

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

A Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Wednesday, February 24, 2010 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:**

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

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Mike Charbonneau	Director Safety, Fiddler's Creek Foundation
Carla Barrow (via telephone)	Special Counsel
Elliot Miller	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, all Supervisors were present..

**SECOND ORDER OF BUSINESS**

**Update: Foreclosure Claim**

Ms. Carla Barrow of Weiss Serota, stated the title company completed about 85% of the property's title search. She expected a commitment for certain parcels by next week, Friday, making the foreclosure filing completed by the next board meeting. She asked the Board if there were any questions regarding the foreclosure claim. Mr. Adams discussed a press release relating to the Fiddler's Creek Developer, Gulf Bay, filing Chapter 11 bankruptcy, protection with the full support of a new lender, to preserve the substantial equity in the development. Gulf

Bay identified a lender, Gulf Bay Capital Inc., who is investing about \$25 million, in an attempt to take a debtor in possession position. Ms. Barrow explained that the filing of a Chapter 11 bankruptcy is an attempt to reorganize their financial affairs, by looking for other sources of infusion of capital. Upon filing of a bankruptcy, all action against the debtor, such as the ability to move forward with the foreclosure claim, must include a release from the bankruptcy court. The effort of the debtor is to try to halt litigation and to get additional financing. She anticipated the Chapter 11 filing moving promptly. She explained that the District is considered a secured creditor and any such financing by the Debtor would require the court's approval. In order for the debtor to move forward with the proposed \$25 million in financing, the lender must demonstrate that the secured creditors are receiving adequate protection. In calculating adequate protection, the court considers the equity in the property. If the District is adequately secured, there may be an opportunity for the debtor to get the additional financing approved, by making a certain payment. If the District is not adequately secured, there may be objections to the financing and a request can be made to move forward with the foreclosure claims. She noted that the debtor's filing needs to be reviewed by counsel and the value of the property needs to be determined. She stated the debtors used a 2010 MAI Appraisal, which gives the land a value \$312 million and an estimated mortgage debt of \$160 million. She estimated the amount of Districts #1 and #2 bonds is at \$100 million and noted potential objections to the additional financing.

Mr. Schutt questioned if a validation of the appraisal is part of the process and questioned if a third party objection is considered. Ms. Barrow stated the court does not present an independent evaluation; that would be up to the CDD. Ms. Barrow stated if the appraisal is completed, came back lower than the MAI appraisal and showed that the equity in the property was dissipating, then negotiations could be held to object the financing or the conditions of the financing.

Mr. Schutt questioned the District's next step. Ms. Barrow explained that the filing was made in the Middle Court District of Florida and the District would need to file an appearance immediately and proceed in terms of raising an objection to the proposed financing. She explained that an evidentiary hearing will be held by the court, at which time the District can present appropriate evidence; or, there may be a resolution, short of the hearing, if an agreement can be reached. She stated the pending title work must be completed and the foreclosure claim

can not be filed yet. She recommended moving promptly in the bankruptcy court and getting a competing appraisal, pending the bondholders' opinion. She explained the value of the appraisal and that the role of a secured creditor in the bankruptcy court includes entitlement to interest and attorney fees; if the District is an under-secured creditor, the situation is different. Mr. Brougham questioned if she discussed the filing with the bondholders or the bondholders' counsel. Ms. Barrow responded no, as she was informed of the filing this morning.

Mr. Slater recommended Ms. Barrow discuss the situation with the bondholders and bondholders' counsel. The Board discussed the next step to take that would better facilitate the process.

Mr. Correia discussed the need to make an educated decision. He questioned an estimated timeframe as to when the filing would be complete. Ms. Barrow stated that it is hard to say because she has not reviewed the filing; usually a Chapter 11 filing takes a year or more, but that does not mean that the creditor does not see progress. She discussed the reasons for obtaining another appraisal and the urgent need to file for an appearance.

Mr. Brougham questioned if any of the discussed actions puts the District or bondholders at risk. Ms. Barrow stated the risk is to not take action or be prepared. She explained the new financing could obtain a super priority lien status, which would trump the District's lien.

