

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

The Boards of Supervisors of the Fiddler's Creek Community Development District #1 and Fiddler's Creek Community Development District #2 held a Public Hearing and Regular Meeting on **Friday, October 28, 2011 at 8:00 a.m.**, at the **Fiddler's Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

**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

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

James Curland	Vice Chair
Jim Schutt	Assistant Secretary
Robert Slater	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Tony Pires	District Counsel
Robert DeMarco	Treiser Collins, Special Counsel CDD #2
Aleida Martinez Molina (via telephone)	Weiss Serota, Special Counsel CDD #1
Mike Williams (via telephone)	Bond Counsel
Dr. Hank Fishkind	Fishkind & Associates, Inc.
Andrew Sanford	ITG Holdings
Amanda Barton	ITG Holdings Counsel
Dan Carter	ITC Holdings
Scott Steady	Bondholder Counsel FC #2 Series 2005
Ron Albeit	Fiddler's Creek Foundation
Chris Wiebeck	Muni Mae – Counsel
Paul Battista	Debtor's Counsel
Elliott Miller	Resident

**FIDDLER'S CREEK CDD #2**

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 8:10 a.m. He noted, for the record, that Supervisors Schmitt, Correia, Robertson, DiNardo and Scott were present, in person, for CDD #2.

**SECOND ORDER OF BUSINESS**

**Affidavit of Publication**

The affidavits of publication for today's public hearing and regular meeting were located behind Tab 2, of each CDD's agenda package.

**THIRD ORDER OF BUSINESS**

**Bankruptcy Counsel Report – Robert DeMarco**

***\*\*\*This item was an addition to the agenda\*\*\****

Mr. Adams advised that Mr. DeMarco requested to present his report today, because of Court conflicts on Wednesday.

Mr. DeMarco stated, at their last meeting, the Board directed him to make an inquiry into the use of the construction trust account monies, by the indenture trustee, for the purpose of paying legal fees and expenses. He referred to his letter to the indenture trustee, dated October 5, 2011, and Mr. Bloom's October 20, 2011 response, which was distributed to the Board and Staff.

One of the issues raised in Mr. DeMarco's letter was the First Amendment to the Master Indenture, which was dated October 1, 2009. The issue with the document itself was that, theoretically, it was deemed to have been by consent of the bondholders; however, the signature page was blank and there were no signatures by any of the bondholders. Mr. DeMarco advised he has no way to ascertain whether more than 51% of the bondholders consented to the document.

Mr. DeMarco explained if it was not with consent, it must be approved by resolution of the Board. He indicated he did not see in the minutes that there was an acceptance of the resolution by the CDD's District Counsel. He stated, in any event, the condition precedent to the validity of the document is a letter from bond counsel, which is required under the terms of the master indenture, to certify that the supplemental indenture meets the requirements of the master indenture. Mr. DeMarco was advised by Mr. Bloom to speak to CDD Counsel.

Mr. DeMarco stated he has no answer regarding these issues; however, he feels it is reasonable to assume, in light of the CDD's records that, as well as his inquiry of Mr. Adams, Mr. Pires, the debtors and everyone else, that the requisite formalities were not observed with

regard to the First Amendment to the Master Indenture. Consequently, he is leaning toward the view that the document is not valid. He stated if it is not a valid document, the question becomes to what extent the indenture trustee would have the ability to take monies out of those accounts without the benefit of that particular document. Mr. DeMarco noted that if it is a valid document, the question is to what extent the monies were removed by the trustee, in excess of the scope of the document. He stated the document provided for remedial fees that were theoretically related to the foreclosure that was anticipated, but never actually commenced.

Mr. DeMarco indicated he saw nothing to provide him with any information with respect to whether or not monies taken by the indenture trustee from the CDD #2 accounts might have been used to pay legal fees and expenses attributable to CDD #1. Mr. Bloom's response, on Page 4 of his letter, was that the allegations were false. Mr. DeMarco clarified that he did not make any allegations; he was trying to find an answer to these questions. Mr. Bloom referred Mr. DeMarco to the monthly statements from the indenture trustee. Mr. DeMarco indicated that the monthly statements are nothing more than numbers on a piece of paper, with no backup. Based upon what was provided by the CDD, which was part of the public records request by the debtor, he could not determine, by looking at the bank statements, whether it was CDD #1 or CDD #2 that was involved, as to those particular payments.

Mr. DeMarco stated if they had counsel, there was a question about whether or not the bondholders themselves were submitting bills to the indenture trustee and whether the indenture trustee was paying them. Mr. Bloom's letter states, 'the allegation is false.' Mr. DeMarco again clarified that he did not make an allegation; he simply stated that it might be an issue and he asked for an explanation. No further response was received.

Mr. DeMarco advised that he also asked for the accounting, not merely a notation of the amount paid or the payee but also the supporting documents, including the actual invoices for attorneys' fees, which would include time sheets, hourly billing, hourly billing rates, who did the work and what was actually done. Mr. Bloom's response was 'see the monthly statements' and he made a claim that those documents were subject to attorney-client privilege.

Mr. DeMarco indicated he does not agree with many things in Mr. Bloom's letter; however, the purport of the letter is that the CDD is in default and, consequently, the indenture trustee can do anything it wants. Mr. DeMarco stated, assuming that there is no default, the indenture stipulates that the only way to take monies from the construction and acquisition accounts is to pay for actual construction expenses, for which a requisition is provided and for

which the CDD engineer provided a Certificate of Completion; thus, the monies taken for the purpose of paying legal fees and expenses would be a violation of that particular section. Mr. Bloom pointed out that there was a default, which changes everything.

Mr. DeMarco stated there is a special provision for the trust and acquisition account, which suggests that if there is a default, the monies must go to pay down the principal.

Article 6 provides that "the CDDs will reimburse the trustee, upon its request, for all reasonable expenses, disbursement and advances incurred or made by the trustee, in accordance with any provision of this indenture." Mr. DeMarco interprets this to mean if there are fees, expenses and costs that are to be reimbursed, the trustee should make a request to the CDD for the payment of those monies. He advised that no such request was made; the trustee took the money directly from the account. Mr. DeMarco's understanding is that these particular accounts were being held by the trustee and the trustee had complete control over them. The construction requisitions would come to the CDD, the CDD would issue the approval, the construction engineer would give his okay and the trustee would write a check, presumably to whoever was to be paid.

Mr. DeMarco noted that the trustee and CDD had discussions about the nature of fiduciary relationships that may be involved, with respect to the documents. His position is that there is a contractual relation between the parties and the rights and duties of the parties are spelled out in the contract. He advised, with respect to monies that are received by the CDD, the CDD is acting as a fiduciary for the trustee for the purposes of accounting for those monies and turning them over to the trustee. The same is true with respect to the fact that the trustee is holding escrow accounts and is acting as an escrow agent, for all intents and purposes. Mr. DeMarco explained that under Florida law, the elements of a fiduciary relationship are present with respect to monies being held by the trustee in trust for the CDD. Under those circumstances, a relationship is created which will allow the CDD to sue, based on what is called an "equitable accounting". Mr. DeMarco indicated this may be the next step, if the records are not produced voluntarily.

Mr. DeMarco stated there are two (2) issues that relate to reimbursing the indenture trustee for its reasonable expenses. He pointed out that they do not know if the expenses were reasonable because the indenture trustee has provided no real accounting, other than the amount taken. Under those circumstances, there is a breach of the master indenture language and probably a breach of the implied covenant of good faith and fair dealing, which is inherent in all

contracts; however, they must first establish a breach of the underlying contract. This set of circumstances would give rise to the ability to seek a formal procedure against the indenture trustee for an accounting.

Mr. DeMarco advised Article 6 states, "if the District defaults in respect of the foregoing obligations, the trustee may deduct the amount owing to it from any monies received by the trustee under this master indenture." He stated this is contrary to what Mr. Bloom suggests. Mr. Bloom feels that any and all monies that are there, including the construction accounts, can be dipped into. Mr. DeMarco does not agree. He suggested that if the trusted acquisition accounts were only supposed to be used for construction or to pay down a principal, the monies were not received pursuant to the master indenture. Mr. DeMarco feels that because the trustee never presented any bills and never gave the CDD a chance to respond, the CDD was not in default under any obligations with respect to the reimbursement of fees and expenses, because the CDD never had a chance to look at the invoices and approve them.

