

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

The Regular Meeting of the Board of Supervisors of the Fiddler's Creek #1 Community Development District was held on **Wednesday, November 19, 2008**, immediately following the 9:00 a.m., Fiddler's Creek Community Development District #2 meeting, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114**.

Present at the meeting were:

Phillip Brougham	Chairman
James Curland	Vice Chairman
Jim Schutt	Assistant Secretary
James Robertson	Assistant Secretary
Robert Slater	Assistant Secretary

Also present were:

Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Jeff Pinder (via telephone)	Wrathell, Hart, Hunt & Associates (WHHA)
Ron Albeit	Foundation GM
Mike Charbonneau	Security
Jim Vajen	Gulf Bay
Carlo Zampogna	District Counsel
Anthony Pires (via telephone)	District Counsel
Chuck Tentley	Tru-Green Landscape
Glen Hall	One Source
Charles Bentley	Bentley Electric
Al Love	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

The meeting was called to order at 9:40 a.m. Ms. Crismond announced that all Supervisors were present at Roll Call except former Supervisor Schmitt.

Mr. Brougham requested that the discussion of Item 6, concerning the landscape maintenance contract, be transcribed verbatim, if possible.

SECOND ORDER OF BUSINESS

Staff Report: Engineer

****This item was deferred until later in the meeting.****

THIRD ORDER OF BUSINESS

Affidavit of Publication for Revised Notice of Meetings for Fiscal Year 2009

****This item was discussed out of sequence.****

It was stated that the affidavit of publication advertising the revised meeting schedule was provided.

FOURTH ORDER OF BUSINESS

Administration of Oath of Office to Newly Elected Supervisors: Phillip Brougham (SEAT 5), Robert Slater (SEAT 4), and Jim Schutt (SEAT 3)

Led by Ms. Crismond, newly elected officers, Mr. Slater, Mr. Brougham and Mr. Schutt recited the Oath of Office. Ms. Crismond asked the Supervisors to sign the documents and said these will be entered into the public record. District Counsel briefly summarized the following documents provided in the Supervisors' packets:

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- **Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees**
 - **Membership, Obligations and Responsibilities**
 - **Form 1: Statement of Financial Interests**
 - **Form 1X: Amendment to Form 1, Statement of Financial Interests**
 - **Form 1F: Final Statement of Financial Interests**

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2009-3, Electing the Officers of the Fiddlers Creek Community Development District #1

Mr. Robertson stated that according to the Rules of Procedure, Mr. Brougham's term as Chairman expired two (2) years ago. Mr. Robertson made a motion to nominate Mr. Curland as Chairman. There was no second to the motion.

Mr. Curland made a motion, seconded by Mr. Schutt, to nominate Mr. Brougham as Chairman.

On MOTION by Mr. Curland and seconded by Mr. Schutt, with all in favor of appointing Mr. Brougham as Chairman.

Mr. Brougham made a motion, seconded by Mr. Schutt, to nominate Mr. Curland as Vice Chairman.

On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor of appointing Mr. Curland as Vice Chairman.

ADD-ON DISCUSSION

Safety and Security Vehicle

Mr. Brougham advised that Mr. Charbonneau presented a handout to CDD #2 Board members with comparisons of vehicles as alternatives to replace the Districts' oldest vehicle. He stated that CDD #2 Board members were in favor of Mr. Charbonneau's recommendation.

Mr. Charbonneau said he was asked to prepare a spreadsheet showing comparisons of different vehicles and their fuel costs. Mr. Robertson commented that all the alternative vehicles gave virtually the same miles-per-gallon in fuel consumption as the Interceptor.

Mr. Robertson made a motion to direct staff to replace the 2004 Interceptor with a new one, once the District Manager advises of the acquisition costs. Mr. Brougham seconded the motion. The Board members reviewed the mileage output and maintenance costs for Pickup Trucks versus the Crown Victoria option.

Mr. Brougham asked Mr. Robertson to amend his motion to direct the District Manager to get price quotations on the Crown Victoria, along with the other vehicles being considered. Mr. Robertson agreed.

On MOTION by Mr. Robertson and seconded by Mr. Brougham, with all in favor of directing the District Manager to obtain price quotations on the Crown Victoria, along with the alternative vehicles presented.

*****Mr. Pinder, WHHA Controller, announced his presence via telephone.*****

SIXTH ORDER OF BUSINESS

**Consideration of Award of Contract for
Landscape Maintenance of Right-of-
Ways, Water Management Areas and
Similar Planting Areas within the District**

- **Affidavit of Publication for Notice to Contractors**
- **Bid Tabulation/Analysis**

Mr. Brougham deferred to Ms. Crismond to begin the discussion on this item.

