

**MINUTES OF MEETING
FIDDLER’S CREEK COMMUNITY DEVELOPMENT DISTRICT #1**

A Regular Meeting of the Board of Supervisors of the Fiddler’s Creek Community Development District #1 was held on **Wednesday, November 20, 2013, at 8:00 a.m.**, at the **Fiddler’s Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the meeting were:

Phil Brougham	Chair
Gerald Bergmoser	Vice Chair
James Curland	Assistant Secretary
Richard Peterson	Assistant Secretary
Robert Slater	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Tony Pires (<i>via telephone</i>)	District Counsel
Matthew Flores	Woodward, Pires and Lombardo
Tony DiNardo	Developer
Ron Albeit	The Foundation
Tony Grau (<i>via telephone</i>)	Grau & Associates, District Auditor
Carrie Robinson (<i>via telephone</i>)	Special Counsel

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:00 a.m., and noted, for the record, that all Supervisors were present, in person.

▪ **Special Counsel Update: Litigation**

******This item was an addition to the Agenda.******

Ms. Robinson stated that, as of yesterday afternoon, the CDD investor 1 and 2 entities, the bondholders, filed an amended counterclaim in the case currently pending on the CDD #2 issues. In the amended counterclaim, the bondholders raised issues related to CDD #1 for the first time. Ms. Robinson explained that, because those issues were raised by a current litigant in the CDD #2 litigation, it leads to the perfect opportunity for CDD #1 to file a motion to intervene, in that lawsuit, asking that CDD #1 also be part of the lawsuit to address its own issues

that were brought up by the bondholders and allow CDD #1 to file its own counterclaim asserting those issues. She advised that counsel is poised and ready to file the motion, together with a proposed intervenor's counterclaim, today.

Mr. Brougham noted that his discussions with Mr. Reyes indicated that the route of piggybacking on the suit already filed by the bondholders, rather than the District filing its own lawsuit, keeps the case in circuit court, rather than federal court. Ms. Robinson preferred to not discuss the details in an open forum but confirmed that this route gives the District the opportunity to enter into a lawsuit with a judge who is very familiar with CDD issues and the lawsuit is well underway, which is a benefit to CDD #1.

In response to Mr. Brougham's question, Ms. Robinson confirmed that the motion to intervene will be filed today. Mr. Brougham asked what the next event will be. Ms. Robinson indicated that the motion must be set for hearing in order to receive a ruling; however, the judge's hearing schedule is very tight, so a hearing is likely in January or February. Ms. Robinson noted that this matter must be heard by the judge, not the magistrate. The earliest possible hearing date will be requested. Ms. Robinson advised that, should the motion be granted, the intervenor's counterclaim, which is being proposed, would be deemed "filed" and the parties named as the defendants, mainly US Bank, must respond to the counterclaim.

Mr. Curland asked what happens if the judge does not rule in the District's favor. Ms. Robinson indicated that, if CDD #1 is not permitted to join the current lawsuit, it has the right to file its own lawsuit.

Mr. Brougham asked if US Bank is aware of the District's actions. Ms. Robinson confirmed that US Bank is aware that the bondholders filed their amended counterclaim yesterday; notification was received online, virtually immediately. Once CDD #1 files its motion, US Bank will know by later today of the District's intention to join.

Mr. DiNardo referred to CDD #2's receivership hearing, on December 4, 2013, and asked if CDD #1 would be impacted if CDD #2 prevails. Ms. Robinson indicated that it would not directly impact CDD #1. Ms. Robinson explained that the motion for appointment of a receiver is only as to the CDD #2 issues but it could be an indication of things to come. Mr. DiNardo asked if it can be combined for the December 4, 2013 hearing. Ms. Robinson stated that it is likely that the court would not look favorably on an amendment; an actual amended motion must be filed to add those issues and, now, the issues before the court are all related to CDD #2 and

she is unsure whether the bondholders decided to amend the current motion. Mr. DiNardo voiced his opinion that the bondholders made the decision to amend; he will verify. Ms. Robinson noted that the other side can object; however, if it can get in over the objection, that would be ideal.

*****Ms. Robinson left the meeting at approximately 8:08 a.m.*****

SECOND ORDER OF BUSINESS

Public Comments: Non-Agenda Items (3 minutes per speaker)

Mr. Brougham asked for public comments on non-agenda items.

There being no public comments, the next item followed.

THIRD ORDER OF BUSINESS

Special Counsel Update: Bankruptcy Proceedings

There being no update, the next item followed.

FOURTH ORDER OF BUSINESS

Consideration of Resolution 2014-1, Accepting the Audited Financial Report for Fiscal Year Ended September 30, 2012

Mr. Brougham presented Resolution 2014-1 for the Board's consideration.

Mr. Tony Grau, of Grau & Associates, referred to Page 1 and indicated that this is a clean opinion; the District did not receive a clean opinion for the past few years due to various events occurring in the District, during that time. Mr. Grau explained that the form of the audit is different and follows the new, required format; however, it essentially states the same things. He reviewed the "Summarized Net Assets", on Page 3, noting that the District's total net assets decreased from -\$26,459 to -\$1,465,195, due to accruing interest on the unpaid bonds being added to the principal balance of the bonds. Page 4 provides the "Changes in Net Assets" and reflects the items that created significant expenses, including the write-off of the previous assessments, of approximately \$3.7 million, and the adjustment for the unpaid interest on the bonds. He stated that the District's "Net Loss" went from -\$5 million to -\$1.4 million; however, this will change in the coming year, assuming the bonds are restructured.

Mr. Grau referred to Page 5 and explained that the 1999 and 2006 Series bonds were refunded and that the District is attempting to refund the 2002 and 2005 Series bonds. The "Balance Sheet", on Page 8, identifies the status of each of the funds. The "Income Statement", on Page 10, shows that the "General Fund" had an increase of approximately \$550,000, the "Debt Service 1999 Series" increased about \$372,000 and the "Debt Service 2006 Series" increased \$177,748; the other three (3) funds had losses. Mr. Grau concluded that the District's "Fund Balance" increased by \$999,000.

Mr. Brougham referred to the terms "Custodial credit risk" and "Concentration risk", on Page 17, and asked Mr. Grau to comment. Mr. Grau indicated that the "Custodial credit risk" is not an issue because the money market mutual funds are not specific securities, they are part of a mutual fund; this disclosure does not apply for the District's types of investments. Regarding "Concentration risk", Mr. Grau advised that the District could adopt a policy setting limits for concentration of risk on its investments; he does not see this as an issue for the District.

Mr. Brougham asked that a discussion item be included on a future agenda regarding whether the District should adopt a policy related to the "Custodial credit risk" and "Concentration risk" of its investments.

Mr. Slater asked why the statement "Not applicable to CDD #1." is not included under "Custodial credit risk" and "Concentration risk", if it is not relevant to the District. Mr. Brougham feels that the comments appear negative. Mr. Slater stated that he does not like the wording of the comments associated with each item. Mr. Slater asked if the District is required to have a policy and voiced his opinion that, if it is not required, the comment should not be included in the audit. Mr. Grau indicated that he can delete the entire "Custodial credit risk" portion, if the Board wants it removed. Mr. Brougham favored removal. Mr. Grau advised that he must check to determine if the "Concentration risk" item can be removed. Mr. Brougham suggested that the items either be removed or a clarifying statement be added noting that the District adopted alternative investment guidelines.

Mr. Grau referred to Note 8, "Series 2002" and "Series 2005" sections, on Pages 19 and 20, and noted that the last paragraph of each explains the bankruptcy issue and the developer's reorganization plan. Note 9, "Prior Period Adjustment", on Page 21, explains the recharacterization of the legal fees and other trustee fees that were paid. On Page 22, Mr. Grau

indicated that the amount owed on the bonds was incorrect in the prior year financial statements; therefore, it was adjusted down in this audit.

Mr. Curland referred to a statement in the last paragraph of each bond series section which states "The District agrees to levy special assessments in the annual amounts adequate to provide payment of debt service and to meet reserve requirements." He asked if this means that the District will impose a "Special" assessment on residents.

Mr. Adams explained that all of the District's assessments are actually "Special" assessments; it is a technical term used. He stated that they are "Special" assessments because they offset "special" benefits, by definition, and, in this case, the statement is not referring to a unique or additional assessment; it is the regular yearly assessment.

Mr. Curland contended that the statement says "The District agrees to levy special assessments" and asked if that means the District can levy assessments above and beyond the bond assessments that are already in effect for each property owner to pay off their portion of the bond debt. Mr. Curland voiced his interpretation that this statement means that the District can impose additional assessments, if necessary, if there is an issue with a bond.

Mr. Adams indicated that the District adopted a methodology and that is what the bond assessment amounts are based upon; if the bonds are refunded, then the methodology would change and the assessment amounts could change. He advised that the District is not assessing above and beyond what is called for in the methodology; as of today, the District is assessing to meet the current obligations. Mr. Adams explained that the recharacterization takes into account the trustee's unauthorized use of reserve and revenue funds collected for the purpose of paying down the bonds. He noted that the District collected the funds and transmitted them to the trustee for a specific purpose; however, in this case, the trustee used the money for a different purpose, which is why it was recharacterized for prior years, in which it was not recognized. In response to Mr. Curland's question, Mr. Adams confirmed that restructuring is the only way to fix the problem.

Regarding restructuring the bonds, Mr. DiNardo indicated that all parties, with the exception of US Bank, have agreed to restructure.

Mr. Brougham referred to Note 16, "Litigation and Claims", on Page 23, and indicated that the sentence "The District intends to vigorously defend the action." should be changed to "The District intends to vigorously contest the assertion and claim of the trustee."

Mr. Grau indicated that Note 17, on Page 23, discusses the bond refinancing and indicates that the first payments were not made on the 2002AB and 2005 Series bonds and that the District is trying to restructure the debt.

In the “Report to Management”, on Pages 29 and 30, Mr. Grau advised of a compliance finding because the District did not meet the debt service reserve requirements for the 2002A and B and the 2005 Series bonds, along with a filing deficiency finding, as the audit was late.

Mr. DiNardo referred to the comment about the missed first payments on the 2002 and 2005 Series bonds and noted that the District and the bondholders had an agreement to defer the payment because of the pending restructuring; he believes that it is a bad note. Mr. Adams stated that there was a ‘consent to defer’ agreement provided by the bondholder. Mr. Grau pointed out that the last part of the sentence states “are deferred due to an agreement between the District and the bondholder”. Mr. DiNardo apologized; he did not hear that part. Mr. Brougham confirmed that the current wording is sufficient and a change is not necessary.

Referring to the yellow highlighted “(TO BE PROVIDED BY CLIENT).” items, on Page 29, Mr. Brougham asked Mr. Adams for the status of the response. Mr. Adams indicated that the “Management Response” was sent to everyone.

Mr. Curland read the “Management Response” regarding the reserve requirement into the record:

“As noted by the auditor, the District is continuing its efforts to make necessary arrangements to ensure funds are available to make debt service payments.”

Mr. Curland read the “Management Response” regarding the filing deficiency into the record:

“The District anticipates that the Fiscal Year 2013 report will be filed timely.”

In response to a question, Mr. Adams indicated that the filing deadline is June 30.

On MOTION by Mr. Peterson and seconded by Mr. Bergmoser, with all in favor, Resolution 2014-1, Accepting the Audited Financial Report for Fiscal Year Ended September 30, 2012, as amended, was adopted.

FIFTH ORDER OF BUSINESS

Developer's Report/Update

Mr. DiNardo reported that he is in negotiations with a developer to buy Marsh Cove.

If the sale goes through, Mr. Brougham asked if Mr. DiNardo will proceed with the plan to have a separate gatehouse. Mr. DiNardo replied affirmatively and added that the thought is for the gatehouse, gate and road to be private and built with developer funds; it would be a gated community built without need for bond money.

Mr. Brougham recalled that Mr. Albeit was provided with a letter and opinion letter from Mr. John Ribes with JRL Design, regarding tree pruning, at the last meeting, and asked if he had any comments. Mr. Albeit is reviewing it with Mr. Jim Vajen but had no comments at this time

SIXTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole presented Draw #82, for the 2005 Series bonds, for approximately \$1,000 for ongoing work related to the lake conveyances.

Mr. Brougham asked if these pay draws are to pay the District Engineer for engineering work. Mr. Cole stated that it is payment for engineering related to construction, as opposed to general services. Mr. Brougham questioned why the bills are separated. Mr. Cole explained that the pay draws are for work completed related to construction items; if the bond was still in place, these costs are being tracked for repayment to the general fund.

Mr. Cole indicated that Phase 2 lake erosion work was completed last week. The golf course areas and the lakes in CDD #1 and CDD #2 were planted; a few punch list items remain.

It was noted that the sod appears to be dead. Mr. Cole noted that the sod could not be planted because the water was too high. The sod should come back and will be monitored for recovery.

Mr. Cole reported that the Waste Management (WM) oil spill repaving project was completed. He reported on a recent oil spill in CDD #2, which does not affect CDD #1.

Documents were prepared and Mr. Cole met with Mr. Pires and Mr. Mark Woodward. Additional information was provided for the lakes turnover and the matter is pending.

Regarding the lakes turnover, Mr. Brougham distributed a resolution, drafted by Mr. Pires, accepting the lake conveyances. Mr. Brougham asked if this represents all of the lakes. Mr. Cole indicated that additional maintenance easements must be added at four (4) lakes

because they were slightly over excavated. He is preparing legal descriptions and must go through Collier County to have them recorded; Collier County has an interest because they are dedicated to the County but with no responsibility for maintenance.

Regarding the herbicide material that was discovered near Fiddler's Creek, in the Marsh Cove area, Mr. Cole indicated that the material was collected, placed in drums and is scheduled for pickup in December.

Mr. Brougham recalled that Mr. Pires was to write a letter. Mr. Pires stated that he received the information last week regarding the parties; the letter will be sent to the various contractors no later than Friday. Mr. Brougham noted that many items come up at meetings where direction is given or someone is to take action. Mr. Brougham asked if the Supervisors could be provided with copies of these types of letters or an explanation of the action taken confirming that the item was addressed and so it does not fall through the cracks. Mr. Pires and Mr. Adams agreed to provide the Board Members with copies of such items.

Mr. Cole reported that the traffic signal design is ongoing. He anticipates providing preliminary information to David Plummer and Associates next week so that the underground utilities can be located, in the vicinity of where the mast arms will be located.

Mr. Brougham asked if the traffic signals will be powered by the District or the county. Mr. Cole believes that the District's power will be used.

Mr. Brougham questioned why the design phase takes so long.

In response to a question, Mr. Cole confirmed that there should be no "road work" necessary with the signal installation, with the exception of possible road restriping.

SEVENTH ORDER OF BUSINESS

Discussion: Lakes Turnover

Mr. Brougham presented Resolution 2014-3 for the Board's consideration.

Discussion ensued regarding the lakes on the exhibit.

On MOTION by Mr. Curland and seconded by Mr. Slater, with all in favor, Resolution 2014-3, Accepting the Conveyance By Special Warranty Deed of Various Lake Tracts and Parcels, as documented, was adopted.

EIGHTH ORDER OF BUSINESS

**Consideration of Resolution 2014-2,
Establishing Minimum Procedures for
Public Comment at Public Meetings**

Mr. Pires presented Resolution 2014-2 for the Board's consideration.

Mr. Slater voiced his concern about Item 4, which gives speakers of a common topic a minimum of ten (10) minutes; he believes they should be given a maximum of ten (10) minutes. Mr. Slater questioned why so much time is being allotted and suggested a five (5) minute limit.

On MOTION by Mr. Peterson and seconded by Mr. Bergmoser, with all in favor, Resolution 2014-2, Establishing Minimum Procedures for Public Comment at Public Meetings, as amended, was adopted.

Mr. Pires confirmed that he will make the approved amendments and forward the document to Mr. Adams for attachment to Resolution 2014-2.

▪ **Staff Reports – Attorney**

****This item, previously Item 11.A., was presented out of order.****

Mr. Pires indicated that he had nothing further to report, other than that he is meeting and working with Mr. Reyes regarding the motion to intervene and other related matters.

****Mr. Pires left the meeting at approximately 8:51 a.m.****

NINTH ORDER OF BUSINESS

Approval of Minutes

A. October 18, 2013 Special Meeting

Mr. Brougham presented the October 18, 2013 Special Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Lines 23, 195, 210 and 216: Change “_____” to “Turner”

Line 60: Change “an blocking exchange” to “blocking an exchange”

Mr. Pires submitted the following change:

Line 116: Insert “the trustee” after “of”

On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, the October 18, 2013 Special Meeting Minutes, as amended, were approved.

B. October 23, 2013 Regular Meeting

Mr. Brougham presented the October 23, 2013 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following change was made:

Lines 207 and 221: Change "Slater" to "Curland"

On MOTION by Mr. Bergmoser and seconded by Mr. Slater, with all in favor, the October 23, 2013 Regular Meeting Minutes, as amended, were approved.

TENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

ELEVENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

There being nothing additional to report, the next item followed.

B. Manager

Mr. Adams indicated that the District received approximately \$26,000 from the tax collector due to overcollection of their anticipated fees.

i. Approval of Unaudited Financial Statements as of October 31, 2013

Mr. Adams presented the Unaudited Financial Statements as of October 31, 2013. He noted the limited activity during the first month of the new fiscal year.

In response to a question, Mr. Adams explained the tax bill process and confirmed that the tax bills must be sent by the first week in November.

Mr. Brougham noted that all residents should have noticed a decrease in their assessment, as a result of the refundings.

ii. NEXT MEETING DATE: December 11, 2013 at 8:00 A.M.

The next meeting is scheduled for December 11, 2013 at 8:00 a.m.

C. Operations Manager

Ms. Crismond indicated that the lake and wetland contract is out for bid; however, as only two (2) proposals were received, she contacted additional contractors and hopes to have the bids for the next meeting. She confirmed that LakeMasters submitted a bid.

Ms. Crismond recalled the whitefly treatment proposal discussed at the last meeting. The Board asked her to seek adjustments from the contractor. Ms. Crismond reported that the contractor will not provide a guarantee on the trees or shrubs due to the numerous factors that can influence the tree and shrub health. Furthermore, the contract only covers ficus, no other species. Ms. Crismond advised that the contractor agreed to the payment plan that the Board requested; however, she did not secure it because she had Mr. Pires send TruGreen a defective work notice. She indicated that Management visited the property on Monday and observed ficus recovery. Ms. Crismond believes that the District should not move forward with the new contractor, at this time. She feels that TruGreen is doing better; whitefly is constantly adapting and so the treatments, frequency of treatments and chemicals are changing. In response to a question, Ms. Crismond confirmed that TruGreen has indicated that they are now performing systemic root treatments, with continued foliar treatments where necessary.

Regarding TruGreen's previous treatments, Mr. Adams pointed out that the summer was very wet and the chemicals oftentimes were diluted by the rain, which impacted the effect of the treatments. Mr. Adams further noted that whitefly immunity is ever changing; originally, treatments were once per year, then twice per year and, now, six (6) treatments per year are recommended. Mr. Adams advised that everyone must treat the problem, in order to push the pest out of the community.

Mr. Brougham asked if any villages are neglecting the whitefly problem. Mr. Albeit reported that Mr. Vajen indicated that he is satisfied with the villages' actions. Discussion ensued regarding the conditions and treatments in other neighborhoods.

Mr. Brougham voiced his understanding that CDD #2 awarded their landscape maintenance contract to TruGreen and asked if there was a significant price adjustment, because of the whitefly issue. Ms. Crismond indicated that TruGreen's price remained the same.

It was noted that the turnaround circle, at the end of Bent Creek Court, is not CDD property. Ms. Crismond indicated that she contacted the crew this morning and requested that they tidy the mulch that was installed in error in that island, as pointed out by Supervisor Slater.

Mr. Adams presented invoices from the law firm providing legal services to Wilmington Trust. The costs are related to preparation of the tri-party and successor trustee agreements, which should put the District in a position to proceed with Wilmington Trust as the trustee, pending the results of litigation. Regarding where the costs should appear on the financial statements, Mr. Adams indicated that a “legal” line item will be created or they can be grouped into “Legal-trust estate”. Mr. Brougham wants to hit US Bank with these costs. Mr. Adams confirmed that they can utilize separate entries, to track them.

Mr. Curland pointed out that the law firm is being paid \$650 per hour and asked if the District has any choice in who Wilmington Trust hires to represent them. Mr. Adams replied no.

On MOTION by Mr. Bergmoser and seconded by Mr. Slater, with all in favor, payment of the legal invoices provided by Wilmington Trust, was approved.

TWELFTH ORDER OF BUSINESS

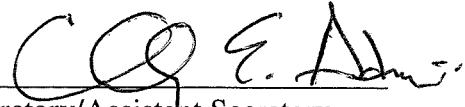
Supervisors’ Requests

There being no Supervisors’ requests, the next item followed.

THIRTEENTH ORDER OF BUSINESS

Adjournment

There being nothing further to discuss, the meeting adjourned at 9:10 a.m.


Secretary/Assistant Secretary


Chair/Vice Chair