

**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, October 22, 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:

Gerald Bergmoser	Vice Chair
Richard Peterson	Assistant Secretary
Robert Slater	Assistant Secretary
Charles Turner	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Carrie Robinson (<i>via telephone</i>)	Tobin & Reyes, P.A., Litigation Counsel
Tony DiNardo	Developer
Ron Albeit	The Foundation
Alice Carlson	AJC Associates, Inc.
Frank Weinberg	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 Bergmoser, Peterson Slater and Turner were present, in person. Supervisor Brougham was not present.

SECOND ORDER OF BUSINESS

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

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

There being no public comments, the next item followed.

THIRD ORDER OF BUSINESS

Special Counsel Update: Litigation Proceedings

Ms. Robinson advised that the CDD #2 punitive damages motion is set for hearing on December 30, 2014.

*****Ms. Robinson left the meeting.*****

FOURTH ORDER OF BUSINESS

Developer's Report/Update

Mr. DiNardo asked if the Board received the developer's letter regarding the operation and maintenance (O&M) assessment on the commercial property. He stated that the developer believes the assessment is in violation of Florida law and is excessive. Mr. DiNardo expressed the developer's opinion that, according to the business plan, the District's calculation of the equivalent residential units (ERUs) was incorrect. He asked if the Board read the assessment that the developer provided from Fishkind & Associates. Mr. DiNardo advised that this matter must be resolved because of the developer's belief that the assessment is in violation of Florida law. He questioned what the Board will do and asked that the matter be investigated.

Mr. DiNardo referred to the District's September request asking the developer to contribute extra funds and advised that the developer has "no comment" to the request to contribute additional funds, until the District resolves the developer's issues with the O&M assessment.

Mr. Bergmoser recalled that Mr. DiNardo previously made a commitment, on behalf of the developer, to reimburse the District for its legal expenses relating to changing trustees.

Mr. DiNardo disagreed, stating that he only made a commitment to "redo" the bonds and the developer paid to "redo" the bonds; he advised the Board to review its bills. He reiterated that the developer will not review the Board's request, or bills, until the District resolves the assessment issue. Mr. DiNardo advised that the developer is withholding an "answer" to the District's request because the developer believes that the District is in violation of the law regarding the assessment on the commercial property. He alleged that, from "day one", the District's calculation method was not transparent in the business plans because no method was included, except for an ERU column. Mr. DiNardo stated that the properties designated as ERUs by the District are not, because, if ERUs were being used, there would be a difference in assessments between single and multi-family units. He contended that the District is employing a "hybrid" method, which was not disclosed in the business plans, regarding which parcel is receiving what allocation and under which method. Mr. DiNardo summarized that the developer

disagrees with the District’s calculation method and the assessment amount. Mr. DiNardo stressed that the developer will not respond to any of the District’s requests until the assessment on the commercial property is “resolved”.

Mr. Adams recommended that the District engage a third party assessment methodology expert, with no affiliation to the community, past or present, and authorize engagement of Special Counsel to work on this matter, as Mr. Pires would have a conflict of interest, due to his partner’s representation of the developer. In response to Mr. Bergmoser’s question regarding Special Counsel, Mr. Adams indicated that the District would engage counsel that is familiar with Florida government and assessment law.

Regarding whether Ms. Alice Carlson, of AJC Associates, Inc., would be present, Mr. Adams indicated that he was unsure if she would make it; he felt that it was not the time to engage in debate on the subject.

Mr. Peterson expressed his opinion that the assessment and the District’s reimbursement request were separate matters. He asked to hold an executive session, once the District engages Special Counsel.

Mr. Adams advised that an executive session cannot be held until the District is in litigation or contemplates litigation. Mr. Adams indicated that, once Special Counsel is engaged and reviews the information, he can contact each Board Member, individually, to explain the situation and how Special Counsel believes that the District should proceed. He noted that the Board could take action during a meeting.

On MOTION by Mr. Slater and seconded by Mr. Turner, with all in favor, authorizing the District Manager to engage a third party assessment methodology expert, with no affiliation to the community, past or present, and engagement of Special Counsel with an appropriate background in Florida government and assessment law, were approved.

Mr. Bergmoser noted “ground shaking” activities, recently, and asked if any areas were being dynamited. Mr. DiNardo stated “Nothing in District #1.” Mr. Adams advised that he followed an explosives truck this morning down to the community. It was noted that the explosions occur at 2:00 p.m., each day.

FIFTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole recalled discussion at the last meeting regarding installation of traffic calming devices on Cherry Oaks Trail. He distributed copies of the Collier County Neighborhood Traffic Management Program Manual (NTMP). Mr. Cole noted that traffic calming was a controversial and debated issue in the county for several years. He advised that the NTMP explicitly details how traffic calming devices can be instituted. Mr. Cole stated that Mr. Brougham and Mr. Adams asked him to investigate the possibility of closing the north end of Cherry Oaks Trail and installing a cul-de-sac, at the intersection of Cherry Oaks Lane and Cherry Oaks Trail, or a hammerhead intersection, which is what currently exists. He submitted a sketch to the East Naples Fire District (ENFD) and was advised that the ENFD did not favor closing the road because of response times and limiting connectivity, within the community. Mr. Cole was advised by the county that the ENFD is against any traffic calming measures; however, he was not able to confirm the information with the ENFD. He stated that road striping alternatives might aid in slowing traffic speed, along with the planned "No Through Traffic" signage that will be installed at both ends of the community.

Mr. Slater noted that the majority of the traffic will be residents residing near the second fountain, coming north on Sandpiper Drive, who turn left onto Cherry Oaks Trail. He believed that installing a "No Left Turn" sign would stop most drivers from turning left at that location and encourage them to use Fiddler's Creek Parkway.

Mr. Cole pointed out that a "No Left Turn" sign would legally prohibit residents in that neighborhood from turning at that location, along with emergency responders.

Mr. Turner remarked that Mr. Cole did not specifically state that the District could not impede traffic on the road. Mr. Cole reiterated that the ENFD was against impeding traffic. Mr. Turner asked if the statute prohibits the District from impeding traffic.

Mr. Pires advised that, whether the ENFD was against it or had a valid basis to object to impeding traffic and had a dislike of speed humps or bumps, were different questions. He explained that Collier County has jurisdiction over the roadways. Mr. Pires noted issues with installing a cul-de-sac at that location, as there is not enough land in the District's right-of-way (ROW) for a cul-de-sac.

In response to Mr. Bergmoser's question, Mr. Cole clarified that a cul-de-sac was being contemplated for Cherry Oaks Trail and Cherry Oaks Lane, several hundred feet south of

Sandpiper Drive. He confirmed that the cul-de-sac would effectively close off the entrance from Sandpiper Drive. Regarding the two homes on the other side, Mr. Cole explained that those residents could gain access on the north side of the cul-de-sac or hammerhead; it would be a short, dead end street.

This item will be added to the next agenda.

Mr. Pires confirmed that he will coordinate with Mr. Cole.

Mr. Cole reported that the work at the east end of Marsh Cove, Phase 1, was substantially completed; four development tracts are being readied, to the east of Club Center Boulevard.

SIXTH ORDER OF BUSINESS

Update: SR 951 Traffic Signal Installation

Mr. Cole indicated that the construction agreement was approved last week and was submitted to the Department of Transportation (DOT). David Plummer and Associates will follow up on issuance of the permit; all of the DOT's comments were addressed. Mr. Cole anticipated issuance of the permit soon. Once the permit is issued, the Notice to Proceed will be given to the contractor to proceed with construction of the traffic signal.

Mr. Bergmoser asked how much longer the county's construction will last. Mr. Cole was advised that final paving will occur within the month. Mr. Bergmoser questioned if work must wait until the county's project is completed. Mr. Cole stated that the District's project could commence but probably would not because the contractor would be waiting for the mast arms to arrive.

Mr. Cole speculated that installation of the traffic signal and the burn-in period will be completed in April, 2015.

SEVENTH ORDER OF BUSINESS

Consideration of Security Vehicle Proposals

Mr. Adams presented proposals for a new security vehicle. He recalled that the previous vehicle was a generic Ford Taurus; however, Ford now offers the Taurus and Explorer vehicles with the police Interceptor package. Mr. Adams explained that the police Interceptor package is more durable than the standard model and more appropriate for the security services within the District. He noted a preference for the Explorer because it offers more storage capacity for

security equipment and would be better capable to handle the terrain to patrol areas with new construction.

Mr. Adams indicated that quoted prices are federal government prices. He advised that the cost difference between the Explorer and Taurus would be approximately \$3,500. Mr. Adams recommended purchasing the Explorer, for \$27,025. He explained that the vehicle must be built; therefore, once ordered, it should arrive in mid-January.

Mr. Adams recalled that the purchase of a new security vehicle was discussed, at length, at the last CDD #2 meeting; he will make the same recommendation to CDD #2 today.

In response to a question, Mr. Adams confirmed that the budget anticipated a \$24,000 vehicle split across two years. He advised that this vehicle costs more but, because it will not arrive until four months into Fiscal Year 2015, the budget would cover the Fiscal Year 2015 payments; however, the Fiscal Year 2016 budget would need to be increased to absorb the difference for purposes of proper replenishment of the fund balance.