Article 8 addresses events of default and does not say that, in the event of a default, all of the other language pertaining to the construction accounts is invalid or is changed. Mr. DeMarco remarked that he does not agree with Mr. Bloom's assertion that the event of default creates a situation in which the trustee can do anything it wants with any of the money it has and has no duty to account to the CDD. He indicated that there is a provision which says the trustee may protect and enforce the rights of the holders of the bonds under the indenture. The question becomes whether the trustee's determination that the CDDs were not doing it right is reason enough for the trustee to attack every step of the bankruptcy process. He explained that in the event of a dispute, the prevailing party is entitled to an award of attorneys' fees. Mr. DeMarco stated, for the most part, the CDDs were the prevailing party throughout the bankruptcy process because everything the indenture trustee did was dismissed and dismissal is an indication of the prevailing party.

Mr. DeMarco stated as part of the order in the adversary proceeding against the CDD, each side was to be responsible for its own attorneys' fees and costs. The question arises as to whether or not the indenture trustee received an invoice from its attorneys for the adversary proceeding process and paid it out of the CDD #2 trust account. Mr. DeMarco summarized that he has no information to ascertain if the use of the fees was reasonable. He noted that if the trustee provides a complete accounting, the CDD might agree that it was reasonable and pay it. Mr. Bloom indicated that the burden is on the CDD; however, Mr. DeMarco feels that the burden

is on the indenture trustee, to show that they are reasonable, in a situation where the indenture trustee is seeking reimbursement of fees and expenses.

Mr. DeMarco stated in the event that the Board is not willing to accept the present situation, it has the right to sue the indenture trustee, in state court, for equitable accounting and a breach of contract, seeking enforcement of the provisions of the master indenture. He noted that every time a lot was sold, the proceeds were turned over to the indenture trustee and the CDD has no accounting of how those funds were applied. He feels the trustee will say that the loan balance is accelerated, the entire amount is due and attorneys' fees and costs are owed, in addition to the principal and interest.

Mr. DeMarco expressed his understanding that Mr. Wrathell is involved in communications with the indenture trustee, seeking the backup documents as part of the audit process. He remarked that he read the communications provided in the agenda and it appears that the same type of responses were received from the indenture trustee as Mr. Bloom provided in his letter. Mr. DeMarco stated he would not have advocated a lawsuit because it is an expensive proposition and no one can predict the outcome; however, if they do nothing and the indenture trustee is not paying down principal with the monies that the CDD is providing, then the indebtedness will never be paid. He stressed that the actual amount taken by the indenture trustee must be established. In the absence of any voluntary participation by the trustee, it is up to the Board as to how they wish to proceed.

Mr. Robertson stated if monies were taken, there should have been a reduction of principal. He asked how they would determine which principal account is reduced. Mr. DeMarco responded if the trustee had provided the appropriate information, the answer would be based upon where the trustee spent the money.

Ms. Scott stated the first major problem is that the Board Members had no idea of the amount because no amount was ever approved by the Board. She also noted that the amount was probably not approved by the bondholders because there are no bondholders' signatures on the First Amendment to the Master Indenture. She felt they should have a copy of the Goodkin Consulting Agreement, which the Manager requested, to determine if it was a valid expense. Ms. Scott asked if they have their bond counsel's approval of the first amendment. She feels they have a simple lawsuit due to four (4) or five (5) major defects.

Ms. Scott expressed that she feels the Board was treated as a conduit for the bondholders. Mr. Wiebeck stated he feels the Board has made it clear that they are a good conduit for the developer.

Mr. Elliott Miller, a resident, asked why they needed the October 1, 2009 document, if the main indenture provided adequate relief for them to appropriate CDD #2's funds. He theorized the fact that they sought to have a specific document executed makes it clear that they did not feel secure under the main indenture. Mr. Miller stated he assumes that the master indenture requires that there be a default before any relief can be asserted under it. He indicated that a typical document requires a Notice of Default and many documents also provide a grace period after receipt of the notice. To his knowledge, no Notice of Default was received and he speculated that there never was a default.

Mr. DeMarco stated Mr. Bloom's letter suggests that there was no acceleration of the indebtedness, which is contrary to the position taken by the indenture trustee.

Ms. Scott stated the first amendment stipulates that the remedial accounts can only be funded from reserve accounts. She advised that the trust statements from US Bank show that money was taken from construction accounts. Mr. DeMarco explained that the purpose of the first amendment was to provide for the fact that there was no further purpose for the monies in the construction accounts so the funds were going to be shifted over to the reserve account and used for remedial fees.

Ms. Scott stated she does not want them to justify their invoices; she wants them to justify the first amendment, which is not in effect and never was in effect. Mr. DeMarco explained if the first amendment is deemed to be invalid, the question is what are their rights under the master indenture. Ms. Scott noted that the master indenture does not provide for payment of legal fees. Mr. DeMarco stated reasonable fees and expenses are provided for in Article 6 of the master indenture. He noted that the trustee should have submitted a written request, as required under the master indenture. If it was a legal fee or expense that the CDD deemed appropriate, it would be inappropriate to take the money from the trust and acquisition account. It would come from an existing pool of funds from the budget, for O&M, or the District would have to impose a special O&M assessment against the property owners for that purpose. He indicated the payment cannot come from the principal and interest accounts because it skews the loan balance.

Ms. DiNardo inquired about the status of the appeal. She stated now that all of the decisions were made, the indenture trustee is appealing the whole process and is using the CDD's money to sue the District. Mr. DeMarco stated, as part of this process, there must be an accounting request.

Mr. DeMarco suggested another way to approach the situation would be to try to engage in voluntary mediation, prior to filing a lawsuit; however, they would not be able to do so, at this point, because the District does not have the information it needs to properly mediate the case. Ms. DiNardo expressed her belief that it is imperative that they obtain the information and, if it necessitates a lawsuit, they have no other choice.

Ms. Scott inquired about denying the indenture trustee access to the accounts. Mr. DeMarco indicated they must first consider how much money is in the account because it might not be worth trying to get an injunction. Ms. Scott advised they have at least \$2 million in unused, unallocated construction funds. Mr. DeMarco proposed that part of the lawsuit process could be a request for a temporary restraining order or a preliminary injunction. He noted that the fact that the indenture trustee is not providing the information prevents them from being able to provide the judge with the appropriate information for the suit. He stated one of the allegations in the lawsuit would be that they have full and complete control over the accounts and the CDD has no ability to obtain the information from any other source.

Mr. Robertson requested that Mr. Adams ask the District Engineer to advise Mr. DeMarco of the approximate amount remaining.

Mr. Miller stated if the master agreement provided adequate revenues, the first amendment would not have been necessary. He stressed that they should focus on the fact that the master indenture did not give the indenture trustee the right to take the funds; if it did, they would not have needed the amendment. Ms. Scott agreed.

Mr. Sanford pointed out that CDDs #1 and #2 are in default on their bonds. With regard to the timeline, he stated the developer missed payments leading up to May 1, 2009, the foreclosure process was authorized by both Boards in late 2009 and the assessments were accelerated but the bonds were not. The assessments were decelerated by the bankruptcy court confirmation order. Mr. Sanford stated there was a question about an event of default. He read what constitutes an event of default in the CDD #1 Master Trust Indenture. He expressed that he would like to see the Board reach out to begin dialog with the indenture trustee, rather than continue adversarial discussions. Mr. Robertson advised him that they tried that.

Mr. Sanford asked about a resolution. Mr. DeMarco indicated that the resolution would be to have the indenture trustee provide something indicating that what they did was reasonable. Mr. Sanford remarked that he does not feel additional lawsuits or action will make the problem better.

Mr. DeMarco stated, the bottom line is, legally, what is the effect of what the trustee did on the balance. He indicated that the actual balance between the indenture trustee and the CDD will have to be established and may have to be adjudicated. Mr. Scott stated they have a fiduciary duty, as a Board, to do exactly that.

Mr. Robertson stated the first thing they are looking for is a complete accounting of what transpired. After that, the CDD would like a reimbursement check.

Mr. DeMarco stated they need to determine to what extent the trustee is entitled to the fees and costs that it claimed, whether the money taken from the trust accounts must be put back and a different process adopted. He indicated if the trustee wants to say that the balance includes attorneys' fees and costs, the principal and interest that were removed need to be restored.

