

**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, January 28, 2015**, 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
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
Mike Charbonneau	The Foundation
John Irwin	Resident
Jesse Fritz	Resident
Joe Vacarro	Resident
Shannon Benedetti	Resident

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 Brougham, Bergmoser, Slater, Turner, and Peterson were present, in person.

SECOND ORDER OF BUSINESS

Special Counsel Update: Litigation Proceedings

******This item, previously the Third Order of Business, was presented out of order.******

Ms. Robinson reported that CDD #2 was successful at the December 30, 2014 hearing; the judge allowed CDD #2 the right to amend its losses to add claims for punitive damages

against U.S. Bank on its tort claim of Breach of Fiduciary Duty, Conversion and Constructive Fraud. She indicated that, on the same day, the bondholders' motion was set for hearing on February 23, 2015. Ms. Robinson recalled that CDD #1 intervened in the bondholders' case, not in the CDD #2 case. She explained that the issues between the lawsuit filed by the bondholders and the lawsuit brought by CDD #1 are very similar; therefore, the District will await the outcome of the February 23, 2015 hearing. Ms. Robinson felt that, as its next course of action, it would behoove CDD #1 to conduct targeted but limited discovery aimed at the issues relative to punitive damages.

Mr. Brougham asked if the reason Special Counsel did not file the motion due to procedural differences, as outlined, and the bondholders' hearing on February 23, 2015. Ms. Robinson replied affirmatively; Special Counsel intervened on the bondholders' case, not on the CDD #2 case, and all of the evidence that was proper and on behalf of CDD #2 related only to CDD #2. She noted that the situation will be very different at the bondholders' hearing because the bondholders' lawsuit involves claims for both CDD #1 and CDD #2; therefore, it will be more appropriate to move at that time. Mr. Brougham questioned if a response to the first request to discovery was received. Ms. Robinson advised that a lengthy response was received and will be forwarded to the Board.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, authorization for Special Counsel to file for additional discovery against U.S. Bank, was approved.

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

THIRD ORDER OF BUSINESS

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

****This item, previously the Second Order of Business, was presented out of order.****

Mr. John Irwin, a resident, recalled prior concerns about construction traffic on Cherry Oaks Lane. He noted a recent decrease in the amount of large construction vehicle traffic on the road; however, the amount of small construction contractor and worker vehicles remains. Mr. Irwin expressed concern that those vehicles travel too fast on Sandpiper Drive. He admitted to

stopping some vehicles and the drivers informed him that the guards told them to use that route. Mr. Irwin felt that speed bumps should be installed in the lane.

Mr. Brougham stated that he supports reducing traffic; however, Mr. Irwin is experiencing growing pains related to an increased amount of construction traffic, just as other residents experienced, in the past. Mr. Irwin pointed out that Cherry Oaks Lane is a different type of road. Mr. Brougham concurred but pointed out that Cherry Oaks Lane is a public road and the District cannot block or enforce anyone from driving on it.

Mr. Pires advised that the District does not have the ability to enforce traffic laws; however, it can install traffic calming devices, subject to the District Engineer’s review and approval by Collier County. He noted that emergency services agencies are typically not appreciative of speed bumps; speed humps, tables or other traffic calming devices might be acceptable.

FOURTH ORDER OF BUSINESS

Developer’s Report/Update

Mr. DiNardo reported that construction of the fountain, in front of Marsh Cove, will commence, immediately. Regarding construction traffic, he identified the location where all construction traffic is directed to enter, an existing road and the location where another road will be built. Once the road is built, the Marsh Cove construction traffic will be directed away from the current route.

Mr. Brougham directed Mr. Charbonneau to remind the Sandpiper Gate guards where construction traffic should be directed. Mr. Charbonneau indicated that the passes are site-specific and the directions are printed based on the software. Mr. Charbonneau confirmed that security mitigates when traffic uses other routes and advises the Sheriff of “hot spots”, such as Cherry Oaks Lane and Sandpiper Drive.

FIFTH ORDER OF BUSINESS

Engineer’s Report

Mr. Cole presented Draw #91, for approximately \$7,000, for the Series 2005 A/B bonds, for work related to transfer of the South Florida Water Management District (SFWMD) permits. He and Mr. Pires are working on this matter and it will be presented at the next meeting.