Ms. Crismond referred to the memorandum regarding consideration of this contract. She advised that the pre-bid meeting was held on-site on Friday, October 17th and that the bid opening was held on Monday, November 3rd. She indicated that the bid analysis was provided for review. Mr. Brougham asked if any contractors were present in the room and requested that they identify themselves. Contractors from One Source, Villa & Sons, Main Scapes, and Tru-Green Landscaping introduced themselves.

Ms. Crismond advised that nine (9) contractors had attended the pre-bid meeting and that five (5) contractors had submitted bids. District staff had gone through all the proposals and qualifying requirements under Section 3.07. She referred to the bid analysis sheet and indicated that staff had listed each contractor's bid and provided comments.

[START OF VERBATIM RECORD]

Mr. Brougham: I'd like to open this up with one (1) question of significance with respect to Tru-Green, in terms of not exactly complying with the bid specifications; most significantly, that there was no resource list provided and there were some questions on some licenses and certification. Can anyone explain that from Tru-Green?

Chuck Tentley: Yes. My name is Chuck Tentley. I work for Tru-Green. My job is to do all the proposals within our company. Unfortunately, I was in the hospital for about five (5) weeks and we had to rely on some other internal people to do contracts for me. They did not provide (inaudible) asked.

Mr. Brougham: Do you have that information?

Chuck: Yes. I do have that today.

Mr. Brougham: You do have an equipment list if we desire it, as well as the missing information? Okay, thank you. I just wanted to be certain as to what had happened, for the public, and the fact that that information is available, if any of the Board needs to see it. I

would like to start with comments and questions with Supervisor Robertson, on the bid analysis and the recommendation of staff:

Mr. Robertson: Tru-Green has been our contractor for the last year in District #2 and they've done a pretty satisfactory job. End of comments.

Mr. Brougham: Supervisor Slater?

Mr. Slater: I have several questions. I wanted to know what some of the comments meant in your analysis, Cleo. First, I looked at it strictly from a dollars and cents point of view. I see a \$30K differential for what you chose, as opposed to what was bid by another contractor. Second, I have no idea what the problems were that you mentioned in here; they're not explicit. I either need to know what the problems are or I'll have to defer making a decision, because it doesn't help me. You have to tell me what the problems were.

Ms. Crismond: I tour the community with the contractors on a weekly basis and any deficiencies that we find during our tour, it is expected of the District for those deficiencies to be corrected in a timely manner. I found that with One Source, there were several months that things got out of hand, as far as deficiencies go and compliance with trimming and weeding, and ~~it was to the point where the District had to issue a Defective Work Notice, and even with the~~ Defective Work Notice, the work that was requested was not completed within timely manner, which incidentally, brought us to where we are today. It's just continuing, ongoing deficiencies throughout the CDD #1 property. So the District determined to re-evaluate, go out to bid and bring it before the Board.

Mr. Slater: I'd like to follow up with several questions. One, how many deficiency notices were issued?

Ms. Crismond: One (1) Defective Work Notice was issued.

Mr. Slater: Was a time limit on the Defective Notice given to them that it had to be completed by?

Ms. Crismond: The time limit was on that notice. That is correct.

Mr. Slater: And did they ever really complete it?

Ms. Crismond: Eventually they did complete, but it was nowhere near that time notice.

Mr. Slater: Mr. Robertson, going back to CDD #2, have you ever issued any deficiency notices?

Mr. Robertson: We've never had a need to, and throughout the year, as we saw two (2) contractors working side by side, one (1) in District #1 and one (1) in District #2, the need for the deficient notice for District #1 became very apparent; and yet no problems I know of, Cleo had ever working with the District #2 contractor.

Ms. Crismond: I mean, I'm not going to say that they're perfect. We do our tours. I do a monthly tour with Ron Albeit and Jim Vajen, and I tour with Tru-Green on a weekly basis, and any items that are a concern, they address the concerns. They do resolve our requests. It doesn't go on and on and on, to the point where I have to bring it before the Supervisors for assistance.

Mr. Slater: With Tru-Green being the landscaper for CDD #2, and obviously I've never seen their bid, where does the Tru-Green, specify where they're getting the bodies to do CDD #1? I mean, just say you don't need to have bodies on-site #1 December, I think, whatever it is - I would like to know how they're going to double their workforce. That's really in effect what it is, from doing CDD #2, they're gonna need to do CDD #1. Did they specify that in their bid? Did they say how they're gonna come up with the bodies?

Mr. Brougham: ~~Chuck, would you care to respond to that? The question basically~~ is, right now you're handling CDD #2, and if you're awarded the contract within a week to ten (10) days, you're going to have to have boots on ground and vehicles to take over CDD #1 and #2. How do you plan to staff up, if you are successful?

Chuck: If we are awarded the contract, we obviously wouldn't use the crew that's in CDD #2. We have people coming into our office and applying for these jobs daily. As you know, we're all in a recession and people are looking for jobs, so I don't think for us to find bodies, or actually workers, is going to be an issue.

Mr. Brougham: Do you have an estimate on how many new workers you'd have to hire in the next two (2) weeks?

Chuck: I would say 15.

Unidentified Speaker: Do you have a supervisor identified?

Chuck: We have some people in mind and we'll make that decision if we are successfully awarded.

Mr. Brougham: Mr. Schutt?

Mr. Schutt: No comment.

Mr. Brougham: Mr. Curland?

Mr. Curland: The One Source bid here - there's a comment at the bottom of the page here that talks about the fact that One Source has submitted a proposal with a request to discuss and negotiate terms of the contract. Are we saying that One Source's bid is not a firm price?

Speaker: My name is Glen Hall, Vice President of Sales and Marketing for One Source. No, it does not mean that we won't accept the contract. We've had two (2) contracts with CDD #1 and we've accepted both. There was one (1) item, I believe, that changed a little [unintelligible]. It was minor and it was accepted.

Mr. Curland: From the District Manager's standpoint?

Ms. Crismond: I have submitted that paperwork to District Counsel. I don't know if you have any comment on that, Carlo.

Carlo Zampogna: Our concern, from a legal standpoint, was we're not going to go and re-negotiate with a contractor, because what happens if we can't come to terms and have a meeting of the minds as to the exact terms of the contract? Then what do we have to do? Go out and re-bid the whole process again. So when it came down to that, our concern was we're not going to go back and forth and have contracts going back and forth [unintelligible].

Mr. Brougham: If I may. Last year's is immaterial. What's material is that you bid on a new contract and right behind that new contract you submitted -- and I have the letter here -- it's like a five (5)-page letter, stating you'd like to re-negotiate or negotiate the following and there's not one (1) item on here. There are, one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen items on the contract that you've proposed, if you're awarded the contract, you'd like to re-negotiate. Go ahead Jim, you have the floor.

Mr. Curland: It's significant, apparently. You don't stand behind your bid without a re-negotiation of those points?

Glen Hall: I'd like to say that I'm sitting next to the President of our company and his comment to me is that we will retract the requirement for any negotiation on the contract and accept it, as is.

Mr. Brougham: Okay, thank you.

Mr. Curland: I have no other questions.

Mr. Brougham: I agree with the comments that were made by Supervisor Robertson, and I'd have off-line discussions with District staff concerning the issues that have come up, particularly over the last six (6) to eight (8) months with One Source. The reason that we went out to bid was a majority vote on CDD #1's Board, coupled with input from our District Staff and also from our Fiddler's Creek and Gulf Bay personnel in attendance, that the work being performed by One Source was deficient. That was the whole purpose for going out for re-bids. I also observed that on re-bidding, One Source's pricing increased significantly over what would have been the second year pricing on their former contract or the current contract. And I think that is reflective of the fact, at least, it's my opinion that it's reflective of the fact that they incurred far more costs in the first year of their contract than they anticipated. And it's also my personal opinion that therefore, the only leverage point was to reduce their manpower and that resulted then in defective work. It's more money than we have budgeted, but as recommended and observed by our District Staff, it shouldn't put us in a significant shortfall. And we do have adequate reserves to cover that shortfall if it were to come. So with that said, and if there are no other questions, I'm going to make a motion that we accept the recommendation of our District Manager to award a two (2)-year contract, with one (1)-year renewable, to Tru-Green Landscape.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor of accepting the recommendation of our District Manager to 1) award a two (2) year contract, with one (1) year renewable, to Tru-Green Landscape and deem the variations in the bid from Tru-Green to be minor and waive the variations; 2) deem the Tru-Green bid that it is from a competent, responsible firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; 3) deem that the Tru-Green bid is the most advantageous to the District; and 4) award the contract to Tru-Green for a first year price of \$747,182 with a second year option of \$759,182.

[END OF VERBATIM RECORD]

▪ **Engineer's Report**

*****Mr. Brougham requested the Engineer's Report, formerly Item 2, at this time.*****

Mr. Cole presented a small map of the project to the new Supervisors. For the benefit of the new Supervisors, Mr. Brougham asked Mr. Cole to briefly explain the process of paying for items covered by the District's construction bonds. Mr. Cole spoke of the history of the CDD's project and the four (4) construction bonds issued over the years. He explained that an engineer's estimate is first prepared, based upon necessary infrastructure. This work is then compiled with other information and a bond is established to obtain construction funds. This bond is repaid over time. Mr. Cole stated that when work is completed monthly, the contractor submits invoices to him to certify as a qualifying expense. Mr. Cole advised that he processes these pay draws and forwards them to the District Manager and District Counsel, indicating that they are acceptable. Mr. Cole said the bond accrues interest monthly.