Mr. Robertson pointed out that the Board is at the direction of the trustee and the District can be sued, if the Board does not follow the direction of the trustee. Discussion was held on the role of Districts #1 and #2. Mr. Adams stated the same discussion will be held in the District #2 meeting, as they hold different bonds.

Mr. Barrow stated that, at a minimum, the District should file for an appearance in bankruptcy court, consult with bond counsel with respect to the validation of the appraisal and discuss with bond counsel the possible areas of objection to the restructure of financing. Mr. Robertson questioned if Ms. Barrow recommended a specific request for an appraisal. Ms. Barrow stated that she has not reviewed the 2010 MAI Appraisal, but suggested bond counsel's opinion as to selecting a firm to complete an appraisal.

**On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the Board approved Special Counsel, Weiss, Serota, to proceed in the bankruptcy filing, at the direction of the bondholders.**

Mr. Brougham questioned if the filings affect the continuance of the operation and maintenance, off-roll assessments. Ms. Barrow stated it could be possible that the court would compel the payment as an administrative expense. Mr. Brougham questioned if the Board needed to take any action as to the O & M aspect. Ms. Barrow explained the role of the issued stay, as a result of the bankruptcy filing. Discussion ensued regarding the District's roll in the filing. Ms. Barrow anticipated that the filing outlines the direction of the proposed \$25 million.

Mr. Love questioned who represents the off-roll assessments in the bankruptcy court. Mr. Adams recommended the District retain Ms. Barrow. Mr. Brougham confirmed.

**On MOTION by Mr. Slater and seconded by Mr. Robertson, with all in favor, the Board approved Special Counsel, Weiss, Serota, to prepare an addendum for providing representation on O & M Assessment in the bankruptcy filing.**

**\*\*\*Ms. Barrow left the meeting.\*\*\***

Discussion was held about the possibility of having a discussion with Mr. Ron Albeit.

Discussion ensued on the current operating budget of the developer. Mr. Brougham explained the District's operating budget includes salaries that the District pays to Staff and will continue to be executed; the question is whether the District will have a revenue shortfall if the developer does not pay the assessments.

Mr. Pires discussed the issue of multiple Board Members attending the town hall meeting and stated that a notice will be posted on the gate house and website, stipulating that the Board Members may attend the town hall meeting. Mr. Adams suggested the Board Members refrain from making comments and issuing an opinion. Discussion ensued on the Sunshine Law.

Mr. Brougham requested Mr. Albeit prepare a notice for posting.

**THIRD ORDER OF BUSINESS**

**Consideration of Resolution 2010-4,  
Adopting the Amended Post Orders of the  
District**

The Board reviewed the Amended Post Orders. Mr. Brougham recalled the discussion held on the changes made, at the last board meeting. Mr. Slater questioned the phone number for The Rookery. Mr. Adams noted the number is there, but is changed. A Board Member

questioned the multiple locations regarding small commercial vehicles on Page 7. Discussion was held on the appropriate gate to have large vehicles exit and the possibility of upgrading the gate software. A Board Member noted that the consideration of the TEM proposal for an upgrade to the gate software was deferred. Mr. Brougham noted that the enforcement of traffic flow is not possible because the software was not approved. Discussion was held as to whether vehicles should exit one (1) designated gate or the closest gate. Mr. Brougham expressed that this is a non-issue because, regardless of what the Post Orders say, the people are going to exit where they want to exit. A Board Member recalled that the Board was going to ask the guards to direct drivers out the Sandpiper Gate. Mr. Brougham stated that any vendor is instructed to enter and exit Sandpiper; however, there is no way to stop people from exiting Championship Gate.

**On MOTION by Mr. Curland and seconded by Mr. Brougham, with all in favor, changing the language regarding commercial vehicles, with the exact wording to be provided by Mr. Curland, was approved.**

**On MOTION by Mr. Brougham and seconded by Mr. Slater, with all in favor, Resolution 2010-4, Adopting the Amended Post Orders of the District, as revised by Mr. Curland, was approved.**

**FOURTH ORDER OF BUSINESS**

**Continued Discussion: Rights and Responsibilities with Regard to Championship Drive Road and Right of Way from 951 to District Gatehouse**

Mr. Brougham recalled discussion at the last Board meeting about the possibility of placing an early warning sign, adjacent to the driving range, to forewarn drivers as they approach the restricted, private entrance. Mr. Pires discussed a dedication made in 1990 by the property owner. The dedication, with ownership in the name of Pelican Lake RV Resort Property Owners Association, is to Collier County, County Water and Sewer District and the General Public for egress/ingress for drainage, but with no maintenance obligations. He recommended, as the easement is dedicated to the county and public, the easement is a county right-of-way and the installation of the sign is contingent upon approval from the county. Mr. Brougham asked if the

District would have to apply for a permit. Mr. Pires responded affirmatively. A Board Member asked who is responsible for the road maintenance. Mr. Pires stated the association is responsible for the maintenance. Discussion was held as to whether the District should take proactive steps to ensure the road is maintained. An audience member suggested that the road could be deeded to Copper Cove. Mr. Brougham stated the legal research does not illustrate such. Mr. Brougham requested Staff contact the President of Pelican Lakes regarding the sign placement. Mr. Adams questioned if the county can establish municipal service taxing unit (MSTU) over the property. Mr. Pires confirmed and explained that the road is within the plat of Pelican Lake RV Resort, with a dedication to the county, with no responsibility for maintenance. Mr. Brougham explained that a MSTU usually imposes a tax on property owners; however, in this case, he was sure that all residents of Fiddler's Creek would need to receive such. Mr. Pires explained that the county commissioners have a policy that a MSTU will not be established, unless 50% plus one (1) of the property owners approve of the unit.

**FIFTH ORDER OF BUSINESS**

**Update: Championship Road Crosswalks and Signage Installation**

Mr. Cole stated the surveyors are working this morning and contractors are expected to begin next week; it should take a few weeks to complete installation. He explained they will be tearing out the old sidewalk and then pouring the new crosswalks. Mr. Brougham explained that the bondholders agreed to pay for the completion of the work.

**SIXTH ORDER OF BUSINESS**

**Discussion: Joint Meetings with CDD #2**

Mr. Brougham noted that this item came up last month and that joint meetings can be used to discuss joint issues. Mr. Adams explained that, currently, Districts #1 and #2 cost share irrigation and security items; in the future the Districts may begin to cost share more items. He detailed the outline of the joint meeting agendas. The joint items would be addressed first, followed by individual District items, with the District having the shortest or fewest items to be discussed first. Mr. Adams noted that having both joint meetings and individual meetings may confuse members of the public and recommended establishing joint meetings, as a standard. He clarified that, if there was a joint meeting without joint discussion items, the District with the least items would discuss their items first. Mr. Adams explained that the respective Chair of

each Board would lead their District's items and voting would be to each Board. He explained that on joint items, there must be two (2) separate majority votes; if either District fails to obtain a majority vote, the item fails. Ms. Scott questioned if the Districts could alternate the order of individual District issues. Mr. Adams noted that the current layout of District items is used in the management of other Districts.

Mr. Brougham requested Mr. Charbonneau present the proposal for gate improvements.

Mike Charbonneau presented Championship Drive Gate improvements for the Board's review and consideration. He stated Mr. Curland requested pricing for an inbound call box, which is \$4,127.79 for a new call box, button and camera. He stated it will work off of the same phone line and would be placed at the end of the island, adjacent to the entry gate. Mr. Brougham clarified the box would be for someone who drives by the gatehouse, does not have a pass and needs to enter. Mr. Charbonneau stated a quote was included for moving inbound equipment, at \$2,609.07. This would move the existing inbound call box and the visitor pass reader to the same position, at the end of the island, adjacent to the entry gate at the end of the same island, previously discussed. Mr. Brougham questioned if the existing equipment is moved and someone approaches, either outbound or inbound, at the same time, at the same relative spot, if one (1) gate clicker will operate both gate arms. Mr. Charbonneau responded yes and explained that the arm will go up and come down after the car reaches the closing loop. An audience member noted the issue of motorcycles going around the gate. Mr. Brougham stated that it can not be prevented. Discussion was held on the location of the operators and Mr. Charbonneau noted that the sensitivity of the sensors was adjusted to the lowest setting.

**On MOTION by Mr. Brougham and seconded by Mr. Slater,  
with all in favor, the Championship Drive Gate Improvements  
were declined.**

**SEVENTH ORDER OF BUSINESS****Approval of January 27, 2010 Regular  
Meeting Minutes**

Mr. Adams presented the January 27, 2010 Regular Meeting Minutes for the Board's approval. The following changes were made:

Line 42: Delete Ms. Schutt

Line 31: Delete Mr. Robertson

Line 38, 317: Change "Causwell" to "Carswell"

Line 40, 350: Change "Riggio" to "Riccio"

Line 453: Change "Islet" to "Isla Del Sol"

Line 462: Change "The" to "the"

Line 485: Change "Fiddler's Creek" to "the Rookery"

Line 489: Change "Sandpiper" to "Fiddler's Creek Parkway"

Line 492: Change "substantial" to "insubstantial"

<p><b>On MOTION by Mr. Curland and seconded by Mr. Slater, with all in favor, the January 27, 2010 Regular Meeting Minutes, as amended, were approved.</b></p>
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**EIGHTH ORDER OF BUSINESS****Other Business**

Mr. Adams stated that FEMA over-obligated funds that were reimbursement for expenses incurred, related to Hurricane Wilma. He noted a reimbursement is due in the amount of \$35,000; with the District retaining \$48,000. He had extensive communication with FEMA and noted the District has the right to appeal; however, the District would be appealing to FEMA. Mr. Adams stated the release needs to be signed to close out the report and then an appeal can be filed. FEMA is going to require additional information from the vendors that they may or may not have, such as time cards from four (4) years ago. A Board Member questioned if there was a statute of limitations. Mr. Adams noted he has been in discussions for about six (6) months. Mr. Pires questioned FEMA's recourse, if the District refuses to pay. Mr. Adams anticipated FEMA will pursue the entire \$83,000, probably through the court system. A Board Member questioned the amount in the General Fund 002. Mr. Adams stated 002 was established to repay the loan from SunTrust that was used to pay for recovery expenses and is paid four (4) times a year. Mr. Brougham suggested continuing with the appeal.

Mr. Brougham questioned if the District should prepare a cash flow analysis for consideration at the next meeting. Mr. Adams stated he would like to review the filing and the budget in the filing. If the District's assessment is not in the Budget, then the District should consider a cash flow analysis. He noted the healthy fund balance protects the District for, at least, a year. Mr. Brougham questioned if, in court, the funds would begin distribution in arrears.

Mr. Adams explained that the assessment payments are an obligation, but they are in a holding pattern because of the bankruptcy filing. Mr. Brougham discussed the lack of the developer's proactive steps to avoid bankruptcy. Mr. Brougham asked to discuss the option of putting the assessment on-roll, for the next budget year. Mr. Correia expressed the lack of reserves for District #2 and noted that if a developer payment is not made, the District can anticipate an immediate problem.

**NINTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

Mr. Pires discussed the OneSource litigation and requested an executive session at the next Board Meeting. Mr. Adams noted that the Board Meeting has to be opened in the public session, closed for executive session and reopened in public session.

**b. Engineer**

Mr. Cole presented the Series 2005 Pay Draw #43, in the amount of approximately \$3,800, related to the cost of sidewalk connections, preserve clearing, backflow relocation and other miscellaneous items. He indicated he was waiting on a check for the backflow and will resubmit to Collier County for the relocation. Mr. Brougham questioned the actual position of the relocation. He explained it will flow under a bridge, east of the gate house on Marsh Drive; at the end of Phase 3, Unit 1.