Additionally, the draw included a permit fee for inspection on a lake that the District is trying to close out with the county.

Mr. Cole indicated that the field work for the Phase 4 lake erosion improvements was completed; the work was prioritized, according to the budget. He explained that the budget is approximately \$200,000, per phase; the work should commence in April.

SIXTH ORDER OF BUSINESS

Update: SR 951 Traffic Signal Installation

Mr. Cole advised that the revised agreement was executed by Collier County and submitted to the Department of Transportation (DOT). He noted that the Commission Chair changed during the most recent meeting but hoped that DOT would not return the agreement for revision.

Mr. Brougham recapped that the DOT approved the agreement on January 13, 2015, it was signed by Commission Chair Nance on January 15, 2015, shipped via FedEx to the DOT on January 22, 2015 and received by the DOT on January 27, 2015. He discovered late yesterday that DOT's counsel has an issue because the former Commission Chair's name was crossed out and the new Chair's name was written in, with Chair Nance executing the agreement. Mr. Brougham was advised by someone at the Collier County Commission office that the permit would be issued. Mr. Brougham noted that this issue will likely cause the project to be delayed at least one more month.

Mr. Brougham recommended authorizing the District Engineer to proceed with ordering materials.

Mr. Bergmoser recalled previously making the recommendation to order the mast arm and asked what other expenses were related to the project.

Mr. Cole indicated that the project would also involve installing electrical conduits, etc. Mr. Slater pointed out that conduits could not be installed until the permit is issued. Mr. Cole clarified that lead items, such as the mast arms, could be ordered.

Mr. Slater acknowledged the importance of the traffic signal but felt that the District could be exposing itself, financially, as the District cannot be sure that the permit will be issued.

Mr. Brougham asked if the mast arm order could be cancelled with no penalty. Mr. Cole must research this matter.

Mr. Turner asked about the chances of the specifications changing, if the mast arms were ordered before the permit is issued. Mr. Cole indicated that mast arms are site specific, based on the geometry of the intersection; the length would be specific to this intersection. Mr. Cole stated that all of these and the technical items were addressed with the DOT; therefore, he did not anticipate changes to those items. Mr. Turner asked if Mr. Cole received a bill of materials from the contractor. Mr. Cole advised that shop drawings were received but he did not respond to them, pending receipt of the permit.

Mr. Slater recalled an earlier issue because one of the mast arm poles would be located in a preserve area and asked if that matter was resolved in writing. Mr. Cole has documentation from the state advising that it is okay, since it will be within the state's right-of-way (ROW).

Mr. Bergmoser asked if Mr. Cole was confident that all design issues were resolved and that the only thing pending was the DOT's acceptance of the signed agreement, with the modified Chair name and signature. Mr. Cole replied affirmatively.

Mr. Brougham indicated that an email from the DOT Permit Coordinator was received advising that the permit should be issued within a few days; however, the email was received prior to DOT raising the issue of the Commission Chair's name change.

Mr. Turner voiced concern about ordering materials, as something could change, since the mast arms are site specific. Mr. Cole reiterated that all technical issues were resolved. Mr. Turner asked if there is any risk of the specifications changing after the District orders the materials. Mr. Cole felt that, until the permit is issued, there is always a risk.

In response to a question, Mr. Cole estimated that the mast arms would cost \$100,000 to 150,000. Mr. Bergmoser pointed out that the lead time for mast arms is lengthy. In response to a question, Mr. Cole stated that he did not know if the materials contract provisions provide for or allow changes, once the order is placed. Mr. Cole confirmed that, once the permit is issued, the project will take approximately six months to complete. It was suggested that the District wait until the permit is issued before ordering materials.

Mr. Pires asked Mr. Cole if the contract specifies a time frame whereby the contractor could argue that because the Notice to Proceed was not received, the contract was suspended or terminated. Mr. Cole must review the contract; however, he advised the contractor last week that the permit was expected. In response to Mr. Brougham's question regarding costs, Mr. Cole confirmed that he did not ask the contractor if the quoted prices were still valid.

