

**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 24, 2016** 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
Carlo Zampogna ( <i>via telephone</i> )	Zampogna Law Firm
Tony DiNardo	Developer
Ron Albeit	The Foundation
Mike Charbonneau	The Foundation
Mark Grimmel	Egis Insurance and Risk Advisors
Richard Peters	Resident
Joseph & Peggy Schmitt	Resident
Eileen Robertson	Resident
Jesse Fritz	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 all Supervisors were present, in person.

**SECOND ORDER OF BUSINESS**

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

Mr. Richard Peters, a resident, addressed tree trimming between Cherry Oaks Lane and the lake, on the corner of Fiddler’s Creek Parkway, Sandpiper Drive and Cherry Oaks Lane. The area looks nicer; however, the palm trees have not been trimmed in two years. Mr. Peters asked

if anything could be done. In response to Mr. Broughan's question, Mr. Peters clarified that he was referring to the palm and oak trees.

Ms. Crismond reported that palm tree trimming is on the list and she will contact LandCare USA, LLC (LandCare) about the hardwood trees and Davey Tree about crown reducing. Mr. Brougham directed Ms. Crismond to email him if no action is taken by this time next month.

### THIRD ORDER OF BUSINESS

### Special Counsel Update

There being no update, the next item followed.

▪ **Discussion: Mulberry Buffer Damage Caused by Diamond Shores Developer**

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

Mr. Brougham indicated that Mr. Carlo Zampogna, of Zampogna Law Firm, was engaged, at last month's meeting, to pursue remedies from the owner of Diamond Shores, who, without complete authorization, had a contractor hat-rack trees and fence panels were broken.

Mr. Zampogna discussed letters that were sent to the property owner; the last letter was sent last week. Mr. Brougham noted that copies of the letters were previously received. He had a conference call, yesterday, with Mr. Craig Woodward, of Woodward, Pires & Lombardo (Woodward, Pires), who did not review the letter until Tuesday. Mr. Woodward and his client did not have sufficient time to respond and did not have background information for the financial demand, which was \$70,580. They will provide comments and a response by Friday.

Mr. Brougham asked Mr. Zampogna if he had quotes from the vendors when he sent the last letter. Mr. Zampogna replied affirmatively; however, he needed revised quotes for ficus trees because, legally, ficus trees are what the District is entitled to. The original quote was not for the same size ficus trees. Mr. Adams explained that the original trees were 100-gallon but the quote was for 45-gallon trees. Ms. Crismond pointed out the difficulty in obtaining 100-gallon ficus trees, since most suppliers do not carry them.

Mr. Brougham stressed that the Board had not discussed, nor decided, on what type of trees to replace the ficus trees with.

Mr. Zampogna advised that, since the County standards permit ficus trees to be replaced, the standard, from a financial damages standpoint, is to replace with "like kind" and, if the Board decides to replace the trees with a different type, which is more expensive, the District would not be legally entitled to recover the "upcharge" for a more expensive tree. Mr. Brougham

understood and verified that the District is obtaining a quote for like-to-like trees, for purposes of the settlement.

Mr. Zampogna will send an itemization to Mr. Woodard and the property owner. It may take longer for a response because the accuracy of the financial amounts must be confirmed; however, having the invoices would shorten the time frame for a response. Mr. Brougham confirmed that Staff has all invoices, with the exception of the ficus tree invoices, which Mr. Adams will submit to Mr. Zampogna before next Friday. Mr. Zampogna will prepare a response for Mr. Woodard to provide to his client tomorrow morning.

Mr. Slater inquired about the principal owner of Diamond Shores. Mr. Zampogna indicated that the entity is JMD Developments & Investments, LLC (JMD Developments); Mr. Dennis Albaugh is the registered agent.

Mr. Peterson asked how the price is set if there are no 100-gallon ficus trees. Mr. Adams was locating the trees and pricing; he expected a price in the \$60,000 to \$70,000 range. The price difference would be for replacing 55 ficus trees with 35 oaks and an additional \$4,000 to \$5,000 for the stump grinding.