Mr. Adams reiterated the reasons for his recommendation to purchase the Explorer and, regarding whether the current Taurus could accommodate the security equipment, he advised that it holds the equipment but does not leave room. Mr. Adams identified the equipment that the vehicle carries.

Discussion ensued regarding the type of vehicle discussed the last time a security vehicle was purchased. It was noted that the heavier vehicle, carrying a heavier load, would utilize more fuel than the current vehicle. Mr. Adams concurred that the Explorer consumes more fuel; the Explorer gets 18 miles per gallon (mpg) and the Taurus gets 21 mpg. In response to a question, Mr. Adams conceded that neither vehicle would achieve those mileage figures, due to the low driving speed. It was noted that Consumer Reports estimated 14 mpg.

Mr. Peterson pointed out that the security vehicle fuel costs, under the Fiscal Year 2014 budget, were already at 120%. He voiced his opinion that the Taurus model would be sufficient for the safety vehicle and asked about purchasing a four-cylinder vehicle, versus the proposed six-cylinder.

Mr. Adams advised that he previously researched the difference between four and six-cylinder vehicles; the difference was about \$200, which was not a significant cost savings and the fuel savings was not significant, either. He stated that the Ford dealer believed that a four-cylinder vehicle would wear out sooner than a six-cylinder model. Mr. Adams explained that the

vehicle is driven 100,000 miles per year and low speed driving causes more wear and tear on the engine. The Interceptor models are better suited for low speeds.

Mr. Turner asked if the purchase price would be split with CDD #2. Mr. Adams advised that the cost would be split on a prorata share based upon assessable units. In response to a question, Mr. Adams confirmed that the vehicle will be paid for in full at the time of purchase.

Mr. Slater asked if the price includes the law enforcement light bar. Mr. Adams replied no and estimated approximately \$3,000 for installation of the light bar, which would be paid from the "Operating supplies" line item. Mr. Adams recommended installing a new light bar, as opposed to moving the light bar from the current vehicle.

Regarding why the security vehicle would be used to transport the safety cones necessary for construction work, Mr. Adams advised that the security contractor did not previously use cones; however, the Districts recommended that security implement the use of cones.

In response to a question, Mr. Adams confirmed that off-road capabilities are needed to patrol through the new construction areas. A Board Member questioned if the Districts' safety provider is being used to protect the contractor's equipment. Mr. Adams stated that the patrols look for people that should not be in the construction areas or who should have left the construction areas for the day.

Mr. Turner noted that CDD #2 has more construction areas and suggested that the heavier duty Explorer might perform well for at least two or three years, as opposed to the Taurus.

Mr. Peterson supported the purchase of the Taurus.

Mr. Slater asked what CDD #2 voted to purchase. Mr. Adams indicated that CDD #2 did not vote. Mr. Adams confirmed that, if CDD #2 approves a different vehicle, the matter must be reconsidered.

On MOTION by Mr. Turner and seconded by Mr. Slater, with Mr. Turner, Mr. Slater and Mr. Bergmoser in favor, and Mr. Peterson dissenting, the 2015 Ford Explorer proposal, with a police Interceptor package, for \$27,025, was approved. (Motion passed 3-1)

Mr. Bergmoser advised Ms. Carlson that the Board had a brief discussion regarding assessments on the commercial property and decided to conduct further research.

EIGHTH ORDER OF BUSINESS

Approval of September 24, 2014 Regular Meeting Minutes

Mr. Brougham presented the September 24, 2014 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 52: Delete "be"

Line 57: Change "gated" to "blocked"

Line 58: Change "recommended" to "advised that the Board could consider"

Line 95: Change "do the same on Mulberry" to "consider traffic calming on Mahogany"

On MOTION by Mr. Turner and seconded by Mr. Slater, with all in favor, the September 24, 2014 Regular Meeting Minutes, as amended, were approved.

○ **Action Items**

The action items were not discussed.

NINTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

TENTH ORDER OF BUSINESS

Staff Reports

A. Attorney

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

B. Manager

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

The Unaudited Financial Statements as of September 30, 2014 were provided for informational purposes.

ii. NEXT MEETING DATE: November 19, 2014 at 8:00 A.M.

The next meeting will be held on November 19, 2014 at 8:00 a.m.

C. Operations Manager

Ms. Crismond presented the Operations Report. She advised that a pre-bid meeting will be held soon and the proposals will be presented for the Board's consideration at the December meeting.

