

**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, March 23, 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
Ron Albeit	The Foundation
Mike Charbonneau	The Foundation
Kevin Cook	LandCare
Mark Swanson	LandCare
Shannon Benedetti	Resident
Joseph Schmitt	Resident
Eileen Robertson	Resident
Elise Marshall	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)**

Ms. Shannon Benedetti, a resident and member of the Landscape Advisory Team (LAT), reviewed the report from the Horticulturalist, Ms. Cathy Feser, and noted that, subsequent to submittal, Ms. Crismond and Mr. Tony Spinelli, a resident and member of the LAT, toured the property.

According to Ms. Benedetti, Ms. Crismond tried to follow-up with the LAT’s request for new flowers for the front Fiddler’s Creek Parkway entry, which Ms. Benedetti appreciated because all of the different flowers look “beautiful”; however, the flowers now look flat. Ms. Crismond wanted the flowers to be mounted and lifted, so residents would have a nice view driving into the community but, Ms. Benedetti pointed out that the flowers were smaller than expected.

Ms. Benedetti noted large signage along the sides of Fiddler’s Creek Parkway and a utility box. Ms. Feser did not recommend plantings around the utility box because of planting distance and height requirements. Ms. Benedetti suggested focusing attention away from the signs and the utility box by installing shrubbery behind the flowers to brighten the entrance.

Ms. Benedetti pointed out that the LAT is working on a list of items with Ms. Crismond to assist the Board.

**THIRD ORDER OF BUSINESS****Special Counsel Update**

Mr. Adams reported that Judge Shenko has not ruled on the pending Motion to Dismiss.

Mr. Brougham indicated that there is nothing the District can do and voiced frustration about having this matter pending since November.

**FOURTH ORDER OF BUSINESS****Developer’s Report**

Mr. Brougham asked when Fiddler’s Creek, LLC was planning to reconfigure Fiddler’s Creek Parkway, entering from SR 951. Mr. Albeit will ask Mr. DiNardo. Mr. Brougham pointed out that the District should not spend a considerable amount of money for landscaping around the monuments, if three or four months later, the developer would remove the landscaping.

**FIFTH ORDER OF BUSINESS****Engineer’s Report**

Mr. Cole advised that the County performed another inspection of the SR 951 traffic signal and the contractor installed the missing sod. Once the Florida Department of Transportation (FDOT) and the County provide their final written approvals, expected in a few weeks, the retainage can be paid to OnPower and the contractor, and the summary of all costs to be shared could be prepared. Mr. Brougham asked if the Board of County Commissioners must

sign-off. Mr. Cole replied no. Mr. Brougham asked Mr. Cole to inform him when FDOT signs-off and Mr. Brougham will forward it to the County Transportation Department.

Mr. Cole reported that lake levels dropped enough to complete the Phase 4 lake erosion repairs. In the past several weeks, the contractor cut the bags and installed the sod. Mr. Cole anticipated completion of the lake erosion repairs, this week, as Lake 33, north of Sauvignon, and Lake 12, east of Mulberry, were completed; Lake 8, near Bellagio is proceeding. Preparation for the Phase 5 lake erosion repairs started this week and was anticipated to be sent out for bid. By the next meeting, Mr. Cole planned to provide the bids and a recommendation for award of the contract. Mr. Brougham pointed out that this was just in time for the rainy season. Mr. Cole hoped for two to three months of dry weather.

Mr. Brougham asked about the impact, if Phase 5 was deferred for a year, based on the delay in completing Phase 4. Mr. Cole indicated that, last week, he directed staff to inspect the lakes and offered to review and discuss the most critical areas. Mr. Brougham advised that, if the District incurred unanticipated expenses for an interim period, and the erosion program was not severely impacted by either deferring work for a year or reducing the scope, additional budget funds would be available for the Mulberry landscape buffer restoration expenses, which the District might not recoup. In response to Mr. Brougham's request, Mr. Cole will either provide a proposal for all of Phase 5, which was budgeted at \$200,000, or a \$50,000 proposal for repairs, or less, depending on severity.

Mr. Brougham advised that CDD #1 would not receive its 50% reimbursement for the traffic signal until FDOT and the County sign-off and, if it was not for two or three months, it would be a continued drain on finances.

Mr. Bergmoser asked if Staff is inspecting work in Phases 1, 2, 3 and 4 and, if so, whether it was to Mr. Cole's satisfaction. Mr. Cole indicated that a cursory review was performed and the lakes appear to be holding up well. In response to Mr. Brougham's question, Mr. Adams indicated that the geotubes have a warranty of 15 years.