Mr. Cole noted that the preserve clearing contractor, Turrell, Hall & Associates, asked the county to inspect the area and the county said they do not have to inspect the area. He noted the ongoing spray is being completed and that he asked for a quote for continuing maintenance. Mr. Brougham questioned the turnover process. Mr. Cole explained that a monitoring report was prepared that stated the areas were cleared, exotic life was growing and the completed work did eliminate significant amounts of exotic plants, while the remaining exotics are being treated. Mr. Brougham questioned the expense to maintain the preserve area. Mr. Cole estimated about \$50,000 for about 100 acres. A Board Member recalled that the Board was going to clear the area and then declare the preserve was cleared and any future growth was considered natural growth. Mr. Cole noted that areas of perpetuity have to be maintained, for instances the aquatic areas are maintained. He noted the preserve areas currently treated and maintained include the area by Hawks Nest and Cardinal Cove, between the entrance and Whisper Trace and a small

area south of Mallards. He outlined certain areas will be turned over to the CDD. Mr. Pires questioned the certification process. A Board Member requested the county inspect the area. Mr. Cole stated that the request can be made. A Board Member noted concern for the wildlife, as the spraying may be harming endangered species. Mr. Adams noted that the District must maintain certain levels as mandated by permits and the District's contract with a qualified, licensed contractor. Mr. Adams noted the herbicides are applied very specifically and generally disintegrate upon contact with the water; however, he did note the timing concerns for disturbing the wildlife. He noted the chemicals being used and the application process are in accordance with the governing agencies. Mr. Adams stated the other option, besides spraying, is manual removal, which is costly.

Mr. Cole stated bondholders' counsel, Ms. Halle Alexander, suggested a request, in writing, for funds pertaining to the entrance lighting at Fiddler's Creek Parkway and US 51. He discussed the need for advanced signage on Championship, Fiddler's Creek Parkway and Sandpiper. He stated a call was made to the county's right-of-way department and they referred him to the state; their response is pending. Mr. Brougham noted that, according to his previous experience, DOT stated the use of advanced signage is only used to pre-warn signaled interventions.

Mr. Brougham questioned if the barricades at the end of Club Center Drive could be removed. An audience member noted there is a telephone pole and piping on the ground. Mr. Cole noted there is a temporary drainage pipe and stated he would look into the possibility of removing the items.

**c. Manager**

**i. Unaudited Financial Statements as of January 31, 2010**

Mr. Adams presented the Unaudited Financial Statements as of January 31, 2010. Mr. Brougham questioned how the legal expense for the bondholders is handled. Mr. Adams stated it is handled through the remedial account. The funds are paid from the general fund and transferred back into the account from debt service funds. Mr. Adams identified the locations within the financials where the Board could track the activity.

**ii. NEXT MEETING DATE: March 24, 2010 at 8:00 A.M.**

The next meeting is March 24, 2010 at 8:00 a.m., at this location.

**d. Operations Manager**

Ms. Crismond stated she will be touring the lakes next month and the landscaping tour on Friday was cancelled, but will be completed next month. The tree trimming of the cassias began February 15<sup>th</sup> and is ongoing. The sidewalk repair will be completed within the next couple of weeks. The patrol stats included 28 total stops; 16 to residents, 7 to guests, 5 to vendors, 2 citations and 26 warnings, with a total of four (4) visits this month.

Discussion was held regarding trip hazards in the community. Mr. Cole noted that there are cones at the areas with a difference in elevation, until they can be fixed. Mr. Brougham questioned the criteria for a trip hazard. Mr. Cole stated he was unsure, but that certain areas allow a ¼" difference. Mr. Pires recommended the Board to address the known trip hazards.

**TENTH ORDER OF BUSINESS**

**Off Roll Assessment Payments**

***\*\*\*This item was addressed during the Second Order of Business.\*\*\****

**ELEVENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Elliot Miller, resident of Fiddler's Creek #2, questioned if interest would accrue, if the Board tries to defer FEMA payments. Mr. Adams stated he was not aware of any interest accrual.

**TWELFTH ORDER OF BUSINESS**

**Adjournment**

**On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, the meeting was adjourned at 10:30 a.m.**

The meeting adjourned at 10:30 a.m.

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman