

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

The Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #1 was held on **Wednesday, September 24, 2008 at 10:30 a.m.**, at **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

**Present at the meeting were:**

Phillip Brougham	Chairman
Alexander Love	Vice Chairman
James Curland	Assistant Secretary
James Robertson	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Anthony Pires	District Counsel
Matt Morris	Client Services Manager
Jim Vajen	Gulf Bay
Ron Albeit	Fiddler's Creek Foundation
Mike Charbonneau	Security
Carlo Zampogna	Assistant District Counsel

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 10:30 a.m., and announced that all Supervisors were present with the exception of Supervisor Schmitt.

**SECOND ORDER OF BUSINESS**

**Staff Report: Engineer**

Mr. Cole presented the following pay draw:

Draw #27, 2005 Series Bond, approximately \$30,000, primarily for ongoing clearing work discussed over the past several meetings.

Mr. Brougham asked about the status of available funds for the sidewalk ramp work. Mr. Cole advised that there appears to be funds; he would discuss this with the developer and report to the Board at the next meeting.

**THIRD ORDER OF BUSINESS**

**Presentation/Discussion: CDD Ownership and Maintenance Responsibilities Within Road Right-of-Ways in Single Family Neighborhoods**

Mr. Pires recalled previous discussion about the CDD's responsibility for sidewalk maintenance within certain villages of Fiddler's Creek. He advised that he had looked at Cherry Oaks Trail, Cranberry Crossing, Mulberry Lane and Mahogany Bend Drive. Mr. Pires stated that the Cherry Oaks Trail right-of-way is dedicated to CDD #1; the engineer confirmed that the roadway and sidewalk within this village is located entirely within the CDD right-of-way. Mr. Pires advised that the Mulberry Lane right-of-way was assigned to the CDD through an assignment of reservation; however, one sidewalk easement outside the right-of-way that runs across the front of every lot in Mulberry Road Village was not assigned to the District. Mr. Pires advised that the Mahogany Bend Drive right-of-way was assigned to the District; the engineer confirmed that the sidewalk in this village lies solely within the District.

In summary, Mr. Pires said the District has the maintenance responsibility for sidewalks within its right-of-ways on Cherry Oaks Trail and Mahogany Bend Drive. With regard to Mulberry Lane, the master covenants for Fiddler's Creek require property owners to maintain the sidewalk easement located within the Village; however, the District needs to maintain its portion of the sidewalk within Mulberry Lane. He recommended that the sidewalk easement reservation be formally assigned to the District to clearly delineate its ownership and responsibility.

A question was raised regarding maintenance of pavers on the sidewalk within the Cherry Oaks Trail right-of-way. Mr. Pires commented that pavers that are extensions of driveways are not the CDD's responsibility.

A question was raised about liability for the sidewalk on Mulberry. Mr. Pires advised that both parties were liable.

Mr. Love asked whether notification would be sent to homeowners if the sidewalk on Mulberry was assigned to the District. Mr. Brougham said if the Board took this route, it would formally communicate to the HOA and all residents on this street.

A Board member asked whether the area between the curb and sidewalk is the responsibility of the District or the homeowner. Mr. Pires said landscaping installed on the right-of-way is the District's responsibility. Mr. Adams explained that as each home site is developed, the property owners are responsible for maintaining landscaping that they install within this area. Mr. Pires referred to the Mulberry Village restrictions and read the following: *"Each owner shall be responsible for the maintenance of landscaping, lawn and other site improvements installed by owner in the residential unit. The residential unit is the platted tract of land to the edge of the road pavement abutting the residential unit."* He clarified that landscaping installed by the developer, for the property owner, should be maintained by the property owner to the edge of the roadway.

Mr. Brougham stated that the Board wished to end speculation about easements, ownerships and covenants. He said the Board wanted to move forward with the attorney's recommendations to establish a clear and consistent policy on power washing sidewalks on the three (3) streets as discussed, in addition to sidewalks on other District roadways.

Discussion ensued further on this topic.

**On MOTION by Mr. Brougham and seconded by Mr. Love, with Mr. Robertson dissenting, and Mr. Curland in favor of directing Mr. Pires to draft a resolution memorializing the CDD's responsibility for sidewalks for review at the next meeting. (Motion passed 3-1)**

#### FOURTH ORDER OF BUSINESS

#### Approval of August 27, 2008 Public Hearing and Regular Meeting Minutes

Corrections to the minutes were provided as follows:

Line 287: Change "Scott" to "Schmitt"; Change "Ms. DiNardo" to "Mr. Love".

Line 300: Change "two" to "one"; Change "lakes were" to "lake fountain was".

Line 309: Delete "Board's".

Line 311: Change "replace" to "re-brace".

Line 316: Change "Menaggio" to "Bellaggio".

Line 338: Insert new paragraph and subheading "Gatehouse Procedures".

**On MOTION by Mr. Brougham and seconded by Mr. Love, with all in favor of approving the August 27, 2008 Public Hearing and Regular Meeting Minutes, as corrected.**

**FIFTH ORDER OF BUSINESS**

**Other Business**

There being no Other Business, the next item followed.

**SIXTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

Mr. Brougham asked about the status of Mr. Pires' efforts on transfers between lake properties and the District. Mr. Pires said he was waiting for the developer to clarify these transfers.

Mr. Brougham asked about the status of the transfer of the temporary easement on Montreux. Mr. Pires advised that the transfer has been drafted and will be executed by the developer; this should be completed by the next Board meeting.

**b. Manager**

**i. Unaudited Financial Statements as of August 31, 2008**

Mr. Adams presented the Unaudited Financial Statements as of August 31, 2008.

Mr. Brougham asked Mr. Adams to address the \$54,137 entry under Assessments Due From Developer. Mr. Adams explained that there was a footnote indicating that as of August 31, 2008, this money had not yet been received; however, since that time, and specifically on September 2<sup>nd</sup>, the funds were received. He stated that staff was still working on the timing of invoices and that he and Ron Albeit would be copied on email transmissions between accounting departments to ensure these are handled prudently.

Mr. Brougham said he had asked Mr. Adams on the telephone about the \$7,620 item; Mr. Adams had advised that a large amount of this was booked incorrectly. Mr. Adams stated that \$1,400 of this was booked under Access Control Operating supplies. Mr. Adams briefly explained various line items.

Mr. Brougham requested footnotes added to the Operating Expense summary for any re-classifications.

Mr. Brougham referred to page 15 under the Debt Service Fund, Series 2005 Bonds, Interest Income, year-to-date \$45,189, which appears as 382% of the budget. He asked how the interest income figure could have been budgeted in the Debt Service account.

Mr. Brougham also referred to page 17 and commented on the \$21,592 of Interest Income against the year-to-date budget of \$3,547.

Mr. Brougham requested that Mr. Adams provide answers on these two items and email the Board members.

**ii. Status of Contracts for Irrigation System Test**

Mr. Morris advised that he spoke with Mike from Aquamatic about amending his proposal to remove some of the sampling work. He said he anticipated having the contracts in place by the end of the following week; staff hoped to begin the study on the system over the next two (2) to three (3) weeks. Mr. Brougham said staff should push to complete the study prior to the onset of the dry season.

**iii. Alternative Investments for Operating Accounts (Low Risk vs. Return)**

Mr. Adams advised that staff had planned to present some options to consider for investing the fund balance in the operating fund. He stated that one (1) week earlier, in light of recent bank failures, staff moved funds into Federally backed money market funds that offered higher security but lower interest yields. Mr. Brougham stated that as Treasurer, Mr. Wrathell has the authority to make such decisions. Mr. Brougham advised the Board that he was involved in a discussion with Mr. Wrathell prior to this decision being made. Mr. Brougham asked where the bond funds were located. Mr. Adams advised that these were also in Federally backed money market funds. Mr. Pires asked whether these instruments are direct obligations of the U.S. Treasury. Mr. Adams responded affirmatively. Mr. Pires advised that the Florida Legislature adopted a statutory scheme stating that local governments could have a written investment policy outlining various investment vehicles or choose not to have a written policy and use a default investment scheme under State Statutes. Mr. Pires advised that a subsection of the Statute has been renumbered since the Board adopted its investment policy. Therefore, he would come back at the next Board meeting with a resolution to amend the statutory reference accordingly.

It was commented that all the Board members did not receive notification about Mr. Wrathell's decision to move the funds until one month later. Mr. Adams advised that the funds are more secure where they are located; however, due to the significance of recent events, the

decision was made to move quickly. Mr. Brougham requested that in the future, Mr. Adams or Mr. Wrathell inform all Board members, as well, of these types of significant actions.

**c. Operations Manager**

**i. September Access Control Test**

**Access Controls:** Ms. Crismond advised that the quarterly testing report was enclosed for the Board's review. She explained that the investigator had come to the community as a floral delivery person. The investigator reported that the guard did not ask for identification, verify the person had flowers, also noted the vehicle was not marked as a floral company, was not provided directions on how to use the passes bar scanner for exiting and was given a pass for more than 24 hours. Discussion ensued on this topic. It was pointed out that of the findings provided by the investigator, insuring the explanation on how to use the passess bar scanner would be a good point to review with the guards to insure this is a part of their routine dialogue with visitors and the highlighting of the fact that the computer had recently defaulted back to a 48 hour pass setting, instead of 24 hour, were very beneficial findings and that the rest of the findings were not consistent with the access procedures.

**Lake Fountains:** Ms. Crismond reported that lake fountains were currently not running. She stated that it would cost \$11,300 to replace the 7 1/2 horse power pump needed to repair the fountains. Mr. Brougham felt the Board needed to move forward, if other sources for a pump were exhausted. Ms. Crismond said this came with a warranty.

Discussion ensued briefly on this topic.

Ms. Crismond said this price included replacement of the pump and the motor. A concern was raised about the costs of replacing pumps on an ongoing basis. Mr. Brougham said he had a conversation with Ron and Jim about running the pumps on an alternate basis; however, this did not seem the best solution. He felt the Board needed to look at the options on the table each time a pump malfunctioned. A Board member recalled previous conversation where the Board said it would let the pumps run until they failed; he felt the time had come to make a decision regarding the pumps.

**On MOTION by Mr. Brougham and seconded by Mr. Robertson, with Mr. Love and Mr. Curland dissenting the approval of the \$11,300 expense to replace the fountain pump. 2-2 (Motion failed).**

Mr. Brougham asked that this item be placed on next month's agenda.

A concern was raised that the Board had recently spent considerable funds to refurbish the fountains. It was commented that the motor should be replaced in order to run the fountains and objected to the idea of leaving the fountains off. Mr. Brougham said the Board is still in the same position and would run the fountains 15 minutes per day, twice a day.

**Lake Maintenance:** Ms. Crismond reported that staff continued to tour the property and littoral plantings would be scheduled in the next three weeks.

**Patrol Services:** Ms. Crismond reported that she was working with Mr. Charbonneau, but there has still been no patrol in the community for the past three months. Mr. Charbonneau stated he contacted the police chief who stated he will follow up on this issue.

**Landscaping:** Ms. Crismond recalled that she was given direction to issue a Defective Work Notice to One Source in July. She referred to a listing of various areas of concern on the property. Ms. Crismond said that upon her inspection, various areas of the property were not yet completed. She spoke of ongoing communication problems between herself and One Source regarding work needed on the property after Tropical Storm Fay.

Concerns were raised about Ms. Crismond's frustration with the non-responsiveness and poor performance of One Source with respect in light of their contract specifications. Mr. Vajen said he was surprised the firm was hired a second time after previous non-responsiveness. Mr. Brougham commented that this matter concerned a \$673,000 contract with One Source and said work deficiencies were noted from early summer. He commented that the Board should not have to fight with a vendor regarding its performance. He stated that under the terms of the contract, they could be given 30-days notice without cause and immediate notice with cause. Mr. Robertson asked what would be done if the firm was given notice. Mr. Pires said if there was no reason for an emergency contract, the Board needed to follow the competitive solicitation process if it terminated One Source without cause. He explained that an emergency contract was necessitated by an unexpected turn of events beyond the Board's control, wherein delays in competitive solicitation would be detrimental to the District.

A Board member commented that the Board had the right to terminate this contract without cause on December 1. It was asked whether the Board could simply go through the normal bid process over the next two months until the contract expires. Mr. Adams responded affirmatively.

A Board member pointed out that the landscape contractor for CDD #2 was the Number 2 bidder for District #1 during the last solicitation process.

**On MOTION by Mr. Curland and seconded by Mr. Love, with all in favor of directing staff to re-bid the contract for landscaping effective December 1<sup>st</sup> and making proper notification to One Source.**

Mr. Adams said this item will be brought back on the November 19<sup>th</sup> agenda. Mr. Brougham asked what the options are if there is a further decline in performance after the Board gives One Source notification. Mr. Pires advised that after receiving notice by the District, if One Source does not perform appropriately, the District can back charge the company. Mr. Brougham recommended that, if necessary, the Board use True Green for supplemental maintenance efforts.

**Irrigation:** Ms. Crismond advised that Irrigation Pump 5 was damaged in the process of being replaced. The replacement would cost \$8,800.

**Tropical Storm Cleanup:** Ms. Crismond advised that she had received an invoice for \$24,586.

**Tree Replacement:** Ms. Crismond stated that Mr. Vajen and Mr. Albeit went to the nursery to look at the trees. She commented that she was quoted between \$1,500 and \$2,200 per replacement tree, for 25-foot trees. She advised that six (6) Royal Palm trees were hit by lightning on the opposite side of the north lake, at the main entrance. Ms. Crismond asked for direction on the timeline for installing the replacement trees. Mr. Vajen said mid-November was fine.

Mr. Curland voiced concern once again about the expense involved in replacing parts for fountains. He requested the fountains be run for longer periods between now and next month to determine their condition. Discussion ensued on this topic.

**SEVENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

There being no Comments or Requests, the next item followed.

**EIGHTH ORDER OF BUSINESS**


**Adjournment**

**On MOTION by Mr. Love and seconded by Mr. Robertson,  
with all in favor of adjourning.**

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

*\*\*\*Adjournment time not noted.\*\*\**

  
Secretary/Assistant Secretary

  
Chairman/Assistant Chairman