With regard to the Fiddler's Creek 2004 bonds, Mr. Wiebeck agrees with Mr. Sanford that the Districts have been in default for a long time. He stated if the District is concerned about incurring legal fees and that it will have to impose special assessments, which is of its own doing. He felt the largest action was when the District decided to join with the developer and support the developer in bankruptcy, against the clear wishes and directions of the bondholders, not to vote in acceptance of the plan. Mr. Wiebeck noted Mr. DeMarco's attorneys' fees are the fees that are most egregious, in terms of misspent and misappropriated money. Ms. Scott asked Mr. Wiebeck if he was saying that they, as a Board, should not have bankruptcy counsel. Mr. Wiebeck responded they, as a Board, have a fiduciary duty to their creditors, as well.

With regard to the issue of whether CDD #2 is in default, Mr. Miller recalled last Wednesday when he discussed the Report and Memorandum of Law submitted by Greenberg Traurig and Mr. Bloom in response to the bankruptcy court's request for an analysis of the impact of the plan on the bondholders and the bond debt. In that report, Mr. Bloom and Greenberg Traurig stated that the effect of the plan was to render that there would not be a default. Mr. Bloom said explicitly that, under the plan, CDD #2 cannot make payment for two (2) years and there has to be an accrual and a deferral; therefore, there is no default.

Mr. Sanford indicated one (1) of Mr. Bloom's arguments against the reorganization plan is the restructuring of the bond debt assessments, is, in effect restructuring the bonds because it

restructured the assessments. Mr. Sanford felt it is inappropriate to use Mr. Bloom's interpretation as any legal opinion that we admit that is restructuring of the bonds. He stated Mr. Bloom is not bond counsel; he is one (1) individual lawyer that was using it as an argument to point out the effect of restructuring of the bonds.

Mr. Robertson asked Mr. DeMarco what he needs from the Board in order to move forward. Mr. DeMarco advised he needs a resolution and authorization to engage in litigation with the indenture trustee for the purpose of obtaining an accounting, a refund or reduction in principal. He surmised that they will move forward with trying to get a temporary restraining order or preliminary injunction in place, in the interim.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Mr. Correia, with all in favor, authorization for Special Counsel to begin litigation, against the indenture trustee, and attempt to obtain a temporary restraining order or injunction, was approved.**

Ms. Barton stated the 2003 Series is represented by Holland & Knight, both on bankruptcy counsel and bond counsel, so any litigation or dealings with the 2003 Series should be directed to Holland & Knight, not Greenberg Traurig. Mr. DeMarco stated he will reach out to the attorneys to determine how to serve process on the indenture trustee. He does not know whether Greenberg Traurig, or another attorney, will accept service of process.

## **JOINT MEETING ITEMS**

Mr. Adams opened the Fiddler's Creek CDD #1 meeting. He stated the next item has to do with the presentation of the supplemental methodologies. He indicated that Dr. Fishkind has written objections, for each District, that were received in the last 48 hours.

Mr. Adams noted, for the record, that Supervisors Curland, Schutt and Slater were present, in person, for Fiddler's Creek CDD #1. Supervisors Brougham and Bergmoser were not present.

**FOURTH ORDER OF BUSINESS**

**Public Hearing to Consider Resolutions Relative to the Adoption of Revised Supplemental Assessment Methodologies, Revised Assessment Rolls and the Imposition of Special Assessments on Certain Specifically Benefitted Lands within the District to Secure Special Assessment Revenue Bonds, Series 2002A, Series 2002B and Series 2005; Providing a Severability Clause; and Providing an Effective Date**

The Fourth and Fifth Orders of Business were discussed jointly.

**FIFTH ORDER OF BUSINESS**

**Public Hearing to Consider Resolutions Relative to the Adoption of Revised Supplemental Assessment Methodologies, Revised Assessment Rolls and the Imposition of Special Assessments on Certain Specifically Benefitted Lands within the District to Secure Special Assessment Revenue Bonds, Series 2003A, Series 2003B, Series 2004 and Series 2005; Providing a Severability Clause; and Providing an Effective Date**

***\*\*\*Mr. Adams opened the public hearing for CDDs #1 and #2.\*\*\****

Dr. Fishkind reminded both Boards that, more than a month ago, he presented an assessment methodology and has subsequently corrected the typographical errors discussed during the course of that presentation. He noted the addition of Section 3.7, pursuant to a request from Ms. Barton's associate. He stated Section 3.7 clarifies the way in which the District has administered its liens, from the beginning, notwithstanding some frailties in that process that were discovered during the course of litigation, and corrected.

Dr. Fishkind indicated that there are no material changes to the methodology from the last presentation. He suggested that they focus on Section 3.7, which has generated some questions and comments. He suggested that it might be useful to hear from Mr. Steady, Mr. Sanford, and others who might have comments or questions so that he can address them all at once.

Recognizing that the last meeting was not a public hearing but a presentation of the report by Dr. Fishkind, Mr. Pires suggested, for the purpose of the public hearing, not only do they have

the Revised Supplemental Assessment Methodologies but, for each District, when they conduct their public hearing, that Dr. Fishkind provide his testimony as to that methodology and the supplemental assessment, as the last time did not qualify as testimony for today's hearing. Dr. Fishkind expressed his understanding that the 170 process was launched at the last meeting, with testimony and full exposition of the assessment methodology, and that today, the Board sits as a Board of Equalization to hear comments and questions. Mr. Adams suggested that they utilize the transcript from the previous meeting and incorporate it as part of today's record. Mr. Pires and Mr. Williams agreed.

- *See Exhibit A: CDD #1 – Summary Testimony of Revised Supplemental Assessment Methodologies by Dr. Hank Fishkind on September 28, 2011*
- *See Exhibit B: CDD #2 – Summary Testimony of Revised Supplemental Assessment Methodologies by Dr. Hank Fishkind on September 28, 2011*

Mr. Robertson requested that Dr. Fishkind walk them through Section 3.7. Dr. Fishkind stated this is not an assessment issue; it is a methodological practice of how to practically assign debt and lien in a situation where there are multiple bond issues. He advised what this District has done is to use a first-bonded, first-platted method (FIFO). He explained that the assessment methodology first spreads all of the debt that is issued across all of the acreage of the District. The assessment methodology is a formula by which the Board refines the debt originally assigned per acre to debt per land use and those land uses can change, over time.

Dr. Fishkind explained that they have one (1) bond issue spread over all of the dirt. They begin to plat and to refine the debt per acre to debt per land use. He noted they would also fix the amount of debt and the bond issue. He indicated that the whole plan of assessment and the dollar amount of debt being paid off relates to the whole plan of improvement, which anticipates multiple bond issues. They do not want to confuse the amount of debt being paid off with the assignment of that to a bond issue. Dr. Fishkind stated the amount of debt being assigned is part of the assessment methodology. The identification of which bond and which lien is part of what is called the "lien book".

Dr. Fishkind explained that if the first platting has absorbed debt, it has to absorb debt from the first bond issue because that is the only bond issue there. The second bond issue must be assigned to the unplatted acres, which is stated in the methodology. There can be two (2) series of bonds encumbering the unplatted acres, if the platting process had not gotten to the point of absorbing all of the debt from the first bond issue and there is still debt remaining.

Mr. Robertson stated he understood that when they took the original acreage and platted some of it, all of the debt for the first bond went to the platted land. Now there is other land, still unplatted, on which a second bond is levied; thus, the second bond's debt applies to the unplatted land and the first bond applies to the land already platted. Dr. Fishkind remarked that is not necessarily so. He theorized that if, during the course of the platting of the first bond issue, only 50% of its debt was absorbed on the land that was platted, 50% of the debt still resides on the unplatted acres. Now the second set of bonds is issued. Those bonds will encumber all of the unplatted acres, which include acres that still have some of the remaining debt from the first bond issue. He stated that is the reason for a true-up test. It ensures that the debt on the unplatted acres stays below the ceiling level, as more debt is added.

Ms. Scott indicated the reason for the adjustments is that the dates were out of order. Dr. Fishkind explained that there was some confusion over when things were platted and when the bonds were issued. He stated the total amount of payments was correct but the identification of which bond went with which plat was off, for some of the parcels.

Mr. Schutt asked if, when the bonds are issued, the property for which the debt is incurred is identified. Dr. Fishkind stated that they are applied to all of the property in the development. He explained that if done geographically, the overlapping benefits would not be recognized.