Mr. DiNardo noted that fuel prices are decreasing and contractors are lowering their prices, accordingly. Mr. Cole felt that the major cost for the traffic signal project is materials; fuel would be a minor factor.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with Mr. Brougham in favor and Mr. Bergmoser, Mr. Slater, Mr. Peterson and Mr. Turner dissenting, authorization for the District Engineer to proceed with ordering mast arms, although permit is not officially issued, was not approved. (Motion failed 1-4)

Mr. Cole recalled discussion, at a previous meeting, regarding restriping Championship Drive this summer, at the same time CDD #2 completes its paving project. He will review other CDD #1 roads. Mr. Cole explained that bids were obtained for the CDD #2 paving project; however the project will be rebid because fuel prices decreased, significantly, and curb and gutter work must be added to the project. Mr. Cole advised that the project should go out to bid in March and the paving work would commence after the in-season.

Mr. Brougham felt that, if the District has roads restriped, everything should be restriped, including crosswalks, etc. Mr. Cole confirmed that he will prepare a bid package for the CDD #1 restriping work.

Mr. Brougham asked how the permit will be received, once it is issued by DOT. Mr. Cole advised that it could arrive via email or regular U.S. Mail.

Mr. Slater noted that the striping on S.R. 951 and turning onto Fiddler's Creek Parkway is faded and asked if the District can ask the state to restripe the roads. He questioned why it took the District or the state one week to replace a metal pole that was bent over, into the roadway.

Mr. Cole indicated that striping those roads is the state's responsibility. Regarding Mr. Slater's question about striping, Mr. Cole advised that the paint striping was applied but the state must wait a minimum of 30 days to apply the thermoplastic striping; it is possible that the permanent striping was not completed, yet.

Mr. Slater indicated that a reflector pole appeared to have been run over and asked if the District should contact the state. Mr. Cole will contact the contractor.

SEVENTH ORDER OF BUSINESS

Continued Discussion: Machine for Maintenance of Sidewalks

Mr. Albeit spoke to the vendor, who recommended delaying the purchase, as a new model will be available in February or March. He noted that, in the interim, The Foundation will research pricing of other vendors.

Mr. Brougham asked that this item no longer be carried on the agenda but added once Mr. Albeit provides a proposal and is prepared to present it to the Board. He advised Management against entering into a contract for sidewalk maintenance, in the interim.

EIGHTH ORDER OF BUSINESS

Consideration of Proposal from TEM Systems, Inc., for Security Upgrade

Mr. DiNardo presented the TEM Systems, Inc., (TEM), proposal to upgrade the cameras for the Sandpiper Drive and Main Gate Houses. He stated that the proposal is identical to TEM's presentation but modifications were made to the CDD #2 portion because everything in CDD #1 will have fiber optic lines; however, fiber optic lines could not be run to Sandpiper, in CDD #2. Mr. DiNardo will recommend that CDD #2 install the new analog and IP digital cameras but a dial-in line and computer will be necessary. The guards will still be able to view what is occurring; however, it will not be in real time, as in CDD #1.

Mr. DiNardo stated that, as the construction road is built, it will be gated. The gate will open automatically when exiting and a keypad will be used for the entrance. He explained that the gate will have sensors and beams that will be set during late night hours to alert the roving patrol if the gate is accessed during that time.

Mr. DiNardo identified a termination point at Fiddler's Creek Parkway where the hedges are staggered and vehicles could gain access; he will recommend that CDD #2 consider installation of a gate between the hedges and multiple sensors which would distinguish if the line is breached by an animal or a vehicle and alert the roving patrol. Mr. DiNardo identified another termination point at a lake with a pump house that can only be accessed from a public road, which has a chain link fence and gate. He will propose that CDD #2 consider alarming the pump house and gate to alert the roving patrol if the gate is opened.

Mr. DiNardo advised that Comcast should be finished with its work in March and The Foundation wants to complete the installation of the guard houses at that time. Additionally, The

Foundation will upgrade its website and implement a gate house online system during June, July and August. While the website is being completed, the TEM GateHouse program will be installed, which be online and enable residents to enter information about guests and visitors.

Mr. DiNardo was confident that, if both CDD #1 and CDD #2 approve their respective portions, the security system upgrades could be completed by the end of the summer.

