

**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, February 25, 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 |
| Rick Reyes (<i>via telephone</i>) | Tobin & Reyes, P.A., Litigation Counsel |
| Tony DiNardo | Developer |
| Ron Albeit | The Foundation |
| Kevin Cook | TruGreen Landcare |
| Tre Hilzmyer | TruGreen Landcare |
| Rick Herndon | TruGreen Landcare |
| Jesse Fritz | 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 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.******

Mr. Reyes recalled that a hearing was scheduled for last Monday, with respect to the bondholders’ Motion for Punitive Damages; it was anticipated that the District could pursue its

punitive damages claim thereafter. He indicated that the hearing was continued due to procedural issues that U.S. Bank raised and the court is requiring the bondholders to amend their lawsuit to allege some different allegations. Mr. Reyes requested an executive session to discuss strategies that the District should pursue, given the outcome of the Monday hearing.

The Board agreed to continue today's meeting to Friday, March 6, 2015 at 3:00 p.m., at this location, to hold an executive session.

Mr. DiNardo indicated that CDD #2 sent a letter to the CEO of U.S. Bank and asked if the letter is public information. Mr. Reyes replied affirmatively. Mr. DiNardo asked if anything transpired, as a result of that letter. Mr. Reyes believed that the parties agreed to meet but the date and location are undetermined.

*****Mr. Reyes 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.*****

There being no public comments, the next item followed.

▪ **Discussion: TruGreen Landcare Performance**

Mr. Brougham discussed the Board's frustration with the performance of TruGreen Landcare (TruGreen).

Mr. Tre Hilzmyer, Branch Manager of TruGreen's Naples, Florida office, indicated that TruGreen wants consistency and is seeking strategies that do not result in a Defective Work Notice (DWN). He acknowledged items in a recent DWN that required TruGreen's attention but voiced his opinion that TruGreen was properly addressing other items in the DWN.

Mr. Kevin Cook, Regional Manager of TruGreen, indicated that Mr. Rick Herndon was hired about six months ago to address these situations; however, it took time for Mr. Herndon to become familiar with the District but he now understands the landscaping needs. He discussed the seasonal issues and confirmed that TruGreen addressed the issues, including spraying, replacing sod, etc. Mr. Cook indicated that fertilization was completed in November and February fertilization is underway.

Mr. Cook stated that Mr. Herndon is on property every day and fully understands the District's needs. He felt that, from a maintenance standpoint, the progress is obvious and plans

and schedules are in place to address items. Mr. Cook expressed his confidence that Mr. Herndon will perform well this year.

Mr. Brougham believed that, if TruGreen has a plan and the necessary manpower, the District should not have to issue any more DWNs. He recalled that the contract has specific terms and suggested that TruGreen be more proactive.

Mr. Slater noted the poor appearance of the marigolds. Mr. Cook indicated that TruGreen follows the annual program of The Foundation. The Foundation completes four flower rotations each year, while the CDD completes two. Mr. Cook pointed out that The Foundation recommended marigolds but, once the CDD installed them, The Foundation removed its marigolds; TruGreen tried to extend the life of the District's marigolds. Mr. Cook stated that he received approval today to replace the marigolds.

In response to Mr. Brougham's question, Mr. Cook advised that it is not expensive to add a flower rotation; adding a third flower rotation would be good.

Mr. Peterson identified bougainvillea impacted by caterpillars and asked if they would be replaced or sprayed. Mr. Cook indicated that TruGreen will attempt to rejuvenate the bougainvilleas in spring by pruning them back. Ms. Crismond estimated that a flower rotation costs \$900. Mr. Brougham directed Ms. Crismond and TruGreen to perform four flower rotations per year. Mr. Cook indicated that TruGreen will submit separate work orders for the additional flower rotations.

*****Mr. Hilzeyer, Mr. Cook and Mr. Herndon left the meeting.*****

FOURTH ORDER OF BUSINESS

Developer's Report/Update

Mr. DiNardo reported that the construction entrance should be completed in March. Once the fountain in front of Marsh Cove is completed, a gate will be installed and no construction traffic will enter at that location. He identified a location of the construction gates.