Mr. Schutt asked how the confusion is resolved when there are two (2) CDDs, if the bond debt is applied to all unplatted properties. He stated they have CDD #1 and CDD #2 and there are bonds specifically for those CDDs but unplatted properties in both. Dr. Fishkind indicated that within a District, there is no geographic specificity; however, each unit of government is treated separately. Mr. Schutt stated with the first bonds, the bond debt applies to all unplatted property so, initially, the whole development was unplatted and all bond debt applied to all of the acres. He asked if it was then redefined into CDD #1 and CDD #2. Dr. Fishkind advised that was done in 2005. Mr. Pires clarified that each District's bond issue applies to the land only within its boundaries.

Dr. Fishkind stated, originally, there was one (1) District with about 3,000 acres of land; subsequently, more land was acquired and put into the development plan. Then two (2) Districts were made from one (1). When that occurred, the debt was divided very carefully, along with the benefits.

Mr. Robertson noted as soon as they plat the unplatted land, they can identify a specific debt burden to that plat; thus, he, as a property owner, knows exactly what his debt is. Dr. Fishkind added that the District then needs to identify the bond issue in its lien book so that, over time, they are sure that all of the bond debt is paid off.

Dr. Fishkind stated, with regard to the first bond issue, if they were to not pay off all of the first bond debt and reserve some of the payment for some future bond issue, this would create some uncertainty. He stated when the bonds were issued he signed a certificate stating this will work if it is done the way it was presented. If it is changed, he could not certify that it will work.

Mr. Correia commented that there is probably room in the community for another two (2) or three (3) CDDs. Dr. Fishkind indicated that is a possibility. Mr. Correia asked if that is not done, does it mean that CDD #2 keeps getting bigger. Dr. Fishkind explained that if additional land is added, there is a process, under state law, to expand the boundaries if that expansion is no more than 50% of the original acreage. He stated anything that is platted is done. For the unplatted land, potentially, they could add the new acreage to the unplatted and redo the assessments for the entire amount.

Discussion ensued regarding the possibility of future bond issues. Dr. Fishkind explained that when the development started, there was a Master Trust Indenture and a plan of development and the bonds were validated in Circuit Court, which gave rise to a cap. Mr. Pires clarified that their bonds have more than five (5) years' maturity, which requires a validation process. Capital improvement bonds with less than five (5)-year durations do not necessarily have to be validated.

In response to a question by Mr. Curland, Dr. Fishkind explained that the total amount of par debt for the system of improvements is largely driven by the engineering costs.

Mr. Schutt referred to Page 3 of Dr. Fishkind's handout and asked how the interest can be the same every year if the interest is added into the principal. Dr. Fishkind responded the interest is not compounded. Mr. Schutt questioned several other amounts in the handout. Dr. Fishkind will check into these.

Mr. Adams asked if there were any other Board questions from CDD #1 or CDD #2. There being none, he asked if there was any public comment, testimony or objection for CDD #1. He indicated that each District received a written objection with regard to the FIFO approach. He asked if any members on the conference call wished to make any comments regarding CDD #1.

Mr. Chris Wiebeck, with Muni Mae, stated their objection is related to the FIFO only, for CDD #1. He advised that their letter made it clear they believe that FIFO was always the method for CDD #2 and they are fine with that. For CDD #1, they have an objection because they feel that the 2002 and the 2005 bonds, as they share a coequal lien on the land, should, as platted, be platted and a prorata allocation of outstanding balance should be applied. Mr. Wiebeck indicated that makes the most sense to them, in the vast sense of the original indenture. He voiced Muni Mae's concern that Dr. Fishkind recently represented the developer in the bankruptcy case and received over \$100,000 in fees related to that case, bringing to question his ability to not be conflicted, in this case. Mr. Wiebeck stated the rest of their letter speaks for itself.

Rather than responding, Dr. Fishkind felt it would be more efficient for the Board to hear from Mr. Steady, since his questions relate to the same issue.

Mr. Battista stated, for both CDD #1 and #2, he wanted to confirm that, for the supplemental assessments, the total amounts of the bond debt set for in the assessments includes a reduction for the amounts that were in the various construction funds as of the bankruptcy filing date or as of today. Dr. Fishkind responded affirmatively, noting that the reason is that the plan confirmed by the bankruptcy included the detailed schedules of how the debt was to be repaid in full. Dr. Fishkind noted that the schedules were based upon the use of the full amount of the construction fund before any monies were taken for legal purposes. Dr. Fishkind stated the plan also provided that the future construction needs of the District would be funded privately by the developer, which is why the plan incorporated the use of the construction funds to pay down bond debt.

Mr. Pires stated, for the record, it may be better to address Mr. Wiebeck's objections to CDD #1 and then move to CDD #2. Mr. Williams agreed.

Mr. Schutt asked if the issue of paying legal fees out of the bond debt and the methodology being impacted by the assumption that all bond debt went to pay for construction requires Dr. Fishkind's calculations to be different. Mr. Adams advised him the position is that it nets out of the total. He stated how the trustees chose to use it is up to them but there is no longer money available to the CDD or owed by the CDD. Dr. Fishkind concurred and further explained, assuming that the plan of confirmation is not overturned in the appeal, the plan is based, in part, on the employment of the construction funds, the remaining construction balance, prior to any deductions for legal fees, to pay down bond debt. That is what the bankruptcy court

approved. Dr. Fishkind feels the District's obligation is to create an assessment methodology that is consistent with that.

Mr. DeMarco stated his understanding of the Revised Supplemental Methodology is that it treats the money in the construction accounts as though it had not been removed and, therefore, the assessments are not increased, as they would have been had the money been removed. Dr. Fishkind advised him that is a fair observation, based on the methodology. He stated it occurs in a slightly different fashion because the construction money would be used to extinguish bond debt. If it is not used to extinguish bond debt, the assessments would be higher than what is in the methodology.

Mr. Slater asked if the bankruptcy court required them to adopt a revised assessment methodology. Dr. Fishkind explained there is a master methodology for CDD #1 and a master methodology for CDD #2 and those were updated, as conditions on the ground have changed. He stated the master methodologies that were originally adopted anticipated these changes. Dr. Fishkind advised his position is that they are continuing with their master methodology and are now updating it to reflect the current amount of bond debt, the current land use plan, which has changed and how much land is left unplatted. Mr. DeMarco clarified that the bankruptcy confirmation order did not, in any way, intend to change or affect the assessment methodologies used by the CDDs. Dr. Fishkind explained they must do an amendment because they cannot bring the old assessment methodology into conformance with the plan. Mr. DeMarco indicated that the bankruptcy court left it up to the CDDs to take the appropriate action.

Ms. Martinez Molina expressed her agreement with Mr. DeMarco's assessment of what the confirmation order says/does not say or directs/does not direct the CDDs, with respect to the exercise they are going through this morning.

Dr. Fishkind addressed Mr. Goldberg's letter of objection. He explained that Mr. Goldberg raises an issue about the FIFO method, arguing that, in his view, it is inconsistent with the bond documents and the offering statements. Dr. Fishkind does not agree with his interpretation. He stated, because the methodology was silent, originally, on the FIFO method does not mean that everything was not meant to be that way. Clearly it was because that is how they can run the true-up test. Being that they, subsequently, have made it clear, he feels the FIFO method is the only practical method to conduct a lien book with multiple bond issues.

Dr. Fishkind further noted that this issue was fully litigated in front of Judge May. He indicated that there was extensive discussion about this, about the frailties in the lien book and

about how that was going to be corrected. Testimony from Mr. Cox, the bondholders' expert, confirmed that FIFO is the method he uses; he found nothing objectionable and agreed IT was a proper method.

Dr. Fishkind stated the FIFO method is imbedded within the detailed financial schedules incorporated in the plan of confirmation by the debtor. He indicated that these are the reasons he respectfully disagrees with Mr. Goldberg's opinion.

Mr. Adams asked for any other comments, objections or public testimony with regard to CDD #1. There being none, Mr. Adams proceeded with CDD #2. He advised they received a written objection from Mr. Scott Steady, representing the Series 2005 bonds.

Mr. Steady introduced himself and noted he was attending the meeting as Special Counsel to the Trustee for the 2005 bond issuance. He stated he wished to explain why, from a timing standpoint, he had to submit his letter. He also felt they could resolve the issue, generally, based on some additional information.

Mr. Steady explained that when the District adopts new assessments under Chapter 170, they are coequal and overlap all other assessments placed within Districts, so they can have various series of assessments first and, based on those assessments, they provide security for the subsequent bond issuances. He stated when the bonds were sold to the 2005, there is a provision in the bonds that says, specifically, the security, which is the assessments, are coequal and they overlap.

