

**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, December 9, 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 (<i>via telephone</i>)	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
Ron Albeit	The Foundation
Mike Charbonneau	The Foundation
Frank Weinberg	Resident
Eileen Robertson	Resident
Joseph Vaccaro	Resident
Allen Kassman	CDD #2 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 Supervisors Brougham, Bergmoser, Slater and Peterson were present, in person. Supervisor Turner was attending via telephone.

On MOTION by Mr. Slater and seconded by Mr. Bergmoser, with all in favor, authorizing Mr. Turner’s attendance and full participation, via telephone, due to exceptional circumstances, was approved.

SECOND ORDER OF BUSINESS

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

There being no public comments, the next item followed.

THIRD ORDER OF BUSINESS

Special Counsel Update

Ms. Robinson reported that, at the last meeting that the hearing concluded on various motions to dismiss. The U.S. Bank and ITG hearing to Dismiss the Amended Counterclaim concluded but the court reserved ruling and requested written orders from each party. The written orders were submitted last Friday and counsel for U.S. Bank submitted their own order; the orders are currently under consideration by the court. The signed order has not been received and there is no indication on how the judge is going to rule.

Mr. Brougham asked if the issued order is provided via email or telephone. Ms. Robinson indicated that the order is provided electronically by the Clerk of Court. All parties were asked to email what they wanted in the order, in word format, to the judge's judicial assistant and the judge will create the final order.

Ms. Robinson will immediately provide updates to Mr. Adams and the Board Members, as requested by Mr. Brougham.

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

FOURTH ORDER OF BUSINESS

Developer's Report

There being no report, the next item followed.

▪ **Discussion: Additional Security Guard at Main Gate**

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

Mr. Brougham recalled that, in late November or early December, there was a large backup in the guest lane at the main gate and, at the last meeting, the Board approved an extra guard at the main gate, starting in January.

Mr. Brougham asked Mr. Adams and Mr. Albeit about the extra guard starting, prior to the holidays. Mr. Albeit provided a potential start date of December 21, for four hours per day, five days per week, including Saturday, December 26, at a cost of \$943. Mr. Brougham pointed out that the cost will be split between CDD #1 and CDD #2.

Mr. Adams requested that the Board approve an amendment outlining the increase in the

Access Control Agreement with The Foundation, to an amount not-to-exceed \$599,305, between CDD #1 and CDD #2 and authorization for the Chair to execute.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, amendment of the Access Control Agreement with The Foundation, increasing the not-to-exceed amount to \$599,305, allowing for the extra guard at the main gate, four hours per day, five days per week, including Saturday, December 26, beginning December 21, 2015, was approved.

▪ **Discussion: Speed Bumps**

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

Mr. Brougham reported that, prior to the meeting, Mr. Frank Weinberg, a resident, presented concerns, on behalf of the Mahogany Bend Homeowners Association about speeding and asked if the CDD can install speed bumps.

Mr. Brougham asked if there are legal restrictions for speed bumps. Mr. Cole indicated that the county discourages speed bumps but has a guideline and procedure. Mr. Cole believed that agreement by a majority of the residents living on the affected street and submittal to the county, for review and approval, was required.

Ms. Eileen Robertson, a resident, pointed out that Mulberry Row residents do not want speed bumps.

Mr. Brougham requested that Mr. Cole research the county guidelines and procedures and email the information to Mr. Albeit.

Mr. Peterson serves as President of the Cascada HOA. He advised that most residents were against them.

Mr. Allen Kassman, a CDD #2 resident, suggested researching alternatives. Mr. Brougham was hesitant about traffic circles or modifying the current configuration of the road, as these are capital items and the CDD has no construction funds.

FIFTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole reported that the final inspection of the SR 951 traffic signal was completed last week. Minor punch list items were noted, which the contractor is handling.

Mr. Cole indicated that completion of the lake erosion project was delayed because of high water levels. He measured the lakes this morning and water levels increased 4" since last week, due to the rain. The contractor cannot cut the bags and spread the material until water levels drop another 8".