Ms. Crismond recalled that a 16" irrigation mainline break recently occurred along Fiddler's Creek Parkway and indicated that repairs were underway. She explained that the repair will involve removing the sidewalk, recompacting the ground and reinstalling the sidewalk. Ms. Crismond obtained two quotes and will review them; she estimated repair costs of approximately \$18,000.

Ms. Crismond confirmed that patrols were increased to twice per week and she is working with the sheriff to increase patrolling on Cherry Oaks, as well as other areas in CDD #2.

Mr. Bergmoser pointed out that there were 30 warnings but only three citations. Ms. Crismond advised that she cannot control the issuance of citations; she asks the Sheriff to issue citations but it will not be done simply because the District requests it. Ms. Crismond voiced her understanding that, once one or two warnings are received, a citation is issued.

Mr. Pires asked if the cause of the 16" irrigation mainline break was determined. Ms. Crismond indicated that the cause was not determined. Mr. Pires asked about the age of the mainline pipe to determine whether it was a construction-related, maintenance or routine operational issue.

It was noted that the break occurred in an area where large trucks servicing the golf course were driving. Mr. Cole advised that the repair was on the left of the driveway. Ms. Crismond and Mr. Cole will investigate the area further to determine the cause. In response to questions, Mr. Cole estimated that the mainline was ten years old, with a life expectancy of 40 years.

Mr. Bergmoser questioned if The Rookery can drive heavy vehicles over the CDDs' property, at will. Mr. Cole explained that the driveway existed before the road; provisions were made for the driveway when the road was designed and constructed.

ELEVENTH ORDER OF BUSINESS**Supervisors' Requests**

In response to a question, Mr. Adams advised that the Unaudited Financial Statements as of September 30, 2014 are not the accrued financial statement; generally, the books remain open and costs accrue through October.

In response to Mr. Peterson's question, Mr. Adams confirmed that the \$109,337 "Legal - litigation" line item, on Page 2, was related to the trustee situation. Mr. Peterson pointed out that "Engineering" expenses, on Page 2, exceed the budget by approximately \$30,000 and asked why. Mr. Cole stated that the work related to lake erosion issues was included under "Engineering" but the "Other contractual" line item, on Page 2, was under budget by \$50,000; which offsets the overage for "Engineering".

In response to a question regarding "Other contractual - landscape maintenance", on Page 3, Ms. Crismond confirmed that the District is holding payments due to the contractor. Mr. Adams clarified that the District is withholding; however, the withheld amounts were included in the \$730,952 "Year To Date" amount. Regarding why the landscape costs were under budget, Mr. Adams noted that one month of billing remained. Ms. Crismond confirmed that most of the "Improvements and renovations" costs were paid. It was noted that "Roadway maintenance", on Page 3, was at 141%. Ms. Crismond advised that the expenses were related to sidewalks, sign replacements, etc.

Mr. DiNardo asked what the \$415,231 "Due from other funds" line item, on Page 1, was related to. Mr. Adams indicated that \$415,231 was due from "Debt Service Series 2002" and "Debt Service Series 2005" and speculated that they were collections that are due back to the "General Fund".

Mr. DiNardo stated that the Board "signed off" on all of the construction for the Series 2002 and Series 2005 bonds and advised that the remaining amounts are excess and should be used to redeem bonds. He asked if the Board is doing anything with regard to redeeming bonds.

Mr. Adams advised that the District does not have any available constructions funds and that the Series 2005 construction fund actually owes the "General Fund" approximately \$120,000. Mr. DiNardo questioned the figures in the Unaudited Financial Statements and contended that all of the funds listed for the Series 2002B, 2002A and 2005 bonds should be transferred to the Series 2014 bonds, unless Mr. Adams can prove differently. Mr. Adams indicated that he will research the matter. Mr. DiNardo felt that the shift would involve Board action. Mr. Adams clarified that it would not be a Board action; it would be administered by the Trust Indenture.

Mr. Bergmoser pointed out that the Series 2005 construction fund reflected a -\$108,000 fund balance. Mr. DiNardo argued that there is no Series 2005 bond. Mr. Adams explained that

the construction fund was closed; however, the money spent from the "General Fund" to continue certain things during the bankruptcy and post-bankruptcy continued to be booked, in the hope that some of the misused construction funds could be recovered, through litigation, and be used to replenish the "General Fund".

TWELFTH ORDER OF BUSINESS


Adjournment

There being no further business to discuss, the meeting adjourned.

**On MOTION by Mr. Peterson and seconded by Mr. Turner,
with all in favor, the meeting adjourned at 8:57 a.m.**

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary


Chair/Vice Chair