One issue that Mr. Steady would debate Dr. Fishkind on is, absent some specificity later in the allocation methodology, they are coequal and, as property is platted, they should be coequally drawn down on those bonds. He stated when they look at the allocation for Area 2, about \$29 million has already been assigned to the platted lots. Platted lots are better security than unplatted land. Mr. Steady remarked, as 2005 bondholders, although they were last in time with the three (3) bond issuances but coequal and overlapping in assessments, why should they be at the tail end of getting the last bit of undeveloped land. He indicated it is not the same security, absent something else. He feels there is a clear position that their assessments are coequal and they do overlap.

Mr. Steady stated when he first became involved, he received the September 22 draft of the supplemental methodology and 3.7 was not included, so there was no mention of the priority issue. He indicated that the provision of FIFO was actually in the 2005 assessment methodology. He advised he has not had a chance to see the assessment resolution that adopted

and imposed the Chapter 170 assessments to confirm that FIFO was in there, which would have been a modification of the general rule. He requested additional time for confirmation.

Mr. Adams asked for any public comment or testimony regarding CDD #2.

Mr. Wiebeck noted as CDD #2 2004 bondholders, they believe that District #2 was a FIFO methodology and is reflected in Mr. Goldberg's analysis. He stated, whereas they are objecting to the FIFO methodology in CDD #1, they do not have the same objection in CDD #2.

Mr. Sanford agreed with Mr. Wiebeck regarding the FIFO methodology. He indicated it was on the original supplemental methodologies when all of the bonds were sold and incorporated into the indentures. He asked that the newly adopted lien book, or lien roll, of the District be implemented into the supplemental assessment methodology. Mr. Adams indicated that is a requirement of the final adoption.

Mr. Adams asked for any other public comment or testimony on CDD #2. There were no further public comments.

Mr. Schutt inquired how the mechanism works in the coequality. He asked if it is a security issue, as opposed to a division of the money that comes in.

Mr. Steady explained that usually, if it is platted, in the next bond issuance, it is very clear that the debt is only on the unplatted lands. He stated it is what is disclosed in the issuance and where the assessment plat is; typically, if they have a plat from the first bond issuance, it is off the books and is not part of the second bond issuance; however, the rest of the undeveloped land is subject to both bond issuances. Mr. Steady indicated that the plat issue is not usually a problem with a second bond issuance, with existing plats. He noted absence some specificity, he believes that it is coequal and overlapping on the undeveloped land. Mr. Steady emphasized that he is not acknowledging that for the platted lots they are discussing, their lien is not on, until he confirms that the language is in the 2005 assessment methodology.

With regard to Mr. Sanford's request for inclusion of the lien rolls, Mr. Robertson asked if that was done with Ms. Carlson a month-and-a-half ago. Mr. Adams indicated they have been corrected and there were proofs of claims that were filed as a part of the bankruptcy that assigned certain debt to certain folios and are part of what Dr. Fishkind used in his methodology. As a part of finalizing the entire process, there is an exhibit requirement that is, in fact, the lien roll, that takes all of the numbers out of Dr. Fishkind's report and assigns them across the folios in the manner and method outlined in his report.

Mr. Adams stated prior to either Board considering adoption, in this particular case, three (3) legal opinions are required. He noted they will first require an opinion that their actions, through adopting this report, will essentially bring them into conformance with the bankruptcy order. He indicated that bankruptcy counsel expressed concerns that they are not experienced, nor do they have the type of background to be able to provide that opinion. Mr. Williams, bond counsel, will have a subsequent opinion and then there is a general counsel opinion. Mr. Adams stated three (3) attorneys must provide opinions that indicate everything is correct and true. This will put the Boards in a position to adopt the revised assessment methodology reports.

Mr. Adams noted that the two (2) bankruptcy counsels have indicated that they are not qualified or experienced and are not willing to give the opinion required to set the other opinions in motion; however, a department in Mr. Williams' firm that handles bankruptcy is willing to provide the opinion.

Mr. Williams stated if he were sitting where the Boards are, he would want a legal opinion. He indicated that discussion has taken place over the last few weeks regarding the best way to produce those opinions and it has fallen upon Mr. Williams' firm and they are willing to take on that responsibility, if the Boards wish.

Mr. DeMarco advised that an email was sent to Mr. Pires yesterday evening, in response to a request for a legal opinion. He explained that there has been some behind-the-scenes rhetoric with regard to the extent the two (2) bankruptcy counsels have the ability, as bankruptcy attorneys, to tell them that Dr. Fishkind's procedure and the substance of his assessment methodology conforms to and is/or consistent with the bankruptcy order. He stated no bankruptcy attorney, based strictly on bankruptcy principles, can provide that answer. Mr. DeMarco advised this particular confirmation order says, "you shall take such measures as are necessary to implement the plans." He stated, the opinion of their bankruptcy counsel is that the confirmation order does provide that the CDDs have to take such measures as they deem to be appropriate for the purposes of implementing the plans and conforming to the plan of reorganization. He emphasized that is all a bankruptcy lawyer can provide an opinion on.

Mr. DeMarco advised that both he and Ms. Martinez Molina provided opinions with respect to the fact that the order clearly states that there will be a subsequent procedure, followed by the CDDs, for the purposes of bringing the assessment methodologies into line, correction of the lien applications, bringing it in line with what is appropriately done. He stated, respectfully, Dr. Fishkind is their consultant for step #2 in that process, so they have an opinion from their

bankruptcy counsel indicating the court says they can take such measures as are required to do it but not what measures are actually required; they have an opinion from Dr. Fishkind stating these are the measures that are required and, with the combination of the two (2), he believes they have the appropriate legal opinion with respect to the bankruptcy end of the process.

Ms. Martinez Molina stated Mr. DeMarco has articulated what they set forth in writing to Mr. Pires, as well as discussing by email and telephone. She emphasized that Judge May did not say what must be done but acknowledged that the CDDs are required to take some action to help effectuate the plan. The court did not provide guidance. She indicated she did not know that the court, or anyone, would know what to do or would have experience, as this is the first time that an issue like this has come up in bankruptcy court.

Mr. Martinez Molina indicated that Mr. DeMarco articulated CDD #1 bankruptcy counsel's position, as well, and they are both on the same page regarding this issue.

Mr. Pires stated Ms. Martinez Molina's email indicates CDD #1 was directed to take action that is necessary to effectuate the plans of reorganization. The opinion they are seeking is that the actions being taken today effectuate the plans of reorganization. Mr. Pires noted that Mr. Williams indicated that his firm can provide that opinion. He stated they are not getting into a dispute with Mr. DeMarco or Ms. Martinez Molina. He is recommending that they engage the services of Akerman-Senterfitt to provide that opinion, along with the bond counsel opinion that the assessment process and supplemental methodology are consistent with the bond documents and bond covenants.

Mr. Williams stated Mr. DeMarco's and Ms. Martinez Molina's comments are news to him. He indicated that he respects both of them and he is not disagreeing that the confirmation order says what they both expressed.

Mr. DeMarco stated he feels, with respect to everyone there, that the Board has sufficient legal opinion with respect to what the bankruptcy process requires. He expressed that he does not think any other expert, other than Dr. Fishkind, can tell them what is actually required to conform to what the bankruptcy court indicated. He stated he respectfully submits that Mr. Williams and Mr. Pires can rely on that and on Dr. Fishkind's opinion that this is the process required to conform to the process.

Mr. Pires stated he respectfully disagrees with Mr. DeMarco. He feels that an attorney can provide an opinion and it is a legal opinion that effectuates the plans of reorganization and Mr. Williams has indicated that his firm can provide that opinion.

Mr. Slater asked where, in any of the documents, it says that they, as a Board, have to have any opinion from any lawyers, as opposed to making their own decision from what they have heard. He advised nothing in the order from Judge May said that lawyers have to give them their opinions. He noted that he is very satisfied with what he heard from Dr. Fishkind and he wished to make a motion for CDD #1 to accept the new methodology.

Mr. Pires explained that part of their role was to give guidance to the Boards, which they can accept or not accept. He cannot provide an opinion that this assessment process effectuates the plans of reorganization because he is not a bankruptcy attorney. He indicated that Dr. Fishkind provided his opinion as a financial advisor and as author of the methodology report adopted in the past.

Mr. Williams stated he will need to review the bankruptcy opinions, request a certificate from Dr. Fishkind and confirm factual matters set forth in the equalization resolution.

Mr. Adams indicated to Mr. Williams that he missed the statement by Mr. Slater that he did not see anywhere the need to have any legal opinions with regard to moving forward and adopting the corrective actions required conform to the plan. Mr. Williams stated he is not aware of any requirement.

Mr. Adams commented to Mr. Slater that he listened to the testimony of their financial advisor, who advised them that, in his expert opinion, the report that was provided does bring them into conformance with the adopted plans of reorganization for the various parties. Mr. Slater agreed. Mr. Adams asked if he is willing to accept that, as provided, and make a motion to that effect. Mr. Slater responded affirmatively.

Mr. Adams indicated that Mr. Slater's motion died.

Mr. Schutt stated in a previous meeting where Dr. Fishkind explained the methodology, they understood that the methodology has not changed; it is the same methodology they have been using for the last ten (10) years. He asked if they need another opinion as to whether it is acceptable. He remarked that if it is not acceptable today, it has not been acceptable for ten (10) years.

Mr. Adams stated he did not want to downplay the value of having legal opinions but he feels Mr. Schutt summed it up very well. Mr. Schutt felt the only decision they need to make is do they accept the methodology.

Mr. Pires indicated that, sitting as the Board of Equalization, they need to adopt the resolution and they do not have the forms of the resolutions today, as they are still working

through the process of finalizing those documents. Mr. Adams explained that no one foresaw that they would be at this point today so no resolutions were offered up today for consideration.

Mr. Pires stated with regards to the legal opinion, it must be consistent with the plans of reorganization. He noted if they choose not to have that opinion, it is their prerogative.

Dr. Fishkind stated at their last meeting, when they authorized the advertisement for the 170 process for which they are now sitting as a Board of Equalization, they approved the methodology. He pointed out that they could not have advertised for the special assessments unless they had already approved the methodology. He also noted that, although they do not have the resolutions today, they could consider delegating the final execution to the Chairs so they do not need to have another meeting, if that is their will and preference.

Mr. Pires suggested that, based on the history of challenges to all of the processes involved, the Boards should have the actual documents in front of them before considering the resolutions.

Mr. Williams noted that the resolutions are very close to being finalized.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Slater, with all in favor, continuing the Public Hearing portion of the meeting to November 16, 2011, was approved.**

Mr. DeMarco suggested that CDD #2 follow the lead of CDD #1 so that they have the resolutions in front of them and have an opportunity to review them.

Mr. Curland stated Mr. Bergmoser and Mr. Brougham will be back for the next meeting and they will not be voting on these resolutions, since they have not participated in this part of the meeting. Mr. Adams and Mr. Pires advised that they will be voting.

Ms. Scott indicated that she read the Judge's order and read the paragraph where he dictated what the Board needed to do; she is 100% confident that they have totally complied with what the Judge ordered. She does not feel they need any other legal opinions or any further discussion.

Mr. Adams recapped the dialog of both Boards for Mr. Miller.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Mr. Correia, with all in favor, continuing the Public Hearing portion of the meeting to November 16, 2011, was approved.**

**\*\*\*Mr. Adams closed the public hearings for CDDs #1 and #2.\*\*\***

Mr. Slater indicated that he disagrees with Mr. Pires regarding his decision to allow Mr. Brougham and Mr. Bergmoser to vote on November 16 because they did not attend today's meeting. Mr. Pires stated if they are present at the meeting, they are required to vote. Mr. Slater advised it is a continuation of this meeting. Mr. Pires stated they can leave the room if they wish; however, the better course of action would be for them to review the tapes of this meeting before voting.

Mr. Schutt asked if they will have copies of the resolutions prior to the meeting. Mr. Adams noted that the resolutions will be in their agenda packages. Mr. Schutt commented that Mr. Steady had some concerns and was going to conduct a review; he asked if they would hear from him as well. Mr. Steady advised he will work with the Manager to get the documents and he will hopefully submit an update to his previous submittal. He clarified that he only needs the adopted 2005 assessment resolution adopting all of the documents.

## **SIXTH ORDER OF BUSINESS**

### **Other Business**

Mr. Adams explained that, at the last meeting, Mr. Battista, the reorganized debtor's counsel, approached the subject of how they will get the arrearage assessments paid to the Districts; there was discussion with regard to the tax collector and the ability to issue tax certificates and go through the tax certificate sale process. He stated the tax collector's counsel has signed off on the District doing a direct bill of its arrearage for the non ad valorem assessments on the November 2009 and November 2010 tax bills. The monies will flow from the reorganized debtor into a trust account held by one of the legal firms and an errors and omissions form will remove those assessments from the property tax bill. They will be submitted to the tax collector by Ms. Carlson. Upon verification that this is complete, the monies will be released from the trust accounts to the Districts. Mr. Adams advised the Boards that Mr. DeMarco has been part of those conversations amongst the various counsels and they

are all in agreement that this process will work. He indicated that Ms. Carlson has already prepared the forms and the billings so it is now a matter of some wire transfers.

Mr. DeMarco stated these are on-roll P&I and O&M assessments. He explained that one of the caveats in the bond offering statements is that they do not necessarily recommend putting the CDD assessments on roll because if someone wants to pay the assessments but not their taxes, the tax collector will not be able to take a partial payment and split the bills. Part of the problem is that the ad valorem assessments are being treated differently, under the plans of reorganization, from the non ad valorem assessments and the tax collector, under state law, cannot split bills and has to apply the monies that are received to the entire bill. In effect, the non ad valorem assessments for the tax years 2009 and 2010 will be deemed to be off roll. Ms. Carlson will submit the appropriate form to the tax collector, who will then take the non ad valorem assessments off roll, issue an amended tax bill without any non ad valorem assessments, which will relieve the tax collector of the burden of having to figure out how to implement the plans of reorganization. Mr. DeMarco suggested that Mr. Pires' firm act as the escrow holder, since he serves as District Counsel and can act as an escrow agent for both CDDs #1 and #2.

Mr. Schutt asked if this is all necessary because the on-roll tax bill is not being brought up to date. Mr. DeMarco explained it is because the entire tax bill, consisting of both non ad valorem and ad valorem assessments, is not being paid in full and the tax collector cannot take a payment for only one portion of the bill.

Mr. Battista confirmed that Mr. DeMarco's explanation is accurate. He advised that they have tried to get the most efficient and effective way to get these obligations paid. After several meetings with the tax collector, Counsel for both CDDs and Ms. Carlson, they believe the best way to proceed is for the debtors to enter into an understanding with their escrow agent. Mr. Battista explained that they will fund the on-roll P&I obligation that they are required to fund into the escrow account. Ms. Carlson will file the appropriate papers with the tax collector and, once the tax collector accepts the papers and reissues the tax bills, separating out the on-roll P&I obligations and whatever O&M is left, the money can be released from escrow to the CDDs, in satisfaction of that obligation. Mr. Battista indicated that they will continue to pay the ad valorem real estate tax bill for 2009 and 2010 as the plan allows, which is over a period of time and, for 2011 going forward, under the plan, they are obligated to pay those tax bills with the on-roll P&I.

Mr. Pires advised they are requesting the Boards, individually, to authorize Staff to finalize the necessary documents and for the Chairs of the respective Boards to execute the appropriate agreements to implement what is finalized between the tax collector, the Districts and the debtor.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Schutt, with all in favor, authorization to direct bill the 2009 and 2010 tax year assessments owed by the reorganized debtor, to submit the appropriate forms to the county tax collector to remove them from the same year property tax bills and for the Chair to execute the appropriate agreements, was approved.**

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Schmitt, with all in favor, authorization to direct bill the 2009 and 2010 tax year assessments owed by the reorganized debtor, to submit the appropriate forms to the county tax collector to remove them from the same year property tax bills and for the Chair to execute the appropriate agreements, was approved.**

Mr. DeMarco clarified that he is bringing the lawsuit in the state court system and not in bankruptcy court.

Mr. Correia stated at the next meeting, when they begin discussing litigation, it is pretty obvious that CDD #2 does not have any money and the only way he knows of to get money is with special assessments. He requested some projections as to how they are going to move ahead. Mr. Adams advised him that Mr. DeMarco indicated this may be enough to get some positive feedback and get things moving; he wants to see what the response is first before beginning contingency planning.

**SEVENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

There being no audience comments or Supervisors' requests, the next item followed.