Mr. Cole reported that another Waste Management hydraulic spill occurred on Cherry Oaks Lane. The length of the spill was 600' to 700'. The street was repaved two years ago, due to a hydraulic spill. The county immediately contacted Waste Management; they attempted to pressure wash the street but were unsuccessful. Mr. Cole was on site last Thursday and emailed Mr. Dan Rodriguez, at the county. Mr. Rodriguez will follow up with Waste Management. Mr. Cole believed that 600' to 700' of Cherry Oaks Lane will need to be milled and repaved.

Mr. Vaccaro felt that milling the cul-de-sac was necessary. Mr. Brougham anticipated that power washing would not be successful, as it did not work with the prior hydraulic spill, and requested milling the entire roadway and repaving the length of the affected spill.

Mr. Vaccaro pointed out that some pavers need to be replaced. Mr. Cole reported that three to four areas of pavers were affected.

Mr. Pires indicated that Mr. Rodriguez was helpful dealing with the county Solid Waste Department. The county can utilize the terms of the Franchise Agreement that the county has with Waste Management to ensure that the results are satisfactory.

Mr. Brougham felt that any solution, short of milling and repaving the 600' to 700' of Cherry Oaks Lane, was unacceptable. Mr. Pires confirmed that this was conveyed to Mr. Rodriguez. Mr. Brougham recalled that, the last time this occurred, Waste Management was agreeable but their insurance provider was not.

Mr. Cole reported that a 25' section of valley gutter on Cherry Oaks Lane needs replacing and the CDD is responsible, per the terms of the agreement.

In response to Mr. Brougham's question, Mr. Cole confirmed that the valley gutter is structurally cracked and failing. Ms. Crismond and Mr. Cole obtained quotes and Ms. Crismond's proposal was lower than Mr. Cole's. Mr. Cole recommended that the valley gutter be replaced before the paving.

Mr. Brougham inquired about the status of the deed for Cherry Oaks Lane. Mr. Pires advised that the deed was sent to the developer for execution. Mr. Brougham stated that no work will be completed on the road until the deed is executed.

Mr. Cole submitted a list of reputable, local contractors to flush, maintain and replace fire hydrants to Mr. Albeit, at Mr. Brougham's request. Mr. Cole will provide a list of communities with backflow assemblies.

Mr. Brougham will contact the Fire Department about painting the fire hydrants.

Mr. Brougham asked if OnPower's check for \$100,010.45 was processed. Mr. Cole confirmed that it was sent. Mr. Adams requested a copy of the draw, as he had not seen it. Mr. Brougham indicated that the draw was presented by Mr. Cole, two meetings ago. Mr. Adams recalled that the Board delayed approval of the draw and he never received it. Mr. Cole will follow up with OnPower.

SIXTH OFDER OF BUSINESS

Consideration of Florida Insurance Alliance Proposal of Insurance Coverage (with Additional Crime Coverage)

Mr. Brougham asked if the additional crime coverage is for the District or Wrathell, Hunt and Associates, LLC (WHA). Mr. Adams indicated that the coverage is for the District, as WHA carries \$1 million in employee crime coverage. The additional insurance will cover any shortages, once the WHA policy is exhausted.

In response to Mr. Peterson's question, Mr. Adams indicated that the insurance carrier is Florida Insurance Alliance (FIA). Mr. Peterson asked if Egis Insurance & Risk Advisors (Egis) provides the general liability policy. Mr. Adams replied affirmatively.

Mr. Slater asked if the District has crime coverage. Mr. Adams replied not on the District's policy but on WHA's policy, as WHA's employees perform transactions.

Mr. Brougham asked why a debris removal expense of \$250,000 is included under "Extension of Coverage" and when the District can file a debris removal claim. Mr. Adams explained that the debris removal expense relates to structural debris, such as the gatehouse, which is an insurable expense. It does not include landscaping, which is an uninsurable asset.

Mr. Peterson asked if the items listed under "Extension of Coverage" were peril coverages. Mr. Adams replied affirmatively. The rider was related specifically to crime, as outlined on Page 4 of the policy. Mr. Adams pointed out that Page 3 should have been omitted.

Mr. Brougham felt that the premium was inexpensive for the amount of coverage. Mr. Adams believed that \$800 for \$1 million of crime coverage, is a good use of funds.