Mr. Slater referred to the hedges issue on Fiddler's Creek Parkway and asked if the road empties onto US 41. Mr. DiNardo replied affirmatively. Mr. Slater questioned the necessity for a gate. Mr. DiNardo explained that construction contractors removed boulders from the hedge area and they use the break in the hedges as a shortcut to enter the community. Mr. DiNardo stated that the gate would alert the roving patrol if anyone used that point of entry.

Mr. Brougham referred to the description for the Main Gate House, which states "one camera capturing an overview of the entrance gates" and asked for explanation. Mr. DiNardo indicated that it is the analog camera at the Main Gate House and the gate house on Championship Drive that will create the boundaries; if anyone enters those areas, the roving patrol will be notified and know where to go. Mr. DiNardo advised that the other cameras will replace the old cameras that were not IP digital cameras.

Mr. DiNardo explained that everyone who enters the community will be on film, which will be stored, digitally, in The Foundation's corporate computer room.

Mr. Brougham questioned why the Main Gate resident entrance does not have a camera to photograph resident license plates. Mr. DiNardo stated that information about resident entry is known based on the residents' remote controls. Mr. Brougham pointed out that The Foundation only knows who the access device was issued to. Mr. DiNardo advised that the system could be enhanced; however, if an issue arises, that resident would be approached for details.

Mr. Brougham noted a \$9,000 difference between the camera quotes for the Main and Championship gate houses and questioned how the Main Gate can have five more cameras but the difference is only about \$9,000 more. Mr. DiNardo indicated that the Main Gate has more IP digital cameras, which are not very expensive.

In response to Mr. Brougham's question, Mr. Adams confirmed that the cameras would be included in the CDD's insurance coverage.

Mr. Brougham recalled that both Boards previously agreed to share the cost of the overall security upgrades, on a prorata basis. Mr. Adams noted that both Districts budgeted for the prorata split.

Mr. Slater referred to Page 3, which states "This price **DOES NOT** include concrete, electrical labor and/or materials, ...". Mr. DiNardo advised that The Foundation and the developer will cover those costs; the Districts are only being asked to purchase the equipment and The Foundation and developer will ensure that it is installed.

Mr. Brougham recapped that the proposed CDD #1 cost is \$71,500 and approximately \$29,000 for CDD #2. Mr. DiNardo indicated that the cost to CDD #2 will be about \$60,000, with the upgrades. Mr. Adams confirmed that, with the additional costs, the total will still be within budget. Mr. Brougham noted that a prorata split would result in CDD #1 paying about \$84,500 of the total. Mr. DiNardo stated that, if CDD #1 pays \$71,500 for its portion of the costs, he will work it out with CDD #2 to pay the balance.

Mr. Bergmoser pointed out that, while these costs are within the District's budget, the District overspent by \$130,000 during Fiscal Year 2014 and, because of the developer's actions, the District could have a \$280,000 shortfall in the Fiscal Year 2015 budget. He noted that these overages could equate to \$410,000 from the cash fund over two budget years. Mr. Bergmoser felt that the District's fund balance is becoming dangerously low, should there be an emergency, such as a hurricane, sink hole, etc. He stated that he has no objection to the project but questioned if the District can afford it without knowing the extent of the District's exposure on the other issue being discussed with Mr. DiNardo.

Mr. Adams advised that the District always holds back and protects about 25% of its annual budget amount in the fund balance. He explained that the fund balance rolling forward from Fiscal Year 2014 into Fiscal Year 2015 was about \$1 million and 25% of the annual budget would be approximately \$750,000; therefore, the District carried over more. Mr. Adams further referred to the Unaudited Financial Statements as of December 31, 2014 and reviewed the District's financial position. He concluded that the District budgeted for the security upgrade and the Board has the financial flexibility to approve the expenditure.

Mr. Brougham acknowledged Mr. Bergmoser's concerns and asked that Management provide a brief commentary of the future budget expenses, the status of revenue collections and the District's anticipated financial position, if the current commitments are met. He wants to

know if the Board might need to reconsider and forego some previously budgeted items to remain within the approved budget.

Mr. DiNardo voiced his opinion that with what is occurring with CDD #2 and if the Districts receives money and punitive damages, those funds would pay for the traffic signal. He stated that CDD #2 sent a letter to the CEO of U.S. Bank, which he felt would be a catalyst to bring the matter to fruition.