**EIGHTH ORDER OF BUSINESS**

**Continuation**

**On MOTION for Fiddler's Creek CDD #1 by Mr. Curland and seconded by Mr. Slater, with all in favor, the meeting was continued to November 16, 2011 at 8:00 a.m.**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Correia and seconded by Ms. DiNardo, with all in favor, the meeting was continued to November 16, 2011 at 10:00 a.m.**

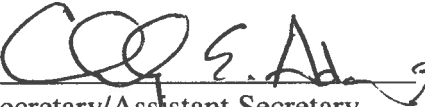
**NEXT MEETING DATES:**

- **November 16, 2011 at 8:00 A.M. and 10:00 A.M., respectively.**
- **December 14, 2011 at 8:00 A.M. – (*Joint Board Workshop followed by Regular Meeting*)**

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

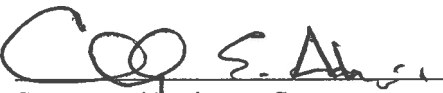
**October 28, 2011**

**FOR FIDDLER'S CREEK #1:**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair

**FOR FIDDLER'S CREEK #2:**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair

**Exhibit A**

**CDD #1 – Summary Testimony of Revised Supplemental Assessment Methodologies  
by Dr. Hank Fishkind on September 28, 2011**

*Dr. Fishkind indicated this is the first step in the two (2)-step process of launching the assessment process, under Chapter 170, whereby the District will establish new levels of debt that will be the restructuring of the existing debt, pursuant to the plan. He introduced himself and provided a brief summary of his qualifications and experience, noting that he prepared the original methodology reports for both Districts.*

*Dr. Fishkind presented the Supplemental Assessment Methodology Report. He advised that, as a result of the approved reorganization plan, it is important for the District to supplement its existing Master Assessment Methodology to reflect restructuring of the bonds. He stated the original methodology was supplemented, as each set of bonds was issued, to accommodate changes. Dr. Fishkind referred to Table 1, on Page 3, explaining it reflects the bond debt to be restructured, based on what was confirmed in the reorganization plan. Mr. Brougham recalled several revised supplemental methodologies, over the years, and asked if the Board should anticipate a supplemental methodology every time the land use changes. Dr. Fishkind replied affirmatively. Table 2, on Page 4, shows the debt allocation over the unplatted properties, based on the District's adopted assessment methodology, according to net acreage, including ponds, roads and land without a building. He referred to Table 3, on Page 5, which is a calculation of the ceiling amount of debt for the true up test; as proposed, the debt per net acre would be \$155,716. Table 4 reflects an analysis of whether the amount of debt, per acre, will exceed the ceiling amount that was set. Dr. Fishkind discussed the original calculations from 1996 and the switch, over time, from gross acres to net acres. He detailed converting the original debt per gross acre figures to debt per net acre, resulting in a debt per net acre amount of \$161,627, based on the 1996 figures. As the new proposed amount is \$155,716, the District would not exceed the ceiling methodology requirement originally set in 1996. Mr. Brougham explained where these assessments appear on the tax bills and assured the homeowners that their allocated bond debt will not change, as a result of this restructuring.*

*Dr. Fishkind explained the next step was to determine if the restructured assessments confer a special benefit on the properties that will pay those assessments, which is critical, as the District would not be able to impose assessments on properties if the cost of those assessments*

*exceeded the benefit. He confirmed that the special benefits exceed the assessment amount test. Mr. Schutt stated the lots purchased by DR Horton are in the parcels listed on Table 2. Dr. Fishkind clarified that the lots are in CDD #2 but they are in the Fiddler's Creek community. Mr. Schutt questioned the validity of the evaluation, as the numbers are generated specific to a list of parcels in Table 2; Dr. Fishkind is using lots outside of those parcels. Dr. Fishkind indicated this is the available data; he does not have transactions in CDD #1 but, since both Districts are part of the same community and the amount of benefit is so large, compared to the debt, he feels it is a reasonable yardstick to apply.*

*Dr. Fishkind referred to Table 5, on Page 8, showing the new land plan for the remaining unplatted acres. He explained how that debt is allocated to the properties, based on benefit, and detailed the analysis of the restructured assessments for roads and other uses. Mr. Brougham asked Mr. Cole if the roads within CDD #1 are fully constructed. Mr. Cole indicated the roadways within the 2005 Series bonds have not been completed; however, the roadways to the east were considered non-CDD. The roads originally planned with CDD funds have been built. Dr. Fishkind noted the numbers are correct on Tables 7 and 8 but Table 6 contains a typo, it should reflect \$4,616,144, instead of \$5,494,038. He explained how allocations were made, as new lots came into the District. Table 10, on Page 11, shows the tax roll with the amount of the assessments, allocated on a net acreage basis, along with administrative charges. In response to Mr. Brougham's question, Dr. Fishkind confirmed the administrative charges are an allowance for early payment of taxes and allowable fees charged by the tax assessor and/or tax collector.*

*Mr. Schutt voiced his opinion that Dr. Fishkind is referring to this as a supplemental assessment methodology but, from what was said, it seems the methodology has been consistent and all that is being discussed now is a different amount of money because of the bankruptcy and the deferral of payments until 2012. He felt the methodology, per se, has not changed; rather, it is the amount and distribution. They will still divide  $x$  by  $y$  and use acreage on the identified lots. Dr. Fishkind confirmed Mr. Schutt's opinion is correct, noting that is why it was titled as a supplemental rather than a restatement or amendment.*

*Mr. Bergmoser asked what the debt per net acre was, prior to the proposed change. Dr. Fishkind did not know but thought it was probably a little lower because there was no capitalized interest. Dr. Fishkind felt it has not changed significantly and pointed out it is below the ceiling amount, which is what really counts.*

*Mr. Slater recalled Dr. Fishkind's earlier statement that a reallocation may be necessary in the future, if there is a significant change, and asked what constitutes a significant change. Dr. Fishkind advised that the current land plan calls for 114 55-foot lots and if the plan was reduced to 112, it would not be significant; however, if there was a new product type that is not currently in the table, that would be a change requiring a supplement.*

*Mr. Curland indicated the bondholders removed a significant amount of cash from the bonds, during the past few years, and asked what impact it had. Dr. Fishkind stated that the court did not allow for the removal of those monies; the plan confirmed by the court assumed those monies were available to pay down bond debt or stay in the construction fund. To the extent those monies were used for other purposes, Dr. Fishkind's position was that the bondholders were repaid the money, regardless of how they chose to use it, and the monies cannot be paid twice. A Board Member asked if the \$34 million amount should be adjusted by the \$5 or \$6 million that was taken out of the available funds. Dr. Fishkind explained that the plan anticipated that the funds would be used to call down the bonds and it appears, in essence, that the bondholders have called some of the bond debt early, themselves. Dr. Fishkind confirmed the money is already netted out. Noting the funds are not there, Mr. Robertson asked if there is a requirement for the bondholders to repay the funds. Dr. Fishkind discussed that the monies could be repaid through the construction account but it would then come back out to the bondholders. Because there is nothing left to construct, the money was to be used to call bonds early. If some of the money was used, then fewer bonds can be called early; however, a lawyer may advise differently. The plan anticipated those monies would be used to call bonds, not to conduct a legal battle.*

*Mr. Garrett Cuttler, a resident, asked if the 55-foot lots are sized for condominium or single-family home construction. Mr. Brougham and Dr. Fishkind confirmed they are 50-foot lots and are for single-family homes.*

*Mr. \_\_\_\_\_ Barron, a resident, asked if the DR Horton purchase closed. Mr. DiNardo indicated they expect to close in early October.*

*Mr. Jesse Fritz, a resident, asked if there are any rules, regulations or population zoning on the 50-foot lots. Mr. Brougham indicated it was a commitment, within the reorganization plans, that each development would adhere to the existing standards and/or be required to come before the Design and Review Committee (DRC) for any changes.*

**Exhibit B**

**CDD #2 – Summary Testimony of Revised Supplemental Assessment Methodologies  
by Dr. Hank Fishkind on September 28, 2011**

*Dr. Fishkind presented the Supplemental Assessment Methodology Report for CDD #2. He advised that it would follow the parameters of the District's assessment methodology reports adopted in 2003 and supplemented in 2004 and 2005, as additional bonds were issued, costs changed and land use changed. Dr. Fishkind indicated this is a continuation of the same process, except this time there is a plan confirmation with restructured assessments and a new plan of development for a portion of the affected area. The difference for CDD #2 is that a portion of the affected area is already platted and debt was assigned, based on the assessment methodologies. The debt service is restructured on those plats but the amount of debt assigned to them will not change, because they are already platted.*

