

**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, July 23, 2014, 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:

Philip Brougham	Chair
Gerald Bergmoser	Vice Chair
Richard Peterson	Assistant Secretary
Robert Slater (<i>via telephone</i>)	Assistant Secretary
James Curland	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Rick Reyes (<i>via telephone</i>)	Tobin & Reyes, P.A., Litigation Counsel
Tony DiNardo	Developer
Joseph Vaccaro	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:01 a.m., and noted, for the record, that Supervisors Brougham, Peterson and Curland were present, in person. Supervisor Slater was attending via telephone. Supervisor Bergmoser was not present at roll call.

On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor, authorizing Mr. Slater's attendance and full participation, via telephone, due to special circumstances, was approved.

SECOND ORDER OF BUSINESS

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

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

THIRD ORDER OF BUSINESS

Special Counsel Update: Litigation Proceedings

Mr. Reyes recalled that Judge Pivacek recused herself and the judge assignments were reassigned. He advised that the case was assigned to Judge Shenko, who is a new judge. Judge Shenko issued an order scheduling a status conference on September 4. Mr. Reyes stated that no substantive activity will occur until the hearing; however, discovery will continue. Counsel is responding to discovery that U.S. Bank propounded on CDD #1, prior to when the motion to disqualify was filed

Mr. Reyes recommended holding an executive session in order to discuss these matters openly and in more detail.

******Supervisor Bergmoser joined the meeting, in person, at approximately 8:04 a.m.******

In response to a question, Mr. Pires confirmed that executive session attendees must attend in person; no one can call in to an executive session. Mr. Pires agreed that Mr. Reyes can hold a privileged conversation with Mr. Slater.

The Board agreed to continue today's meeting to Monday, August 4, 2014 at 1:00 p.m., at a location to be determined, for the purpose of holding an executive session to discuss pending litigation.

Mr. Brougham recalled that U.S. Bank filed a motion to disqualify Mr. Reyes and/or his firm.

Mr. Reyes indicated that this motion is the issue that is delaying the case. He explained that he represents Fiddler's Creek LLC in a case pending in federal court and, in that case, the judge ordered the entity affiliated with ITG, the bondholder to CDD #2's 2003 bonds, to produce documents that they said would be used in the defense of their case, in discovery. Mr. Reyes stated that those documents were produced, pursuant to court order, and, when produced, U.S. Bank took the position that Mr. Reyes should be disqualified because those documents were produced to him, even though they were produced through a court order. He noted that a lengthy hearing was held with Judge Pivacek at which, after hearing arguments and the testimony of one witness, she stated "I am not inclined to grant this motion" and, because the hearing was not technically completed, U.S. Bank used that comment as an opportunity to disqualify Judge Pivacek. Since Judge Pivacek recused herself and county judges were being shuffled, the

District had to wait for a new judge to be assigned. Mr. Reyes summarized that the motion to disqualify him remains and the process must be “redone” with Judge Shenko.

******Mr. Reyes left the meeting.******

FOURTH ORDER OF BUSINESS

Developer's Report/Update

Mr. DiNardo reported that work in Marsh Cove continues, on schedule.

FIFTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole advised that the bid opening for the U.S. 41 and S.R. 951 traffic signal project was yesterday. The bid package was provided to five contractors; one did not respond, two declined to bid because they did not have the bonding capacity for the project and two submitted bids. He stated that bids were received from Highway Safety Devices (HSD), who previously priced the work, and OnPower Services (OnPower). Mr. Cole explained that OnPower's bid contained a mathematical error of \$9,471.54. OnPower's corrected bid for \$367,926.70 is lower than the HSD bid of \$400,966.70.

In response to Mr. Brougham's question, Mr. Cole advised that OnPower has completed work throughout southwest Florida.

Mr. Cole indicated that he received additional comments from the Department of Transportation (DOT). He explained that DOT is requiring an agreement between DOT and the county regarding the project because, while DOT is the permitting entity, the county is the party taking over the traffic signal. This must go before the board of county commissioners who will not meet again until September 9. Mr. Cole confirmed his belief that this matter will be a consent item on the commission's agenda. He stated that the DOT will not issue a permit until the agreement is in place; therefore, the project will be pushed back a few more weeks. Mr. Cole felt that the contract should not be awarded until the permit is received and suggested that Mr. Pires review the bid submittal, in the interim.