Mr. Peterson agreed that the matter might be resolved in the District’s favor; however, from a budgetary standpoint, the District does not know whether it will receive any of those funds.

Mr. DiNardo expressed his belief that the Board’s concept of saving money for the reserve is inadequate and does not benefit homeowners. He felt that, instead of saving funds in the reserves for something that might happen, the District should obtain a line of credit to finance expenses if something occurs. Mr. DiNardo indicated that the District is in a strong financial position.

Mr. Brougham voiced his opinion that the proposed security upgrades were well received by both Boards and residents. He thought that, even with funding the security upgrades and the traffic signal, the District would still have a healthy remaining fund balance. Mr. Brougham indicated that the District does not have a line of credit and asked Mr. DiNardo to “call in that chip”. Mr. DiNardo is meeting with the COO of the bank and agreed to discuss obtaining a line of credit with him, on the District’s behalf.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with Mr. Brougham, Mr. Slater and Mr. Turner in favor and Mr. Bergmoser and Mr. Peterson dissenting, the TEM Systems, Inc., proposal for security upgrades, in a not-to-exceed amount of \$72,000, with adjustments to delete sales tax and including the additional terms and conditions supplied by District Counsel, and authorization for the Chair to execute an agreement, were approved. (Motion passed 3-2)

Mr. Pires noted, for the record, that any plans and specifications associated with the access control system are exempt from the Sunshine Law and confidential from exposure to the public. Mr. Pires recommended that, in the future, any materials or handouts related to the

security system be provided only to the Board, Staff and The Foundation for review and consideration. Furthermore, these items should be maintained in a confidential status, within the District's records. He advised that the District can hold closed door meetings, with a court reporter, to discuss the details of the security system and, if the items are necessary for litigation or other purposes, the Board could waive confidentiality.

Regarding the security records, Mr. DiNardo anticipated holding the video and records for at least two years but at a minimum of at least one year.

Mr. Turner asked if the photographic data can be used if someone damages the gate. Mr. DiNardo replied yes and advised that the current system is capable of this. Mr. DiNardo stressed that the new system will be more sophisticated and all information will be stored off site.

NINTH ORDER OF BUSINESS

Discussion: General Counsel Services

Mr. Brougham voiced his opinion that the Board must discuss and express their opinions of the District Counsel services. He advised that a member of Mr. Pires' firm serves on The Foundation's board and Mr. Pires is also District Counsel for CDD #2. Mr. Brougham felt that, recently, the situation has turned awkward, as Mr. Pires had to opt out of advising the Board because of a conflict or potential conflict of interest between the various entities represented by his firm. He indicated that, in those situations, the District was forced to seek outside counsel, at an increased cost over the current District Counsel services contract rate, which imposes delays and increases expenses to the District. Mr. Brougham pointed to an assessment protest that is under discussion with the developer on the commercial property and the pending landscape maintenance agreement between the Districts and The Foundation, as examples of recent matters that required the District to seek outside counsel.

Mr. Brougham stressed that the District is not obligated to change District Counsel but has the opportunity to seek new District Counsel.

In response to a question, Mr. Pires confirmed that he has represented CDD #1 since shortly after its establishment.

Mr. Slater asked Mr. Brougham if the situations prevented the District from obtaining the correct legal advice, almost instantaneously, and whether the District was ever held back from making a decision pending an opinion from a different lawyer. Mr. Brougham was not aware of any significant delays; in the most recent instance the delay was about one month but came with

additional legal costs. Mr. Slater felt that Mr. Pires' historical knowledge of the District outweighs the inconvenience of instances when the Board must seek other counsel.

Mr. Bergmoser asked, aside from the two recent instances, how often Mr. Pires must recuse himself. Mr. Pires stated that the first occurrence was prior to the bankruptcy filing when the developer was paying assessments off roll and the District engaged separate counsel to initiate the foreclosure assessment process. Mr. Pires noted that his firm does not handle bankruptcies so a different firm was needed, regardless.

Mr. Brougham explained that he felt the Board should consider this, as the issue arose twice within six weeks.