Mr. Turner questioned the outstanding balance of the traffic signal. Mr. Adams indicated that the District was currently holding retainage of approximately \$35,000. In response to Mr. Brougham's question, Mr. Adams estimated a total amount of \$464,000 for the traffic signal, with CDD #1 receiving reimbursement of \$232,000. In response to Mr. Turner's question, Mr. Brougham indicated that \$464,000 was paid to the vendor. Mr. Bergmoser asked if reimbursement from CDD #2 was contingent on the final bill. Mr. Brougham replied

affirmatively. Mr. Adams referred to \$36,792, under "Accounts payable", on Page 1 of the financials, which was the OnPower retainage.

**SIXTH ORDER OF BUSINESS****Update: Mulberry Lane Tree Buffer Restoration and Status of Cost Recovery Discussions with the Adjacent Property Owner**

Mr. Brougham recalled that the owner of Diamond Shores, who owns Antilles, which is across the fence from Mulberry, hired a contractor that was not a licensed tree service company, to hat-rack 50 ficus trees. The contractor stopped when it was pointed out that it was unsafe and the owner did not have permission, as it was not in accordance with arborist practices and County code but the damage was already done. At the last meeting, the Board voted to remove the ficus stumps and all of the hat-racked damaged ficus trees were moved; the final stump was removed by crane on Monday. Mr. Brougham noted that, at this meeting, the Board will discuss what type of trees to replant. Ms. Feser and the Design and Review Committee (DRC) have recommendations for acceptable replacements.

Two weeks ago, Mr. Brougham received an email, as President of Pepper Tree Village Association, from Mr. Cole. The engineering firm employed by the Diamond Shores developer requested a CDD easement through the fence across Fiddler's Creek and Pepper Tree property, to tie into an 8" potable water line in Pepper Tree. According to the engineering representative, Diamond Shores is planning a maximum of 280 multi-family or 150 single-family homes but they do not have enough potable water for 280 units; their present supply line runs from SR 951, down Port Au Prince Drive and into the development. Mr. Brougham reported that the Pepper Tree Village Association held an emergency meeting and the Board denied the request for easement and reported back to Mr. Cole. Mr. Cole is waiting until after this meeting to respond to the engineering firm. Mr. Brougham explained that the Pepper Tree HOA denied the easement request, due to concerns about having a three-story building overlooking Pepper Tree, and the impact, if any, on Pepper Tree's water pressure and capacity.

Mr. Brougham advised that the CDD has a maintenance easement over Fiddler's Creek, LLC property, in a 20' right-of-way (ROW) running along Mulberry, Pepper Tree, Bent Creek and Whisper Trace. A request for an easement across CDD/Fiddler's Creek, LLC property was presented to the Board.

Mr. Pires clarified that the technical term is "landscape buffer", per the documents that Mr. Cole provided, today.

Mr. Cole received an email with documents that he will provide to Mr. Adams for distribution. The email was sent to Mr. Adams, Mr. Pires and Mr. Brougham, last Tuesday. Mr. Pires recused himself from the conflict.

As the District Engineer, Mr. Cole explained that Ms. Keisha Westbrook, of RWA Engineering, contacted him regarding a request for a County utility easement to facilitate the proposed connection of the utilities, formally known as Diamond Shores water main, to the existing water main, located in Pepper Tree. Attached to the email was a location map, identifying the easement location, a more detailed map showing the easement along the northern side of Pepper Tree and the 20' landscape buffer, an Assignment of Reservations stating that the CDD has maintenance responsibility of the landscape buffer tract and a plat.

Mr. Cole read the email from Ms. Westbrook:

*"Mr. Cole, per our conversation yesterday, pertaining to the need for a second potable water connection for a development that we are working on called The Antilles, I have attached information related to the site and specific easement request. This development is north of Pepper Tree Village and is currently zoned mobile homes (MH). We are going through the Planned Unit Development (PUD) process and while going through the water demand calculations, we found that the existing water main does not provide sufficient pressure to meet the new flow requirements. Also, due to the number of units, the County now mandates a second connection for residential developments. We assessed two locations where there is an existing County water main for the second connection, and the best, least intrusive alternative would be to connect to the existing 8" water main on the north side of Pepper Tree Way, adjacent to the south property line of The Antilles. This would require a 15'x20' easement, which would cross what appears to be a 10' landscape buffer/drainage easement and a 10' public utility easement to the ROW. This would be an 8" water line connection that would provide an alternative water source for Fiddler's Creek, in the event that there was ever a problem with the line that goes west, towards 951."*

Mr. Cole referred to a yellow line, which is the location of the proposed water line easement. The District has a water main connection at Fiddler's Creek Parkway and SR 951,

which travels to the east. The District is looped in several places. The first loop goes up Mulberry Lane and connects to Championship Drive and back to SR 951; in addition, there are several loops along US 41, to the east. Diamond Shores has an 8" water main that loops within itself, which does not provide sufficient flow. According to Mr. Cole, a single-family home may only need 750 gallons per minute for fire protection, versus a three-story residential building that needs at least 1,000 gallons per minute, for fire flow.