Mr. Slater voiced confusion about having four different types of crime coverage, equating to \$4 million. Mr. Adams explained that the limit is \$1 million each in coverage for forgery and alteration, theft, disappearance and destruction. Mr. Slater pointed out that theft, disappearance and destruction is another \$1 million and refused to accept the proposal, based on the way it was written. Mr. Adams explained that the \$1 million limit is for each category under "Description". Mr. Slater disagreed. Mr. Pires agreed with Mr. Slater and suggested that clarification be provided on the aggregate coverage and whether it is per occurrence. Mr. Pires commented that this is the vaguest proposal he has ever seen.

Mr. Adams explained that WHA's crime coverage is first because WHA is under contract with the District and the District is an additional insurer under WHA's policy. Mr. Pires advised that the policy does not state that and recalled Mr. Adams saying that the District is the actual insurer, not WHA. Mr. Adams stated that this policy is for the District but under WHA's contract for performing management services for this District. The accountants at WHA are an additional insured, so WHA's crime coverage would hit first. Mr. Pires stated "the policy does not say that".

Mr. Brougham asked Mr. Pires to email recommendations to Mr. Adams and for Mr. Adams to respond to the broker, requesting modification of the policy.

Mr. Brougham pointed out the limited potential for crimes to be committed by people other than the District management company. Mr. Adams agreed.

Mr. Turner was as confused by the policy as Mr. Slater and felt that it was missing crucial information on the peril coverage. Mr. Adams will provide the details.

Mr. Pires recalled that, under the District Management Agreement, WHA is required to carry \$1 million in professional liability coverage. Mr. Adams confirmed that WHA has \$1 million in professional liability coverage and crime coverage.

In response to Mr. Brougham's question, Mr. Adams indicated that the liability coverage is \$1 million per occurrence, \$2 million aggregate, including public officers' insurance for the Board.

Mr. Pires requested that the next agenda include the revised insurance policy. Mr. Adams will email the entire policy to the Board and Staff, as it is 100 pages long. Mr. Brougham asked Staff to provide a one-page summary of coverage.

Mr. Adams will ask Mr. Mark Grimmel, of Egis, to attend the next meeting. Mr. Pires suggested that Mr. Grimmel provide an outline for the Board, prior to the meeting.

SEVENTH ORDER OF BUSINESS

Continued Discussion: Check Writing Controls Procedures

- **Review of Current Internal Control Procedures**

Mr. Adams recalled that, at the last meeting, the invoice process and procedures, specifically relating to receiving, processing and paying invoices, were discussed. He provided a detailed summary of all accounting procedures for the District, which is typically provided to the auditors and insurance carriers.

Mr. Adams reiterated the invoice process:

- When invoices are received, Ms. Crismond reviews the invoices and codes them. The vast majority are sent to the field office, with the exception of the utility bills, which are paid immediately.
- Ms. Crismond transmits the invoices to Ms. Lucy Marte, in Management's Accounts Payable Department, assigned to Fiddler's Creek.
- Ms. Marte enters the invoices into an aging report, which is submitted to Mr. Adams for review and execution.
- Ms. Marte prepares the checks and forwards them to the head of Management's Accounting Department for review and execution, before forwarding them to the Controller, for execution.

Mr. Adams pointed out that the agenda contains monthly financials, which have comparisons to the prior month and year-to-date. The financials are prepared by Ms. Marte, reviewed by the head of Management's Accounting Department, with final review by the Controller, prior to inclusion in the agenda package.

Mr. Adams noted that the duties are segregated and, if fraud were to occur, it would entail collusion among multiple people. WHA has been in business for ten years and is fully insured. No theft claims were ever filed. Mr. Adams stated that this is the most important service that WHA provides to their clients; therefore, employees are motivated and incentivized to ensure that controls are in place.

Mr. Adams reported about a company that recently experienced a situation where an employee created a bogus company and paid that bogus company, which they were a party to. Mr. Adams reassured the Board that this would not happen with WHA, due to having multiple layers in the chain of command.

In response to Mr. Brougham's question, Mr. Adams indicated that the auditors perform testing on internal controls. Auditors come to WHA's office and pull a random batch of documents to test the controls. Mr. Brougham asked if this was referenced in the last audit report. Mr. Adams confirmed that, in the last audit report, the auditor noted their review of the internal controls. Mr. Pires advised that the Board can request a detailed analysis from the auditor, at an additional cost.

