

**MINUTES OF MEETING
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #1**

Two (2) Public Hearings and a Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 were held on **Wednesday, August 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
Richard Peterson	Vice Chair
Robert Slater	Assistant Secretary
Charles Turner (<i>via telephone</i>)	Assistant Secretary
Gerald Bergmoser	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Tony Pires (<i>via telephone</i>)	District Counsel
Terry Cole	District Engineer
Carrie Robinson (<i>via telephone</i>)	Special Counsel
Ron Albeit	The Foundation
Bob Baldocchi	Resident
Bill Bury	Resident
Joe Vaccaro	Resident
Gretchen Scott	Resident
Kay Burns	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, Peterson, Slater and Bergmoser were present, in person. Mr. Turner was attending via telephone.

On MOTION by Mr. Brougham 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)**

Mr. Bob Baldocchi, a resident, detailed issues with the gates, on Mulberry Lane, which were of poorer quality than other gates in the community. Mr. Brougham stated that management was pressuring the contractor to remedy the situation and felt that the concrete fence was a “terrible” design and must be replaced.

Management took note of the missing fencing.

Mr. Brougham asked for the status of the fence repairs. Ms. Crismond stated that the contractor hoped to change the gates on Friday; she will follow up then. Mr. Brougham directed if there were other gate options. Ms. Crismond stated that the gates were the closest to the existing fencing. Mr. Brougham directed Ms. Crismond to research other alternatives.

Mr. Slater asked if the gates were supposed to open into the other community. Ms. Crismond responded affirmatively, for landscaping purposes. Mr. Adams noted that the landscaping would be performed on an angle, so that contractors could access with their equipment.

In response to a question by Ms. Kay Burns, a resident, Mr. Adams confirmed that shrubbery would be installed in front of the gate so that residents could walk behind but there would not be a direct view of the gates from the road.

Mr. Bill Bury, a resident, wanted to know the location of CDD #1; Naples versus Boca Raton. Mr. Adams explained that the corporate office is located in Boca Raton and the local office, where he and Ms. Crismond work, is located in Bonita Springs. The local Office of Record is Mr. Pires' office, Woodward, Pires & Lombardo (WPL), located in Naples.

Mr. Bury asked why assessments were increasing. Mr. Adams stated that, as outlined in the mailed notice, the CDD includes all units currently constructed and those that are planned that are in the vicinity of the improvements being maintained. The developer contributes to the operation and maintenance (O&M) expenses, regardless of whether a unit is constructed. One of the primary reasons for the increase, in Fiscal Year 2017, was that 77 platted, assessable units were lost when a portion of Marsh Cove was replatted to larger units. On the debt service side, a true-up was paid to reduce the assessment on the units that were lost. On the O&M side, more costs were absorbed over a smaller number of units. Another reason for the increase was

increased landscape expenses. Management strives to deliver a high level of service and to meet homeowners’ expectations. Money is well spent for the services that the community receives.

Mr. Brougham felt that the biggest cause for the increase, proposed at \$80 per unit, was the reduction in assessable units over the prior year, line items remained fairly constant.

A resident inquired about the double sized lots on Marsh Cove. He felt that double assessment payments should be made. Mr. Adams stated that, on the debt service side, a homeowner pays for two lots because it is a direct cost of benefit of the construction and use of the infrastructure. From a maintenance perspective, the District assumes the methodology that a unit is a unit, when it comes to maintaining the infrastructure, regardless of lot size. They are all proportionately maintaining the infrastructure. The real difference is the use of the infrastructure on the capital side. A larger lot uses more of the drainage system and roadways, assuming more occupants and more vehicles.

With regard to the landscaping budget increase, Mr. Bury asked if there was a debt-to-interest ratio, where the CDD accumulates interest, which would account for increases in the cost of landscaping services. Mr. Adams stated no, not on the operating side. There is not much earned interest on funds in the operating account. The District has a budget of approximately \$2.9 million, with projected interest earnings of \$2,200. With governmental funds and investment requirements, it is about asset protection, first, which results in lower interest earnings. The interest yield is .02% and funds must be held in a Qualified Public Depository (QPD) of the State. Funds must be held in the QPD's holdings, in an amount equal to the CDD’s investment, so there are no opportunities for loss.

THIRD ORDER OF BUSINESS

Developer’s Report

There being no report, the next item followed.

FOURTH ORDER OF BUSINESS

Engineer’s Report

Mr. Cole stated that the lake erosion contract was delayed because of rain and rising water levels. It may be several months before the work could continue. The sidewalk inspection occurred but a formal report was not yet available. Out of approximately 11 miles of roadway, 133 locations had a lip over ¼”. Repairs would be prioritized for those over ½” and would be

coordinated with Ms. Crismond. Mr. Brougham asked the approximate cost per repair. Ms. Crismond stated that grinding was much less expensive. Management was unable to ascertain the cost but repairs would be paid out of "Roadway maintenance".

Mr. Slater asked why some sidewalks had stones imbedded in the concrete. Mr. Adams stated that it was aggregate in the concrete. Mr. Slater clarified that the last time sidewalk repairs were made, the concrete was one color but the strip that was filled in was full of rocks. Mr. Adams stated that, when concrete is ground down, the aggregate is exposed. When concrete is poured and screed, the "cream" of the concrete is brought up to cover the aggregate but it is still within the concrete.

Mr. Cole was still trying to obtain a proposal from Curb Systems of SW FL and Sarasota, LLC (Curb Systems), for repair of the 6' to 8' sidewalk section, located across from Cascada, on the north side of Fiddler's Creek Parkway, near the site of last year's irrigation main break.

Mr. Pires asked if all of the areas identified as exceeding the limits were marked, or flagged. Mr. Slater stated yes; he walks the area daily. Mr. Cole stated that, in some cases, the sidewalk was painted; however, if it was at the lip of the sidewalk and paver block, it was not marked but identified on a map. Mr. Pires stated that Florida law requires a hazard to be addressed, immediately, or to warn people of the hazard. Mr. Adams felt that the hazards should be painted. Mr. Cole stated that they would be painted. Mr. Brougham believed that the District should not paint private pavers with orange paint. Mr. Cole clarified that the pavers would not be painted; the lip would be painted.

Mr. Turner asked if the sidewalk issue, near Cascada, was repaired. Mr. Brougham stated that Mr. Cole was attempting to obtain a quote for the repair from the contractor. Mr. Turner was concerned that the ground was falling away from the sidewalk and could be undermined. Ms. Crismond forwarded the information to the District Engineer immediately.

FIFTH ORDER OF BUSINESS**Special Counsel Update**

Ms. Carrie Robinson stated that a hearing scheduled for September 8, relating to the punitive damages motion, remained on the calendar. U.S. Bank sought to redepose Mr. Harvey Pitt, former Chairman of the Securities and Exchange Commission (SEC), originally deposed in 2013 or 2014. Mr. Pitt's testimony supported the Motions for Punitive Damages, in the CDD #2 case. Mr. Pitt must be deposed on behalf of U.S. Bank, individually, because U.S. Bank was

only part of the case as Trustee. After back and forth motions, the court granted U.S. Bank’s request to take the deposition. U.S. Bank scheduled other motions to be heard on September 8, seeking to delay the hearing until the deposition could be taken. Currently, the hearing remained set and the Court would decide which motion would be heard first. There was a possibility that the punitive damages Motion may be pushed by the Court, in whole or in part. The Court may agree to hear the punitive damages Motions, related to U.S. Bank, as Trustee, and delay a request for punitive damages amendment, related to U.S. Bank, individually; more would be known on September 8.

A Board Member asked, in Ms. Robinson’s opinion, if the purpose of deposing Mr. Pitt was to compromise his earlier testimony. Ms. Robinson responded that, from U.S. Bank’s perspective, that would be the best possible outcome. It was also possible that U.S. Bank wanted Mr. Pitt’s opinion and to separate U.S. Bank, individually, and, as Trustee. The best-case scenario for U.S. Bank would be for Mr. Pitt to “dial back” or contradict his earlier testimony. In response to a question of whether this related primarily to punitive damages, Ms. Robinson replied affirmatively.

Mr. Brougham directed Ms. Robinson to update Mr. Adams, after the September 8 hearing, so that he may provide the details to the Board.

*****Ms. Robinson left the meeting at 8:23 a.m.*****

SIXTH ORDER OF BUSINESS

Affidavit/Proof of Publication

Mr. Brougham presented the proof of publication for today’s Public Hearing, which was properly advertised in the newspaper.

SEVENTH ORDER OF BUSINESS

Public Hearing to Hear Comments and Objections on Adoption of Fiscal Year 2016/2017 Budget

A. Consideration of Resolution 2016-9, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2016, and Ending September 30, 2017

*****Mr. Brougham opened the Public Hearing.*****

Mr. Brougham presented Resolution 2016-9 for the Board’s consideration. He suggested making the O&M on-roll assessment \$1,575, a round number, and rolling the difference out of

“Contingencies”. Mr. Adams clarified that Mr. Brougham wanted to roll the assessment back to \$1,575, and use fund balance to cover the reduction. After further discussion, Mr. Brougham rescinded his suggestion.