Mr. Brougham surmised that Diamond Shores has a problem. Mr. Cole agreed, as Diamond Shores must loop their water main, which was the purpose of the request and proposed options such as connecting across Mulberry into Pepper Tree. As part of the engineering requirements, Diamond Shores must prove that it would not have a negative impact on the water main system in Fiddler's Creek. Mr. Cole did not believe that it would have a negative impact.

Mr. Brougham asked if the District has the right of refusal, even if Diamond Shores proved that it would not have a negative impact. Mr. Pires advised that, if the District has an interest in property and a party is requesting access through an easement over the District's property, the District has full discretion to say "yea" or "nay". Mr. Turner asked if Diamond Shores has any legal right to access the water line. Mr. Pires could not answer, due to his recusal. Mr. Cole explained that the District owns a landscape buffer and a ROW that is a County utility easement (CUE). If the landscape buffer was dedicated as a CUE, Diamond Shores would have the right but does not have the right because the District has maintenance responsibility over the landscape buffer.

Mr. Slater asked if Diamond Shores could build if they were required to have two inputs for their water and they could not get access to it. Mr. Brougham indicated that they must build fewer units. Mr. Slater recalled that the new requirement was that any development must have two inputs. Mr. Cole confirmed that Ms. Westbrook stated that in her email. Mr. Slater concluded that Diamond Shores cannot build because of noncompliance with the County requirement. Mr. Cole referred to the statement, "*Also, due to the number of units, the County now mandates a second connection for residential developments*" but Mr. Cole did not know the number of units. Mr. Slater felt that, since she did not elaborate, it was in Ms. Westbrook's best interest to provide an explanation or Mr. Cole should find out the County requirements.

Mr. Slater and Mr. Brougham voted no for providing an easement to Diamond Shores.

Mr. Bergmoser pointed out that it was the purview of Pepper Tree to make a decision. Mr. Brougham reported that Pepper Tree made a decision. Mr. Bergmoser asked if the CDD

Board must decide whether to assume the easements. Mr. Brougham replied affirmatively. In response to Mr. Bergmoser's question, Mr. Cole explained that the CDD has easement responsibility for the landscape buffer, which Diamond Shores requested to cross. Mr. Brougham pointed out that Diamond Shores would have the same issue with Mulberry. Mr. Cole agreed, as the landscape buffer continues into Mulberry.

Mr. Peterson understood that the Board's decision regarding the landscape buffer for access to the water line could shut down Diamond Shores' development or change the density. Mr. Slater pointed out that Diamond Shores could install another line from SR 951 into their facility but it would cost more. Mr. Brougham asked if this was a potential option. Mr. Cole did not know. Mr. Peterson asked if Diamond Shores has recourse, if the Board denied their request for access to the District's water line. Mr. Brougham reiterated that Mr. Pires advised, in very general terms, that anyone holding a landscape maintenance easement had full discretion; therefore, Diamond Shores has no legal recourse.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, the Diamond Shores request for access to the District's 20' landscape maintenance easement to connect to an 8" water main on the north side of Pepper Tree Way, was not approved.**

Mr. Cole will email Ms. Westbrook, on behalf of the CDD and the Pepper Tree Village HOA.

Regarding the buffer, Mr. Brougham reported that the hat-racked ficus trees were removed and the stumps grinded. Mr. Adams stated that if the contractor was not finished, he was close to finishing. Mr. Adams reported that the process cost the District \$24,000. Mr. Joseph Schmitt, a resident, asked how the CDD would recoup the \$24,000. Mr. Brougham indicated that this matter will be discussed later in the meeting.

Mr. Brougham addressed replacement options and recalled that, at the last meeting, live oaks were discussed, as a suitable replacement for the ficus trees. Ms. Feser recommended Weeping Podocarpus trees, which Mr. Brougham agreed were attractive looking, full canopied trees. Mr. Slater pointed out that the tree was not on the Fiddler's Creek approved tree list.

Ms. Crismond presented proposals from LandCare USA, LLC (LandCare) and SunnyGrove. Mr. Brougham indicated that LandCare proposed \$46,200 for 22 12' tall/5' wide,

100-gallon trees, equating to \$2,100 per tree, versus SunnyGrove's proposal for 8' to 12' 100-gallon trees at \$225 per tree. Ms. Crismond pointed out that SunnyGrove can only provide 45-gallon trees, as their suppliers do not carry 100-gallon ficus trees. Ms. Crismond requested clarification from SunnyGrove, as a size spread of 8' to 12' was unusual. Mr. Peterson asked for clarification on LandCare's proposal of \$46,200/50-\$95k. Ms. Crismond indicated that she requested pricing for 22 trees; the original quote was \$95,000 for 50 trees, which was the number of trees removed from the property.

