

**MINUTES OF MEETING  
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #1 &  
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #2**

The Joint Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 and Fiddler's Creek Community Development District # 2 was held on **Wednesday, March 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:**

**For Fiddler's Creek CDD 1:**

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

**For Fiddler's Creek CDD 2:**

James Robertson	Chair
Manuel Correia	Vice Chair
Victoria DiNardo	Assistant Secretary
Gretchen Scott	Assistant Secretary
Peggy Schmitt	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Ron Albeit	Fiddler's Creek Foundation
Mike Charbonneau	Director Safety, Fiddler's Creek Foundation
Carla Barrow (via telephone)	Special Counsel
Elliot Miller	Resident
Al Love	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 8:00 a.m., and noted all Supervisors for both Districts were present at Roll Call.

**JOINT MEETING ITEMS**

**SECOND ORDER OF BUSINESS**

**Update: Foreclosure Claim/Bankruptcy Filing**

Ms. Barrow provided an update on the Chapter 11 Bankruptcy filed by Fiddler's Creek; there are 28 debtors in bankruptcy, which puts an automatic stay on the property so that creditors cannot pursue foreclosure action against the property of the debtor, unless relief is granted by the bankruptcy court. She discussed that courts are hesitant to grant relief where creditors have an ample equity cushion in the collateral; meaning, the debtor owes the creditor an amount that the equity in the property can cover. Bankruptcy courts like to give the debtor a fresh start and an opportunity to reorganize their affairs and figure out a plan to repay creditors, without creditors seeking recourse to the collateral. Most recently, financing was approved for the debtors to pay certain administrative expenses and the budget for the expenses, including a portion of the O & M Assessment; however, the timeframe for payment is unknown and the last hearing indicated about 13 weeks. She has been working with bondholders' counsel and discussed the upcoming hearing on April 14<sup>th</sup>. Ms. Barrow stated she will continue to seek protection on the O & M payments, as they have been approved. She discussed the banks have loans, underneath the CDD liens, and are interested in maintaining the value of the land. Discussion ensued on the completion of a proof of claim, due May 10<sup>th</sup>, whereby creditors file a form that states the amount due. She did not anticipate that the court will be inclined to lift the stay and allow the District to move forward on the foreclosure action; instead, she anticipated the court allowing the debtor time to propose a plan to repay creditors. Ms. Barrow stated she will continue to protect the interest of the O & M payments and seek to increase the budget to include the on-roll assessments.

Mr. Brougham questioned the number of debtors. Ms. Barrow stated there are 28 debtors. Mr. Brougham questioned the completion of an independent appraisal. Ms. Barrow stated she did not receive authorization from bond counsel for an independent appraisal. Mr.

Brougham questioned if the debtor was receptive to paying the on-roll assessments. Ms. Barrow explained that the original budget reflected CDD assessments and did not reflect on-roll or off-roll and the explanation was given that the on-roll and off-roll debt is the same, but the difference is the collection mechanism. She anticipated that the numbers in the budget will be changed to cover the costs of preservation of the lien and cover on-roll and off-roll expenses; all of which will be addressed at the April 14<sup>th</sup> hearing.

Mr. Brougham questioned if the debtors would have to commit to pay their Collier County delinquent taxes. Ms. Barrow explained that taxes do have to be paid in full; there are mechanisms that can be obtained from the bankruptcy court that would assist the District. She stated that she is not proposing that the District has the answer or the mechanism that would allow prompt collection; however, the District can quantify the numbers and work towards a mechanism to complete the payment.

Mr. Slater questioned why the District should not progress with the lien procedure, up to the filing point. Ms. Barrow clarified that the decision has not been made to not begin foreclosure action; however, the bondholders have not provided instructions to proceed, seeking the stay relief. She explained that the burden of proof is on the District to prove that the District is undersecured and the property is not necessary for an effective reorganization. At this time, it does not appear that the CDD is undersecured; rather, they are fully secure with an equity cushion and the debtors fully intend to rely on the property to reorganize.

Mr. Schutt questioned if all the title work on the property is complete. Ms. Barrow replied that there are portions of the property that are not complete and the title company is working to complete the title.

Ms. Barrow explained that she filed an opposition to the debtor in possession financing, solely to point out weaknesses in their strategy, concerns over the debtors plans to reorganize, pointing out deficiencies in the budget and requesting adequate protection, with respect to the debt assessment. She stated that she was specifically instructed to protect the District's right to the O & M payment and to coordinate with the bondholders, with respect to the debt assessment payment.

Mr. Curland questioned if the collection of O & M assessments is going to be paid on a going forward basis and whether the previously unpaid amounts will be considered. Ms. Barrow stated that when the funds are released, they are going to be for a period, from the date of the

filing, forward. Payments are anticipated to be made on a six (6) to 13-week basis. Mr. Adams stated that the District is missing the payment for the month of February and the 13-week budget included District funds for the month of February. He discussed that Mr. Albeit has a check for the March off-roll assessments. Ms. Barrow requested copies of the check.

Mr. Elliot Miller questioned if the District will file a proof of claim to receive complete payment. Ms. Barrow confirmed that a proof of claim will be filed and the District can use strategies in terms of receiving payment via a plan or through collateral. She explained that the purpose of the proof of claim is to ensure that the proper amounts are on record and the receipt of payment is a matter of timing.

Mr. Correia questioned if the developer will, at a future time, be up to date on their payments to the District. Ms. Barrow anticipated that it is more likely to occur with the O & M payment, than the debt service payment. She explained that the debtors want to make sure that the collateral is protected, thus the payment of the O & M assessments, as an administrative expense, is recognized as appropriate. She anticipated that it is less likely that the debt service will be paid, until a clear, outlined restructure is completed.

Mr. Al Love questioned if the \$162 million in debt included the bondholders. Ms. Barrow stated the money does not include the debt to bondholders and the \$160 million figure relates to the bank's financing. She stated off-roll debt is estimated at about \$98-99 million and she did not recall the on-roll number. A Board Member questioned if all the numbers were included in the bankruptcy court filing. Ms. Barrow stated the numbers were in the opposition papers; a schedule was completed, by debtor, for the off-roll.

Ms. Barrow requested guidance from the Board, in terms of objections. Mr. Brougham stated that the strategy for the stay should not be altered. He asked Ms. Barrow to aggressively pursue the completion of title commitments and the issue of the on-roll assessments, including the February assessments.

### **THIRD ORDER OF BUSINESS**

#### **Other Business**

Mr. Brougham discussed the complaints regarding the signage and the lighting of the signage at the new entrance on US 41. He asked Mr. Cole to investigate what can be done to provide better signage identifying the entrance. Mr. Cole stated that the Department of Transportation's (DOT) policy is that, unless it is a signalized intersection, you cannot have

advanced signage saying, "Fiddler's Creek Next Right"; however, it can be requested and the DOT will consider it.

Mr. Cole stated another engineer designed the entrance and clarified that the sign is needed for those driving east on US 41, with a sign on the south side of the road. Mr. Correia requested that the foliage be cleared. Mr. Cole stated he will look into the District's options. He explained that he has a call in to the county regarding the temporary, fire backflow assembly and anticipated that it will be gone within a few months.

Mr. Robertson asked when the Board is going to discuss the District's bid specifications. Mr. Brougham stated a workshop was to be considered to discuss procedural matters and needs to be scheduled, including the rules of procedure and bid specifications for all bids. Discussion ensued on establishing a date for the workshop and the legality of a Board Member discussing bid specifications with a bidder. Mr. Pires confirmed that no laws were violated when Mr. Schutt contacted a security agency. Mr. Schutt explained that he contacted Wackenhut to ask why they did not submit a proposal for the District's security bid. He stated Wackenhut explained why they did not submit a bid, which prompted Mr. Schutt to question the Districts' bid procedures. Mr. Schutt noted that Wackenhut was not a bidder.

Mr. Pires summarized that the workshop will review the Districts' Rules of Procedures, the Board will allow the audience to attend and provide questions/comments after the Boards exhaust their discussion. The workshop was set for April 28<sup>th</sup> at 11:00 a.m.

