

**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, December 14, 2011**, immediately following the Joint Access Control Specifications Workshop at **8:00 a.m.**, at the **Fiddler's Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114**.

Present at the meeting were:

Phil Brougham	Chair
James Curland	Vice Chair
Gerald Bergmoser	Assistant Secretary
Jim Schutt	Assistant Secretary
Robert Slater	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Tony Pires	District Counsel
Terry Cole	District Engineer
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel CDD #1
Joe Parisi	Developer - Gulf Bay
Mike Williams (via telephone)	Bond Counsel
Mike Charbonneau	Foundation-Director of Safety
Betty Lirot	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 9:12 a.m., and noted, for the record, that all Supervisors were present, in person.

SECOND ORDER OF BUSINESS

Update: Bankruptcy Proceedings – Aleida Martinez Molina

Ms. Martinez Molina reported that the reorganized debtors filed a motion to be heard on an expedited basis regarding approval of the sale of 227 home sites to Lennar Homes. The parties worked very hard to develop language for a proposed agreed order that would alleviate any concerns. The District's concerns were that the sale, or the closed order to the sale, would grant the future purchasers rights beyond what was contemplated in the plans of reorganization.

As of yesterday morning, attorneys for the reorganized debtors, the CDDs and most of the various bond series' representatives were on board with the language and were going to walk it to the court. A few hours prior, counsel for the indenture trustees, Series 2005 and 2006 bonds, filed an emergency motion to continue that hearing, along with a motion to withdraw the reference. Basically, it was to have the issue heard by the court of appeals. This action caused the hearing on the Lennar sale order to be continued to Friday morning to see if the indenture trustees' issues can be resolved.

Regarding the appeal, Ms. Martinez Molina indicated it is still in the early stages. The reorganized debtors filed a motion to dismiss the appeal on very basic grounds. Last week the appellants, US Bank, filed a response to the motion to dismiss. Nothing has been set for argument and the case is not fully briefed; therefore, they still have a ways to go with regard to the appeal. Technically, the CDD does not need to take action, at this point. She noted the District is caught in the middle, as yesterday's situation, because the appeal is still there and things can happen to delay the normal course of business of the reorganized debtors.

Mr. Bergmoser referred to the agreement to sell the 220 lots not being in accordance with the agreement from the bankruptcy and asked the differences and how it affects the CDD. Ms. Martinez Molina indicated the concern was that there might be language that could be interpreted to say the ultimate purchasers would be able to enjoy certain benefits that were meant for the reorganized debtors; however, that issue was resolved with different language. In response to Mr. Brougham's question, Ms. Martinez Molina confirmed there is no material effect on the District, at this time. Mr. Brougham asked if the appeal impedes the implementation of the bankruptcy plan. Ms. Martinez Molina stated the plan was consummated; however, to the extent there is an appeal, it allows counsel for US Bank to do what they did yesterday; for example, say the otherwise mundane sale order should not be heard by the bankruptcy because it affects their appellate argument. Ms. Martinez Molina stated it is a rather academic exercise; however, the appeal is not materially affecting the CDDs but it can and does affect the course of business as the reorganized debtors move forward.

Mr. Schutt recalled an issue relative to payment of back taxes and the allocation to the proper category and asked if the matter was resolved. Mr. Pires indicated the escrow agreement was signed November 28 and the money is in his trust account. The necessary forms were delivered to the tax collector and Ms. Alice Carlson will follow up with them regarding

allocation. Mr. Adams stated his understanding is that the tax collector's office must reenter all of them and reissue the revised tax bills; they must be received and agreed upon by the debtor, in order to release the funds from the escrow account. Mr. Adams advised that he has not heard back regarding the tax collector's time frame.

Ms. Barton indicated a motion was filed, in bankruptcy court, by the debtors trying to approve the process with the Collier County Tax Collector. Progress is being made. Mr. Adams clarified that the motion relates to only CDD #2.

In response to Mr. Curland's question, Mr. Brougham indicated the off-roll payments were received but the on-roll assessment arrearage has not been received, as it is the money tied up in the escrow. Mr. Adams confirmed the amount is approximately \$316,000. Mr. Adams advised that revenue receipts are arriving from the tax collector's office for the current fiscal year.

THIRD ORDER OF BUSINESS

Developer's Report/Update

There being no developer's report or update, the next item followed.

FOURTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole presented Pay Draw #64, related to the 2005 Series bond, for \$271 related to soft costs for providing updates regarding where things stand with the bonds. As discussed last month, he is working towards completing the lake conveyance and water management district certification documents to be funded by the general fund. He indicated that, according to Mr. Adams, payments have not been received but are expected within the week.

FIFTH ORDER OF BUSINESS

Discussion: Results of Repair of Lake Erosion Areas RFP and Direction on How to Proceed

******This item, previously the Sixth Order of Business, was presented out of Order.******

Mr. Cole reported that no bids were received for the lake erosion repairs. He noted bidders were hesitant to bid on a project requiring them to keep their prices the same for the next three (3) years and being further limited in their bonding capabilities on the projects. A secondary concern was the three (3)-year contract tying up their bond capacity. Mr. Cole

recommended issuing Addendum #3, to those that attended the mandatory pre-bid meeting. The intention is to put Phase 1 out to bid and he is confident they will have some bidders. Mr. Adams noted that if this project is bid on a yearly basis, it will not exceed the required sealed bid threshold; therefore, this can be accomplished through a simple addendum to the contract.

A Board Member stated he is not comfortable with the addendum approach. Discussion ensued regarding the time and cost of going through the sealed bid process again. Mr. Pires confirmed that, regardless, the District does not need to readvertise, to proceed with the addendum approach. Mr. Brougham asked how many parties are currently interested and whether any are willing to compromise. Mr. Cole indicated there are approximately three (3) interested bidders but none are willing to compromise on the term of the contract. The contractors are worried about pricing for petroleum-based products, fuel and tying up their bonding capacity, if they were to enter into a long-term contract. Mr. Brougham questioned the risk if the CDD chose a contractor for the first year but had to select a different one for the next year. Mr. Cole indicated the work on each lake stands on its own and/or could interface; they would ensure the work was completed.

In response to Mr. Brougham's question, Mr. Cole recommended proceeding with Addendum #3. Mr. Cole hoped to receive bids and present them at the January meeting.

On MOTION by Mr. Schutt and seconded by Mr. Bergmoser, with all in favor, authorizing the District Manger and District Engineer to proceed with preparation of Addendum #3 and issuance to those contractors that attended the pre-bid meeting and proceeding with a single-year contract, was approved.

SIXTH ORDER OF BUSINESS

Discussion/Consideration: Revising Series 2005 Supplemental Engineer's Report to Reflect Revised Construction Costs to be Consistent with the Bankruptcy Court Approved Plans of Reorganization and Recently Adopted Revised Supplemental Assessment Methodology

******This item, previously the Seventh Order of Business, was presented out of Order.******

Mr. Adams recalled the bankruptcy process and plans of reorganization, which require the CDD to realign its outstanding debt to be consistent with the final bankruptcy order and approved plans of reorganization. He indicated the District has revised its lien roll and the Assessment Methodology. The remaining item to be brought into alignment is the Engineer's Report. The original Engineer's Report identified a project cost and the construction fund was funded to address the original costs; however, over the years, there were savings and, a couple of years ago, in preparation for a potential debt restructure, the developer and District Engineer went through an analysis of determining the cost to complete "in progress" areas, to complete infrastructure in certain areas to a point where product could be sold. Mr. Adams noted, during the process, the developer indicated they would be willing to enter into a developer completion agreement for the originally contemplated but unfinished infrastructure. He believed that that offer came off the table when negotiations with the bondholders deteriorated; however, the District has continued to operate based upon the revised projects list. Along the way, the trustee agreed, on behalf of the bondholders, to fund the additional revised remaining projects list. During the course of the bankruptcy, the bondholders and trustees were using certain portions of the trust estate to fund their own legal expenses related to the bankruptcy. They also used construction funds to pay down principal, resulting in a reduction of the available construction funds down to the original level. Subsequent additional legal expenses occurred and were paid from the construction fund, leaving it about \$116,000 short.

Mr. Adams indicated the Board needs to consider potentially bringing the Engineer's Report into alignment with the court-approved plans of reorganization because the plans recognize that construction funds were used to pay down the principal portion of that particular bond issue. The Supplemental Assessment Methodology acknowledged the use of the construction funds so the District ended up with a net remaining principal value, in which the assessments are driven, on an annual basis, and in consideration of a deferral period and change in the amortization schedule by a year or two (2). Essentially, the District currently has an Engineer's Report that is not in alignment with the direction of the bankruptcy order or the Revised Assessment Methodology Report.

Mr. Brougham questioned if there are any remaining funds to complete the work identified in the current Engineer's Report. Mr. Adams indicated no funds are available. The Board acknowledged at their last meeting that the District may not see any funds return to

address those items, so they decided to pay a portion of the costs from the general fund, in order to complete work related to some stormwater certifications, so there are no issues related to the stormwater system, which could delay or prohibit construction of homes in those areas, along with other soft costs for previously completed but unpaid work. Mr. Adams indicated today, the Board must decide whether to take action to bring the Engineer's Report into alignment with the bankruptcy order and Revised Supplemental Assessment Methodology and, if so, the timing of it. Mr. Adams noted the remote possibility that some or all of the funds may come back to the District, with that being driven by actions taken by the CDD #2 litigation. This could lead to determinations that the funds utilized by the bondholders and trustees for their own representation are due back to the District. Mr. Adams advised ensuring the Engineer's Report contains a statement that should additional funds come back to the District, they will be utilized for remaining projects identified in the report but which cannot be completed, at this time, due to lack of funding.

Mr. Williams felt, if it is the Board's desire, they can ask Mr. Cole to prepare a date of completion certificate, indicating it is impractical to complete the Series 2005 project. The certificate should reference the fact that the trustee took roughly \$5.5 million for non-construction purposes and there is no expectation that the money will be replenished. He recommended leaving open the possibility that if funds are returned, they can be used for project purposes. Mr. Williams felt, with those qualifications, Mr. Cole can render the date of completion certificate to wrap up the process.

Mr. Brougham summarized that the 2005 construction fund now has a negative balance but previously had \$5.5 to \$6 million to complete the work listed in the Engineer's Report. As a result of the funds being otherwise utilized, the Engineer's Report is left open. The plan is to issue a certificate of completion but leave the matter open such that if additional funds become available, the additional work can be completed. Mr. Brougham asked Mr. Cole to summarize where any found funds would be used. Mr. Cole clarified that he previously stated he is substantially complete with the work contemplated with the approved bondholders' work list, which excluded the other \$5.5 to \$6 million worth of remaining work. Mr. Cole described the completed and remaining scopes of work, including infrastructure work supporting the Marsh Cove area. Mr. Cole indicated the remaining work is primarily in the area to the east. Mr. Slater questioned whether work is planned for other areas. Mr. Cole clarified the area in question by

Mr. Slater was part of the 2005 bond, or preserve areas, which was completed. The preserve area maintenance is within the District's maintenance budget. Mr. Brougham asked if there would be any complications if the Engineer's Report was finalized with a certificate of completion but the developer subsequently proceeded to develop the remaining infrastructure. Mr. Adams thought the statement would indicate there were additional projects originally contemplated but there are currently no funds to complete them; thus, the project is complete due to lack of funding but those originally contemplated projects can be considered, should additional funds become available. Mr. Adams explained it is certified as complete but the driving force in why it is complete is because there are no remaining funds.

A Board Member questioned the urgency behind the certificate of completion. Mr. Brougham explained there is no urgency, other than it is a housekeeping matter to bring everything into alignment. Mr. Adams noted construction funds are generally not intended to be left open for more than three (3) or four (4) years and the District's are much older. Discussion ensued regarding issues for the bondholders in keeping the construction fund open.

Mr. Curland asked what happens or where the money comes from, should a developer decide to finish Runaway Bay. Mr. Cole indicated the CDD infrastructure contemplated for Runaway Bay was completed, with the exception of overlay of a small amount of pavement on Marsh Drive. Mr. Curland clarified he meant Marsh Cove. Mr. Brougham asked who is responsible for funding the work, since the funds no longer reside in the 2005 construction fund. Mr. Williams indicated a new developer could not seek funds from the CDD because its liability is limited to construction through bond proceeds.

Mr. Slater asked if the bondholder is given an out with regard to the CDD getting any funds to pay for completed work, should the Board move forward with the completion paperwork. Mr. Pires indicated the CDD does not waive any rights.

Mr. Cole indicated Mr. Adams provided him with a detailed list of the appropriation of the construction funds, for items such as legal fees, which will be included in his final report. He would also include a note regarding the amount due to the general fund that should have been funded through the construction fund.

Mr. Cole indicated the cost for the report will be \$6,000 to \$7,000. Referring to the \$25,000 for the District certification and lake conveyances, that is to come from the general fund, Mr. Cole asked if the Board would approve at least another \$5,000 to cover preparation of this

report. Mr. Brougham felt there is money in the budget to do so; however, he does not want to tie it into the motion. Mr. Adams indicated the cost would be booked as a 'due from'.

On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, directing the District Engineer and Bond Counsel to prepare the appropriate documents to certify and complete the Revised Engineer's Report encompassing the construction of infrastructure, as currently completed, was approved.

SEVENTH ORDER OF BUSINESS

Consideration of Resolution 2012-3, Amending the Budget for Fiscal Year 2011

******This item, previously the Fifth Order of Business, was presented out of Order.******

Mr. Adams presented Resolution 2012-3 for the Board's consideration. He explained the purpose of the resolution is to bring the District's expenditures and revenues in line with the budgeted amounts or amend them, accordingly, to the actuals. In this particular case, the District's actual expenditures exceeded its budgeted expenditures due to the bankruptcy-related legal and trustee expenses. Mr. Adams stated this amendment is necessary in order to avoid a finding in the Fiscal Year 2011 audit, on this matter, although there may be other findings.

On MOTION by Mr. Slater and seconded by Mr. Bergmoser, with all in favor, Resolution 2012-3, Amending the Budget for Fiscal Year 2011, was adopted.

EIGHTH ORDER OF BUSINESS

Consideration of Required Actions Resulting from Access Control Specifications Workshop

Mr. Adams requested the Board consider a motion directing Staff to move forward with modifying the access control specifications in accordance with the suggestions and recommendations made during the Workshop held this morning.

On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor, directing Staff to implement the access control specifications in accordance with the suggestions and recommendations made during the Workshop held this morning, was approved.

NINTH ORDER OF BUSINESS

Approval of Minutes

• **November 16, 2011 Continued Public Hearing and Regular Meeting**

Mr. Brougham presented the November 16, 2011 Continued Public Hearing and Regular Meeting Minutes and asked for any additions, deletions or corrections. The following change was made:

Line 123: Change “plotted” to “platted”

On MOTION by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the November 16, 2011 Continued Public Hearing and Regular Meeting, as amended, were approved.

• **November 16, 2011 Regular Meeting**

Mr. Brougham presented the November 16, 2011 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following change was made:

Line 33: Insert “Weinberg” after “Frank”

Mr. Brougham asked Mr. Cole to comment on the road damage noted on Page 12. Mr. Cole indicated he visited the location and found a few gouges in the pavement, which were not new; he found no other roadway deficiencies. Mr. Cole spoke to Ms. Crismond, who obtained an estimate of approximately \$1,000 to repair the area; however, both agreed the condition is not affecting things now, so it would be more cost effective to complete those repairs in the future, in conjunction with other repairs.

On MOTION by Mr. Bergmoser and seconded by Mr. Curland, with all in favor, the November 16, 2011 Regular Meeting Minutes, as amended, were approved.

TENTH ORDER OF BUSINESS**Other Business**

There being no other business, the next item followed.

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

Mr. Pires indicated the escrow agreement was executed November 28, 2011 and the funds were wired into his escrow account. He reviewed the letter sent to Mr. Spivey, as attorney for the indenture trustee, asking for reimbursement to fund the account and to not impose overdraft charges.

Regarding AJC Associates, Inc., Mr. Pires reported no further contact from Ms. Carlson's attorney as to the hold harmless indemnification agreement. He recommended the Board consider authorizing him to send a more formal demand letter to AJC Associates, Inc. Mr. Brougham directed Mr. Pires to proceed with the formal demand letter and asked Mr. Adams to include this as an agenda item for the January meeting.

b. Manager**i. Unaudited Financial Statements as of November 30, 2011**

Mr. Adams presented the Unaudited Financial Statements as of November 30, 2011. Mr. Brougham asked about the automobile maintenance costs. Mr. Adams indicated the majority of the costs are related to the rack and pinion replacement on the Taurus; there was a complete rebuild of the front end. Mr. Brougham questioned if someone ran over something. Mr. Charbonneau indicated the mechanic feels it is normal wear and tear; the vehicle has 163,000 miles on it. In response to Mr. Brougham's question about the legal advertising costs, Mr. Adams explained a significant part of the costs is due to the required advertising of the public hearing on the Revised Assessment Methodology, which is lengthy and includes maps. Regarding a question about the insurance expense that is 174% of budget, Mr. Adams indicated it was for the District's annual general liability and property insurance. This year, the insurance company completed a review of the assets and replacement values, which were adjusted upward. It was necessary to go with a different insurance carrier because, due to the District's financial condition, the previous underwriters would no longer offer coverage, resulting in carrying higher risk and increasing the premium.

ii. NEXT MEETING DATE: January 25, 2012 at 8:00 A.M.

Mr. Adams noted the next meeting is scheduled for January 25, 2012.

c. Operations Manager

Mr. Brougham asked for questions regarding the Operations Manager's Report emailed to the Board by Ms. Crismond.

A question was raised regarding replacement of two (2) drivers in the new pump house. Mr. Adams confirmed the pumps needed to be replaced and the suspicion is that it is due to unreliable service from FPL. He discussed the pump function and power supply. He indicated a request was made for FPL to monitor the system. Mr. Adams confirmed the \$19,000 cost is the total cost; this will be a shared expense with CDD #2. He confirmed that FPL will not reimburse for anything; however, they will take corrective action.

TWELFTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

Ms. Betty Lirot, a resident, asked if residents can obtain a bar code entry pass, as opposed to the clicker. Mr. Charbonneau indicated the standalone readers for that technology are at Championship Drive; otherwise, there is no issue other than passing the \$4.00 to \$5.00 cost on to the resident. Mr. Adams suggested only allowing a clicker or bar code but not both. Mr. Charbonneau confirmed he can deactivate bar codes. Mr. Brougham asked Mr. Charbonneau to prepare a brief proposal of the pros and cons, implementation, etc., for presentation at the January meeting.

THIRTEENTH ORDER OF BUSINESS

Adjournment

There being nothing additional to discuss, the meeting adjourned.

**On MOTION by Mr. Brougham seconded by Mr. Bergmoser,
with all in favor, the meeting adjourned at 10:21 a.m.**


Secretary/Assistant Secretary


Chair/Vice Chair