Mr. Brougham understood that the Weeping Podocarpus tree grows with a very wide spread and felt that a space of 300' to 400' could not accommodate 50 trees. Ms. Crismond suggested planting the trees 15' apart. Mr. Kevin Cook, of LandCare, advised that 15' was too close together. LandCare sourced the trees and found a supplier in Orlando. Mr. Cook noticed a huge disparity, of approximately 50%, in the cost between 45-gallon and 100-gallon trees. Mr. Brougham asked if SunnyGrove's quote was accurate for 45-gallon trees. Mr. Cook felt that it was close and explained that the high cost was due to the shipping cost from Orlando. Mr. Brougham questioned the height that a 45-gallon tree would grow to in a year. Mr. Cook indicated that the tree would not grow a great deal in the first year because it would be trying to get established. Mr. Mark Swanson, of LandCare, advised that the price increases three times the amount per gallonage because it takes more space and time for a nursery to grow the tree and keep it alive. Mr. Swanson did not believe that a 45-gallon tree would reach the caliber in the first year or two that a 100-gallon tree would.

Mr. Brougham inquired about the height of the fence. Ms. Crismond estimated 8'. Mr. Brougham suggested purchasing 8', 9' or 10' trees. Mr. Adams concurred, as the hat-racked stumps were in the 10' to 12' range.

Mr. Peterson voiced concern about growth, as the plant specs reflect that the Weeping Podocarpus grows 35' high and wondered how long a 12' tree takes to reach maturity. Mr. Brougham asked about the approximate height of the ficus trees. Ms. Crismond estimated 35'. Mr. Peterson's observation of tree growth was that there would be a shock to the tree when first planted and questioned whether an 8' tree would be viable. Mr. Bergmoser suggested obtaining further estimates of 45-gallon and 100-gallon Weeping Podocarpus trees.

Mr. Slater asked why a tall tree was being considered so quickly, as there were no houses and a tall tree would block any future development, and if there was an alternative to the Weeping Podocarpus that provided a certain amount of height, such as an 8' to 12' bush. Mr.



Cook advised that live oaks were easy to obtain and inexpensive but the Board did not want live oaks. Mr. Bergmoser recalled inherent root system issues with the ficus trees, as roots damaged the fence and live oaks caused root problems, as well.

Ms. Elise Marshall, a resident, believed that the trees were on Diamond Shores' property. Mr. Brougham indicated that the trees were 16' on the other side of the fence. Ms. Marshall agreed with Mr. Slater, as she lives on Mulberry, and the trees were overlooking the road. She felt that this end of Mulberry was over landscaped and live oaks should be eliminated because pavers in her driveway were excavated to trim the root system of a live oak. Mr. Brougham had the same issue with his pavers.

Ms. Eileen Robertson, a resident, pointed out that no one knows what is going in that development, since a plan was not submitted, and all of the trees could be hat-racked. Mr. Brougham stressed that the contractor would not cut another tree on that easement or the District would take legal action but agreed with Ms. Robertson's point. Mr. Brougham suggested removing the remaining ficus trees, when replanting, so there was consistent replanting. Ms. Robertson indicated that none of the restoration was budgeted and it was expensive. Mr. Brougham pointed out that the Board did not cause this to happen but would do its best to find a reasonable, cost effective solution. One solution was to do nothing and leave the fence alone.

Mr. Brougham requested that Mr. Albeit ask Ms. Feser for another viable option, allaying the Board's concerns about cost. Mr. Albeit agreed and recalled that the DRC recommended that the replacement trees be as close to the type of trees removed. Mr. Brougham stressed that the Board was not accepting or rejecting anything, at this point, and wanted to obtain size options from LandCare for the next meeting or sooner.

In response to Mr. Peterson's question, Mr. Brougham indicated that he wanted LandCare to provide an option for a different size of Weeping Podocarpus trees. Mr. Cook questioned the minimum height. Mr. Brougham replied 8'. Mr. Peterson pointed out that an 8' tree by an 8' fence could not be seen. Ms. Crismond advised that the tree will be below 8', on the sloped part of the property.

Mr. Brougham requested placing this item on the next agenda for further discussion.

Mr. Brougham indicated that the Board received the update and status letter on the recovery costs from Mr. Carlo Zampogna, of Zampogna Law Firm.

Mr. Peterson asked why Mr. Pires cannot speak on this matter. Mr. Brougham indicated that Mr. Pires' firm Woodward, Pires & Lombardo (WPL) represents the owner of Diamond

Shores. Mr. Pires explained that, when a conflict of interest arises, absent of a waiver signed by both parties, the attorney must recuse himself from any representation of the party involved.