Mr. Adams stated the new security vehicle arrived and has been in use for about a month. He requested the existing vehicles, model years 2004 and 2007, be considered for disposal, as prescribed by law, as surplus equipment. He explained the 2007 vehicle was in worse condition and recommended that the Board authorize Staff to advertise as surplus bid, the sale and disposal of the 2007 Crown Victoria security vehicle.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Brougham, with all in favor, authorizing Staff to advertise as surplus bid, the sale and disposal of the District's 2007 Crown Victoria security vehicle, in accordance with Florida Law, was approved.**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, authorizing Staff to advertise as surplus bid, the sale and disposal of the District's 2007 Crown Victoria security vehicle, in accordance with Florida Law, was approved.**

**FOURTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

There being no report, the next item followed.

**b. Engineer**

Mr. Cole presented Pay Draw #51 for the 2005 Series Bond, in the amount of \$1,400 for engineering services related to follow up items on the punch list.

Mr. Cole discussed, in relation to CDD #2, an item on the bondholders' approval list is the FPL Performance Guarantees, for work related to Avia Mar 5U2 and in Veneta. The purpose of doing the work is to obtain preliminary acceptance of the subdivision improvements from Collier County. The work would complete an entire project, making the lots ready for sale. He noted he is working with FPL to obtain the contracts necessary to install the remaining utility infrastructure, i.e., street lights and pump stations.

Mr. Cole stated he will apply to the State of Florida for additional signage. He questioned how the District anticipates paying for the additional signage, as it is not included on the bondholders' list. He anticipated the cost to be a few thousand dollars for the permitting and the installation; however, the lighting will cost more than the sign. He stated he can present the permit and sign costs at the next Board meeting. Discussion ensued on the use of the current sign.

In relation to CDD #1, Mr. Cole presented Pay Draw #44, in the amount \$14,000, for fees related to the Belle Meade Exotic Removal Clearing. He stated Collier County was very happy with the project and the clearing of exotics has to occur in perpetuity. He said he is working to obtain a price for an annual, ongoing clearing, anticipated to be around \$50,000, for a few hundred acres. Discussion ensued on the boundaries of the preserve. He noted the location of effluent ponds owned by the City of Marco. He presented a proposal for ongoing maintenance of the exotics, as previously approved by the bondholders. Mr. Adams emphasized that the

agreement for treating the preserve areas, in the amount of \$11,500, is currently paid from construction funds and not the CDD's operating funds.

Mr. Cole presented a proposal for removing the temporary canal crossing at the end of Club Center Boulevard. He explained that there will be a guard rail with three (3), nine (9) button reflectors.

Mr. Cole stated he contacted bond counsel regarding the main entry lighting. He summarized the sidewalk construction on Championship Drive is ongoing.

A resident questioned the reasoning for a street light not working. Mr. Brougham stated all the lights should be on sensors and the sensor may be bad. A resident questioned the replacement of frost damage landscaping and the reason for the pressure cleaning. Ms. Crismond stated all frost-damaged plants were replaced throughout both Districts. She stated the pressure cleaning was part of the operating budget, as a continuing maintenance item and it cleaned the mildew off of the sidewalk. Mr. Pires noted that the pressure cleaning is routine maintenance to help minimize potential CDD liability related to slips and falls, due to mold and mildew build up.

**c. Manager**

**i. NEXT MEETING DATE: April 28, 2010 at 8:00 A.M.**

The next meeting is April 28, 2010 at 8:00 a.m., at this location.

**d. Operations Manager**

Ms. Crismond presented the Operations Manager's Report for Districts #1 and #2. She stated the tours are ongoing for lake maintenance. Numerous dead and dying fish were observed in several lakes due to golden algae, which is a toxic plankton. She recalled a massive fish kill in Lake 50A. It was the first documented fish kill in the State of Florida and options for controlling the deadly plankton are still unknown. She noted the problem has existed in Texas, since the 1980s and the algae typically exists in brackish systems and prefers cold water. She noted that LakeMasters immediately responded, took water samples and transported a fish for additional testing. The water results confirmed golden algae, treatment was completed on March 11<sup>th</sup> and no further fish kill has been documented. Mr. Brougham noted this incurred some unbudgeted, additional expenses. He recalled a phone conversation with Mr. Adams regarding this emergency situation and the expense of the treatment. Mr. Adams stated the treatment cost about \$14,000 and the algae is a naturally occurring species. He discussed that the county has

battled the same problem within their drainage system and was very interested in the positive results of our treatment.

Ms. Crismond stated the Cassia Tree Reduction Program is complete. She noted the patrol services were increased to twice a week, through April 15<sup>th</sup>. Mr. Brougham questioned if repeat offenders will be checked and expressed concern for an increase in patrol and citations. Mr. Charbonneau confirmed that every person that is stopped is checked to see if a warning was previously issued.

Ms. Crismond stated she met with Mr. Schutt and identified numerous locations on Mulberry for sidewalk repairs; the cost to complete the repairs is \$9,175. Mr. Brougham questioned if the repairs come out of bond money. Mr. Adams stated the money comes from O & M.

Mr. Brougham questioned the status of the Sandpiper Gate. Mr. Albeit stated that the permitting for Sandpiper Gate is about to conclude and anticipated work beginning within 30-days of the Notice of Commencement being filed.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, with all in favor, the Joint Session was adjourned.**

**\*\*\*The Meeting was recessed.\*\*\***

**\*\*\*The Meeting reconvened at 9:42 a.m., with all Board Members present.\*\*\***

## **FIDDLERS CREEK CDD #2 ITEMS**

### **FIFTH ORDER OF BUSINESS**

### **Approval of February 24, 2010 Regular Meeting Minutes**

Mr. Adams presented the February 24, 2010 Regular Meeting Minutes for the Board's consideration. The following changes were made:

Line 25: Change "Kolton" to "Torben"

Line 174: Change "Kolton" to "Torben"

**On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo and seconded by Ms. Scott, with all in favor, the February 24, 2010 Regular Meeting Minutes, as corrected, were approved.**

**SIXTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
February 28, 2010**

Mr. Adams presented the Unaudited Financial Statements as of February 28, 2010. He noted the check received today, from the developer, will be booked towards March and the statements will continue to reflect a "due from developer" for February.

**SEVENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Christensen requested the posting of the meeting agendas.

Discussion ensued as to the Board's policy of having a street light on, continuously, where the community is not developed. Mr. Pires recommended having the lights on for safety reasons. Mr. Adams noted that the lights are charged on a tariff basis. Regardless of whether the light is on or not, the District is charged a flat amount, per month/per light, in the \$5 to \$6 range.

Mr. Correia noted that, on April 1<sup>st</sup>, the Community Members Committee will hold a meeting with the Districts' attorney, in regards to the bankruptcy proceedings. Mr. Brougham noted it is a committee of homeowners, appointed by the US Bankruptcy Trustee.

**EIGHTH ORDER OF BUSINESS**

**Adjournment: Fiddler's Creek CDD #2**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Correia and seconded by Ms. Schmitt, with all in favor, Fiddler's Creek CDD #2 portion of the meeting was adjourned at 9:55 a.m.**

**FIDDLER'S CREEK CDD #1 ITEMS**

**NINTH ORDER OF BUSINESS**

**Off-Roll Assessment Payments**

Mr. Adams noted that all Board Members of Fiddler's Creek CDD #1 were present.

Mr. Brougham noted that the District received payment for the March O&M assessments and the District will pursue payment for the February meeting.

**TENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

***\*\*\*This item, originally the Thirteenth Order of Business, was discussed out of order.\*\*\****

Mr. Brougham asked if there were any Audience Comments.

A resident noted the agenda for today's meeting was not posted on the website.

**ELEVENTH ORDER OF BUSINESS**

**Executive Session**

***\*\*\*This item, originally the Twelfth Order of Business, was discussed out of order.\*\*\****

The appropriate parties entered into Executive Session at 10:05 a.m.

The regular meeting reconvened at 10:18 a.m.

Mr. Pires requested direction from the Board as to whether to file an offer of settlement or offer of judgment.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Brougham, with Mr. Schutt dissenting, the filing of an offer of settlement in the amount of \$25,000 and the initiation of Discovery, with a not to exceed amount of \$300 in attorney fees, was approved.**

**TWELFTH ORDER OF BUSINESS**

**Approval of February 24, 2010 Regular  
Meeting Minutes**

***\*\*\*This item, previously the Tenth Order of Business, was discussed out of order.\*\*\****

Mr. Adams presented the February 24, 2010 Regular Meeting Minutes for the Board's review. The following changes were made:

Line 48: Change "District" to "debtor"

Line 22: Change "Terry" to "Tony"

Line 61: Change "objective" to "objection"

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Slater, with all in favor, the February 24, 2010 Regular Meeting Minutes, as amended, were approved.**

**THIRTEENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
February 28, 2010**

*\*\*\*This item, previously the Eleventh Order of Business, was discussed out of order.\*\*\**

Mr. Adams presented the Unaudited Financial Statements as of February 28, 2010 and noted that funds in the Community Bank of Broward will be transferred in order to comply with the FDIC limits. Mr. Brougham questioned the Capital Lease Inception line item. Mr. Adams replied it is the financing related to the District's recently acquired security vehicle. Even though we financed the vehicle, the revenue from the lease proceeds has to be recognized, in its entirety, in the year in which it is received.

Mr. Brougham questioned when the Board will see the audit. Mr. Adams anticipated at the April meeting.

Mr. Adams explained that the gatehouse maintenance expense was due to the overhang being hit. Ms. Crismond stated the District should be getting reimbursed from the company or insurance.

Mr. Adams explained the operating supplies line item includes remotes purchased for general circulation and by the Rookery Membership.

Discussion was held on the format of the agenda. Mr. Brougham recommended alternating, monthly, the order of each District's specific agenda items.

▪ **Audience Comments/Supervisors' Requests – Continued**

A resident questioned if a tree is going to be moved or destroyed on the sidewalks where work is being done. Mr. Brougham requested that the palm tree be replanted.

Ms. Crismond asked for the Board's approval for sidewalk repairs on Mulberry; the cost being \$9,175. A Board Member questioned how the repairs would be paid. Mr. Adams stated it would come from the O&M. Mrs. Brougham recalled that the District may be liable, as the Board has acknowledged the issue. Mr. Pires stated that the District acknowledged the situation and can either warn people of the problem or repair the problem. Discussion ensued on the cost

of the project and the proposed hazards. Mr. Adams stated the engineer reviewed the situation and stated the area is a trip hazard.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Brougham, with all in favor, the sidewalk repairs on Mulberry Lane were approved.**

Mr. Adams stated that he was not able to submit an appeal to FEMA for the over-obligation of funds received after Hurricane Wilma. In order to file an appeal, we needed to submit additional backup paper work which, among other things, included time cards from private vendors. Those documents do not exist, five (5) years later, from these private companies. According to the program's staff, an invoice for the overage is expected to be issued in the next couple of months. He explained that he asked to speak with the head administrator, Bob Seibert, at some time in the future, to go on record regarding the District's dissatisfaction in how the entire program was administered, from the state's perspective, and how it is essentially penalizing entities, such as ourselves. Mr. Pires questioned how the program was administered. Mr. Adams stated, for this event, it was a dual administration by both FEMA and the state, but going forward, it will be administered solely by the State of Florida. Mr. Pires stated he can contact the local state representative or senator to discuss issues with the agency.

**FOURTEENTH ORDER OF BUSINESS**

**Adjournment: Fiddler's Creek CDD #1**

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Slater, with all in favor, the Fiddler's Creek CDD #1 portion of the meeting was adjourned at 10:45 a.m.**

**FIDDLER'S CREEK CDD #1 &  
FIDDLER'S CREEK CDD #2**

**March 24, 2010**

**Fiddler's Creek CDD #1**

  
Secretary/Assistant Secretary

  
Chairman

**Fiddler's Creek CDD #2**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair