

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

The regular business meeting of the Fiddler's Creek Community Development District #1 was held on Wednesday, September 27, 2006 at 10:00 a.m., at the Fiddler's Creek Club and Spa, 3470 Club Center Drive, Naples, Florida 34114.

Present and constituting a quorum were:

Phillip Brougham  
James Robertson  
Alexander Love

Chairman  
Assistant Secretary  
Assistant Secretary

Also present were:

Chuck Adams  
Bob Casey  
Anthony Pires  
Terry Cole

District Manager  
Assistant Regional Manager  
District Counsel  
District Engineer

**ROLL CALL**

The meeting was called to order and the roll called.

**APPROVAL OF AUGUST 23, 2006 MINUTES**

Mr. Brougham stated that on page two, line 45 "total amount of the budget for," should have "General Fund 002" inserted. He also stated that on page three, line 105 "document," should read "documents" and "it," should be replaced with "they." Mr. Brougham stated that on line 106 after "Severn Trent asking about the money," should read "inquiring about prior request for repayment for funds paid for field management services." Mr. Brougham stated that on page four, line 125 should read "with prior month year-to-date does not equal current month year-to-date." On page five, line 139, "Gates Software had," should read "Gates Software was." Mr. Brougham stated that on the same page, line 142 beginning of last word and completing that sentence on line 143 did not make sense. Mr. Adams stated that sentence should be taken out.

On the same page, line 163 "Cotton green," should be "Cotton Green." On page six, line 171 "for the ramps," should read "for the sidewalk ramps."

**On MOTION by Mr. Love and seconded by Mr. Brougham, all were in favor of approving the minutes of August 23, 2006, as amended.**

**CONSIDERATION OF MUNICIPAL CAPITAL CORPORATION LEASE FOR 2007 CROWN VICTORIA VEHICLE**

Mr. Casey stated that there is a proposal from Municipal Capital Corporation for financing a two-year lease-purchase in the amount of \$21,812.50 including the vehicle, light bar and graphics package.

Mr. Brougham stated that it has been customary to have a one dollar buyout on a two or three year lease and questioned the advantages to the District for a one dollar buyout versus giving the car back with residual.

Mr. Adams responded that it is a mileage issue.

Conversation ensued regarding this item.

Mr. Adams stated that the currently owned cars are a public asset and the proper procedure for disposal is surplusizing them, going through a bid advertisement period, allowing people to submit a bid to purchase the equipment and the highest bidder wins. He added that to the extent that they do not receive any interested bids it allows proceeding accordingly with proper disposal of them.

Conversation ensued regarding this item.

Mr. Adams stated that this lease-purchase agreement does not have any penalties for early payoff after the first 12 months.

**On MOTION by Mr. Brougham and seconded by Mr. Robertson, all were in favor authorizing staff to proceed to execute the lease per the Municipal Capital Corporation proposal.**

Mr. Adams stated that the vehicle is expected within the next 30 days as it was ordered upon the Board's authorization a couple of months ago and should be completely outfitted and placed in service by November 1, 2006.

#### **OTHER BUSINESS**

Mr. Casey stated that, under separate cover, he provided the Board with a memorandum asking for consideration of termination of the lake maintenance agreement contract with Aquagenics and awarding the remainder of the contract terms to Lakemasters.

Mr. Adams explained the issues with Aquagenics and Lakemasters in detail.

Mr. Robertson questioned whether Lakemasters has confirmed they could remedy the current situation at a cost of \$18,300 that comes out of the retainage.

Mr. Adams confirmed that is correct and the remainder of the outstanding amount will be used to supplement beneficial plants. Mr. Adams also confirmed that Aquagenics is forfeiting the entire retainage.

Further conversation ensued regarding this item.

Mr. Pires stated that the amount of the contract exceeds Category 4 in the statute for providing maintenance services, which is \$150,000.

Mr. Adams stated that it is necessary to maintain the lakes consistent with various permit requirements of both South Florida and Collier County.

Mr. Pires questioned, with regard to Mr. Adams' and Mr. Casey's experience with Aquagenics, whether they have been performing their activities some way as to have the District be in non-compliance with possible rules and regulations.

Mr. Adams confirmed.

Mr. Pires suggested that the Board declare this an emergency purchase due to the fact that it is almost the sole source provider as well.

Mr. Adams responded that they have already gone through the competitive bidding process and, although the bids are nine months old, they are the second bidder.

Mr. Pires commented that if the situation had not been addressed for the two or three month period of time necessary, the lakes would be in much more severe condition.

Mr. Adams responded that they would but he is recommending they terminate the agreement with the current provider, which was selected as the number one choice in the last bid and to enter into a contract with the second lowest bidder, recognizing there were only two bidders. He also explained that they both had positive history on the property and it would be in the Board's best interest to consider those items. He added that, in his interpretation of the law, they have the ability to do that.

Further conversation ensued regarding this item.

Mr. Pires stated that the concern is it raises a question as to whether the vendor was complying with the statutory requirements and ramifications of the various materials that they would apply. He explained that in the past there have been other aquatic control vendors that have gone through that process and been convicted of failing to comply. Mr. Pires recommended that the Board declare an emergency to wave the competitive bidding requirement and award the contract to Lakemasters and reserving any rights to make any claims against Aquagenics if needed in the future.

Mr. Adams added that award be for the remainder of the first year as well as the second year.

Further conversation ensued.

**On MOTION by Mr. Brougham and seconded by Mr. Love, all were in favor of staff terminating agreement with Aquagenics for the maintenance of District lakes due to non-performance as per terms of the contract.**

**On MOTION by Mr. Brougham and seconded by Mr. Love, all were in favor of declaring an emergency as it pertains to the maintenance of District lakes, waiving competitive bidding on sourcing another vendor and awarding the balance of the Aquagenics contract for the remainder of this year and the next fiscal year to Lakemasters.**

## STAFF REPORTS

Attorney

Mr. Pires stated that he had the District minutes from 1996 to 2003 put on compact disc for the Board's review.

Mr. Adams questioned whether it was the Board's desire to have this information posted on their website.

Mr. Brougham confirmed.

Mr. Cole commented that, regarding the benches, he has not met with Mr. Strain regarding backup data to show the location of the benches relative to easements. He explained that he will give it to him by the end of next week when he has it resolved. Mr. Cole added that the county is not giving the District difficulty on the permits for the benches. It was stated that an e-mail was sent from the county indicating that it can be done as an insubstantial change to subdivision plans.

Conversation ensued regarding these items.

Mr. Brougham stated that he was on the county GIS property appraiser maps and found the deed that should have been conveyed from the developer to Peppertree Village had not been filed with the county and, because it was never filed with the county, Peppertree Way still belonged to the developer. He explained that he initiated conversations with Mr. Pires and Mr. Adams regarding this issue. He added that his understanding was that the developer would cause improvements to be made to a certain area of land and, upon completion, would file a requisition justifying expenditures and then convey ownership of that improvement to the District on the county's tax books. He commented that these types of improvements are put on the county tax roll with a valuation of \$100, which results in no tax, so it is not a question of money but a question of ownership.

Mr. Brougham requested that Mr. Pires speak at today's meeting regarding this issue and requested that he explain the defined process and whether the intended result was achieved as well as the implications.

Conversation ensued regarding this item.

Mr. Brougham requested that Mr. Pires explain what legal conveyance was made from the developer to the District on all properties within CDD #1.

Mr. Pires responded that it was either by a dedication of a plat, assignment of a reservation of a plat or grant of easement.

Mr. Brougham requested that Mr. Pires obtain documentation on this.

Further conversation ensued regarding the process and instruments used.

Mr. Adams stated that there are multiple ways to achieve what is required and Mr. Pires has laid out, in general, how certain facilities are dedicated to the District and those two or three vehicles are the various ways in which they can be dedicated to the District.

Further conversation ensued.

Mr. Brougham stated that if it is a liability for the developer to have legal ownership, it should also be a liability for them hold title.

Mr. Pires responded that the difference is that they don't hold title and explained the process. He further stated that if the roadway is ever vacated or abandoned by the District, then ownership relates back to the dedicator. He commented that the alternative is, if that is not reserved, ownership reverts to the adjoining property owners to the middle of the roadway.

Mr. Brougham stated that his second concern is regarding the conveyance of buffer tracts to the CDD, which has not yet been done, and tract B50E and the lake tracts will be conveyed by separate instrument to CDD #1. He added that he would like clarity on the issue and is concerned about liability issues.

Conversation ensued regarding the issue.

Engineer

Mr. Cole stated that there is one pay draw primarily for lake excavation. He provided a description of the areas and explained that the total cost is approximately \$800,000. He also stated that associated with that there was some lake bank sodding.

Mr. Brougham questioned whether those barriers going to stay up along the roadway. Mr. Cole stated that they are going to make some decelerations and some accelerations.

Mr. Cole commented that they need to submit an insubstantial change to one of the previously approved subdivision plans that will show all the benches and they should get approval within two months.

There was a question regarding a piece of property on 951, which is part of CDD #1, and the future of the property.

Mr. Cole responded that each piece of land within CDD #1 pays a pro rata share in some form that is allocated against the bonds.

Conversation ensued regarding this item.

Mr. Adams stated that it is based on acreage.

Manager – Unaudited Financials as of August 31, 2006 and Discussion of Revised O&M Units for Fiscal Year 2006-2007

Mr. Brougham questioned whether the developer assessment can be changed for the next fiscal year.

Mr. Adams responded that it is a timing issue.

Mr. Brougham stated that there is a suggestion on page nine having to do General Fund 002 and he would suggest that the second item be stated as loan proceeds.

Conversation ensued regarding this.

Mr. Brougham stated that the item that Mr. Adams is going to discuss concerns regarding ERU units.

Mr. Adams stated that it is a true-up of the ERU units prior to the tax roll being submitted to the county. He explained that, unbeknownst to him, these true-ups have been occurring after the budget has been adopted and prior to the tax roll being submitted with the budget to the tax collector for placement on the property tax bills and provided an explanation for this. He explained that it has not had a significant financial impact but it does change the numbers from what was adopted in the budget and what is in the financials. He explained that is not going to happen going forward anymore and they need to do a better job ensuring that those true-ups take place prior to the public hearing.

Conversation ensued.

Mr. Brougham requested that Mr. Cole provide an update on the Florida State DOT construction entrance issue.

Mr. Cole stated that there is a conference call this afternoon regarding traffic study and phasing the project.

Conversation ensued on this item.

Mr. Adams stated that he has been working with the underwriter in reviewing the various bond issues to see if it is feasible to consider refinancing at this point. He explained that the 96 Series might be feasible to consider and if they refinance through the current analysis it might be \$150 savings per year per resident.

Conversation ensued on this item.

Mr. Adams added that, because it is time sensitive on the interest side, Bank of America would by buying this internally and he might request another meeting with the Board to go through the analysis and decide if they would like the staff to proceed.

Mr. Brougham stated that he is not happy doing business with Bank of America given their experience on the WILMA loan where they were completely uncooperative with this District as far as the taxable treatment.

Further conversation ensued.

### **SUPERVISORS REQUESTS AND AUDIENCE COMMENTS**

Mr. Robertson stated he had asked Mr. Adams if he would talk with Cardinal Management with regard to the lakes around Montreux Village and who owns them because no one is maintaining the land and lighting.

Mr. Adams stated the he would speak directly with Glen.

Mr. Brougham stated that he printed off the GIS map locations and suggested that the landscaper do the hedge trimming for the indicated buffers once per quarter.

Mr. Brougham commented on gatehouse software and hardware implementation.

Mr. Adams responded that progress is being made on that and provided an explanation regarding the details. He explained that they are working to resolve some issues and once it is working 100% they are going to have club employees utilize the programs by November 1<sup>st</sup> to ensure that it is operating successfully. He added that off-site employees will utilize it, based on the success of club employees, hopefully by February or March. He explained that this is to scrutinize non-residents and their comings and goings as well as ensure that they left when they were supposed to.

Mr. Brougham requested that Mr. Adams prepare a specific action plan to point to dovetailing with the opening of that entrance in February or March.

Mr. Adams stated that, in development of the entrance, there is some infrastructure that has to be created and tied into the existing systems that operates in the same manner. Conversation ensued on this item.

Mr. Brougham stated that he would like to move away from that old hardware and software at the front gate.

Mr. Adams stated that these systems are very technical and expensive when it comes to replacements.

Mr. Brougham commented on the General Fund 002 and the WILMA fund, and that he had a conversation with Mr. Adams concerning the future use of that reserve which will be building over a five year period. He commented that when the WILMA loan is paid off they are going to have \$300,000 plus the interest and some excess from the 4% reserve on the assessments and questioned the use of that money.

Mr. Adams responded that they have the ability to use those excess funds to offset annual assessments. He added that typically they would take those dollars attached to those assessments and drop them into the revenue stream, which would lower the assessments for everyone else. He explained that, in that final year, those dollars would be put back into that final revenue stream and offset the amount. He further explained that they would estimate those interest earnings and try to get as much back in.

Mr. Brougham reiterated that in the fifth year all the money that is in that fund will be used to pay down and pay off the remaining principal of the WILMA loan in its entirety.

Further conversation ensued.

Audience Comments

Mr. Curland commented on the weeds on the berm at one end of Mulberry Lane and the sod on the other end of Mulberry Lane.

Conversation ensued on these items.

Mr. Adams stated he will talk to the appropriate parties and resolve the issues.

Mr. Albeit commented on hearing about the proposal to surplus both security vehicles and his concern with leaving the community security with one vehicle.

Mr. Brougham stated that it has been discussed and this is the resolution of the Board to have one car with a rental backup for maintenance purposes.

Conversation ensued.

Mr. Brougham stated that they will await facts and figures and put it back on the agenda when appropriate.

Mr. Adams suggested that they have the discussion when the resolution for surplusing is introduced.


Mr. Brougham suggested they analyze the amount spent on maintenance.

**ADJOURNMENT**

**On MOTION by Mr. Brougham and seconded by Ms. Matire,  
all were in favor of adjournment.**

There being no further business, the meeting was adjourned at 11:50 a.m.

  
Secretary/Assistant Secretary

  
Chairman/Vice-Chairman