In response to Mr. Peterson's question, Mr. Brougham indicated that the District is currently at an impasse with Diamond Shores. The owner retained another attorney, who met with Mr. Zampogna and there was no change from their position. The District proceeded with removal of all hat-racked ficus trees, along the Mulberry fence line, including stump grinding, which was approved at the last meeting; the District is already incurring costs. Mr. Brougham recalled that the Board authorized the Chair and Mr. Adams to research and speak with another attorney, if a reasonable settlement was not reached, and the Board contemplated litigation for the recovery of costs. Mr. Brougham received a recommendation for Mr. Steve Blount, a well experienced and respected litigator in Naples.

Mr. Adams contacted Mr. Blount and felt that Mr. Blount would serve the District well. Mr. Blount was a former partner of WPL and represented prior owners of the property; however, Mr. Blount has no conflicts with the current owner of Diamond Shores and refers to himself as a "pitbull". Mr. Adams indicated that Mr. Blount recommended that the District file based on the "80% Rule"; having the right to recover attorney fees, if a lawsuit identified damages and the prevailing party was awarded 80% of the amount of the original filing.

If the District pursues a lawsuit, Mr. Brougham suggested retaining Mr. Ricardo (Rick) Reyes, Esq., of Tobin Reyes, P.A., an experienced litigator and "pitbull". Mr. Brougham noted that the hourly rates between Mr. Blount and Mr. Reyes were similar, between \$400 and \$500 per hour; however, Associates and Paralegals perform most of the legal work. Mr. Brougham recommended retaining Mr. Reyes, as he represented Fiddler's Creek in the past.

Mr. Brougham suggested, as the next step, that the Board select an attorney and authorize Mr. Adams to contact the attorney and transfer the legal background for the attorney's assessment and provide an opinion, next month, on whether the District has sufficient grounds to litigate and prevail.

Mr. Adams advised that, if the Board selected the attorney today, and allowed the attorney the opportunity to process the materials, the attorney could contact the opposing party and explain why the opposing party should settle. Staff can report at the next meeting and, if necessary, the Board could continue the meeting or have a closed door session, in preparation for litigation.

Mr. Peterson preferred Mr. Reyes, due to Mr. Reyes familiarity with the CDD.

Mr. Bergmoser wondered if Mr. Reyes would be interested in litigating this matter, as it was a small amount of money. Mr. Brougham and Mr. Adams believed that Mr. Reyes would be interested.

Mr. Slater questioned the cost to replace the trees. Mr. Brougham estimated \$95,000. Ms. Crismond clarified that the cost was \$46,000, because the space could not accommodate 50 trees. Mr. Slater voiced his opinion that the actual costs could reach \$100,000. Mr. Adams explained that the District was entitled to receive the value of what was removed, which was \$70,580, based on the proposals but the amount of recovery could exceed this amount, due to the replacement of the trees.

Mr. Brougham wanted an assessment of the legal situation to prevent spending \$50,000 to recoup \$60,000. The decision that the Board must consider is the amount of recovery versus the expense to pursue recovery.

Mr. Brougham requested authorization for Staff to contact Mr. Reyes and, if he was amenable, retain him to research all past materials and attend the next meeting, which can be continued to an executive session. Mr. Pires advised that a closed door session could not be held until litigation commenced.

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, authorization for the District Manager to contact Mr. Ricardo Reyes, of Tobin Reyes, P.A., and if Mr. Reyes was amenable, retain Mr. Reyes to research all legal documents and attend the next meeting to provide an opinion on whether the District has sufficient grounds to litigate, was approved.**

Mr. Schmitt pointed out that the District spent \$24,000 to remove the trees but the trees could have remained while all of the litigation was pending. Mr. Schmitt felt that the District removed evidence and asked on whose authority the trees were removed. Mr. Brougham explained that the District had evidence, in terms of photographs taken immediately after the trees were hat-racked, which were in Mr. Adams custody.

Regarding removal of the trees, Mr. Brougham recalled that, at the last meeting, the Board voted on removal, based on receipt of a letter of instruction from the developer, requesting that the Board immediately take steps to restore the landscape buffer. In addition, the Board was

advised by Mr. Zampogna that, according to the Collier County Land Development Code, if any trees were severely hat-racked, the trees must be removed and replaced.

Ms. Robertson presented the report from the LAT about the Mulberry tree incident. Ms. Benedetti clarified that Ms. Feser provided the report to Mr. Adams.

Ms. Robertson reported that a number of Mulberry residents were upset because the trees served as part of the conservancy. Birds built nests and there were squirrels and raccoons. Mulberry residents requested that the trees be replaced, as removal of the trees changed the character of Mulberry; the way that the area looks now, was not what residents bought into. Mr. Brougham agreed and shared residents’ angst about having the trees removed; however, the Board removed the trees after they were “butchered”.