Mr. DiNardo stated that Fiddler's Investor CDD, LLC, sold the Series 2014-1 bond; it is encumbered on the 112 units owned by Ashton Woods. He anticipated that those lots will be on-roll next year.

Mr. Peterson asked if it was possible for the Runaway Bay construction traffic to use the construction entrance. Mr. DiNardo replied no.

Mr. Brougham referred to the prospective use of recovered bond construction funds and noted reading in the CDD #2 meeting minutes that CDD #2's bond funds could be used for the security system enhancements and asked if the bondholders would be agreeable to making the security system the third priority, if the funds are recovered. Mr. DiNardo confirmed that the concept can be discussed with the bondholders.

FIFTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole reported that the permit for the SR 951 traffic signal was received from the Department of Transportation (DOT). Once the permit was received, the mast arms were ordered and will be green galvanized steel. Mr. Brougham asked if the county will maintain and repaint the mast arms. Mr. Cole replied affirmatively and added that, if any warranty issues arise within the five-year warranty, those would be covered. Mr. Adams advised the Board to be prepared for the District to pay to maintain the mast arms to the District's standards; another CDD assumed responsibility for painting its traffic signal mast arms because the city would not paint them as frequently as the CDD wanted.

Mr. Cole summarized that the mast arms were ordered, physical works should commence in May; the project should be completed and the traffic signal operational by the end of summer.

Mr. Cole recalled sod replacement work underway in the SR 951 right-of-way (ROW), south of the Fiddler's Creek Parkway entrance; he tried to contact someone. Ms. Crismond stated that the District should be reimbursed for the sod damage and replacement but the county contractor refused to take responsibility.

Mr. Brougham asked when the striping and reflector replacement project will commence.

Mr. Cole advised that the project for the CDD #2 roadways will go out to bid at the end of March; his plan is to have the lowest responsive bidder price the CDD #1 striping work, if it is performed simultaneously with the CDD #2 work. He felt that the price would be more competitive because the contractor would not have to mobilize twice.

Mr. Brougham felt that all striping should be refreshed. Mr. Cole indicated that the crosswalks, center lines, reflective pavement markers, etc. will be included.

SIXTH ORDER OF BUSINESS

Update: SR 951 Traffic Signal Installation

This item was discussed during the Fifth Order of Business.

SEVENTH ORDER OF BUSINESS

**Discussion: Petition for Rule Amendment
to Correct Legal Description**

Mr. Pires recalled that there were Scribner's errors in a few of the legal descriptions of the District's boundaries. He explained that, as a result, a tract of land in the northern portion, reflected in Exhibit A-1, was described within the boundaries of CDD #1; however, it should be within the boundaries of CDD #2. Mr. Pires indicated that, due to the size of the District, an amendment to correct this error must go before the Governor and Cabinet and there must be a public hearing on the matter. He advised that, once filed, this petition would initiate the process to correct the Scribner's error.

Mr. Pires noted that Young van Assenderp, P.A. (YVA), agreed to pay the filing fee for the petition and YVA has not billed the District for any work related to this matter; he believed that YVA would not bill the District. In response to Mr. Brougham's question, Mr. Pires indicated that the only cost to the District, in this matter, would be his legal fees, which will be at a reduced rate.

Mr. Brougham asked if the purpose of the amendment is to correct the boundary description in the official Development of Regional Impact (DRI) document. Mr. Pires replied no; it is to change the Florida Administrative Code Rule describing the boundaries of the District.

Mr. Slater asked for confirmation that the documents do not contain any areas that the District will begin accepting; he wanted to ensure that both documents are consistent. Mr. Pires stated that the areas are consistent.

On MOTION by Mr. Peterson and seconded by Mr. Bergmoser, with all in favor, authorization for the Chair to execute documents related to the Petition for Rule Amendment to Correct Legal Description, was approved.

Mr. Pires will forward the petition to Mr. Brougham for execution.

EIGHTH ORDER OF BUSINESS

Consideration of Resolution 2015-03, Accepting the Transfer of Various South Florida Water Management District Permits to CDD #1; and, Authorizing the Chairman to Execute Request for Conversion of Said South Florida Water Management District Permits from Construction Phase to Operation Phase and Transfer of Referenced Permits to CDD #1

Mr. Cole indicated that Resolution 2015-03 is for the conversion and transfer of South Florida Water Management District (SFWMD) permits from the developer to the CDD; the conversion would be from the construction phase to the operational phase. He advised that approximately 20 permit applications, listed in Exhibit "A", refer to different SFWMD basin areas. Mr. Cole referred to the basin map and stated that all of the permits applications are for areas within CDD #1. He provided a permit conversion and transfer form, along with an Engineer's Certification statement; once Resolution 2015-03 is executed, it will be submitted with all of the documentation. The SFWMD will issue letters converting the permits to CDD #1 for operation and maintenance (O&M).

Mr. Brougham questioned the impact on the District, as the District has been "pulling water" since 1996. Mr. Cole explained that Mr. Brougham's question relates to a water use permit, which is different; this matter involves the surface water management system. Mr. Cole summarized that the transfer puts the permits in the District's name, legally, as the O&M entity.

Mr. Brougham asked what liabilities are transferred to the District.

Mr. Pires stated that, under SFWMD rules, the permittee is responsible for complying with the SFWMD permits until such time as the operating permits are transferred to another entity. He explained that, once CDD #1 becomes the O&M entity, it is liable to ensure that the lake surface water management systems are operating in compliance with the SFWMD rules and plans and specifications for the project. Mr. Pires recalled that the SFWMD notified many CDDs who were operating the surface water management systems, without being the permittee, and advising them that the CDDs must have the permits transferred or risk \$10,000 per day fines for operating a system without a permit.

Mr. Brougham asked if there were any implications when the District embarked on lake erosion repairs.

Mr. Cole recalled that the lake erosion repairs were completed in CDD #1 because the developer, as part of an area in CDD #2, received a violation notice. As a result, the District embarked on a program to inspect all of the lakes and prioritized the repairs. He indicated that the permits for CDD #2 were transferred about two years ago. Mr. Cole advised SFWMD that CDD #2 had a phase in program; therefore the SFWMD transferred the permits to CDD #2. He confirmed that CDD #1 never received a violation for erosion; the District is being proactive in repairing the erosion issues.

Mr. Cole indicated that the Phase 4 request for proposal (RFP) document is being prepared.

Mr. Brougham summarized that, if CDD #1 chooses not to agree to the permit transfer, it would be at risk of being fined for operating a system without a permit. It was noted that the transfer will not have a financial impact on the District, as CDD #1 has been maintaining the system for many years.

On MOTION by Mr. Bergmoser and seconded by Mr. Peterson, with all in favor, Resolution 2015-03, Accepting the Transfer of Various South Florida Water Management District Permits to CDD #1; and, Authorizing the Chairman to Execute Request for Conversion of Said South Florida Water Management District Permits from Construction Phase to Operation Phase and Transfer of Referenced Permits to CDD #1, was adopted.

Regarding the traffic signal installation project, Mr. Brougham asked Mr. Cole to email the Board of any significant events or delays. Ms. Crismond advised Mr. Cole to notify Management and Management will forward the information to the Board.

A question was raised regarding whether a certain area of SR 951 will remain rough blacktop or if it would receive a smooth coating. Mr. Cole stated that he must inspect the area and check with the paving contractor; it is possible that the final lift was not installed.

*****Mr. Cole left the meeting.*****

NINTH ORDER OF BUSINESS

**Consideration of Establishing an
Emergency Line of Credit with
Iberiabank**

Mr. Brougham reviewed the term sheet provided by Iberiabank. He explained that it is a starting point for the District to proceed and define the loan documents needed to cement the terms and conditions of the loan. Mr. Brougham summarized that Iberiabank is willing to advance a \$500,000 line of credit to the District to be used for emergency purposes and secured by the District's ability to impose O&M assessments and to obtain loans.

Mr. Pires pointed out that, as a governmental entity, some items on the term sheet do not apply to the District.

Regarding the 12-month loan term, Iberiabank advised Mr. Brougham of the following:

"The standard way of these lines of credits is on a 12-month term with monthly interest-only payments on principal and any unpaid interest due a maturity. This is not like a 'working capital line of credit' that requires a 30-day rest period at some time during the 12-month term. They are subject to renewal on an annual basis with updated financial information obtained. We will work with the Board in the event that there is a balance owed at maturity 'end of the 12-month term' that cannot be immediately repaid, as in the situation you mentioned. If the line is funded due to an emergency situation, close to the maturity date and you do not have sufficient time to implement a special assessment, the Board would have options. We could look at keeping the renewal on an interest-only payment but with scheduled principal pay downs quarterly or monthly, or, we could look at converting it to a term loan with regular monthly principal and interest payments made over an agreed upon length of time, or, a special assessment could be put in place, in which case we could do a short term renewal until the assessments are collected and we would work with you on how best to approach this based on the circumstances."

Mr. Brougham felt that these types of terms and conditions should be included in the loan document and approved by the Board.

Mr. Slater questioned the possibility of making this a term loan, as a long-term line of credit makes more sense than a short-term line. He noted that the District would incur additional costs every time the term expires.

Mr. Brougham stated that Iberiabank implied an automatic renewal upon presentation of the District's financial documents. Mr. Pires felt that a longer term loan could be obtained.

A Board Member voiced his opinion that, since the line of credit is intended for a catastrophic event, the amount should be at least \$1 million. Mr. Adams stated that the line of credit gives the District immediate access to money for clean up and an additional loan could be sought, once the recovery costs are determined. Mr. Pires and Mr. Adams confirmed that \$500,000 seems to be the norm. Mr. Adams reiterated that the credit line is to meet initial recovery or gap funding needs. Discussion ensued regarding a suitable amount.

Mr. Brougham directed Staff to obtain input from Iberiabank regarding the fees and costs for \$500,000, \$750,000 and \$1 million loans and present the information at the next meeting.

Mr. DiNardo reminded the Board that this is a line of credit and not a loan; the District will incur fees to keep the line of credit open.

Mr. Turner asked if the 12-month term starts when the District borrows the money. Mr. Adams indicated that this term must be placed in the contract. Mr. DiNardo replied no and explained that the District could obtain money anytime but the line of credit must be renewed every year. Mr. Adams clarified that, when money is borrowed, it becomes a 12-month repayment.

On MOTION by Mr. Slater and seconded by Mr. Turner, with all in favor, authorization for Staff to proceed with negotiations with Iberiabank and provide a prospective loan document for the Board's review at the next meeting, was approved.

TENTH ORDER OF BUSINESS

Approval of January 28, 2015 Regular Meeting Minutes

Mr. Brougham presented the January 28, 2015 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 35: Insert “, Turner” after “Slater”

Line 51: Insert “asked” after “Brougham”

Line 244: Change “S.R. 441” to “US 41”

On MOTION by Mr. Bergmoser and seconded by Mr. Peterson, with all in favor, the January 28, 2015 Regular Meeting Minutes, as amended, were approved.

○ **Action Items**

This item was not discussed.

ELEVENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

TWELFTH 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 January 31, 2015

Mr. Brougham presented the Unaudited Financial Statements as of January 31, 2015. He referred to the "Balance Sheet", on Page 1, and noted \$566 on the "BB&T - Savings" line item, which continues to reappear. Mr. Adams will confirm that the money was transferred.

Mr. Brougham pointed out the \$445,872 balance on the "SunTrust" line item, on Page 1, and asked if the District is at risk, as the balance is over the FDIC coverage limit. Mr. Adams confirmed that the high balance in the account carries a risk.

Mr. Brougham referred to the "Legal" line item, on Page 2, and asked Mr. Pires if he is billing monthly. Mr. Adams confirmed that Mr. Pires is billing monthly. Mr. Brougham questioned if Mr. Pires is being paid, as nothing was booked in January.

Mr. Brougham noted the "Rentals and leases" line item, on Page 3. Mr. Adams explained that the District's portion of the cost for the new security vehicle was booked in January, along with the annual agreement with TEM Systems, LLC (TEM), for the gatehouse cameras and electronic products. Mr. Brougham indicated that the District will pay TEM a lot of money for the security upgrades and questioned what the current agreement covers. Mr. Adams stated that it gives the District preferred pricing, response times, etc. Mr. Brougham asked if the agreement is specific to the District's current equipment. Mr. Adams replied affirmatively; however, each time equipment is added, it is added to the agreement, as well, which results in a price increase.

Mr. Brougham asked about the implications, regarding warranty protection, replacement, etc. Mr. Adams indicated that the cameras and the camera value triggers the value of the agreement, along with the gate operators, looping system, readers, etc., which are part of the agreement.

Mr. Brougham urged Mr. Adams to discuss a new agreement with TEM to determine if the District could realize a reduction in the agreement fee, since nearly all of the cameras and equipment will be replaced.

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

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

C. Operations Manager

Ms. Crismond presented the Operations Report. She reported that she and Mr. Brougham had discussions with Officer Edyth Bird and Lieutenant Mike Jones, of the East Naples Sheriff's Office, regarding traffic violations and the predominance of warnings issued versus citations; 160 warnings and 16 citations were issued over the past five months. She advised that Officer Bird and Lieutenant Jones suggested installing a speed trailer on Fiddler's Creek Parkway or another location, for 48 hours, to collect data. Ms. Crismond pointed out that the CDD #2 Board was not interested in the speed trailer option. She explained that the speed trailer would help the Sheriff's Office determine if speeding is an issue.

Mr. Turner asked to address the issue of the number of warnings versus citations.

Mr. Brougham indicated that there was much angst at the CDD #2 meeting regarding the discussion with the Sheriff's Office. He recalled questioning Ms. Crismond and Mr. Charbonneau about the Sheriff's Office's "warning" system and, as a result, he communicated via email with Officer Bird and Lieutenant Jones to understand the system; Officer Bird recommended a conference call. Mr. Brougham stated that Lieutenant Jones explained the Driver and Vehicle Information Database (DAVID), which contains information of a driver's profile, previous warnings, citations, etc.; it is the officer's discretion whether to issue a citation. He confirmed that, per Lieutenant Jones, warnings are in the DAVID.

Mr. Brougham reiterated that 160 warnings and 16 citations were issued during the past five months. He pointed out that the Board previously requested more enforcement.

Mr. Brougham apologized for involving Ms. Crismond in this matter and stressed that there was no intention of offending Mr. James Robertson, CDD #2 Chair, by not including him

in the conference call. He stated that the purpose of the conference call was not to discuss overall traffic enforcement in Fiddler's Creek; it was to obtain an answer to the question regarding warnings.

An unidentified person pointed out that she is not Mr. Robertson. Mr. Brougham acknowledged that she is not Mr. Robertson but that she "is part of the family"; he wanted to make his statement in public and publicly apologize to Ms. Crismond, as she was "raked over the coals" at the CDD #2 meeting, last week.

In response to the question regarding where to install a speed trailer, Mr. Albeit pointed out that 71% of the stops were for stop sign violations; very few were for excessive speed. He felt that a speed trailer would not produce the desired information.

Discussion ensued regarding the potential cost for a speed trailer.

In response to Mr. Brougham's question, Mr. Albeit confirmed that he was not opposed to installing a speed trailer.

Discussion ensued regarding whether the speed trailer flashed the vehicle speed digitally. Mr. Brougham believed that the speed trailer was a small construction trailer that only records the speed of vehicles but does not display the vehicle speed.

This item was tabled, pending additional information regarding the type of speed trailer.

THIRTEENTH ORDER OF BUSINESS

Supervisors' Requests

Mr. Brougham directed the District Manager to remind Mr. Reyes or Ms. Robinson and Mr. Cole to provide Management with an update if anything significant occurs in the litigation and the traffic signal installation project.

FOURTEENTH ORDER OF BUSINESS

Adjournment

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

On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, the meeting recessed at approximately 9:22 a.m., and was continued to Friday, March 6, 2015 at 3:00 p.m., at this location.


Secretary/Assistant Secretary


Chair/Vice Chair