Mr. Joe Vaccaro, a resident, stated that, in prior years, tree trimming was held to \$100,000 and asked how much was actually spent. Ms. Crismond stated that trimming was occurring, now, and would cost \$100,000, by the end of Fiscal Year 2016. Mr. Adams stated that, year-to-date, “Improvements and renovations” were \$131,195; the budgeted amount was \$145,000. Tree trimming was included in this line item. The motive behind increasing the budgeted amount was for a portion of the Parkway project. Mr. Brougham stated that, over the years, the Board kept the amount at \$100,000 but the District was falling behind, in terms of trimming performed on a regular basis, versus trimming on an emergency basis. Realistically, the line item must be increased for Fiscal Year 2017.

Mr. Vaccaro suggested separating the tree trimming budget from “Improvements and renovations”, to better track it. Mr. Adams stated that the information could be retrieved from the detail, at any time.

Ms. Gretchen Scott, a resident, stated that, at the CDD #2 meeting, she asked about a way of looking at various items within the landscaping budget to save some money, such as edging the roads and sidewalks every other week. She asked if anyone reviewed the minutiae. Mr. Brougham did not know but, in his personal opinion, the District had problems with the landscapers doing a quality job edging, once per week, and would not want them to change to every other week.

Mr. Peterson asked if the contract specified trimming and edging once per week. Ms. Crismond stated that the landscapers must edge every time they mow.

*****Mr. Brougham closed the Public Hearing.*****

On MOTION by Mr. Peterson and seconded by Mr. Bergmoser, with all in favor, Resolution 2016-9, Relating to the Annual Appropriations and Adopting the Budget for the Fiscal Year Beginning October 1, 2016, and Ending September 30, 2017, was adopted.

Assessments to Fund the Budget for Fiscal Year 2016/2017, Pursuant to Florida Law

A. Mailed Notice(s) to Property Owner(s)

i. Correspondence from Jeffrey Doyle, 9098 Cascada #102

This item was included for informational purposes.

B. Consideration of Resolution 2016-10, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll

Mr. Brougham presented Resolution 2016-10 for the Board's consideration.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, Resolution 2016-10, Making a Determination of Benefit; Imposing Special Assessments; Providing for the Collection and Enforcement of Special Assessments, Certifying an Assessment Roll; Providing for Amendments to the Assessment Roll, was adopted.

Mr. Pires stated, for the record, that the Public Hearing that was held earlier, and was opened and closed, covered Resolutions 2016-9 and 2016-10, for the budget and assessments.

NINTH ORDER OF BUSINESS

Consideration of Resolution 2016-11, Adopting the Annual Meeting Schedule for Fiscal Year 2016/2017

Mr. Adams presented Resolution 2016-11 for the Board's consideration. The schedule remained the same as in prior years. The November meeting would be one week earlier, due to the Thanksgiving holiday and the December meeting was proposed for the first week in December.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, Resolution 2016-11, Adopting the Annual Meeting Schedule for Fiscal Year 2016/2017, was adopted.

TENTH ORDER OF BUSINESS

Consider Appointment of Board of Supervisors to Serve as Audit Committee

Mr. Brougham stated that the Board may be appointed to serve as the Audit Committee.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, appointing the Board of Supervisors to Serve as Audit Committee, was approved.

A. Form of RFP for Annual Audit Services

- i. Instructions to Proposers**
- ii. Auditor Evaluation Matrix**

Mr. Adams provided an advertisement, Instructions to Proposers and a Request for Proposals (RFP) ranking form for annual audit services. Mr. Brougham asked if the penalties for late submission, as in the Eleventh Order of Business, should be included in the RFP. Mr. Adams responded affirmatively. The RFP would identify what the Board wants the bidder to do.

Mr. Brougham explained that this was occurring due to issues, over the last few years, with auditors presenting the District's audit in June, after it was submitted to the State, so the Board did not have the opportunity to review or make changes to the audits prior to submission. If the audit was not submitted to the Board by May 1, prior to submission, there would be penalties. Mr. Pires suggested that the Board instruct Staff to include in the RFP that one of the qualifications criteria be the auditor's timeliness of submittals of audit reports to the governing body of other CDDs for the previous two years, to determine if this is a systemic issue or unique to this District.

Mr. Bergmoser asked who completes the ranking and if Mr. Wrathell would assist. Mr. Adams stated that the Board ranks the firms without coaching from Management. The Board would review and rank the submittals.

ELEVENTH ORDER OF BUSINESS

Continued Discussion: Penalty Provisions in Contract for Annual Audit Services

Mr. Pires stated that, with regard to the penalty aspect of the proposals, the Board can indicate that the engagement letter would have provisions for withholding payment, in the event that the audit report is not submitted to the Board by May 1; possibly including a dollar amount.

Mr. Brougham's idea was a percentage penalty, not knowing what the firms would quote. Mr. Pires stated that, right now, it depended on what the Statute allows for compensation.

Mr. Slater asked when data was provided to the auditors. Mr. Adams responded by mid-November. Management's goal was to have the audit completed by March 31, which was achieved for most Districts. This District had issues, over the years, due to ties to CDD #2, requiring similar language, although that was not the case for Fiscal Year 2015.

Mr. Bergmoser asked if it was necessary for the audit to be tied to CDD #2 because of the Interlocal Agreement. Mr. Adams stated no, it was due to joint litigation and making sure that there was no contradictory language within the audits that could be used against the Districts.

Mr. Brougham felt that, perhaps, one of the criteria should be that both Districts do not have the same auditor. Mr. Pires was not sure if that provision was allowable, in a RFP; items could be taken into account, such as timeliness, when proposals are considered.

Mr. Adams felt that it was important to disclose the penalties in the RFP.

If the audit was not received by the internal goal of March 31, Mr. Adams suggested a 10% penalty if not received by April 1, another 10% if not received by May 1, another 10%, if not received by June 1, and so on, until received. Mr. Bergmoser was concerned that companies may not bid if the penalty was too severe. Mr. Adams felt that a 10% penalty was motivating enough but not crushing to the auditor. In response to a question of whether the current auditor provided an excuse of why the audit was late, Mr. Adams stated the reason was the auditor's workload. Mr. Adams stated that the auditor must be selected by the October meeting.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, adopting Penalty Provision Terms, as Outlined, in Contract for Annual Audit Services, was approved.

Mr. Adams stated that the due date for RFP submittals is Monday, September 19, 2016 at 10:00 a.m.

TWELFTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of July 31, 2016

Mr. Adams presented the Unaudited Financial Statements as of July 31, 2016. Mr. Brougham thought that the issues of shifting funds with the \$185,581 "Intergovernmental" line item and \$212,882 "Due from Fiddler's Creek #2", were resolved. Mr. Adams stated that the funds were in hand; they must be redistributed. \$185,581 was the true amount that CDD #1 received because CDD #2 paid a portion of the upfront expenses. \$50,000 was expected to return to CDD #2. Mr. Brougham wanted the numbers to be "cleared up".

With regard to "Legal advertising", Mr. Brougham asked what the \$6,061 figure was, versus the budgeted amount of \$1,000. Mr. Adams stated that a portion of that expense would be returned to the District. Parts of the expenses were related to advertising requirements for the boundary amendments and today's Public Hearing. The final reconciliation would include invoices from Mr. Pires and Mr. Cole, for expansion and contraction, and advertising that would be sent to the developer, who stated that they would pay. Mr. Brougham asked why the professionals' invoices were not submitted directly to those who committed to pay. Mr. Adams felt that, even though it was more work, it was more accurate for Management to track and reconcile the expenses, through the CDD.

With regard to "Repairs and maintenance – gatehouse", Mr. Brougham wanted to know what broke last month, to incur a cost of \$2,203. Mr. Adams responded that the cost might be due to an operator or reboot.

Mr. Brougham recalled that the District received a quote for a maintenance contract, which included cameras, and asked if the company reduced the quote. Mr. Adams stated that the District was not charged for the new cameras, as part of the service agreement. The real negotiation would occur in the following year, because the cameras would no longer be under warranty. They were coming up for renewal, in the next month or two, under the preferred service agreement, which aligns closely with the fiscal year. Mr. Brougham wanted to know if new camera equipment was in the CDD's future. Mr. Adams stated no, as he believed the District had all the camera equipment it needed. Referring to alarms, the Maglock would send an alert if it broke.

THIRTEENTH ORDER OF BUSINESS**Approval of July 20, 2016 Regular Meeting Minutes**

Mr. Brougham presented the July 20, 2016 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following change was made:

Line 155: Replace “Piers” with “Pires”

On MOTION by Mr. Brougham and seconded by Mr. Peterson, with all in favor, the July 20, 2016 Regular Meeting Minutes, as amended, were approved.

FOURTEENTH ORDER OF BUSINESS Action Items

There being no changes, the next item followed.

FIFTEENTH ORDER OF BUSINESS Other Business

There being no other business, the next item followed.

SIXTEENTH ORDER OF BUSINESS Staff Reports

A. District Counsel

Mr. Pires provided the revised Belle Meade memorandum as follow up to the discussion at the previous meeting. The draft petition for the boundary expansion was finalized for CDD #1 and CDD #2 and would be provided at the next meeting. Hopefully, at that time, the final rule, adopted by the Governor and Cabinet, for the Scrivener’s error, would be available, so that both petitions could be filed. A draft memo on sidewalk maintenance responsibility would be presented at the next meeting. Mr. Brougham asked Mr. Pires to explain what was owned by the District versus what was still owned by the developer. Mr. Pires stated that a spreadsheet was being prepared of tracts and properties currently owned by the District, those proposed for conveyance and possible timeline for those conveyances. Mr. Brougham explained that the District performs maintenance on properties within the District but the developer has title to them. Over the past year, the CDD turned over most of those properties but some remained. A recent example was the tract near the end of Club Center Boulevard, where the backflow device was located. Two parcels of land were still under the ownership of the developer. Mr. Pires stated that the District would have dedicated or granted easements as separate instruments but the goal was for them to be conveyed as fee simple to the District.

B. District Manager

i. NEXT MEETING DATE: September 28, 2016 at 8:00 A.M.

The next meeting will be held on September 28, 2016 at 8:00 a.m., at this location.

C. Operations Manager

Ms. Crismond stated that Board approval was necessary for the Landscape Architect to design a plan to renovate the open field on Club Center Boulevard, for Design Review Committee (DRC) approval, as previously discussed.

Discussion ensued regarding ownership and maintenance of the tracts of land.

It was noted that the DRC had not yet approved the clusia hedge, as a buffer around the soon to be repainted backflow structure.

On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, authorizing the Landscape Architect to design a plan to renovate the open field on Club Center Boulevard, directly across from Cherry Oaks Lane, in a not-to-exceed amount of \$1,750, contingent upon DRC preliminary approval, to allow one planting, was approved.

SEVENTEENTH ORDER OF BUSINESS Supervisors' Requests

This item was presented following the Eighteenth Order of Business.

EIGHTEENTH ORDER OF BUSINESS Public Comments

Mr. Vaccaro asked if the trees between Mulberry and Bent Creek were removed and replaced, as planned. Mr. Brougham responded affirmatively; last month, along the north shore of the lake.

▪ **Supervisors' Requests**

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

In response to a question regarding whether the area, on the other side of Pepper Tree and Mulberry was being built on, Mr. Brougham stated that the question referred to Antilles or Port-Au-Prince area. After the neighborhood information meeting, a subsequent meeting occurred with Mr. Albaugh, his son-in-law, and their engineer, Mr. Albeit, Mr. Slater, Ms. Eileen Robertson, a resident, and himself, regarding line-of-sight renderings. The group encouraged

Mr. Albaugh to modify the plans and hold another neighborhood information meeting. According to the County Planner, who was responsible for the developer's application, nothing has been done; the developer is "considering his options". Mr. Albaugh did not respond to the County's Letter of Insufficiency, which followed his application. If the application continues not to advance, after a period of six months, which is the date of the last activity, it is considered dormant. The neighborhood information meeting was in May, so the application could be considered dormant around October or November. The threat to build a trailer park was believed to be hollow, because it is a flood zone, and, due to flood zone rules, the homes would be required to be built on stilts, or a lot of fill dirt.

A Board Member noted that he would not be attending the September meeting and would not be reachable by phone. Mr. Brougham asked what would happen, procedurally, if a quorum could not be established for an upcoming meeting. Mr. Adams stated that, if there were items of importance, the Board would be polled to determine a subsequent meeting date. The date must be at least ten days out, because it must be advertised as a Special Meeting. Mr. Brougham stated that it was imperative to respond to Staff's query, prior to meetings, in case the Board did not have a quorum. Three Board Members planned to attend the September meeting, in person. Mr. Turner would attend by phone.

NINETEENTH ORDER OF BUSINESS**Adjournment**

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

<p>On MOTION by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, the meeting adjourned at approximately 9:02 a.m.</p>
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Secretary/Assistant Secretary


Chair/Vice Chair