

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

The Board of Supervisors of the Fiddler’s Creek Community Development District #1 held a Regular Meeting on **Wednesday, October 26, 2011 at 8:00 a.m.**, at the **Fiddler’s Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the meeting were:

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

Also present were:

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| Chuck Adams | District Manager |
| Cleo Crismond | Assistant Regional Manager |
| Craig Wrathell | Wrathell, Hunt and Associates |
| Jeffery Pinder | Wrathell, Hunt and Associates |
| Tony Pires (via telephone) | District Counsel |
| Terry Cole | District Engineer |
| Aleida Martinez Molina (via telephone) | Weiss Serota, Special Counsel CDD #1 |
| Mike Williams (via telephone) | Bond Counsel |
| Paul Battista (via telephone) | Debtor’s Counsel |
| Amy Lowen | Trustee Counsel |
| Tony DiNardo | Gulf Bay Communities |
| Peter Blitcher | Resident |

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 8:03 a.m. He noted, for the record, that Supervisors Curland, Schutt and Slater were present, in person. Supervisors Brougham and Bergmoser were not present.

SECOND ORDER OF BUSINESS

Update: Bankruptcy Proceedings - Aleida Martinez Molina

Ms. Martinez Molina indicated the bankruptcy court has entered a number of housekeeping-type orders, including motions to "quash" subpoenas served on Mr. Adams and Ms. Alice Carlson. The appellate process is ongoing but nothing substantive has occurred. The US Bank versus CDD #1 lawsuit that was dismissed in bankruptcy court will be continued in

state court and remains in limbo; in order for the state court action to proceed, US Bank must take an administrative step which they have not yet done. US Bank's counsel has not replied to the District regarding their intentions. CDD #2's similar state court action was dismissed. Ms. Martinez Molina advised that, during the post confirmation period, the parties are following up on how to proceed with the plan, including when payments will be made and effectuated.

Mr. Battista, on behalf of the reorganized debtors, indicated two (2) appeals were filed and both were transferred to the US district court; each appeal was assigned to a different judge. As a result of and for administrative convenience, he is working with US Bank to consolidate those to the earlier filed case. Regarding the payments due under the plan, he reported that the debtors made the required O&M payments to both CDDs and are working closely with the tax collector, Ms. Carlson and CDD's counsel to determine and implement the most efficient way to make the required on-roll principal and interest payments, as there are many administrative issues. He noted the tax collector has been clear that they will not sell tax certificates for 2009 or 2010 but have asked Ms. Carlson to work with them to develop a mechanism to apply and administratively deal with partial payments on tax bills. He stated if a partial payment is made, it is unclear whether the tax collector will accept it and/or how it would be applied. Mr. Battista summarized the options were to make the payment and leave it in limbo or hold off on the payment until the procedure is known; they chose the latter. He is still working with Regions Bank to resolve any remaining issues so the property can be transferred to them and he is simultaneously working with Regions for them to pay the past due tax bills in full.

A Board Member asked Mr. Battista about the time frame for resolution with the tax collector regarding repayment of the 2009 and 2010 on-roll taxes. Mr. Battista indicated the tax collector requested that the CDD submit a form that would allow them to split out the on-roll P&I on the tax bills, which would then enable them to pay the obligation directly to the CDD, as opposed to running it through the tax collector. Mr. Battista has a call today with Ms. Carlson and Mr. DeMarco to follow up on the process. Mr. Battista reported that, once the procedure is in place, the reorganized debtors are prepared to make the payments as soon as possible; they have the money. Mr. Battista indicated his goal is to file the appropriate forms and make the payments. Mr. Adams confirmed once the payment is received by the tax collector, the CDD has the ability to separate by filing an errors and irregularities form with the tax collector. Discussion ensued about the tax obligations and application of the tax funds to the oldest delinquencies first.

On MOTION by Mr. Curland and seconded by Mr. Slater, with all in favor, authorizing District Management to take all necessary actions and file all necessary forms to receive the arrearage on the payments, as quickly as possible, was approved.