Mr. Brougham asked if the Fiscal Year 2015 audit commenced. Mr. Adams replied affirmatively, noting that the goal is to have the audit completed by the end of March, unless something unusual happens with the litigation.

- **Review of Positive Pay Program**

This item was not discussed.

EIGHTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

NINTH ORDER OF BUSINESS

Staff Reports

A. District Counsel

Mr. Pires is handling the Cherry Oaks conveyance and Waste Management spill issue.

Mr. Brougham asked about the status of the Scrivener's error on the boundary change. Mr. Pires is working on the recommendations and conclusions and circulating a draft to Mr. van Assenderp.

Regarding the title work for the land swap between CDD #1 and CDD #2, Mr. Pires reported that various parties submitted proposals to the developer to perform services; a response is pending.

Mr. Pires reported on the subpoena from Naples Lending. Since the District filed an objection, the scope was narrowed and records were provided. He is working with Mr. Adams and Mr. Cole on this matter.

Mr. Brougham asked if Mr. Pires received clarification of why the District is a party to the litigation. Mr. Pires advised against further discussion until a closed door session was held.

B. District Manager

Mr. Adams indicated that, since the meeting was moved two weeks, the November financials could not be provided.

In response to Mr. Brougham's question, Mr. Adams reported that cash remained positive, based on a check run approved last week. A major flush of cash is expected, next week. Mr. Adams explained that, typically, the District receives 70% of its annual receipts in December.

Mr. Brougham asked if Mr. Adams opened the account at Iberia Bank. Mr. Adams is waiting for the paperwork.

i. NEXT MEETING DATE: January 27, 2016 at 8:00 A.M.

The next meeting will be held on January 27, 2016 at 8:00 a.m.

C. Operations Manager

Ms. Crismond presented the Operations Report. She met with LandCare and, subsequently, met with The Foundation on November 23, 2015 regarding ongoing white fly issues with White Fly. The Foundation was provided with a recommended treatment/application schedule from LandCare's subcontractor. This will be shared with all neighborhood associations, so all treatments are applied at the same time.

In response to a question, Ms. Crismond indicated that a chemical list was provided to Mr. Albeit yesterday. Mr. Albeit will disseminate the chemical list and recommendations to all Property Managers.

Mr. Brougham asked if all villages have a formalized contract and treatment program. Mr. Albeit indicated that some villages are completing treatments, as needed. Mr. Slater noted that single-family neighborhoods do not have contracts. Mr. Albeit pointed out that this is the reason why the Property Managers were given this responsibility.

Mr. Slater observed palm fronds and leaves on Saturday, when LandCare is not in the community, and Mr. Slater asked if LandCare can have a crew clean up debris on Saturday's when necessary. Ms. Crismond will add this to the contract specifications under "Special requirements", making it mandatory under the new contract moving forward. LandCare is supposedly picking up debris every morning and at the end of the day, five days per week.

Mr. Slater voiced his opinion that LandCare waits too long to replace dead plants, which is embarrassing. He approached LandCare and was told that this could not be planned. Mr. Slater noted that Verandah has pristine landscaping that is continually replaced. Ms. Crismond is meeting with LandCare, after the CDD #2 meeting, to discuss this issue. Mr. Slater believed that

the dead plants should be replaced, immediately, at LandCare's expense. Ms. Crismond concurred.

Mr. Brougham requested that Ms. Crismond stress to LandCare that it is one thing to replace material but another to have to replace dead plants. He felt that LandCare is lacking with the replacement of dead plants by not having a "dead plant patrol" or anyone available to plant.

Mr. Turner asked what the landscaping contract requires and if LandCare is violating any terms of the contract or if the contract should be amended. Ms. Crismond indicated that the contract cannot be amended but recalled that the contract requires dead plant replacement within seven days; she will verify the contract terms. Mr. Brougham asked if the seven days is from the time of notification. Ms. Crismond replied affirmatively. Mr. Turner asked about the mechanism for reporting dead plants. Mr. Brougham indicated that any landscape issues should be reported to Ms. Crismond, via email. Mr. Turner asked if a reminder should be placed on the Fiddler's Creek website or in an e-blast, as residents asked about the process for reporting dead plants. Mr. Brougham asked Mr. Albeit to include a notice on The Foundation website stating that Ms. Crismond should be contacted regarding dead plants.

Mr. Slater thanked Ms. Crismond and the Board for replacing the trees in Bent Creek.

Mr. Brougham voiced concern that cleanup issues and dead plant replacements were ongoing instances and contemplated giving LandCare a Notice of Deficiency, if they were in violation of the contract terms. He pointed out that the Board has a high standard for the community regarding landscaping, which is what LandCare promised to uphold. Mr. Brougham asked Ms. Crismond to email the Board with LandCare's response to the dead plant issue. Mr. Pires agreed with sending a Notice of Deficiency.

Mr. Brougham requested that the Notice of Deficiency state, "This notice is being issued due to LandCare's general lack of diligence with respect to the identification and replacement of dead plant material, which is not being performed to the Board's expectations and must be corrected within the next 30 days."

There was consensus from the Board for Ms. Crismond to send a Notice of Deficiency to LandCare.

In response to Mr. Peterson's question, Ms. Crismond confirmed that LandCare's contract was signed one year ago and is a two-year contract.

Mr. Peterson asked if LandCare was known as TruGreen at the time the contract was signed. Ms. Adams recalled that a name change occurred several years ago.

Ms. Crismond advised that the Board can terminate LandCare, at any time. Mr. Adams pointed out that LandCare's contract can be amended, with approval, to include additional services and costs. Mr. Peterson wondered how much LandCare would charge the District to provide additional services.

Mr. Brougham agreed that Mr. Peterson's concern is valid and recommended the following steps:

1. Ensure that LandCare is abiding by the current landscaping contract. If not, send a Notice of Deficiency.
2. Validate that the contract with LandCare is enforceable.
3. Consider an amendment to the contract.

Mr. Brougham recommended that the contract not be amended until the deficiencies are satisfied.

Mr. Slater asked if the payment checks to the landscaping company are made out to LandCare or TruGreen. Mr. Adams replied LandCare. Mr. Slater inquired if a letter was sent to the District, effectuating the name change. Mr. Adams will check the District's records for a letter or assignment.

Mr. Vaccaro asked if LandCare is required to provide monthly reports to the District. Ms. Crismond indicated that LandCare provides a monthly Excel punch list of work to be performed and completed items. Mr. Vaccaro asked if there are many outstanding items. Ms. Crismond replied no. Mr. Brougham pointed out that the punch list does not identify the mowing and edging. Mr. Vaccaro felt that LandCare's foreman, Larry, was "collateral damage". Mr. Brougham agreed, noting that, between the villages and the Districts, Larry is overwhelmed and things are "falling through the cracks". Mr. Vaccaro pointed out that LandCare serviced Cherry Oaks and they are in the process of replacing LandCare with Greenscapes, which maintains the RV Park.

Mr. Brougham requested sending a Notice of Deficiency to LandCare and, if there is no improvement, terminating LandCare.

Mr. Albeit agreed but did not blame the employees of LandCare, as they follow the direction of the foreman. He felt that the foreman was not providing proper direction. Mr. Brougham agreed.

Ms. Crismond stated that key employees at LandCare were advised to tour the property.

Mr. Bergmoser asked if Ms. Crismond noticed a change in the attitude of the crew, since the name change. Ms. Crismond indicated that the attitude of past foremen have been, "we cannot do this".

Mr. Brougham believed that the Board must hire contractors that meet the high standards of the District and residents and, if the low bidder is not doing the job, the Board must hire another service provider. Ms. Crismond recalled that TruGreen previously increased their bid to bring it in line with the market and the Board renewed the contract, with a warning that the Board was monitoring their progress.

Mr. Brougham asked if the Board was aware of increasing landscaping costs and CDD #2 paying significantly more for landscaping. Mr. Albeit indicated that TruGreen increased their bid by 51% and charged separately for the white fly treatment.

Mr. Brougham asked Ms. Crismond to notify LandCare about this discussion and issue a Notice of Deficiency.

TENTH ORDER OF BUSINESS

Supervisors' Requests


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

ELEVENTH ORDER OF BUSINESS

Adjournment

There being no further business to discuss, the meeting adjourned at approximately 9:01 a.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary


Chair/Vice Chair