*Referring to Table 1, on Page 3, Dr. Fishkind specified that \$73,565,000 of debt is being restructured. Table 2, on Pages 4 and 5, shows the land over which the restructured assessments occur; the platted properties do not show a net acreage amount. The debt per unplatted net acre is \$202,878. Table 3 conducts the analysis of the true up test converting the original amount of debt per gross acre to a net acre basis. The ceiling amount established in 2003, on a net acre basis, was \$269,157 and the amount of the restructured debt per net acre would be \$202,878, so the true up test is satisfied. Dr. Fishkind discussed the analysis of special benefits, noting the DR Horton lots are in CDD #2, meaning, there is no doubt that benefit is being created, in excess of the proposed assessments. He moved to Tables 4 and 5, on Page 9, which show the land use plan for the unplatted portion of the property and the allocation between roadways and non-roadways, respectively, based on the original capital improvement plan. Table 6, on Page 10, allocates roadway debt to the unplatted properties. Table 7, on Page 11, allocates the other costs to the unplatted properties, based upon the equivalent residential unit (ERU) methodology, and Table 8 reflects the amount of the assessments that would be allocated to plats, as they are presented.*

*Dr. Fishkind referred to Table 9, on Pages 12 and 13, showing the tax roll for the platted and unplatted properties, based upon the plan for confirmation, and it delays principal and interest payments until 2012 or 2013, depending on the restructuring for the particular piece of debt.*

*Mr. Robertson referred to Table 2 and asked if the platted lots are sold. Dr. Fishkind indicated some were assigned, or transferred, but most are not sold and remain in the debtor's hands. Mr. Robertson recalled that, as part of the Chapter 11 process, it was asserted that some of the prior debt allocations were in error, and asked if those prior errors were corrected in Table 2. Dr. Fishkind replied affirmatively. Mr. Robertson stated that the methodology was not changed, only the dollar and acreage amounts changed. Dr. Fishkind indicated it was a ministerial error of confusion about the timing of plats.*

*Mr. Correia asked if the methodology process will be necessary every time a developer finds other uses for the land. Dr. Fishkind indicated Staff will do so, as necessary, in accordance with Table 8. In response to a question regarding certain properties not included on Table 2, Dr. Fishkind advised that those were not included because they are platted properties. Mr. Sanford asked Dr. Fishkind if he could include a timing of assessments section in this document, the same as what was included in the previous supplemental assessment methodologies. Dr. Fishkind was agreeable, with the Board's permission. This section would state the District's process, which is, first platted, first assigned a piece of debt. The Board was agreeable to adding the section, near the end of the report. Mr. Sanford had additional questions, which Mr. Robertson recommended addressing to Dr. Fishkind, outside of the meeting. Dr. Fishkind indicated this process launches the notification to the landowners of the Board's intention and the 30-day process provides time for input and discussion with landowners and affected parties.*

*Mr. Elliot Miller, a resident, questioned if the units in the Menaggio area are sold. Dr. Fishkind advised that they are treated as platted, so they have debt that was previously assigned, they were part of the bankruptcy confirmation and transferred to Fifth Third, putting Fifth Third into the debtor's shoes, and a pay down is not required. Mr. Miller asked if the transfer to Fifth Third could be considered a sale, as it is in satisfaction of an obligation. Dr. Fishkind felt that assumption would be correct; however, he believed the bankruptcy court treated it differently and they have the power to allocate these types of issues.*

*Ms. Barton, representative for a 2003 Series bondholder, noted Fifth Third is stepping into the shoes of a debtor and will receive a one (1) to two (2)-year forbearance period. She voiced concern that this will go on with end users for CDD #2 and asked if this is setting in stone that any unit sold to an end user would also benefit from a forbearance period. She stated her understanding, through the bankruptcy documents, that, with any unit sold to an end user, the*

*past due assessments would be brought current and would be paid, going forward. Dr. Fishkind was of the opinion that it does confer the two (2)-year benefit; the sizing of the structured debt includes the two (2) years. Dr. Fishkind indicated this was locked in, when the court approved the plan. Ms. Barton indicated the bondholder she represents takes issue with that and she requested a discussion on the matter, prior to the next meeting.*

*Referring to Table 1, for CDD #1, Mr. Battista recalled that Dr. Fishkind deducted, from the amount of the bond debt, the bonds that were called and asked if a similar deduction was made for CDD #2. Dr. Fishkind replied affirmatively; the plan did not allow for any use of funds by the bondholders for any purpose except for calling bonds.*

*Regarding Ms. Barton's concerns, Mr. Darbut asked about the format for discussing objections to Dr. Fishkind's non-legal conclusion with respect to the deferral and paying the pay down. Dr. Fishkind indicated he can discuss it with them during the 30 days. In response to Mr. Darbut's question, Dr. Fishkind confirmed the discussions would be with him, Mr. Williams and could include Mr. Pires. Mr. Darbut questioned if Dr. Fishkind was saying the amount of the assessments will net out or otherwise diminish the amount paid to the bondholders. Dr. Fishkind stressed his position that the plan was set up to anticipate a restructuring of \$73,565,000 worth of debt and no portion of that was anticipated to have been used for suing the Boards or for the legal actions that occurred; there is no provision for those expenditures in the context of the confirmation. Dr. Fishkind concluded, if monies were taken from CDD #2's construction fund, for purposes other than calling bonds, it would be in contradiction to the plan; the figures in the plan do not allow for that. Mr. Darbut asked how the bondholder would otherwise pay the fees and expenses of the trustee incurred to enforce the indenture, if it is not from a deduction in the construction account. Mr. DeMarco recommended that all concerns and questions be put in writing and submitted to him and others, so they can be addressed formally.*

*Mr. Wieback asked Mr. Battista to clarify if a third-party homeowner buys a home, during this period, whether they must start paying assessments. Mr. Battista's understanding was that the forbearance period no longer applies to a third-party homeowner.*

*Regarding the issue of deferral of payments for people who buy lots, Mr. DeMarco confirmed that prior to confirmation of the plan, the process was that arrearages were brought current, each time a lot was sold. He noted it appears the process will be changed. Mr. DeMarco advised that Fifth Third will take the lots subject to a forbearance period and will have the benefit of the debt that was provided to the debtor, under the plan; however, if Fifth Third*

*sells a property to an end user the end user, would be required to bring the assessments current. He indicated a new buydown and principal and interest amount per year will be established. Mr. DeMarco asked Dr. Fishkind if this applies to all of CDD #2's bond series' and users other than Fifth Third Bank or only to the 2003A bonds. Dr. Fishkind's interpretation is that it applies to everyone; the sizing of the debt included deferral of the principal and interest payments for two (2) years. For this reason, Dr. Fishkind was of the opinion that a third party also enjoys the benefit of the principal and interest deferral until 2012 or 2013. Dr. Fishkind explained a series of buydowns and true ups would be necessary, if this reasoning is not the case. In response to Mr. DeMarco's question, Dr. Fishkind confirmed his opinion that the deferral period travels with the land and is baked into the amount of debt the Board is about to assign. Mr. DeMarco remarked that his understanding is similar to Ms. Barton's whereby Fifth Third sells a property to an end user, the end user must bring the assessments current. Mr. Battista felt all parties need to discuss this matter to clarify the understanding because he is of the belief that when the debtor sells the property, there is the required pay down with the only exception being the transfer of property to Fifth Third, meaning, they are the only ones with off-roll properties. Mr. Battista confirmed his feeling that Fifth Third is the only party to get the deferral benefit; subsequent owners would be subject to buy downs. Mr. DeMarco respectfully disagreed with Dr. Fishkind's interpretation and reiterated that the only express provision he found, allowing for the deferral period, related to Fifth Third. Mr. DeMarco asked if the resolutions or the supplemental methodology will need to be changed, should his interpretation be correct. Dr. Fishkind disagreed with Mr. DeMarco and indicated the Board can adopt the resolutions and start the process of holding the public hearing; adjustments can be made. Even if Mr. Battista and Mr. DeMarco are correct, Mr. Williams felt the methodology would not change; they would just provide for a pay down that is not currently reflected in the report.*

*Mr. Correia asked Mr. DeMarco if it was clear, in the plan and order, that the transfer of properties in Menaggio to Fifth Third was in consideration and is satisfaction of the developer's obligation but is not a sale. Mr. DeMarco indicated he has not researched it but Dr. Fishkind's opinion is that it is not a sale. Discussion ensued regarding whether this issue applies to CDD #1, as well.*