Mr. Turner asked if this is a financial question and if the District is charged a set rate by Mr. Pires or is charged based on the work. Mr. Pires indicated that he is paid an hourly fee. Mr. Brougham pointed out that legal expenses increase when the District must seek counsel from a different attorney; the District saves what it might have paid Mr. Pires on that matter but must pay a different attorney for the work, often at a higher rate.

Mr. Brougham concluded that the consensus was to make no change.

In response to a question, Mr. Pires confirmed that he always brings potential conflicts of interest to the Board's attention.

TENTH ORDER OF BUSINESS

Approval of December 17, 2014 Regular Meeting Minutes

Mr. Brougham presented the December 17, 2014 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Lines 214, 218, 220 and 221: Change "Peterson" to "Bergmoser"

Line 462: Change "\$600,000" to "\$600"

Lines 499 and 501: Change "Lilly" to "Lulich"

On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, the December 17, 2014 Regular Meeting Minutes, as amended, were approved.

o **Action Items**

This item was discussed during Item 12.B.i.

ELEVENTH ORDER OF BUSINESS**Other Business**

There being no other business, the next item followed.

TWELFTH ORDER OF BUSINESS**Staff Reports****A. Attorney**

Mr. Pires indicated that the next agenda will contain information regarding the official process to correct the legal description in the District boundaries, which occurred when CDD #2 was created. He explained that the error was discovered during the bankruptcy proceedings.

B. Manager**i. Approval of Unaudited Financial Statements as of December 31, 2014**

Mr. Brougham presented the Unaudited Financial Statements as of December 31, 2014.

Mr. Adams note that the Board previously authorized writing off the \$7,500 that was previously posted as due from the 2005 fund to the general fund, which was related to Fishkind and Associates' services to correct the District's lien roll. He recalled informing the Board that the \$7,500 was not appropriate to include in the punitive damages action but the \$299,478 amount would be part of the claim.

Mr. Brougham pointed out "Legal" expenditures of approximately \$9,000, on Page 2, and asked that District Counsel bill the District monthly. Mr. Adams confirmed that he received the January bill. Mr. Brougham asked for an explanation of the \$816 "Capital outlay - traffic signal" expenditure, on Page 2. Mr. Adams indicated that it was probably for soft costs related to the project, such as permitting, etc. Mr. Cole stated that it was likely costs related to the contractor on the project. Mr. Adams confirmed that hard and soft costs related to the project would be applied under this line item.

▪ Action Items

*****This item, previously part of the Tenth Order of Business, was presented out of order.*****

Mr. Brougham referred to Item 4., and Mr. Cole confirmed that the District Engineer will bill quarterly.

Items 4, 7, 8 and 10 will be moved to "Completed".

ii. NEXT MEETING DATE: February 25, 2015 at 8:00 A.M.

The next meeting will be held on February 25, 2015 at 8:00 a.m.

C. Operations Manager

Ms. Crismond presented the Operations Report. She reported that a Defective Work Notice (DWN) was issued to TruGreen several weeks ago, as a result of a follow up tour. TruGreen is not resolving issues in a timely manner. Ms. Crismond stated that issues with TruGreen have been ongoing for the past several years, which was discussed at the last meeting, prior to the Board retaining TruGreen and the landscape contractor. She has a meeting with TruGreen today, following the CDD #2 meeting to review the incomplete items and pointed out that she observed, driving into the community this morning, items within the DWN that were still not completed. Ms. Crismond will hire a sod contractor to install sod in locations that TruGreen has not addressed. She spoke to TruGreen's former local manager, Mr. Kevin Cook, who was promoted to South East Regional Manager, and advised him that, going forward, anything observed on a tour will be issued a DWN, as she can no longer accept TruGreen's word that the issues will be resolved.

Mr. Brougham recalled that the Board gave TruGreen specific warnings when the contract was awarded that the District would not have patience with defective workmanship, as in the past two years. He believed that the District should follow through, as it makes no sense to award the contract to a contractor that does not perform.

Ms. Crismond explained that, with a DWN, the contractor is given a specific amount of time to resolve the matter and if it is not resolved, the District can hire an outside contractor to perform the work and deduct those costs from TruGreen's contract, which is her intention today.

Mr. Brougham asked that the bougainvillea issue on the uprights be resolved on the plants removed and replaced. Ms. Crismond confirmed that she recommended this to TruGreen. Mr. Brougham directed Ms. Crismond to hire someone to perform this work, immediately. Mr. Pires asked if TruGreen was advised that funds would be withheld for remedial action. Mr. Brougham replied affirmatively.

Mr. Turner asked about the timeline for termination of service. Ms. Crismond indicated that the contract has a 30-day cancellation notice; TruGreen would remain in place until a new contractor was hired. Mr. Turner questioned how many DWNs were acceptable before the District terminates TruGreen. In response to a question, Mr. Adams confirmed that the District is not required to go through the bid process again; it could hire Girard Environmental, who was

the other bidder. Mr. Brougham asked how many DWNs have been issued. Ms. Crismond replied that the contract renewed December 1, 2014 and one DWN was issued under the new contract.

Discussion ensued regarding the whether the bougainvillea should be replaced and, if so, when to replace them.

Mr. Turner stressed that the District must advise TruGreen that, after a certain number of DWNs, the District will be "done". Mr. Adams indicated that termination is the Board's decision. Mr. Pires recalled that the contract has termination with and without cause provisions; the District could terminate at any time, with cause. Mr. Brougham summarized that Mr. Turner's question is whether the Board should develop a policy or give Ms. Crismond direction that, if a certain number of DWNs are issued, TruGreen will be terminated. Mr. Pires advised against determining a specific number. Ms. Crismond stated that she will provide an update at the February meeting. It was suggested that the Board abide by Management's observations. Mr. Brougham pointed out that the entire Board is in agreement that these issues will not be tolerated. A Board Member suggested that TruGreen attend the February meeting. Mr. Adams concurred.

Mr. Albeit recommended that TruGreen meet with the horticulturalist.

Ms. Shannon Benedetti, a resident and a landscape committee member for The Foundation, discussed the horticulturalist and another expert who toured the community and committed to provide training from the community.

Mr. Slater recalled that he was the only Board Member to vote no when the contract was awarded to TruGreen. He asked who the DWNs were mailed to.

Ms. Crismond indicated that one was sent to Mr. Tre Hilzymer, of TruGreen but Mr. Cook was copied on it. Mr. Slater recapped that, at the last meeting, Mr. Hilzymer and Mr. Cook promised to do everything possible to convince the Board to award the contract to TruGreen. Mr. Slater recommended that the DWNs be sent to Mr. Cook. Ms. Crismond spoke to Mr. Cook but he is out of town, due to his promotion. The Board directed Ms. Crismond to inform Mr. Cook that TruGreen would be terminated, if a vote was taken today. Ms. Crismond agreed to relay the message.

In response to a question, Ms. Crismond indicated that the patrol stats were on the second page of her report.

Mr. DiNardo indicated that the Ashton Woods area was platted and the bonds will be allocated to those parcels and appear on the tax roll. He noted that Fiddler's Investor CDD, LLC, is selling the bond. Mr. DiNardo suggested that Mr. Adams contact Mr. Larry Long to insure that he cooperates with Mr. Bill Reagan on this issue.

THIRTEENTH ORDER OF BUSINESS Supervisors' Requests

Mr. Slater recalled that, at the last meeting, he questioned why the District is paying for the sod replacement related to the roadway work and Ms. Crismond advised that the District must pay because it is the property owner. He contended that Ms. Crismond's statement was not correct, as the state replaced sod in front of a gas station. Mr. Slater questioned why the District is not being reimbursed and asked Mr. Pires why the District cannot sue the state.

Mr. Pires suggested contacting the state's contract manager. In response to Mr. Brougham's question, Mr. Slater identified areas that were resodded by the District, after the state's removal; the area is again marked for removal, meaning that replacement by the District will be required. Mr. Cole was unsure what the new markings were for. Mr. Pires advised that, if the area is in a ROW, the state controls it. Mr. Slater contended that, if the state controls it, the state should replace the sod. Mr. Pires recommended notifying the state of the District's concern but was unsure that the District could bring a claim against the state. Mr. Cole indicated that he will discuss this with the state's project manager. Mr. Adams stressed that the sod should be replaced with the same type of sod.

FOURTEENTH ORDER OF BUSINESS Adjournment

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

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the meeting adjourned at 9:38 a.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary


Chair/Vice Chair