Mr. Zampogna recalled that his firm was hired to pursue this matter because a partner within District Counsel's firm represented JMD Developments; ethically, when one member of the firm is disqualified, the remaining members of the firm are also disqualified, unless a waiver is obtained. Yesterday, Mr. Woodward asked if the Board would consider signing a waiver, allowing his firm to represent JMD Developments, for the limited purpose of negotiating and reaching a settlement. If settlement is not reached, and the case goes to litigation, Woodward, Pires would not be involved in representation. Mr. Woodward wanted confirmation, in writing, that his firm can represent JMD Developments, during negotiations.

Mr. Brougham felt that, based on the way that "this gentleman" has been proceeding, including chaining off District access for further fence repairs over the weekend, he was inclined to not provide any waiver to Mr. Woodward. He believed that the District should not do any favors for JMD Developments or Mr. Woodward.

Mr. Zampogna advised that it may take additional time to receive a response if the District did not provide the waiver to Mr. Woodward; the Board must consider the time it would take for Mr. Albaugh to hire new counsel. Mr. Zampogna recommended setting a deadline for Mr. Albaugh to respond before filing suit.

Mr. Brougham asked if Mr. Albaugh requested an extension until next Friday. Mr. Zampogna indicated that the extension was for this Friday, the invoices were provided but, since the invoices will not be available until next week, next Friday is more reasonable.

Mr. Brougham requested that Mr. Zampogna write a letter to Mr. Albaugh rejecting the request for a waiver and, once the invoices are substantiated, the District's claim should be in Mr. Woodards' hands, no later than early next week, as a response, no later than this coming Friday, was requested. Mr. Brougham demanded that Mr. Albaugh allow access to District contractors.

Mr. Brougham advised that the District will not wait for resolution of this demand or claim, as the fence repairs are proceeding; Mulberry Lane was completed and Peppertree Way and Bent Creek Way are in process. As soon as a decision is made regarding the tree replacements, a contractor will be selected and repairs will commence. The Board will pursue legal remedies with Mr. Zampogna but not wait to remedy the appearance along Mulberry Lane and Peppertree Way.

**\*\*\*Mr. Zampogna left the meeting.\*\*\***

Mr. Joseph Schmitt, a resident, with a Bachelors and Masters Degrees in Engineering, indicated that he assessed the fence along Mulberry Lane and determined that the posts are inferior; the posts are the wrong size and do not adequately cover the rebar going through the fence. He explained that, typically, a fence post has 1.5" to 2" of concrete over rebar and concluded that the rebar rusted, spalled, expanded and cracked down the center of the post. On several posts, the crack runs from top to bottom and, as it spalled, the front of the post fell off, causing the panels to fall.

Mr. Schmitt suggested saving some panels in case the post fails. He predicted that 15 posts, with top to bottom cracks, will fail within the next six months but, if the posts are replaced, the panels could be saved. Mr. Schmitt felt that it was cheaper to replace the posts, as the code changed to require thicker posts.

Mr. Brougham reiterated that the District is not waiting for resolution on the claim, as most of the fence was repaired and the only remaining issue is to decide on the tree remediation.

Mr. Schmitt asked who is paying for the stump removal. Mr. Brougham indicated that the District will pay for the tree and stump removal and request reimbursement, unless the residents and Board Members wanted to wait until JMD Developments pays. Mr. Schmitt believed that the ficus trees would recover within a year.

Mr. Brougham noted that the District is not allowed to let the trees recover and recalled Mr. Zampogna advising that, according to the County ordinance, once trees are hat-racked, they must be removed.

Mr. Adams clarified that the trees were out of compliance with County code; under normal conditions and in other parts of the community, crown reduction entails taking the crown down one-third, over a three-year period. The property owner reduced them by two-thirds to three-quarters over one week. Mr. Adams did not anticipate the trees recovering, quickly.

Mr. Brougham pointed out that the issues are how long it would take the ficus trees to recover and that, along the border, it is an eyesore for the entire community. He felt that it was incumbent to take action, as quickly as possible, to remedy the situation. Mr. Brougham recalled that, after Hurricane Wilma, the Board passed a policy, by motion and resolution, that, if a ficus tree toppled in the wind or died, it would not be replaced with another ficus tree. He was not in favor of planting more ficus trees and was uncertain whether live oaks were the best solution, although, live oaks were better than ficus trees.

Mr. Brougham voiced his opinion that the fence has been a "money pit", since the beginning. Since 2010, the District spent approximately \$68,000 on fence repairs to replace panels when the posts separated. He proposed that the Board consider, at least along Mulberry and, eventually, Peppertree and Bent Creek, removing the existing fence and installing a new fence that has better durability, includes a warranty, is decorative and determine the type of landscape buffer to install in front of or behind the fence. Mr. Brougham recommended phasing the project.

Mr. Brougham felt that continual fence repairs was a bad, long-term decision and discussed steel reinforced vinyl, which can be installed on all types of surfaces, has different designs, is warranted for 30 years and has wind resistance to 130 miles-per-hour (mph). He supported a complete solution, versus a piecemeal solution.

Mr. Schmitt noted that this type of fence was typical and common throughout the County, in style and design, and Mr. Brougham's proposal would deviate from any other fencing in Fiddler's Creek. He recalled that the District recently installed new fencing along US 41 and spent a significant amount of money replacing the Mulberry fence.

Mr. Slater stated that, if the trees are supposed to shield residents along Mulberry from the planned three-story apartments, trees on either side would not help and suggested hedges, for privacy. He felt that any tree will be "a stick sticking up" and will look terrible for five years.

According to an arborist that Mr. Slater consulted, the trees will come back and cover the area, within five years. Mr. Slater did not support replacing the trees. He agreed with Mr. Schmitt to continue with the same fencing and replace the posts.

Mr. Brougham reported that damaged posts are being replaced. Mr. Slater noted the issues of what to do with the trees and what to do with the fence.

Mr. Brougham asked if the Board agreed with removing the hat-racked trees. Mr. Slater replied no. Mr. Peterson was unsure and wanted an opinion about the recovery of the existing trees.

Ms. Crismond reported that the arborist evaluated the trees and indicated that it was possible for the trees to begin to recover within 60 days but, because of the severity of the cutting, the arborist could not guarantee that the trees would recover. Mr. Peterson noted that it has been 60 days. Ms. Crismond stated that the trees were demolished on January 18.

Mr. Peterson pointed out that the District is not obligated to replace the tree with an existing type of tree; the District can plant whatever it wants or do nothing. Mr. Brougham agreed. Mr. Peterson felt that doing nothing would include using the \$70,000 for another purpose, if the District was successful. Mr. Brougham agreed that the money can be utilized for any purpose. Mr. Adams advised that, according to the County code, if the District does nothing, it could be subject to a code violation.

Mr. Brougham read the following statement from Mr. Zampogna's letter:

*"Land Development Code, landscaping pruning and maintenance requirements in 4.05.06 (k)(1); vegetation required by this code shall only be pruned to promote healthy, uniform, natural growth of the vegetation except where necessary to promote health, safety and welfare. In addition, trees shall not be severely pruned in order to permanently maintain growth at a reduced height or spread. Severely pruned trees shall be replaced by the owner. Therefore, my clients cannot and will not allow the ficus to regrow, as that directly violates Collier County Code."*

Mr. Brougham clarified that, according to what Mr. Zampogna cited, in the Land Development Code (LDC), the District must remove the severely pruned trees but there was no requirement for what the trees must be replaced with. He recommended that the tree stumps be removed, expeditiously, while deciding what, if anything, to plant.

Mr. Albeit agreed that the next step is to clean everything out but, in the meantime, research tree types. Mr. Brougham pointed out that there is time to obtain a settlement and work with the developer and the Design and Review Committee (DRC) on acceptable replacements, whether trees, foliage or bushes, if anything.

Mr. Albeit asked if replacing the trees in a proper manner would be satisfactory, if Mulberry residents were provided with a timeline, with the steps to be taken.

Ms. Eileen Robertson, a resident, felt that "if anything", implied that it could be nothing, which, in her opinion, was unacceptable. Mr. Brougham clarified that the Board will work with the developer and DRC to determine what, if anything, should go in there; "if anything" and "nothing" are options. Ms. Robertson stated not for Mulberry residents.

Mr. DiNardo stated that, if the Board decided not to replace the ficus trees, the developer will help find a suitable replacement tree. Mr. DiNardo will have the Horticulturalist, Ms. Cathy Feser, make recommendations. Mr. Brougham agreed. If the Board determined that the trees must be cut down, Mr. DiNardo recommended having multiple experts provide an opinion and urged repairing the area, as soon as possible; otherwise, The Foundation will.

Mr. Brougham contended that there was no debate regarding expeditiously fixing the fence or replacing the foliage. Mr. DiNardo pointed out that he was giving his opinion. Mr. Brougham appreciated Mr. DiNardo's opinion but stressed that the Board wanted to quickly get concurrence and asked Mr. DiNardo to have Ms. Feser provide recommendations, immediately.

Mr. Schmitt recalled that the trees were trimmed ten years ago, right after Hurricane Wilma. Ms. Crismond recalled that trimming occurred in 2008. Mr. Brougham noted that the District was cited by the County. When Mr. Schmitt was with the County, at the time, he recalled that the original plans included a ficus hedge. Mr. Schmitt recalled Mr. Mark Strain telling him that, originally, there was a ficus hedge but not the typical ficus hedge, along the parkway.

Mr. Turner proposed establishing guidelines or strategies on the type of tree, and removing the stumps, immediately, to prepare the area for planting, and addressing the fence, as a separate issue. Mr. Brougham agreed. Mr. Turner recommended establishing a timeline and sharing with the residents.

Mr. Bergmoser asked, if the decision is to plant new trees and replace the fence, will the new trees be harmed when replacing the fence. Mr. Brougham did not anticipate replacing the fence.

Mr. Slater noted that if the hat-racked trees are permitted to grow, the trees will become hat-racked hedges, which would provide privacy along Mulberry. He felt that it was premature to decide whether to remove the stumps and trees. Mr. Cole advised that the District will be at risk of being fined by the County. Mr. Brougham indicated that, if the Board does not agree with the attorney's interpretation of the LDC, it should challenge it but the attorney specifically advised that the trees must be removed.

Mr. Slater asked if the original plat had hedges. Mr. Cole recalled that the original landscape plans identified what was proposed; however, it was a code minimum plan and what was actually planted may have been more elaborate. Mr. Cole offered to find the original landscape plans. Mr. Brougham believed that it was not worth it.

**On MOTION by Mr. Brougham and seconded by Mr. Turner, with all in favor, authorizing Staff to complete all fence repairs on the existing fence, along Mulberry, Peppertree, Bent Creek and Whisper Trace, with similar replacement materials, and for the fence contractor to perform a full inspection of all existing posts, provide an inventory of the number of defective posts and the cost to replace the posts, were approved.**

Mr. Brougham favored relying on Mr. Zampogna's opinion that the severely damaged trees must be removed. Mr. Slater preferred hedges instead of trees.

**On MOTION by Mr. Brougham and seconded by Mr. Turner, with Mr. Turner, Mr. Brougham, Mr. Bergmoser and Mr. Peterson in favor and Mr. Slater dissenting, authorization for a contractor to remove all hat-racked ficus trees, along the Mulberry fence line, including stump grinding, was approved. (Motion passed 4-1)**

Mr. Brougham requested recommendations from The Foundation, the developer and Ms. Feser on plant materials to be installed behind the fence, and for Mr. DiNardo to provide an opinion of what The Foundation would like to plant, for discussion at the March Board meeting.

Ms. Robertson asked if there is a timeline for replanting. Mr. Brougham estimated at least one month. Ms. Robertson felt that removing the trees will look terrible; the plant material is growing back. Mr. Brougham agreed that the area looks bad but nothing will happen in one



month, except for removal of the trees, and, as soon as the recommendations are received and there is agreement, action will be taken. Mr. Brougham indicated that the Board is not interested in delaying anything.

Mr. Slater pointed out that, when stumps are grinded, one tree is still standing and he requested that it be cut down.

Mr. Schmitt asked if there was a way to expedite the process, if The Foundation submits its recommendation, next week. Mr. DiNardo indicated that the Board will receive his recommendation, by next week, at the latest. Ms. Crismond will contact vendors to obtain proposals, once she receives the recommendations. Mr. Schmitt voiced concern about finding the same size trees.

Regarding the opinion letter, Mr. Brougham felt that Mr. Zampogna was responsive to Mr. Woodward but stressed that, if the developer and his future attorney do not “play nice” and do not return with a reasonable counter offer, in a specified amount of time, there is the potential of the District filing suit. If the District initiates litigation, Mr. Brougham wanted to retain a more aggressive and assertive attorney, than Mr. Zampogna.

Mr. Turner asked Mr. Pires what happens if his firm is removed from handling this matter for the developer. Mr. Pires indicated that the conflict would remain and offered to recommend attorneys; he felt that Mr. Brougham’s request was not unreasonable.

Mr. Brougham stated that he was not being overly critical of Mr. Zampogna; he felt that Mr. Zampogna was a very nice man. Mr. Slater agreed; however, Mr. Zampogna is a “one man show” and the District needs a team.

Mr. Brougham requested authorization for him and Mr. Adams to research professional litigators, between now and the March meeting. There was Board consensus.

Mr. Schmitt asked what legal instrument was in effect that allowed the developer to go onto District property. Mr. Brougham replied none.

In response to Mr. Slater’s question, Mr. Pires advised that a person voting in favor of an action taken, can make a motion for reconsideration. Mr. Slater was permitted to second a motion.

Mr. Peterson agreed with Mr. Schmitt that allowing the trees to return was a better solution than removing the trees because it will take years before the appearance improves. Mr. Bergmoser favored the opinion of Mr. Zampogna, over the arborist, and suggested waiting 30

days before stump grinding, to see if there is new growth and then revisiting the issue. Mr. Peterson requested waiting 60 days.

**On MOTION by Mr. Peterson and seconded by Mr. Slater, with Mr. Slater and Mr. Peterson in favor and Mr. Brougham, Mr. Bergmoser and Mr. Turner dissenting, reconsideration of the prior motion to authorize a contractor to remove all hat-racked ficus trees, along the Mulberry fence line, including stump grinding, failed. (Motion failed 2-3)**

Regarding the authority allowing the developer and his contractor to go onto District property, Mr. Brougham indicated that the property owner had no authority but approached Mr. Larry Douglas, of LandCare, to request the District's permission to trim the trees. Mr. Brougham directed Mr. Douglas to have the property owner email and Mr. Brougham forwarded the email to Mr. Pires. Mr. Pires forwarded the email to Mr. Cole to delineate the property lines. Mr. Adams and Ms. Crismond met with the property owner to coordinate the work and place conditions, such as providing proper documentation; however, instead of pruning the trees, the property owner chopped them down, leaving half-topped trees along the Mulberry Lane fence.

Mr. Adams clarified that the Staff's intent was to hold a site meeting to discuss the means, methods, parameters and whether this was something that the property owner still wanted to proceed with, and once the proper licenses and insurances were submitted, present a formal proposal to the Board and engage in a contract, protecting all parties. Mr. Brougham wanted the Board to be afforded the opportunity to approve license agreements with individuals who wanted to perform work on District property.

Mr. Slater felt that Mr. Brougham was constraining District Staff and wanted every decision to come before the Board. Mr. Brougham disagreed. Mr. Adams explained that this would be related to a special project that would not be part of the normal course of business. Mr. Brougham clarified that he was not referring to the vendors that have contracts with the District; the policy would exclude emergency situations, such as a hurricane.

Mr. DiNardo pointed out that the landscaping material belongs to the District and the District should be the only one responsible for trimming its trees; a subcontractor should not be used. Mr. Brougham's intention was to establish a policy for anyone performing work on District property. Mr. DiNardo contended that the issue was someone allowing a third party,

with no affiliation with Fiddler’s Creek, to trim trees, which will now be a cost to homeowners. Mr. Adams stressed that Staff never gave permission. Mr. DiNardo voiced his opinion that Mr. Adams should have said no.

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, establishment of a policy for Staff to not verbally, or otherwise authorize any person or contractor to proceed with any work on District property, until the request is brought before the Board for discussion and approval, and authorization for District Counsel to prepare a resolution, with an exception for emergency situations, after consultation with the Chair or Vice Chair, were approved.**

Mr. Turner asked if the entire incident occurred because there was no permission and action should be taken against the property owner. Mr. Adams responded “no”. Mr. Brougham remarked that he did not state that Staff gave permission to the property owner; the property owner chose to ignore Staff’s instructions about how to obtain permission.

**FOURTH ORDER OF BUSINESS**

**Developer’s Report**

Mr. DiNardo reported that, as a result of a streetlight in Veneta being out for two months, a streetlight map with GPS reference points that residents can utilize, was being created. It should be completed in 30 days and will be included on the website. Residents can report downed fences or trees by identifying the reference number of the streetlight poles. Mr. DiNardo suggested meeting with Bentley Electric (Bentley) to discuss a contract for streetlights and to provide specifications for converting the existing lights to LED. Mr. Adams noted that Florida Power & Light (FPL) does not have a streetlight schedule for the monthly tariff charge, versus a usage charge for LEDs. Mr. DiNardo urged the Board to consider LEDs.

Mr. Peterson asked if there will be a link on the website. Mr. DiNardo indicated that residents must use common sense. Mr. Brougham suggested color coding the streets.

Mr. Pires stated that this is an excellent tool and advised that the District is required to publish its designated procedures for the notification of streetlights on its website and publish an advertisement in the newspaper, every year. He will provide the advertisement to Mr. Adams.

Mr. Cole indicated that County utilities have every major utility on their system, which can be incorporated. The County recently started requiring GPS information for its utilities.

- **Presentation: Insurance Coverage Including FIA Proposal for Additional Crime Coverage [Mark Grimmel, Egis Insurance and Risk Advisors]**

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

Mr. Mark Grimmel, President of Egis Insurance and Risk Advisors (Egis), indicated that his firm specializes in insuring Florida governments and he has been insuring Special Taxing Districts for 15 years. He presented the current coverage form, written through the Florida Insurance Alliance (FIA), for additional crime coverage, with a unique endorsement through Wrathell, Hunt and Associates, LLC (WHA).

In response to Mr. Brougham's question, Mr. Grimmel indicated that the premium for the additional crime coverage was \$5,000 and \$31,000 for the total policy.

Mr. Peterson asked about the \$795 premium. Mr. Grimmel indicated that it was a prorated amount, from December until March. Another proposal was provided for March 1, in the amount of \$586, for the remainder of the year.

Mr. Pires requested modification of the proposal to include CDD #1.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, the Florida Insurance Alliance proposal for additional crime coverage, as modified, was approved.**

## FIFTH ORDER OF BUSINESS

### Engineer's Report

Mr. Cole reported that an asphalt patch repair, completed several months ago, at the corner of Fiddler's Creek Parkway and Club Center Boulevard, was separating and the contractor repaired it a couple of weeks ago. Mr. Brougham noted that the contractor paid for the repair. In response to Mr. Brougham's question, Mr. Cole indicated the contractor went deeper into the limerock, versus removing the asphalt.

Mr. Cole advised that the County performed their final inspection of the SR 951 traffic signal, last week. Minor punchlist items remained, such as providing certificates of sod. The temporary construction warning signs on Fiddler's Creek Parkway should be removed, shortly. Once the County provides their final sign-off, submits it to the state and the state signs off, the retainage invoice will be processed for payment, which includes a summary of expenses to be shared between CDD #1 and CDD #2.

Mr. Slater asked if shrubbery can be placed along the signal box. Mr. Brougham noted objections to the CDD planting anything, as it is state property. Mr. Cole explained that the

landscaping requirement is 6' from the signal controller, all the way around, and 4' high, to allow someone working on the signal control box to view over the signal. Other than the signal control box, there is a piece of equipment towards the south, which is about 6' to 7' high at its highest point. Mr. Brougham pointed out that nothing will shield it. Mr. Brougham concluded that no landscaping will be installed.

Regarding lake erosion, Mr. Cole reported 10" more of rain in January than normal. The lakes are still above control elevation, which had never happened this late in the dry season. Hopefully, in the next few days, water levels should be low enough for the lake contractor to complete Phase 4. Next is Phase 5 and the remaining phases will be completed based on priority.

Mr. Pires asked if the final expenses for the traffic signal will be presented for final approval. Mr. Adams indicated that there will only be administrative approval, because it is a contract value, allowing for processing of the requisition through CDD #2 for CDD #1's reimbursement. Mr. Brougham was satisfied, as long as everyone involved completed all of their billings. Mr. Adams noted that Staff relied heavily on the District Engineer to certify the final payments.

Mr. Brougham reported that a Whisper Trace HOA Board member questioned whether the CDD was responsible for blockages in a sewer line, leading from a building. Mr. Brougham believed that the developer and the District facilitates installation of storm and sanitary sewers before they are conveyed, Collier County maintained the main line sanitary sewer and any leads were either the responsibility of the homeowner or HOA. According to the Whisper Trace HOA Board member, they rely on the CDD's website. Under "What is a CDD", there is a statement about sanitary and storm sewers, without the qualifier that the CDD is initially responsible for installation, through the bond funds but not ongoing maintenance. Mr. Cole explained that the service line, between the unit or the house and the main line, is the responsibility of the homeowner or HOA.

**SIXTH ORDER OF BUSINESS****Discussion: Mulberry Buffer Damage  
Caused by Diamond Shores Developer**

This item was discussed following the Third Order of Business.

**SEVENTH ORDER OF BUSINESS**

**Presentation: Insurance Coverage Including FIA Proposal for Additional Crime Coverage [Mark Grimmel, Egis Insurance and Risk Advisors]**

This item was discussed following the Fourth Order of Business.

**EIGHTH ORDER OF BUSINESS**

**Approval of January 27, 2016 Regular Meeting Minutes**

Mr. Brougham presented the January 27, 2016 Regular Meeting Minutes and asked for any additions, deletions or corrections.

Mr. Cole referred to Line 74, on Page 2; which stated that 3' is the minimum clearance requirement but it is actually 6'. Mr. Pires advised to leave the minutes, as stated; Mr. Cole's comment was a clarification.

The following change was made:

Line 465: Change "of" to "and" and "his" to "the"

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, the January 27, 2016 Regular Meeting Minutes, as amended, were approved.**

**NINTH ORDER OF BUSINESS**

**Action Items**

In response to Mr. Brougham's question, Mr. Adams indicated that the IberiaBank account was opened this month; \$300,000 was moved into the account, as required. Mr. Brougham asked if the District is required to maintain a \$300,000 balance. Mr. Adams indicated that it can be drawn upon, as needed, which may be necessary during the gap funding period in October and November, before tax receipts are received.

**TENTH ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**ELEVENTH ORDER OF BUSINESS**

**Staff Reports**

**A. District Manager**

**i. Approval of Unaudited Financial Statements as of January 31, 2016**

**\*\*\*This item, previously Item 11.B.i., was presented out of order.\*\*\***

Mr. Brougham presented the Unaudited Financial Statements as of January 31, 2016.

Mr. Brougham reported that he asked Mr. Pires a question regarding the billing, prior to the meeting, and Mr. Pires explained that two months' billing was consolidated into one. Mr. Pires noted that one month had a lot of activity. Mr. Brougham pointed out that the budget for legal fees was at 80%.

Mr. Brougham asked if the audit commenced. Mr. Adams replied affirmatively; it should be completed by the end of March and presented in April. Delays are caused by ongoing litigation.

**ii. NEXT MEETING DATE: March 23, 2016 at 8:00 A.M.**

**\*\*\*This item, previously Item 11.B.ii., was presented out of order.\*\*\***

The next meeting will be held on March 23, 2016 at 8:00 a.m.

**B. District Counsel**

**\*\*\*This item, previously Item 11.A., was presented out of order.\*\*\***

Regarding the CDD #1 and CDD #2 boundary amendments, Mr. Pires reported that Mr. Cole and Ms. Valerie Lord, a representative of the developer, met with County staff for a pre-application meeting, to address questions or concerns. The Assistant County Attorney was unable to attend; subsequent communications from County staff, addressed a timing issue. Mr. Pires explained that the CDD #1 petition is filed with the Governor and Cabinet sitting as the Florida Land and Water Adjudicatory Commission (FLAWAC), to adopt rules for amending District boundaries, whereas, CDD #2 involves an ordinance change adopted by the Board of County Commissioners. When the County Commission reviews CDD #2's application to amend the boundaries, by ordinance, the effective date of the ordinance should not come until after the Governor and Cabinet have amended the rules for CDD #1; they were amenable. County staff requested a narrative for the requested changes and a draft was completed. A conference call is scheduled for next week.

Mr. Pires reported on the subpoena from Naples Lending. He asked the attorneys if they would accept an affidavit, as to certain matters but they wanted the District's records. Mr. Brougham asked if the charge for providing District records is part of the litigation cost. Mr. Pires replied no.

Mr. Brougham reported that their judge ruled on the County Clerk case and he was now free to rule on the CDD's litigation.

*\*\*\*Mr. Slater left the meeting at approximately 9:30 a.m.\*\*\**

### **C. Operations Manager**

Ms. Crismond presented the Operations Report. She reported that the South Lake entry fountain was shut down, due to excess voltage coming through the control panel. FPL is monitoring the fountain this week and will call a meeting if necessary.

Mr. Brougham asked if that was why the fountain shut down on Saturday. Mr. Crismond replied affirmatively; she was originally told that the fountain was shut down because the manufacturer would not warranty the motor, if there is excess voltage, as it will burn the motor.

Ms. Crismond indicated that Staff met with The Foundation, on Friday, and attended a drive-through with the Landscape Committee. Several observations were noted by the committee and Ms. Feser. Staff is in the process of completing these items with The Foundation. Also, on Friday, Staff identified areas around the community where sidewalk repairs were needed.

Mr. Brougham referred to his email to Mr. Albeit regarding decorative flowers and requested agreement on the type of flower and density of the planting. Mr. Brougham noted no hesitation by the Board about the flowers and density. Ms. Crismond indicated that the contractor has the specifications and she spoke with Mr. Kevin Cook about this matter. In response to Mr. Brougham's question, Ms. Crismond indicated that either they are not fertilizing enough or not pinch heading the flowers. Mr. Brougham believed that the issue was with the distance between the plants. Ms. Crismond noted that the specifications identify how the flowers are supposed to be planted but, apparently, the contractor is not following the specifications.

Mr. Brougham asked if a response was received from Ms. Feser about recommended plant replacements for the south side parkway entry, which was requested by Ms. Shannon Benedetti. Ms. Crismond indicated that, after Friday's drive-through, she sent several emails to Ms. Feser and she responded yesterday. Mr. Brougham wanted to proceed, as quickly as possible, with remediating landscape and flower issues.

Regarding patrol services, Ms. Crismond recalled that the Board wanted more stringent enforcement from the Florida Highway Patrol (FHP) and reminded the Board that, in 2007 or 2008, FHP was supposed to patrol the community for three months but did not. FHP never provided a reason why they failed to show and no one was available to talk to. Mr. Adams



surmised that FHP would not respond now, due to their constant patrols of the current roadway work on I-75.

Mr. Brougham advised that CCSO issued more citations this month and asked if Mr. Charbonneau had any observations on the patrols. Mr. Charbonneau reported that, with more saturation, they are getting more stops and issuing more citations.

Mr. Brougham asked if staff noticed a reduction in violations and whether people were still running stop signs. Mr. Charbonneau did not notice any improvement. This morning, a school bus was stopped inside of the main gate, flashing its lights, and cars were driving 60 mph around the bus. Mr. Charbonneau noted that it was no different inside of the community, from outside. There was consensus to increase patrols to four-hour shifts, through April.

Mr. Adams received no response from Collier County Sheriff Kevin Rambosk.

Mr. Schmitt asked if the Board received notification on a neighborhood information meeting (NIM) for Diamond Shores. Mr. Brougham replied no but he emailed Mr. Mark Strain, who contacted the Growth Management Department. According to Mr. Strain, there are no NIMs scheduled at this point. Mr. Strain will inform the District of updates. Mr. Schmitt indicated that residents within 300' of the rezoning action will receive letters, including most of Mulberry and Peppertree.

In response to Mr. Schmitt's question, Mr. Brougham indicated that he is planning to attend the NIM, representing the CDD, upon authorization by the Board, once notification is received. Mr. Pires explained that, when NIMs are held, in addition to the mailed notice, an advertisement must be placed in the newspaper. Mr. Pires did not foresee any NIMs between now and March and authorization was not necessary, at this time.

Mr. Pires recommended utilizing the County's portal and typing in a folio number, under the planning section, for updates. Mr. Schmitt noted that three parcels are being rezoned into one, including the residential single-family (RSF-3), which requires a public hearing and rezoning action. Any objections must be discussed before the Planning Committee. Mr. Brougham believed that placing a three-story building along the fence may cause issues.

**TWELFTH ORDER OF BUSINESS**

**Supervisors' Requests**

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

**THIRTEENTH ORDER OF BUSINESS**

**Adjournment**

There being no further business to discuss, the meeting adjourned at approximately 9:45 a.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

  
Secretary/Assistant Secretary

  
Chair/Vice Chair