THIRD ORDER OF BUSINESS**Discussion: Trust Estate Non-Construction Related Transactions**

Mr. Adams referred to the items behind Tab 3, which are in anticipation of the upcoming audit season and related to issues observed for which Management felt clarifications, answers or responses were needed from the indenture trustee.

Mr. Wrathell recalled a letter from Ms. DiNardo, of CDD #2 and Mr. DeMarco's letter to the trustee, US Bank. He indicated Mr. DeMarco's letter asked specific questions of the trustee. Mr. Wrathell noted the upcoming audit and some concerns and/or open-ended items that must be addressed. He referred to the three (3) letters sent to US Bank by District Management's office and that the transactions requested in the letters were initiated by the trustee. The establishment of the remedial accounts was initially for foreclosure counsel.

Mr. Wrathell referred to the October 13, 2011 letter requesting copies of invoices, followed by emails requesting copies. Mr. Wrathell advised that the District's questions are focused on the other expenditures for which it did not receive invoices. He stated that about 30% of the requested invoices were not received.

Mr. Wrathell reviewed the second letter, dated October 18, 2011, which relates to bills coded to be paid by each District but the trustee was moving funds from one (1) CDD to another and making payments from only one of the CDDs accounts. He explained that when there was an expenditure, only one (1) invoice was issued and the trustee moved money from one CDD to another to pay the invoice out of the other. Management questioned US Bank regarding the existence of any interlocal or intergovernmental agreements permitting bond trust account funds to be moved from CDD #1 to CDD #2 and vice versa, without the approval of both Boards. Management's letter reminded US Bank that both CDDs are independent special districts and requested an explanation as to the mechanism that enabled US Bank, as trustee, to move the funds as outlined in the letter.

Mr. Wrathell indicated a response was received, via email, on October 19, 2011; however, he is unsure if it fully addresses the District's questions.

Regarding the prorated portions, Mr. DiNardo asked if the amount is the same, based on the normal proration portion between the Districts. Mr. Wrathell indicated Management cannot determine the mechanism or formula utilized by the trustee for the cost apportionment, as some invoices were split 50/50 and others were split with different ratios.

A Board Member referred to the first letter, noting the letter asks about considerably more money than US Bank responded to in the email and asked what the remainder of the money was for and why the funds were transferred. He indicated Management's letter questions \$164,000 and US Bank's response only clarifies \$23,000. Mr. Wrathell indicated he has not focused on the response but will challenge it.

Mr. Schutt voiced his understanding that the attorneys for US Bank allocated about \$3 million and his feeling that those attorneys had the mechanism to allocate and that the allocation was directly related to where the money was. He suggested Management not only ask for the method of allocation but also for the actual time billed by the attorneys because it should not just be an allocation; it is specific identification of where the time was spent. Mr. Wrathell agreed and noted that on a majority of the invoices, the information was either not provided or appears to have been redacted from the invoice.

Mr. Wrathell referred to the third letter, dated October 20, 2011. He explained that the way the indenture amendments were structured, when remedial accounts were set up for a particular bond issue, the money typically flowed from the debt service reserve to that remedial account and, if there were any construction account monies to be used, it was specifically mentioned in the indenture. In the case of CDD #1, the 2005 construction/acquisition account money was moved into the 2002 and 2005 remedial accounts. He mentioned the 2005 bond allows \$55,000 to be moved once; however, \$55,000 was moved over twice. He reviewed the indenture documents and Management's feeling that actions were taken by the trustee that are not consistent with the indenture amendments. The question is how can this be rectified and/or what justified them doing so, since it is inconsistent with the approved indenture amendments.

A Board Member questioned if the District has a document containing the indenture trustee's signature. Mr. Wrathell indicated one cannot be located. The Board Member asked that means the trustee is not obligated to abide by the document. Mr. Adams clarified the document is signed by the indenture trustee but not by the bondholders. Mr. Wrathell felt since the indenture trustee signed the documents, they must comply with the agreement.

Mr. Wrathell reviewed additional examples detailed in the October 20, 2011 letter. He surmised that the trustee's position is, the moment there was a default, they were entitled to move the funds. He reiterated that Management's questions focus on what mechanisms allowed them to move funds. He also noted an invoice, which indicates the costs that would be allocated; however, they were only paid by CDD #1.

Regarding billing, Ms. Martinez Molina indicated bankruptcy attorneys must provide very detailed time sheets and backup; therefore, the attorneys that worked on the cases have the detailed information to back up their work but whether they share it with others is another matter.

Discussion ensued regarding the missing backup and the possibility of it resulting in a qualified opinion in the audit. In response to a question, Mr. Wrathell confirmed if the information is not forthcoming, legal action may be necessary, at some time in the future.

Discussion ensued regarding the timeline of events.

On MOTION by Mr. Curland and seconded by Mr. Slater, with all in favor, authorizing District Management to continue requesting detailed information and backup from the trustee, regarding the allocations, was approved.

A Board Member voiced his opinion that the trustee's response emails to Mr. DeMarco, regarding CDD #2, were argumentative and asked if Management has encountered the same tone. Mr. Wrathell indicated Management deals with US Bank in the majority of its districts and he feels the trustee's level of frustration is high; generally, they are nice, until it gets to this point.

Mr. Wrathell reiterated the focus of his next letter is that the District has invoices but with no detail, accounting of the activity, hours or descriptions and the Board wants the information; otherwise, the District has no explanation as to why or how a particular District paid a percentage of the costs. It cannot be justified to the auditors.

A resident asked, if all the money is gone and it was supposed to be used for construction, will residents receive a special assessment when it is started. She voiced her concern that residents will be assessed to make up for the missing funds.

There being no report, the next item followed.

FIFTH ORDER OF BUSINESS**Engineer's Report**

Mr. Cole noted a lot of the money in the construction accounts was used to pay legal fees which creates a problem. He presented information regarding approved construction work for which work was completed and/or pending but is unpaid or for which there are not sufficient funds in the construction account.

Mr. Cole indicated the capital projects fund balance for the 2005 Series bond is approximately \$6,700, as of August 31, 2011, and the estimated total funds needed to complete the work is about \$117,000; therefore, there are insufficient funds to complete the identified work. He presented emails from the bondholder's representative, Ms. Halley Alexander, detailing the approved work. He stated he has utilized the most recently approved budget of \$607,200. The amount spent, to date, is approximately \$345,000. He indicated the estimated cost to complete work is \$95,000. Most of the work is complete and the project is actually about \$170,000 below the approved budget, which was previously reduced.

Mr. Cole noted he has always tracked these things and the money to complete the work has always been available; however, within the last month, he discovered the money is not there, only about \$6,700 remains. A Board Member voiced his issue with the fact that the bondholders approved \$607,200 worth of work and should be required to pay, when bills are submitted.

Mr. Cole indicated the only physical work remaining is paving the second level of asphalt near Marsh Drive; however, the work was not scheduled until more construction took place.

Discussion ensued regarding work to be completed and completed work that has not been paid. Mr. Cole advised that Pay Draw 58 for \$12,000 was not paid, while Draws 59 and 60 were paid. Pay Draw 61 was presented last month; the currently outstanding costs total about \$22,000, not including the \$7,000 pay draw to be presented today. Mr. Cole summarized the net funds needed are \$95,000 to complete work plus \$22,000 worth of unpaid draws and today's \$7,000 draw.

Mr. Cole reviewed the status of CDD #1's construction accounts. He explained he will not perform additional work until the outstanding costs are paid. Mr. Cole described the request procedure. Mr. Adams confirmed periodic follow up with the trustee is continuing. Mr. Wrathell offered to send a letter regarding the capital projects which were previously approved

and asking that the extra \$55,000 moved into the remedial account be returned to the construction account.

Mr. Cole presented Pay Draw 62, in the amount of approximately \$7,000, for work related to updating the South Florida Water Management District (SFWMD) permitting updates and lake conveyance coordination. He confirmed this falls under the \$95,000 worth of work to complete.

Regarding lake erosion work, Mr. Cole indicated the ad will be in Friday's paper, a pre-bid meeting will be held the following Friday, bids are due November 29 and he will present the bids at the December 14 meeting. The work is scheduled to commence in January.

Mr. Peter Blitcher, a resident, spoke of concerns about the need to pressure wash and repair the sidewalks, throughout the community. He identified issues with curbs. He feels the community is looking old, which does not help in marketing it. Discussion ensued regarding the CDD's areas of responsibility. Mr. Zampogna volunteered to research and provide information regarding maintenance and landscaping responsibilities at the next meeting. Mr. Blitcher questioned who handles erosion into berms. He asked if anyone is documenting the condition of the roads before and after construction projects in the community, as the roads are getting damaged. The Board noted these are public roads and cannot be regulated; however, steps have been taken to monitor the condition of the sidewalks.

SIXTH ORDER OF BUSINESS**Approval of September 28, 2011 Joint Regular Meeting Minutes**

Mr. Adams presented the September 28, 2011 Joint Regular Meeting Minutes and asked for any additions, deletions or corrections.

The following changes were made:

Line 52: Change "Alyse" to "Elysee"

The following additional changes were made, consistent with CDD #2's review of the joint minutes:

Line 32: Insert "(via phone)" after "Molina"

Line 43: Delete "(via telephone)"

Line 49: Change "Clutia" to "Klug"

Line 615: Change "Clutia" to "Klug"

Line 662: Change "Alyse" to "Elysee"

Line 743: Change "Verenna" to "Varenna"

On MOTION by Mr. Schutt and seconded by Mr. Curland, with all in favor, the August 24, 2011 Joint Public Hearings and Regular Meeting Minutes, as amended, were approved.

SEVENTH ORDER OF BUSINESS

Other Business

There being no other business, the next item followed.

EIGHTH ORDER OF BUSINESS

Staff Reports

a. Attorney

There being nothing additional to report, the next item followed.

NINTH ORDER OF BUSINESS

Unaudited Financial Statements as of September 30, 2011

Mr. Adams presented the Unaudited Financial Statements as of September 30, 2011, noting the significant due from developer amount still outstanding is related to the off-roll assessments from this fiscal year and 2010. He indicated the February 2010 and August 2011 amounts were received after September 30 so they have not been posted in these financials. The legal bankruptcy expenses are the largest item putting the District's expenses over budget; however, an unbudgeted transfer of funds has kept the District under budget, overall. In response to a question, Mr. Adams indicated he will clarify why access control services are over budget because it should not be.

Mr. DiNardo indicated the bondholders are appealing and asked who is paying for it. He discussed the status of assessment collections and Mr. Battista's presentation to CDD #1 where they are trying to pay just the O&M portion. Mr. Adams confirmed the District's funds are very low and it is not in a position to pay any bills, other than basic utility bills, until past year assessments are received from the reorganized debtor or current year assessment revenues are received, which should begin by mid-December.

▪ **Manager**

******This item, previously Item 8b, was presented out of order.******

i. NEXT MEETING DATES:

- **October 28, 2011 at 8:00 A.M., or as soon thereafter as such matter may be heard**
- **November 16, 2011 at 8:00 A.M.**
- **December 14, 2011 at 8:00 A.M. (Joint Board Workshop followed by Regular Meeting)**

Mr. Adams indicated the next meetings will be a public hearing and regular meeting on October 28, 2011 at 8:00 a.m., a regular meeting on November 16, 2011 at 8:00 a.m., and a joint Board workshop and regular meeting on December 14, 2011 at 8:00 a.m.

▪ Operations Manager

*****This item, previously Item 8c, was presented out of order.*****

Ms. Crismond presented the Operations Manager report. She reminded the Boards that the lake and wetland contract will expire on November 30, 2011 and that the proposals received will be presented for consideration at the November meeting. She indicated mulching and palm trimming and installation of winter flowers will be completed in November. Pressure cleaning of sidewalks continues, throughout the community.

A Board Member commented on the high number of residents leaving their garage doors open.

TENTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

In response to a question, Mr. Adams reviewed the format for the Friday, October 28, 2011 public hearing and regular meeting.

ELEVENTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Schutt and seconded by Mr. Slater with all in favor, the meeting adjourned at 9:37 a.m.


Secretary/Assistant Secretary


Chair/Vice Chair