****Mr. Brougham acknowledged Mr. Pires, who announced his presence via telephone.****

Mr. Cole presented Pay Draw 29, from the 2005 Series Bond, for approximately \$24,000. He stated that this related to wetland mitigation and littoral plantings in 6U1 and 6U2 lake areas. Also, work was done on the lake 50B area.

Mr. Cole recalled previous discussion about installing sidewalk connections on Championship Drive for Hawk's Nest, Cardinal Cove, Cotton Green and Deer Crossing. He said he was awaiting relevant information and will be preparing these plans.

The Board thanked Carlo for attending.

Mr. Brougham corrected Mr. Robertson's earlier statement and said he was elected as Chairman approximately six (6) months into his four (4) year term, upon the resignation of Mr. Olson. He advised that he was re-elected Chairman when the Board inducted Mr. Curland and Mr. Robertson to the Board. He stated that this was done two (2) years ago.

SEVENTH ORDER OF BUSINESS

Consideration of Quote from Bentley Electric Co., for Control Panel Up-Grade and Entry Fountains Wiring

Mr. Brougham acknowledged that Mr. Bentley from Bentley Electric was present. Mr. Brougham recalled discussion at the last meeting about the fact that these devices were not up to code because the wires were chewed up by alligators. He advised that subsequent to this meeting, he had obtained a copy of the permit and inspection reports issued by the county when

these units were first installed. He explained that these devices were allowed under Code as lake aerators. Mr. Brougham stated that in addition to Mr. Bentley's quote, there was a quote from Aquamatics to run cables up to the devices; both quotes totaled in excess of \$80,000. He asked the Board to discuss the aerators that have been sitting under water for several months.

[START OF VERBATIM RECORD]

Mr. Brougham: Jim, go ahead.

Mr. Robertson: *[Due to low volume, comments are inaudible.]*

Ms. Crismond: If I may comment, you've got three (3) different quotes submitted by Aquamatic, and unfortunately, I have been unsuccessful getting Mike on the phone. I have called him numerous times to discuss these quotes so that I can understand them and explain them to you. I have emailed him. I have requested that he attend this meeting and I still have not heard back. I don't know if he left the country. I don't know where he is.

Mr. Robertson: *[Due to low volume, comments are inaudible.]*

Mr. Bentley: Cleo got us involved on a couple of service calls. We installed that particular fountain back in [inaudible]--

~~Mr. Brougham: --aerator--~~

Mr. Bentley: --I'm sorry, aerator. And so, we do a little bit of both. We haven't been maintaining the product. We're not fountain people. We just put the service in according to the contract. We ran the electrical, the voltage drop and everything was calculated, whatever the drawings were, I think by Pelican Engineering, I believe years ago. And we just installed the control cabinets and everything, but the fountain equipment was supplied by others. I did contact Mike and I talked to Cleo and I said, Cleo, look, we can do what we did before from the metered section, and we'll get the wiring and update it, take the old control panel off and put the new control panel on. I said, but I'm not an expert from [unintelligible] for aerators, to put this equipment in operation. We can wire it and plug it in. So I guess Mike with Aquamatics gave Cleo a quote. He gave it to me about the wiring that you're talking about. There are three (3) aerators. One (1) is a 30 horsepower--

Ms. Crismond: Fifteen and seven and a half (7 ½).

Mr. Bentley: And seven and a half (7 ½), and I believe those are three (3) separate ones. And then you have another lighting circuit, so that's the four (4) runs, which is included. And I went ahead and got my proposal and added his wiring too, as a subcontractor. I

never really talked to him; he just emailed and I just plugged his number into mine. And he was going to take care of the wiring, going outside into the lake areas.

Mr. Schutt: So his \$30,000 is in your 50-something?

Mr. Bentley: That's correct.

Mr. Brougham: Oh, it is?

Mr. Bentley: So, it's not the \$80,000 that [unintelligible]--

Ms. Crismond: --His is in with yours?

Unidentified Speaker: Which proposal?

Ms. Crismond: The one (1) he submitted--

Mr. Brougham: Which of the three (3) different proposals from Aquamatics?

Mr. Bentley: I included the \$24,171.30, because the other--

Ms. Crismond: --okay, that's the second one.

Mr. Bentley: So the GFI's are included because I've got either a new control cabinet or revising the GFI's. It's not up to code right now. Everything is either rusted out or the racks and things are rusted and the transformer's rusted out. So I was gonna update it and put new, some of that stuff.

Unidentified Speaker: That was my question. It appears as a duplication that Aquamatics has included some things on this list that appeared to be in yours as upgrading the control panels [unintelligible]--

Mr. Brougham: So your bid, Chuck, of \$54,640 would include all of the upgrades of the panels, the racks, whatever that end of it was, plus in addition, \$24,171, okay. So we'll get all the wiring quoted from Aquamatics for \$24,171.30, as well as upgrades and bringing all the panels and GFI's up to code on the shore line. Is that correct? That's helpful.

Ms. Crismond: A huge help.

Mr. Curland: There's a statement in your letter to Cleo that "Bentley Electric is not knowledgeable in the field of installing fountains to be certain that this will eliminate the nuisance". Why are we spending 50-something thousand dollars if we don't know if we solved the problem? I understand and I appreciate the fact that you're straight with us on this, but this is a major expenditure for which we've got no guarantee that we're fixing the problem. How do we get around that?

Mr. Bentley: I would imagine just by word of mouth. You're saying the wires have been damaged [inaudible] damage of some sort. What I'm saying is, you're still possibly going to have nuisance, either by a voltage drop calculation or something that might be weather related or some other things. I'm just not in that business, so I'm saying I'm not an expert. I'm an expert at running that power to the [inaudible].

Mr. Curland: I understand and I can appreciate that, but from my standpoint, if I was a consumer, and you basically put this -- with that caveat, would I be buying the product?

Mr. Brougham: Mr. Slater?

Mr. Slater: [Inaudible]. I think he's already told you [inaudible]. I think there should be an alternative method of either not putting in the aerators, or coming up with a completely new set or aerators that would have a warranty with it so the GFI's not [inaudible].

Mr. Schutt: My feeling on the aerators/fountains has been pretty consistent over the years. I think that we have a great, and you know, this is hardly of interest to you at all Joe [phonetic], but you can listen to it anyway. I think we have a great entrance out there with the monuments and the fountains, et cetera. The landscaping is such that your opportunity to view the aerators is limited coming into that entrance and, in addition, if you're looking at it when you're driving in, you're probably an accident waiting to happen. Certainly the passage on 951, you shouldn't be looking at the fountains because that traffic is flying. Firstly, I think that we have an opportunity here to do a green project and not ever run these fountains again. We're spending hundreds of thousands of dollars. The nuisance trips can be any number of things, the alligators chewing on the lines and whatever else is out there. Again, I don't think that the fountains -- and I've read all the arguments and I've bandied words with various people and my honorable opponent made a big issue about wanting fountains, but I think that we're spending a lot of money here for something that has intermittent operational potential. The fountains have been down, or the aerators have been down all year round. The entrance looks beautiful. I think whoever was the CDD Board that preceded this one, Gulf Bay, when they re-did the front, they did a great job, and that's what people see. They don't see those fountains, and I don't think anyone buys a house in here as a result of those fountains. So my position is yes, I think that here, what we have, we're buying a pig-in-a-poke if we buy this, because we don't know if it's going to solve the problem, and the next iteration of what we need to do can be X number of tens

of thousands or hundreds of thousands of dollars. I think the fountains or the aerators should be pulled out of there and never seen again, personally.

Mr. Brougham: Thank you. Mr. Curland?

Mr. Curland: Ron Albeit, my question for you, the developer put these fountains in. He's got obviously an interest in those fountains. Has he any recourse if this Board decides not to operate those fountains again, or basically pull them out?

Mr. Albeit: Well, the Foundation's responsibility is to maintain the community standards that are here. The fountains are part of the community standard.

Mr. Curland: I want to finish this conversation.

Mr. Brougham: I will. At least I'll offer my opinion on that. I certainly don't speak for the Foundation, although sometimes I'd like to. Essentially, what this is going to come down to -- I'll answer that question specifically -- if this Board were to decide not to spend any more money and to pull the existing equipment out of those lakes and put them in the trash heap, the developer/the Foundation has the option, if they so chose to use it, to purchase and install new equipment in those lakes. It could be fewer, it could be more, it could be elaborate colored lights, et cetera, et cetera, et cetera. I mean, we would have no control, but they do have the right. I checked with the attorney and they do have the right to purchase, install, operate and maintain those new devices and assess the homeowners for that cost. They're entirely within their rights to do so. The only stipulation is that such devices, if installed in those lakes, could not interfere with the water management facility in those lakes, because they're constructed as water management lakes and we're responsible to make sure that they operate as water management lakes. So that, I think, answers your question.

Mr. Curland: Well then, I would propose that if this Board decides or votes not to, or that we defer any further action on this until we get an official position from the developer/foundation as to what their position is gonna be if, in fact, we do not re-do the fountains or basically put the fountains back in operation.

Mr. Robertson: One (1) additional piece and I've tried to research this and came up against a lot of knowledge. I believe that when the CDD was constituted, the aerators were deeded to the CDD, but the lakes, those two (2) front lakes inside Fiddler's Creek that weren't deeded to the CDD, they are still owned by the Foundation.

Mr. Brougham: The Foundation owns, excuse me, the developer owns all the lakes within all the districts. The CDD has easements, maintenance easements to all the lakes; but we, the CDD, do not own them. What Tony has been going on and on about is to try and straighten out all the legalities to make sure that in fact, we have maintenance easements signed off by both parties. That's been the sticking point. It's my turn for comments. As I see it, we have three (3) options if we have repair the GFI boxes and install new cables and spend, now \$54,000 instead of \$83,000, and to pick up on your comments, Jim, we have no idea whether if we spent \$54,000 and do the switch, that the devices in the lakes, which are now seven (7) years old, are going to work or not. We spent \$16,000 last year to revamp old gear, in hopes that it would keep going. But, your phrase a 'pig-in-a-poke' -- my opinion is, I wouldn't spend a dime for repairing the old equipment or the GFI boxes. I think that's just spending good money after bad. The second option is we can remove all the equipment and don't replace. Period. However, as we just discussed, there is the possibility that the developer or the Foundation, or both, would purchase and install and operate and assess the operation. In that case, and I think it's a probable case, even though we'll ask them, whether they will or not, I don't know, in that case, I, personally, if that's gonna be the inevitable outcome, I would rather see this Board, this District, maintain control over what goes in those lakes, because if we relinquish our control to the developer, we're at the mercy of whatever they decide to put in at whatever cost. It could be more, less, the same, but it would be spread across in a special assessment, non tax deductible. The third option, as I see it, and what I'd like to recommend to the Board, is that we instruct our District Staff to consult with the developers' representatives and seek quotations from at least two (2) different firms for fountain design and costs associated with it to consider at a future meeting, whether it's December or whether it's January and in conjunction with that, if we were to decide, as part of those discussions, to purchase and install new equipment and retain the control of the design and the operation and budgeting, et cetera, we have the opportunity, since those aerators are deemed to maintain water quality in those lakes. I got a legal opinion that we could utilize the existing bond funds for their purchase, which would impact the residents, zero. It would not even end up in the O & M, except for running the electricity. We wouldn't have to lease them. That's a possibility that's there if we decide to put in new equipment. But I think, my opinion is, and this is going to be made as a motion, that we direct District Staff to contact reputable aerator firms, in conjunction with a representative from the Foundation, and seek quotations to bring back to the

Board in terms of cost and in terms of design presentation, and have this done as expeditiously as possible. Mr. Slater seconded the motion.

Mr. Schutt: I would like to get a legal opinion and we can decide whether or not we want to; but, Mr. Albeit talked about maintaining the community standard, and there have been enough changes to what the initial installation in Fiddlers has been, relative to landscaping and other things, and I maintain, we don't have a standard. A standard that constantly changes is no standard, and hence, that maintaining the community standard is either a figment of somebody's imagination, or it is something that is determined unilaterally by the developer. But that's not a standard. A standard is, I've got six (6) trees, five (5) of this, seven (7) of that, or whatever, and if you keep changing it, you don't have a standard. Now, relative to what Mr. Brougham has said, I don't particularly like those fountains. I think they're a waste of money; however, if you can come up with something that satisfies the developer and also is cost effective, putting in a different type of fountain, maybe a single spray in the middle with some little bubblers inside, there are a whole lot of more attractive fountains around, than that particular one. It is also proven to be totally unreliable, for a number of reasons, whether it's alligators or the corrosive atmosphere or whatever. So, if we are, and I consider -- no, I don't -- I'll pass on that. I think that what you have suggested in working with the developer to come up with something else, if they would plan to put in something of their own design and assess all of Fiddlers, everybody in the Foundation for it, then I think that's a good approach; however, strictly from a selfish standpoint, if they assess the Foundation, they're going to assess CDD #2 and CDD #1, which spreads the money out. So from that standpoint, that's fine with me. Let everybody pay for it because certainly, everybody is getting the benefit of it, if they are running or not running, assuming you believe there is some benefit. Personally, I don't think there is; however, working with the developer to come up with something that is mutually acceptable is possibly a workable solution.

Mr. Brougham: Any other discussion on the motion?

Mr. Robertson: On sharing the cost with District #2, that's a two (2)-way street there, is a fountain in District #2 that come this way as well.

Mr. Brougham: Mr. Curland?

Mr. Curland: Can you repeat the motion?

Mr. Brougham: That we direct District staff to work in conjunction with a representative from the Foundation or developer, or both, and seek design proposals and quotations for replacing existing equipment with new equipment in both of the 951 Lakes.

On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor of directing District staff to contact reputable aerator firms in conjunction with a representative from the Foundation or developer or both, and seek design proposals and quotations for replacing existing equipment with new equipment in both of the 951 lakes.

[END OF VERBATIM RECORD]

▪ **Financial Statements**

****This item was presented out of order****

Mr. Brougham requested that the Board discuss the Financials so Mr. Pinder can continue working. Mr. Pinder, of Wrathell, Hart, Hunt and Associates, stated he is the Controller for the District's finances. Mr. Robertson asked whether Mr. Pinder pre-audits the postings on monthly financial statements. Mr. Pinder said to some degree; however, this depends on the invoice and the personnel doing the coding. He stated that this is often done by the District Manager and said his firm can look at improving this process. Mr. Brougham suggested it would be more accurate if invoices were coded, especially where access control, landscaping and irrigation were concerned. He suggested passing these invoices through District Staff locally, prior to being routed to Mr. Pinder. Mr. Robertson suggested setting a dollar threshold above which every item is pre-audited, to ensure accurate posting.

A Board member asked when CDD #2 planned to reimburse monies owed to CDD #1. Mr. Pinder explained that CDD #2 is starting to receive assessment revenues and he expected them to begin reimbursements by mid-December. Mr. Brougham commented that no one can predict what will happen to homes within either district. He asked about the ramifications involved in the event that CDD #1 has to finance CDD #2 for assessment delinquencies. Mr. Pinder said he was not certain that CDD #1 is legally responsible for CDD #2. He stated that he felt the risk of not getting its money back is extremely low; he commented that even if people did not pay the assessments, the tax certificates would be sold and the monies would come in and be

reimbursed. He added that he would not be worried about collection and repayment. Mr. Brougham voiced concern that any monies CDD #1 would loan to CDD #2 would gain no interest. Mr. Pinder said he did not have an answer for this, other than an agreement between the districts.

Mr. Pires commented that the access control contract and obligation is solely with District #1. He said staff may need to look at modifying this contract.

Mr. Curland voiced concern about the \$5,600 expense in transporting fountain pumps. Mr. Brougham agreed that \$5,600 was an excessive expense and felt the District should not have been billed for this expense at all. He requested that Ms. Crismond look into this further.

Mr. Brougham voiced concern about the developer assessment revenue reflected on the balance sheet. He stated that the balance statements do not reflect the amount of money collected, but rather the amount of money susceptible to accrual. Mr. Pinder explained that the statement reflects the modified accrual basis of accounting. He said that in the past, Staff has not booked the amount due from the developer, but rather, the monies received. He added that if the Board wishes to see the monies due from the developer, then it must recognize the revenues simultaneously. Mr. Brougham said he would like to see revenue reported on monthly financials in the month that it is deposited and expenses reported on the month checks are written. Mr. Pinder said this is possible; however, Staff cannot do this and also recognize amounts due from the developer on the balance sheet.

Mr. Albeit commented that the Board voiced this concern to Mr. Adams about three (3) months ago. He still does not receive copies of invoices when the District is billed, so he can be sure the developer writes the check in plenty of time to be reported monthly. Mr. Pinder said the bills can be forwarded to Mr. Albeit via email. Mr. Albeit provided his email address, albeitr@gulfbay.com, for Mr. Pinder.

Mr. Brougham spoke of Mr. Zacks, a resident, who complained about very tall littoral plants that block the lake view from his home. He commented that he does not see littoral plantings consistently around every lake. Mr. Brougham asked staff to address this. Mr. Pires said these differences may reflect when the District was built per county codes in 1996. Mr. Vajen explained that all lakes do not require littoral shelves. Mr. Vajen said the tall plants behind Mr. Zacks' home can be pulled out and replanted. Mr. Pires added that the water management district may have revised its lake criteria over the past few years.

Ms. Crismond said staff can remove the bulrushes from the lake.

EIGHTH ORDER OF BUSINESS**Approval of October 22, 2008 Regular Meeting Minutes**

Corrections to the minutes were provided as follows:

Line 39: Change "a new substantial" to "insubstantial".

Line 105: Replace "pending" with "after".

Line 136: Replace "resolution" with "reservation".

Line 136: Insert "in" before "1B".

Line 137: Replace "Road" with "Row".

On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor of approving the October 22, 2008 Regular Meeting Minutes, as corrected.

NINTH ORDER OF BUSINESS**Other Business**

There being no Other Business, the next item followed.

TENTH ORDER OF BUSINESS**Staff Reports****a. Attorney**

Mr. Pires advised that the assignment of reservation clarifying the maintenance obligation for Montreux will be signed and ready within a few days.

b. Manager**i. Unaudited Financial Statements as of October 31, 2008**

As this item was discussed earlier in the meeting, the next item followed.

ii. Quarterly Continuing Disclosure Report - Fiscal Period July 1, 2008 to September 30, 2008

Staff presented the Quarterly Disclosure Report for the Board's information.

iii. NEXT MEETING DATE: December 17, 2008, 9:30 A.M., or immediately following the Fiddler's Creek Community Development District #2 meeting

As there was no discussion, the next item followed.

c. Operations Manager

Lake Fountains: Ms. Crismond advised that littoral plantings are being reviewed by management, Lake Masters, Earth Balance and the Golf Course Superintendent on an ongoing basis.

Tree Replacement: Ms. Crismond recalled that the Board had previously discussed replacing the guava trees with bougainvillea bushes on Club Center Drive, just north of The Rookery. She stated Doria's had supplied the lowest quote of \$15,104.82 for plants that can be created into a hedge over a 12-month period.

Mr. Brougham reported that after the last Board meeting, he spoke with Mr. Major, General Manager of The Rookery Golf Course. He stated Mr. Major sent him an email stating he is "committed to sharing the cost of replacing the guava trees with bougainvilleas, and has committed to share the cost of replanting and maintaining the area on The Rookery side of that 150-yard stretch." However, he is not prepared to shoulder this expense this year or next year. Mr. Brougham said the District will do nothing until Mr. Major is ready to move forward.

Tree Trimming: Ms. Crismond stated that palm trimming and pine straw installation is in progress and should be completed by the end of November. Ms. Crismond said she will tour the property to ensure this is completed properly.

Irrigation Study: Ms. Crismond reported that Aquamatics was supposed to provide a report on the irrigation study this month; however, she was unable to get in touch with Mike from Aquamatics. Mr. Brougham asked Ms. Crismond to advise Mike that if he does not produce the analysis within 30 days, the Board will go somewhere else.

Patrol Service: Ms. Crismond reported that nine (9) citations were issued in October. Mr. Brougham suggested that both districts ask the Sheriff to come in once per week. He commented that the CDD #2 Board discussed giving Mr. Charbonneau's staff more latitude to approach and warn drivers about speeding. Mr. Pires said there is no authority allowing a private agency to stop anyone from violating traffic laws. Mr. Brougham requested more research on this by the next meeting. Mr. Pires said the most the agency can do is observe, monitor and advise the law enforcement agency about traffic violators.

Pressure Cleaning: Ms. Crismond reported pressure cleaning was completed on Mulberry, Cherry Oaks and Mahogany.

Access Controls: Ms. Crismond reported quarterly testing is scheduled and a report will be provided at the December meeting.

ELEVENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

Al Love, a resident, spoke of problems with the stormwater drainage system on Mulberry. Ms. Crismond said Staff is aware of this problem. She advised that Extreme Divers came out and completed an inspection. Staff is currently awaiting the quote to come back and clean debris found in the drains.

Mr. Curland recalled Mr. Albeit's earlier statement that if the Board voted not to operate the fountains, it is conceivable that Gulf Bay would install lake fountains and assess residents under the provision of "maintaining the standard of the community". He asked Mr. Pires if Gulf Bay has the authority to operate the fountains if the pumps were deeded to the District. He commented that the standard on the pumps is that they do not run all the time. Mr. Pires explained that the underlying ownership is still 951 Land Holdings, whose ownership of the land is encumbered by the drainage easement in favor of the District. He stated the underlying owner cannot do anything to interfere with the easement or the easement holder. He stated he did not see any prohibition against the developer placing fountains in the lake.

Mr. Brougham raised the issue of retaining the services of a court reporter at monthly meetings in order to transcribe verbatim minutes. He said Mr. Pires had commented that it would be prudent to have verbatim transcripts of Board meetings. Mr. Brougham said he contacted a court reporting firm that worked for the Board of County Commissioners, and learned that this firm charged \$80 per hour for a reporter to attend and record meeting, plus \$8 per page of transcription. He stated this will likely result in a charge of \$5,000 to \$6,000 per year, which is not a budgeted item.

Mr. Brougham made a motion, seconded by Mr. Schutt, to retain court reporting services for future meetings.

Mr. Pires explained that the form of minutes is not stipulated by statute; therefore, minutes can be abbreviated or verbatim. He stated that in his experience, verbatim minutes have been helpful in litigation and in answering future questions.

Mr. Schutt commented that new technology allows court reporters to record discussion immediately during meetings, which makes producing hard copies very straightforward. Mr. Pires commented that court reporters use a chart to note actual speakers present during meetings, which makes attributing comments to speakers more precise.

Mr. Robertson voiced concern that the Board seems to always come up with new ways of spending money and said he could not justify spending this amount of money.

The Board proceeded to take action on the motion.

On MOTION by Mr. Brougham and seconded by Mr. Schutt, to retain a court reporting firm to record meeting minutes, with Mr. Robertson, Mr. Curland and Mr. Slater dissenting. (Motion Failed 2-3)

TWELFTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor of adjourning.

The meeting was adjourned at 11:55 a.m.


Secretary/Assistant Secretary


Chairman/Assistant Chairman