Mr. Pires suggested that Mr. Cole prepare a written recommendation for the lowest, most responsive and responsible bidder.

In response to Mr. Bergmoser's question, Mr. Cole outlined the project timeline, given the delay, and concluded that the signal installation will be delayed. Mr. Brougham asked Mr.

Cole to be prepared to provide recommendations for expediting the project, at the August meeting. Mr. Cole estimated that, if the notice to proceed can be issued in mid-September, installation should be completed by mid-March.

Mr. Pires noted that the sealed bid documents are not available to the public until the Board announces its intention to take action or 30 days after the bid opening; therefore, bid documents cannot be provided to the public until August 20.

In response to a question, Mr. Cole confirmed that the bids were comprehensive and he does not anticipate additional work. Mr. DiNardo asked if the bid price includes Mr. Cole's fees. Mr. Cole replied no; engineering, permitting and design fees are separate. Mr. Brougham asked if the interlocal agreement between CDD #1 and CDD #2 is inclusive of the District Engineer and contractor's fees. Mr. Pires voiced his belief that the agreement includes design, permitting and construction. Mr. Brougham asked if the bid includes David Plummer & Associates fees. Mr. Cole replied no. Mr. Brougham directed Mr. Cole to prepare an estimate of the District Engineer's fees, along with any other costs or fees not included in the bid.

In response to Mr. Curland's question, Mr. Pires confirmed that a bid dispute could further delay the entire project.

Mr. Cole recalled previous discussion regarding the warranty for the paint that will be used on the signals; he advised that, per the bid documents, the paint has a five-year warranty, which is standard for DOT projects.

Mr. Cole noted discussion at last month's meeting regarding signage on Championship Drive; someone was confused about turning onto Championship Drive and did not realize it is a two-lane road. He stated that it is a two-lane road; he researched it and advised that the center line is striped yellow.

Mr. Brougham asked if the erosion work was completed. Mr. Cole confirmed that the current phase was completed; Phase 4 should be completed next spring.

In response to a question, Mr. Cole indicated that both bids are inclusive, although the contractors might have subcontractors completing certain items.

SIXTH ORDER OF BUSINESS

Consideration of Letter of Support to Collier County to Secure Landscape Beautification Grant

Mr. Brougham presented a letter of support to Collier County to secure a landscape beautification grant to landscape the median segment on S.R. 951, between Mainsail Drive and Fiddler’s Creek Parkway. He explained that the county needs ten letters of support to include with its grant application.

On MOTION by Mr. Bergmoser and seconded by Mr. Peterson, with all in favor, the Letter of Support to Collier County to secure landscape beautification grant, was approved.

SEVENTH ORDER OF BUSINESS

Continued Discussion: Proposed Budget for Fiscal Year 2014/2015

Mr. Brougham referred to the “Improvements and renovations” line item, under “Landscaping”, on Page 2, and noted that the District budgeted \$145,000 for Fiscal Year 2014 but expended only \$9,365 through March. Ms. Crismond indicated that there were additional expenses that have not “hit” the financials; \$90,000 was recently spent on tree trimming. Mr. Adams clarified that, on Page 6, under “Landscaping”, the “Other contractual - landscape maint.” category includes a separate \$100,000 item for “Tree Trimming”; the “Improvements and renovations” item is a separate \$145,000 amount. Mr. Brougham questioned if the Board should continue budgeting \$145,000 for “Improvements and renovations”, if it regularly only spends \$10,000. Mr. Adams favored budgeting the same amount for “Improvements and renovations”, as the District should continue reinvesting in its landscape program.

Mr. Curland asked if the equivalent residential unit (ERU) division of 62%/38% will remain for Fiscal Year 2015. Mr. Adams replied affirmatively; the figures include CDD #2’s increase to 1,190 units.

Mr. Slater questioned if the \$100,000 amount budgeted for “Legal – litigation”, on Page 1, will be sufficient, given the additional delays. Mr. Brougham agreed that this matter should be discussed with Mr. Reyes during the executive session. Mr. Brougham believes that the Board must determine how much it is willing to invest and the risk versus the potential reward.

Mr. Adams indicated that mailed notices must be sent next week, based on the anticipated assessment increase. He explained that the District can reduce assessments down from the noticed amount but must offset any additional increases with fund balance. Mr. Adams felt that

\$100,000 would probably be sufficient, as the District generally realizes savings in other areas of the budget and, currently, the proposed budget projects a \$1.1 million “Ending fund balance”, at the conclusion of Fiscal Year 2015.

Mr. Brougham advised that the proposed budget anticipated increasing on-roll assessments from \$1,294.01 to \$1,481.99, which is an increase of \$187.98, over the current fiscal year. Mr. Brougham pointed out that the primary reasons for the increase were the increase in the “Landscaping” budget and the addition of a “Legal - litigation” line item of \$100,000. Mr. Adams added that the security enhancement upgrade for access control contributes to the increase.

Mr. Adams recommended that the mailed notice provide an assessment amount of \$1,499.99.

Mr. Adams explained the noticing requirements. Mr. Brougham asked that the notice contain understandable verbiage.

On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, setting the mailed notice maximum on-roll assessment at \$1,490, was approved.

EIGHTH ORDER OF BUSINESS

Update: Qualified Candidates for November 4, 2014 General Election

• **Seat 1 Charles A. Turner [unopposed]**

Mr. Brougham advised that Mr. Charles A. Turner will replace Mr. Curland at the first meeting following the November election. Mr. Pires clarified that Mr. Turner will assume the seat on the second Tuesday, following the election. Mr. Pires indicated that he will advise Mr. Turner to avoid communication with other Board Members, as of the date of the election.

Mr. Bergmoser stated that he lives across the street from Mr. Turner and asked if this means that he cannot talk to him about anything regarding Board management. Mr. Pires reiterated that, upon his last check, the Attorney General’s opinion was that it becomes effective, as of the date of the election.

Mr. Petersen expressed his intention to resign at the conclusion of today’s meeting and recommended that the Board appoint Mr. Turner to his vacated seat.

Mr. Pires reminded Mr. Curland that, once he resigns, he will not be able to participate in the executive session.

Mr. Slater voiced his understanding that Mr. Turner serves on Fiddler’s Creek advisory boards and must resign from those boards, prior to taking the seat. Mr. Brougham indicated that Mr. Turner is not required to resign. Mr. Slater asked Mr. Pires to explain the legal precedence by which Mr. Turner can serve on Fiddler’s Creek advisory boards, while also holding a CDD Board seat, as it appears to be a major conflict. Mr. Brougham stated that Mr. Turner is on The Fiddler’s Creek Foundation Advisory Board. Mr. Pires indicated that he will research the matter further; however, he believes that there is no statutory conflict of interest.

Mr. Brougham directed Mr. Pires to research this matter and report to the Board.

- **Seat 2 Gerald Bergmoser [incumbent]**

Joseph J. Vaccaro

This item was not addressed.

NINTH ORDER OF BUSINESS

Approval of Minutes

- **June 18, 2014 Regular Meeting**

Mr. Brougham presented the June 18, 2014 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 26: Change “John Cortno” to “Jon Portnof”

Line 27: Change “Nick Peppaglo” to “Nat Pappagallo”

Line 150: Change “Brody” to “Brodie” (2 locations on same line)

Line 151: Change “family” to “criminal”

Line 180: Change “John Cortno” to “Jon Cornof”

Mr. Adams indicated that Ms. Alice Carlson, of AJC Associates, emailed to advise him that she will review the on-roll and off-roll numbers with Mr. DiNardo, in early August.

Line 360: Change “27” to “20”

<p>On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the June 18, 2014 Regular Meeting Minutes, as amended, were approved.</p>

o **Action Items**

The action items were not discussed.

TENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

ELEVENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

Mr. Brougham asked if Mr. Pires will attend the executive session. Mr. Pires indicated that he might have a conflict but will check his schedule.

B. Manager

i. Approval of Unaudited Financial Statements as of June 30, 2014

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2014.

Mr. Bergmoser questioned why the District continues to have \$620 in the BB&T savings account. Mr. Adams indicated that he will have those funds transferred to the FineMark account.

ii. NEXT MEETING DATE: August 20, 2014 at 8:00 A.M.

The next meeting is scheduled for August 20, 2014 at 8:00 a.m.

C. Operations Manager

Ms. Crismond presented the Operations Report. She advised that Management received a Notice of Violation from the Design Review Committee (DRC), on June 19, regarding various signage and streetlight issues, requesting numerous signage repairs, insert replacements, cleaning and painting. Ms. Crismond obtained a quote from Lykins Signtek for \$5,660 to complete the work. She stated that she is presenting this quote for the Board's approval because the line for those services is already over budget for the current fiscal year.

Mr. Peterson noted large lizards in his neighborhood, which could be a detriment to other wildlife, and asked if they can be removed. Mr. Brougham advised him to contact Fish and Wildlife regarding removal.

TWELFTH ORDER OF BUSINESS

Supervisors' Requests

▪ **Resignation of Supervisor James Curland from Seat 1, Term Expires November, 2014**

Mr. James Curland resigned his seat, effective 10:00 a.m., today.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the resignation of Mr. James Curland, effective at 10:00 a.m., today, was accepted.

Mr. Brougham nominated Mr. Charles Turner to fill Seat 1, effective August 4, 2014. Mr. Bergmoser seconded the motion.

Mr. Adams stated that administration of the Oath of Office for Mr. Turner should be added to the August 4, 2014 Continued Meeting agenda, as the first order of business.

Mr. Slater reiterated his opinion that serving on The Fiddler's Creek Foundation Advisory Board and the CDD Board, simultaneously, is a conflict. He noted that The Foundation and the CDD often disagree.

Mr. Brougham's perception was that the CDD only interacts with The Foundation on landscaping and security matters, as they are the CDD's security contractor. Mr. Slater agreed and recalled that the security contract has been the main disagreement, historically. Mr. Slater stressed that Mr. Turner would be a fantastic Board Member but, in good conscience, he should resign from The Fiddler's Creek Foundation Advisory Board.

Mr. Peterson agreed with Mr. Slater and felt that appointing Mr. Turner should be delayed until a conflict of interest can be clarified.

Mr. Brougham withdrew his motion.

Mr. Brougham asked Mr. Pires to draft a memorandum of what the Board can or cannot do, with regard to seating Mr. Turner, following the November election. Mr. Pires advised that the Board has no input in the election outcome; Mr. Turner qualified for the election and will take office the second Tuesday following the November 4 election. Mr. Pires noted that, if someone wishes, they may challenge the results if they have an issue with the candidate's qualifications to serve. Mr. Pires confirmed that he will provide an opinion on whether Mr. Turner has a conflict of interest.

Discussion ensued regarding whether Mr. Curland could vote on the following motion, since his accepted resignation was not effective until 10:00 a.m. Mr. Pires recommended that Mr. Curland not vote.

On MOTION by Mr. Bergmoser and seconded by Mr. Brougham, with Mr. Bergmoser, Mr. Brougham and Mr. Peterson in favor, Mr. Slater dissenting, and Mr. Curland abstaining, the appointment of Mr. Charles Turner to Seat 1, term expires November, 2014, was approved. (Motion passed 3-1)

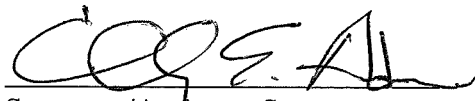
THIRTEENTH ORDER OF BUSINESS Adjournment

Mr. Adams reiterated that administration of the Oath of Office to Mr. Turner should be added to the August 4, 2014 Continued Meeting agenda.


Mr. Pires stated that the Board Members, Mr. Reyes, a court reporter, Mr. Adams and himself, if possible, will participate in the executive session.

On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, the meeting recessed at 9:11 a.m., and was continued to Monday, August 4, 2014 at 1:00 p.m., at this location, for the purpose of holding an executive session with the Board Members, Mr. Reyes, a court reporter, Mr. Adams and Mr. Pires, participating.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



Secretary/Assistant Secretary



Chair/Vice Chair