Mr. Adams clarified that, if Mr. Reyes was not interested in representing the District, Mr. Adams will contact Mr. Blount. Mr. Brougham concurred.

**SEVENTH ORDER OF BUSINESS**

**Consideration of Resolution 2016-4, Regarding Activities in or on District Property or Facilities by Certain Parties Not Otherwise Providing Services to or Under Contract With the District**

Mr. Brougham reported that Resolution 2016-4 memorializes action by the Board, at the last meeting, precluding any contractor that was not under contract, from performing work, on District property, without obtaining Board approval. It does not include District contractors.

Mr. Pires advised that the resolution included language for governmental bodies and other parties such as utility providers.

Mr. Brougham noticed excavation by either the utility or gas company, along Fiddler’s Creek Parkway, on the north side of the sidewalk, from Pepper Tree to Bent Creek. Mr. Albeit noted that Comcast was working in Whisper Trace.

**On MOTION by Mr. Slater and seconded by Mr. Peterson, with all in favor, Resolution 2016-4, Regarding Activities in or on District Property or Facilities by Certain Parties Not Otherwise Providing Services to or Under Contract With the District, was adopted.**

Mr. Turner asked where resolutions were on file. Mr. Adams indicated that the District Office was required to retain all resolutions in a book of proceedings. In response to Mr. Turner's question, Mr. Adams indicated that resolutions were not on the District's website but were available upon request. Mr. Brougham requested that an index of adopted resolutions, over the past two years, be included on the website.

In response to Mr. Turner's question, Mr. Brougham indicated that resolutions could be rescinded but do not go away. Mr. Pires recalled that the Board decided, several years ago that items of importance, in addition to the budget, would be adopted by resolution. Mr. Brougham requested that all resolutions be posted on the website with an index.

**EIGHTH ORDER OF BUSINESS****Presentation and Consideration of Proposal from TEM Systems, Inc., for Installation of ID Scanners at Gatehouses**

Mr. Brougham presented a proposal from TEM Systems, Inc. (TEM), for the installation of ID scanners at the gatehouses.

Mr. Charbonneau reported that this proposal was a result of an Uber driver coming to the gate with an address through a global positioning system (GPS). The scanner will provide another layer of security by allowing guards to scan driver's licenses into a database, as opposed to having a rover follow the driver around, ensuring that the driver goes to their intended destination.

Mr. Brougham asked if the Uber driver wanted an individual or an address. Mr. Charbonneau indicated that the Uber driver wanted access; they did not have a name, only an address on their GPS. Mr. Brougham noted that anyone could identify themselves as an Uber driver.

Mr. Charbonneau pointed out that all gatehouses would have ID scanners. Mr. Brougham advised that the guards could not deny access but could request identification, which was a foolproof way of getting identification. In response to Mr. Brougham's question, Mr. Pires confirmed no legal issues but advised that access must be granted, even if someone refused to provide identification.

Mr. Peterson asked if the intention was to have every visitor present photo identification and not just random selection. Mr. Charbonneau indicated that, if a guest was inputted into the

system by a resident, the guards would not request identification; this was another step to ensure that the person identifying themselves as a guest of a resident was indeed that person.

Mr. Schmitt wondered why the District was circumventing the system, when the onus was on the resident to contact the gatehouse and provide information about the Uber driver. When an Uber driver was dispatched, the picture, name and phone number of the driver was provided to the customer.

Mr. Brougham asked if the cost would be shared with CDD #2. Mr. Adams replied affirmatively.

Mr. Peterson asked if the scanner takes a photo of the Driver's License. Mr. Adams indicated that the magnetic strip of the Driver's License is swiped. Mr. Peterson pointed out that if the driver was from out of state, the Driver's License may not be swipable.

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, the TEM Systems, Inc. proposal for installation of ID Scanners at Gatehouses, in a not-to-exceed amount of \$6,836.62, was approved.**

**NINTH ORDER OF BUSINESS**

**Approval of February 24, 2016 Regular Meeting Minutes**

Mr. Brougham presented the February 24, 2016 Regular Meeting Minutes and asked for any additions, deletions or corrections.

The following changes were made:

Line 351: Change "felt that" to "asked the District Manager if" and insert "Mr. Adams responded no."

Line 501: Insert "until" before "come"

Line 543: Change "FHP" to "CCSO"

**On MOTION by Mr. Brougham and seconded by Mr. Turner, with all in favor, the February 24, 2016 Regular Meeting Minutes, as amended, were approved.**

**TENTH ORDER OF BUSINESS**

**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. District Counsel**

Mr. Pires reported that coordination meetings were held with the various parties involved in the CDD #1 and CDD #2 boundary amendment changes. He received a draft narrative for the requested changes and a conference call was scheduled for next week. A response was pending from the Governor and Cabinet of when the rule change was under consideration on the Scribner's error. Mr. Pires explained that the State legislative session was early this year, reducing resources and staff.

Mr. Brougham asked about the status of the remaining parcels of land owned by Fiddler's Creek, LLC. Mr. Pires indicated that a comprehensive meeting was held, last Friday, with Ms. Valerie Lord, developer's counsel, and Mr. Cole; a list of parcels to be processed was compiled. Hopefully, a batch of parcels will be presented at the next meeting. Mr. Brougham noted that a large buffer was included.

Mr. Pires reported several changes in the State law regarding Special Districts. Beginning on October 1, 2016, District agendas must be posted on the District's website, seven days in advance of the meeting and any electronic materials must be available seven days prior to meetings. Mr. Peterson asked if this means that materials cannot be presented at meetings by Mr. Cole. Mr. Adams indicated that handouts were fine.

**B. District Manager****i. Approval of Unaudited Financial Statements as of February 29, 2016**

Mr. Brougham presented the Unaudited Financial Statements as of February 29, 2016.

**ii. NEXT MEETING DATE: April 27, 2016 at 8:00 A.M.**

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

**C. Operations Manager (to be provided under separate cover)**

Ms. Crismond distributed and presented the Operations Report. On February 19, Ms. Crismond and Mr. Adams met with The Foundation and participated in a drive-through with Mr. Spinelli, of the Landscape Committee, and a representative of the Marco Island Marriott Beach Resort. Several observations were noted at the front entrances and gatehouses. Ms. Crismond

reported that the front entry flower beds need sprucing and Ms. Feser recommended building up the beds.

Mr. Brougham recalled a suggestion to build up the flowers, which involves removing the flowers, adding dirt and creating a slope from SR 951 towards the fountains. Mr. Cook advised that the plan was to extend three rows of flowers, in front of the bubblers, 3.5' to 4', so there was a slope and, instead of having three rows of flowers, there would be eight rows. Mr. Cook pointed out that the build up would start in front of the Fiddler's Creek monument sign where it was flat. Mr. Adams explained that, typically, flowers were on a slope to provide depth and create a bigger presentation but, in this case, it did not occur.

Mr. Brougham asked if the cost for a new bed in front of the monuments was \$17,250. Mr. Cook clarified that the build up was \$6,000, for soil on both sides, and \$17,250 was to remove the existing flowers, build up and enlarge the current beds and replant. LandCare recommended building the flowers up, during the next flower cycle. Mr. Brougham liked the idea but voted no.

Ms. Crismond indicated that, if the Board wanted to consider building up the beds during the next rotation, the cost would be \$4,650. Mr. Cook clarified that \$4,650 was for additional flowers and there were several phases. Mr. Cook reported that LandCare expanded the beds far beyond where there was a patch of Mexican Petunias that was removed, but now they were being told to expand the beds an additional 4' feet, in front of the bubblers. Ms. Crismond asked about the cost. Mr. Cook indicated that the cost depends on whether the Board approved the proposal now or at the next meeting. Mr. Brougham preferred not to spend money to remove "scrawny" flowers and wanted something more comprehensible. Mr. Adams recommended that LandCare present aerial photos identifying the existing beds, what was proposed, a spreadsheet with options to consider and the financial impact of those options.

Mr. Brougham observed that the flower beds look horrible with spindly flowers and dirt. The flowers do not spread before it is time to rotate them out because the beds were not sloped to provide the full panorama. He noted that the island outside of the club and spa does not have a slope and there is a field of flowers. Mr. Brougham received comments from residents that it does not look like Fiddler's Creek can afford decorative flowers and he wanted solutions and options instead of excuses.

Mr. Albeit agreed, noting that this was the season to have flowers, as there was another month and a half of visitors and homebuyers in Fiddler's Creek. He felt that LandCare was



charging the District an excess amount for flowers and for LandCare to not stop the process and say, "Cleo, you are spending all of this money on flowers but you are not going to get the 'wow factor' because they are smaller flowers", was an excuse.

Mr. Cook advised that southern flowers were the same size and planted in every community, including in front of the club and spa. Their flowers were planted in November and Fiddler's Creek flowers were planted three weeks ago. As the flowers continue to grow, they will look like the ones in front of the club and spa. Mr. Cook advised that LandCare did not select the flowers. Mr. Brougham surmised that the flowers were being removed too soon. Mr. Cook indicated that the main problem with the flowers, abutting the monuments, was that the land was flat and soil was added because the land sloped back. Standing on the slope, the flowers look fantastic but look flat when viewed from the roadway. Mr. Cook pointed out that many communities have a slope up to their monument.

Mr. Brougham asked Mr. Cook to drive out through the main gatehouse and observe the flower bed separating the guest entrance from the visitors. Mr. Brougham did not want to spend \$30,000 to \$40,000 on a flower program and requested options and costs.

Mr. Brougham indicated that the Board's objective and the developer's expectations were for residents and visitors to have a flower bed like The Rookery or the front of the club and spa.

Mr. Turner asked about the \$21,450 in the proposal. Mr. Cook indicated that \$21,450 was the total amount, as of today, to remove and replace the flowers, as the number of flowers expanded from 2,500 to 7,150, based on additional beds and expansion of the beds, which was a reoccurring cost. Mr. Brougham noted that this was based on the current specs. Mr. Cook advised that \$6,000 was for 60 yards of soil to build the mound at the front monument. In response to Mr. Turner's question, Mr. Cook indicated that the price was per flower.

Mr. Slater suggested looking for annuals with sensational colors, like Lely. Mr. Brougham agreed and requested options for flowers like in the new development, Winding Cypress.

Ms. Crismond advised that flowers must be ordered 90 days in advance and the summer flowers were ordered. Mr. Brougham requested waiting until next month to order the summer flowers. Mr. Albeit agreed. Mr. Brougham asked LandCare to work with Ms. Crismond.

Mr. Schmitt referred to The Rookery and some villages where there were smaller plants in front, medium size plants in back and a tall plant. Mr. Schmitt suggested considering the plant species. A resident agreed that the size of the flowers was key.

Mr. Brougham requested all options on size, species, location, rotation, timing and costs.

Ms. Crismond presented a proposal from Coastal Concrete Products, LLC (Coastal). Mr. Brougham indicated that the total cost was \$328,950 to replace damaged concrete fence posts in the border fence surrounding Mulberry, Pepper Tree, Bent Creek and Whisper Trace.

Mr. Brougham suggested simulated stone fencing, which was galvanized steel reinforced for superior strength and stability for all weather extremes and has a lifetime warranty. It is graffiti resistant and provides sound abatement. The cost for an 8' section is \$498, including installation. Replacing 2,800 linear feet, from the corner of Pepper Tree to The Preserve, would cost \$116,000. Mr. Brougham was not in favor of repairing the concrete fence or posts, as \$68,000 was expended for fence repairs since 2010. He suggested replacing the fence posts, as needed, and urged the Board to consider a capital improvement program (CIP) to identify aging assets, such as fencing and milling and repaving the roads, which was slated in three to five years, and issuing a bond or increasing assessments, to fund the improvements. Mr. Adams advised that a certain size of bond was necessary to make it feasible to issue a bond, as the District would incur \$150,000 to \$200,000 in issuance costs, no matter the size of the bond. Mr. Brougham requested further information from Mr. Adams.

Mr. Peterson suggested identifying the projects and costs and projecting how the expenditures are distributed, over a period of time. Mr. Adams recalled, several months ago, providing a detailed Reserve Study for a project in Central Florida and a sample ten-year plan, identifying the capital items and including in a schedule. Mr. Adams will work on the Reserve Study and draft a ten-year plan for Fiddler's Creek and suggested including the lake bank erosion project. Mr. Adams recommended a bank loan, versus issuing a bond or increasing assessments.

Mr. Crismond presented a \$5,850 proposal from Coastal for installation of two 8' PVC access gates for the Mulberry buffer fence. Mr. Adams advised that two locations were identified that were not obstructed by trees. Two panels and one post would be removed and replaced with the gates. There is a clearance of 9', which can accommodate a bobcat or small tractor to maintain the property. Ms. Crismond indicated that a double hedge would camouflage the fence.

**On MOTION by Mr. Brougham and seconded by Mr. Turner, with all in favor, the Coastal Concrete Products, LLC proposal for installation of two 8' PVC access gates on the Mulberry buffer fence, in a not-to-exceed amount of \$5,850, was approved.**

In response to Ms. Robertson's question, Mr. Adams explained that the location of the gates were identified by two orange dots on the curb on Mulberry Lane; one gate is just past the median and the other is at the far end where the conservation area begins. Ms. Marshall asked if the gates would be armed. Mr. Adams replied no, it is a double swing, v-locked fence.

### **THIRTEENTH ORDER OF BUSINESS**

#### **Supervisors' Requests**

Mr. Slater asked if two guards man the front gate. Mr. Charbonneau replied affirmatively. Mr. Slater noticed five or six cars backed up, at one time, in the visitor's lane. Mr. Charbonneau calculated 26,000 visitors for February and explained that the purpose of the second officer is to answer phones and handle egress traffic. Mr. Slater asked if the new ID scanners will speed up traffic. Mr. Charbonneau indicated that, according to TEM's Vice President, the scanners are optical readers, which stores the photograph on the Driver's License into a database and identifies the visitor by face recognition.

### **FOURTEENTH ORDER OF BUSINESS**

#### **Adjournment**

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

**On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, the meeting adjourned at approximately 10:00 a.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair