

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

A Joint Regular Meeting of the Boards of Supervisors of the Fiddler's Creek Community Development District #1 and Fiddler's Creek Community Development District #2 was held on **Wednesday, October 27, 2010 at 8:00 a.m.**, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

**Present at the meeting were:**

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

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

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

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

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Aleida Martinez Molina (via telephone)	Weiss Serota, CDD #1 Special Counsel
Hank Morgan	Gray Robinson, CDD #1 Bond Counsel
Robert DeMarco	Treiser Collins, CDD #2 Special Counsel
Chris Wieback (via telephone)	Muni Bank, Bondholder Representative
Tony DiNardo	Gulf Bay, Developer
Elliott Miller	Resident
Mr. Fritz	Resident
Ron Albeit	Fiddler's Creek Foundation
Amanda Barton	ITG Holdings, LLC

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 8:00 a.m., and noted, for the record, that Supervisors Brougham, Robertson, Schutt, Curland and Slater were present, in person, for Fiddler's Creek CDD #1. Supervisors Robertson, DiNardo, Scott, Correia and Schmitt were present, in person, for Fiddler's Creek CDD #2.

**JOINT MEETING ITEMS**

**SECOND ORDER OF BUSINESS**

**Engineer's Report**

For District #1, Mr. Cole presented Requisition 50 in the amount of \$27,360. He summarized the invoices included in the requisition and reported that all work was stopped. Mr. Adams explained that he found it appropriate not to allow contractors to continue doing work knowing that a funding source was not secured. Ms. Scott questioned if the approval list was subsequent to Chapter 11 filing and Mr. Adams confirmed. Mr. Adams explained multiple funding requests were made to the trustee. Mr. Hank Morgan explained that, according to the trustee's counsel, there was a filing in the bankruptcy that implied the debtor may be taking the position that the construction funds may be subject to the automatic stay provision because they are part of trust estate of the debtor. If such was the case, the monies would be subject to the automatic stay provision of the bankruptcy and it would be a violation of the automatic stay for the monies to be expended for the previously approved projects. He recalled previous conversations between bankruptcy counsel for the debtor and trustee's counsel, where bankruptcy counsel indicated that such stay was not implied. Ms. Molina stated she was not aware of this issue, but the automatic stay does not mean that everyone else, other than the debtor, needs to abide by what the debtor says; rather, it means there are procedures to be followed. She suggested that, if there are issues, a party of interest can file a motion to withdraw automatic stay. Mr. Adams asked Mr. DeMarco if CDD #2 could take the same position. Mr. DeMarco stated he will need additional information relating to the specific relief that is being requested. He confirmed that his substitution as counsel has been accepted by the court and recommended a joint motion.

Mr. Cole confirmed that the cost of the design was \$1,583 and that capital projects issues were on hold. Mr. Cole presented Requisition 57, in the amount of \$348,274. He explained that

he acquired a deposit amount for FPL and, when completed, an agreement will be held between the District and FPL. Mr. Cole presented Requisition 58, in the amount of \$28,000, and discussed the associated invoices. He confirmed these would be paid with construction funds.

Discussion ensued on the lakeshore mediation and Mr. Cole confirmed that it has not been approved but has been submitted to the bond counsel. Mr. Pires stated he will follow up with bond counsel. A Board Member questioned the amount of money owed to contractors for completed work. Mr. Cole stated, for the District #2, 2003 bond, the amount is about \$3,000; for the District #2, 2005 bond, the amount is about \$440,000, which is mostly FPL. The amount is about \$54,000 for District #1, 2005 bond. Mr. Brougham questioned if the contractors have the ability to file liens against the District. Mr. Pires replied no; however, they have the ability to file lawsuits.

**THIRD ORDER OF BUSINESS**

**Discussion: Belle Meade Preserve  
Responsibilities**

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

Mr. Pires reported he has been working with Mr. Adams and Mr. Cole on the vegetation removal permit and summarized discussion with Mr. Doug Rillstone regarding the obligations of the District, under the Army Corps, South Florida and Collier County permits. He stated the Army Corps has requirements for exotic removal and, once completed, there is a three (3)-year maintenance monitoring obligation. Mr. Pires stated the District described, in the Engineer's Report, the removal and remediation activity in the Belle Meade Preserve as being a capital cost project. Mr. Cole confirmed it is in the Engineer's Report as such. Mr. Pires stated the capital funds have been paying for the exotic removal and was completed November, 2009. The question becomes what is the completion date for the Army Corps permit to start the three (3)-year maintenance program. Discussion ensued on the monitoring program. Mr. Cole provided a copy of the drainage map for the Districts. Mr. Cole explained the monitoring stations within the District and discussed the previous infestation of Brazilian pepper. He stated the spraying has stopped and the last treatment was completed in August. Mr. Brougham requested a timeline of completed events regarding the permits, obligations to the permits, clearing timing and potential costs.

**FOURTH ORDER OF BUSINESS**

**Consideration of Access Control Contract  
Amendment**

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

Mr. Adams presented the proposed First Amendment to the Access Control Services contract between the Districts and Fiddler's Creek Foundation. Discussion was held on the last sentence, under section six (6).

Mr. Pires stated the original language read "The District reserves the right to modify hours and schedules identified above". Mr. Brougham noted potential issues in exceeding the set caps for hours worked. Mr. Adams noted the caps are outlined in section six (6). Mr. Adams stated the section should reflect that an amendment is necessary to increase hours and cost. Mr. Pires stated he will amend the language accordingly.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, the First Amendment to the Access Control Services Contract, as amended, and authorization for the Chairman to review the amendment and execute accordingly, was approved.**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. Dinardo, with all in favor, the First Amendment to the Access Control Services Contract, as amended, and authorization for the Chair to review the amendment and execute accordingly, was approved.**

**FIFTH ORDER OF BUSINESS**

**Consideration of Proposals for Website  
Design**

- **AboveWater Public Relations & Marketing, Inc.**
- **RT Design Group, LLC**

Mr. Adams discussed the proposals and noted the discontent with the current vendor. Mr. Adams stated the existing contract does not provide language that indicates any part of the site is the vendor's property and, therefore, it appears that it can be transferred to a new vendor.

Mr. Brougham made a motion to waive the provision of the Rules of Procedure as it applies to the situation. Mr. Brougham withdrew his motion. Discussion was held on

considering proposals from other companies. Mr. Adams stated the existing vendor recently went through a change in ownership and they currently charge \$35 to \$40 per month, plus \$100, or \$150, annually for hosting the site.

**On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo and seconded by Ms. Scott, with all in favor, authorization for Staff to reject existing proposals and expand the search for proposals outside the Lee and Collier County areas, was approved.**

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, authorization for Staff to reject existing proposals and expand the search for proposals outside the Lee and Collier County areas, was approved.**

**SIXTH ORDER OF BUSINESS**

**Approval of Minutes**

- **September 21, 2010 Joint Special Meeting**

Mr. Adams presented the September 21, 2010 Joint Special Meeting Minutes for the Board's review. The following changes were made:

Line 41: Change "Portknot" to "Portnof"

Line 44: Change "Baldockia" to "Baldochi"

Line 49: Change "O'Hey" to "Ohye"

Line 50: Change "Petersen" to "Peterson"

Line 170: Change "Way" to "Bend"

Line 274, 284, 291: Change "Menagio" to "Menaggio"

Line 285: Change "Verango" to "Merango"

Line 320: Change "4" to "3"

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the September 21, 2010 Joint Special Meeting Minutes, as amended, were approved.**

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. Dinardo, with all in favor, the September 21, 2010 Joint Special Meeting Minutes, as amended, were approved.**

• **September 22, 2010 Joint Regular Meeting**

Mr. Adams presented the September 22, 2010 Joint Regular Meeting Minutes for the Boards' consideration.

Line 209: Insert "traffic" before "details"

Line 203: Change "Venetta" to "Veneta"

Line 255: Change to "responded that bondholder threats to the CDDs to do"

Line 427: Strike the last two (2) sentences.

Mr. Schutt stated he wanted to retract his statement accusing the trustee's counsel of stealing funds.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the September 22, 2010 Joint Regular Meeting Minutes, as amended, were approved.**

**On MOTION for Fiddler's Creek CDD #2 by Ms. Dinardo and seconded by Ms. Schmitt, with all in favor, the September 22, 2010 Joint 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**

Mr. Pires reported that the existing emergency meeting rules of procedures are consistent with State law, Chapter 189.417.

**b. Manager**

**i. Fiscal Year 2011 Meeting Calendar**

- **NEXT MEETING DATE: November 17, 2010 at 8:00 A.M.**

Mr. Adams noted the next meeting is scheduled for November 17, 2010 at 8:00 a.m. He provided a copy of the meeting calendar.

**c. Operations Manager**

Ms. Crismond reported that extensive repairs were made to the lighting at the Aviamar and Veneta features, including some repairs being made by the landscaper due to cut wires. She reported some of the decorative stonework on the Aviamar feature needs repair and the fountain had a leak, due to broken piping. Ms. Scott reported the fountain is currently not working. Ms. Crismond stated she was not aware of that and the repairs were supposed to be completed on Friday. She stated the entry monuments are owned by the District and neighborhood monuments are owned by the community. Ms. Crismond reported that all holiday lighting should be running the night before Thanksgiving. The winter annuals will be installed this week and the pine straw and palm trimming will begin in November. Ms. Scott questioned why the palm trees are trimmed in November. Mr. Adams explained the trees will remain cleaner for a longer period as it avoids trimming during the growth period.

Ms. Crismond stated a pre-bid meeting is scheduled for October 28<sup>th</sup> for landscaping. She reported that repairs were made to the irrigation pump house located in District #1, where 10-12" of sand was found in the wet well. She discussed the pricing to repair the pumps. The Boards discussed increasing the frequency of inspections. Ms. Crismond stated the inspections can be completed on a quarterly basis. As an additional preventative measure, management had TruGreen install a root barrier along the perimeter of the pump house abutting the ficus hedges to prevent possible root intrusion in the future.

Ms. Crismond indicated that the on-going trenching work on Mulberry is a subcontractor for Teco Gas and they are installing gas lines.

She noted that the patrol services included a total of 14 stops; 11 residents, 2 guests and 2 unknown. There were nine (9) warnings and five (5) citations.

Ms. Scott asked Mr. Albeit the reason for all the parking violations. Mr. Albeit responded oversized vehicles were parked, as well as parking on the street. Ms. Scott requested that such information regarding parking issues be included in the newsletter and website.

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

**NINTH ORDER OF BUSINESS**

**Presentation of Findings Related to the  
District's Concerns with Use of  
Construction Funds to Redeem Bonds**

Mr. Hank Morgan provided a report to Board Members and stated he did not believe there was any potential for litigation. He discussed previous correspondence with Mr. Warren Bloom regarding the use of construction funds to pay down the bonds, including a copy of a direction signed by the bondholders, directing the trustee to use the funds from the construction fund to pay down the principal. He stated the Master Indenture and the Supplemental Indenture are not clear; however, the trustee's position is that the bondholders directed the trustee. He noted the direction was not accompanied by a formal acceleration of the bonds, neither was there a notice of redemption. Mr. Brougham questioned if the bondholders took another \$1.5 million. Mr. Adams confirmed that they took \$1.5 million from Series 2005. Mr. Robertson questioned the wording on the letter approving the action to move the funds. Mr. Morgan stated the wording does not refer to the completion of the project; it simply directed the trustee to take the money and use it to pay down the principal. Discussion ensued on the process and the lack of redemption notice. Mr. Robertson stated that the bondholders previously approved the engineer to do certain work and they are withdrawing their approval. Mr. Morgan stated the issue is a bankruptcy related issue relating to holding back the disbursement of the funds. Discussion ensued on the use of the funds and getting the trustee to release the funds to complete the already approved construction list. Mr. Adams discussed the current balance.

Mr. Brougham questioned if the trustee had the legal authority to withdraw the funds. Mr. Morgan stated it is his opinion that the trustee did have the legal authority. Mr. Morgan stated the second issue that was raised was whether the action had any implication with respect to the tax exempt status of the bonds and opined that there was not an issue. He discussed the private use tests to determine if a bond is a private activity bond and that the bondholders would not want to create a situation that would make their bonds taxable. Mr. Morgan stated the bottom line is that the use of the bond proceeds to redeem bonds is not something that would jeopardize the tax exempt status of the bonds. He clarified his opinion that there are no concerns with respect to tax exempt status because of the action that was taken by the bondholders. The

District and the trustee have both covenanted in the Master Trust Indenture and Supplemental Indenture, not to take any actions that would jeopardize the tax exempt status of the bonds.

Mr. Schutt questioned if a determination was made as to the obligation of the District's Board to follow the request of the trustee. Mr. Morgan replied that the obligation was not considered when reviewing the indentures. Mr. Brougham questioned if the 2005 bonds covered any Villages that are occupied. Mr. Adams responded that there are not any named Villages noted in the lien roll. Mr. Brougham discussed that the prepayment of the principal, decreases future principal and interest payments that have to be made by the landowner, which is the developer. Mr. Adams stated annual installments will be reduced as a result of the principal and interest being paid down. Mr. Brougham requested for Mr. Morgan to explain the difference between Series A and Series B bonds. Mr. Morgan stated the A bonds are long term and B bonds are short term. The B bonds, usually five (5) years, have a redemption feature so that when the parcels are sold, the debt is prepaid and used to redeem a portion of the outstanding bonds and are anticipated to be paid off quickly. Mr. Morgan confirmed that he only reviewed the 2005 B bonds and does not have any knowledge of the proceeds from other bonds.

Mr. Miller questioned if the issue raised with the bondholder/trustee would cause the cessation of the payments to the contractors. Mr. Morgan recalled his discussion with Mr. Bloom that there was an implication that the debtors counsel may be taking the view that the construction funds are part of the estate and subject to automatic stay. Mr. Miller stated if the funds are part of the bankrupt estate, the funds cannot be used to redeem the bonds. Mr. Morgan stated he is not aware of the timing, with respect to the current redemption of the bonds. Mr. Brougham confirmed the funds were taken post petition. Mr. Morgan questioned if the construction funds were scheduled as part of the bankruptcy estate. Ms. Molina stated she would have to review the schedule. Mr. Adams replied that he believed it was and that it was the basis of the concerns by the bondholders.

Ms. Scott questioned if funds were drawn from the construction fund to pay legal fees. Mr. Adams confirmed that the bondholders' and the Districts' legal fees were paid with the construction funds, as it was a provision of the amendment to the trust indentures that was adopted by the Boards in September, 2009. Ms. Scott noted a parcel of land in Marsh Cove that is undeveloped and the funds were taken. Mr. Adams stated Marsh Cove is not a part of the CDD #1 Series 2005 construction area.

Mr. Brougham discussed that Mr. Adams notified him that District #2's bond counsel withdrew and requested Mr. Brougham's opinion as to District #2 retaining Gray, Robinson. Mr. Brougham stated he responded that the Districts voted to retain bond counsel that was separate and that he chose to not take action until another vote was taken. Mr. Morgan stated he has only acted as counsel for District #1.

**TENTH ORDER OF BUSINESS**

**Update: Bankruptcy Proceedings –  
Aleida Martinez Molina**

Ms. Molina reported that there was one (1) significant sale motion for the Bellagio #6 in the amount of \$950,000. She stated there were dozens of golf membership proofs of claim that were filed, as well as applications filed by the debtors, which will be heard on November 30<sup>th</sup>. She stated Molis submitted their fee applications for March through July, in the amount of \$583,766. The DIP financing and cash collateral is in place.

Mr. Brougham stated there is not a lot of activity on the Unsecured Creditors Committee. He stated there will be some investment money that can be used to develop a plan of reorganization. Mr. Schutt questioned if a plan of reorganization is required by December. Ms. Molina stated November 30<sup>th</sup> is a day for several hearings and December 3<sup>rd</sup> is the deadline for the debtors to submit their plan of reorganization. Mr. Schutt questioned if the plan will be available before it is heard. Ms. Molina stated she will forward the information to the Board and Mr. Adams. Mr. Brougham stated the plan will be available on the Unsecured Creditors Committee website, under the court filings and there is no certainty that the plan will be filed by December 3<sup>rd</sup>. Ms. Molina explained that if the debtor does not file a plan by the date, other parties can file a plan or the judge has the ability to grant an extension. Mr. Curland recalled the bondholders previously challenging the Board Members' fiduciary responsibility. Ms. Molina stated nothing more has come of it. Mr. Brougham referred to an email request from the trustee for individual Supervisors to provide any and all communications that they had with the debtors. Mr. Adams stated we complied with the request and have heard nothing more on that subject.

Mr. Brougham asked if there is an objection to retaining Gray, Robinson. Mr. Slater replied that it may not be fiscally responsible, if the objective is the same. Discussion ensued on the use of Gray Robinson as bond counsel.

**ELEVENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
September 30, 2010**

Mr. Adams presented the Unaudited Financial Statements as of September 30, 2010.

**TWELFTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Ms. Molina asked for approval of Gray Robinson to assist in any needed issues. The Board provided their consensus for such.

**THIRTEENTH ORDER OF BUSINESS**

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

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the Fiddler's Creek CDD #1 meeting was adjourned at 10:15 a.m.**

**FIDDLER'S CREEK CDD #2 ITEMS**

**FOURTEENTH ORDER OF BUSINESS**

**Update: Bankruptcy Proceedings –  
Robert DeMarco**

***\*\*\*This item, previously the Fifteenth Order of Business, was presented out of order.\*\*\****

Mr. DeMarco stated that the injunctive relief, which was being sought by the bond indenture trustee, has been dismissed and the amended tax rolls were provided. He stated the letter of intent regarding the Millbrook lots was approved. Discussion was held on the Bellagio sale and the complexity of the sale.

**FIFTEENTH ORDER OF BUSINESS**

**Discussion: Engaging Bond Counsel**

***\*\*\*This item, previously the Fourteenth Order of Business, was presented out of order.\*\*\****

Mr. Adams recalled the report of District #1 bankruptcy counsel and discussed the difficulty in finding a bond counsel that does not have an existing conflict. Mr. Correia noted his frustration with not being able to work together as Boards to hire a bond counsel. Mr. Pires confirmed that there is not a Sunshine violation if the discussion is between individuals that

serve on two (2) separate Boards. Mr. Adams voiced his concern to not do such, if for no other reason than public perception. Discussion ensued on the particular details of each bond issue. Mr. Adams noted it does not hurt to have someone hired and is ready to consult when needed. Mr. Correia noted the need to discuss working together with CDD #1. Discussion followed on previous meetings and community issues between the Districts. Audience members discussed the security issues and the interest of keeping the gates manned or unmanned.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. Dinardo, with all in favor, authorization for Staff to continue pursuing bond counsel, was approved.**

**SIXTEENTH ORDER OF BUSINESS**

**Ratification of Fiscal Year 2011 Amended Budget**

Mr. Adams presented the Fiscal Year 2011 amended budget for the Board's approval. The budget reflects the developer-owned units' assessment being moved back to on-roll collection status.

**On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo and seconded by Ms. Schmitt, with all in favor, the Fiscal Year 2011 Amended Budget, as presented, was ratified.**

**SEVENTEENTH ORDER OF BUSINESS**

**Consideration of September 30, 2010  
Emergency Meeting Minutes**

Mr. Adams presented the September 30, 2010 Emergency Meeting Minutes for the Board's consideration.

**On MOTION for Fiddler's Creek CDD #2 by Ms. DiNardo and seconded by Ms. Schmitt, with all in favor, the September 30, 2010 Emergency Meeting Minutes, as presented, were approved.**

**EIGHTEENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
September 30, 2010**

Mr. Adams presented the Unaudited Financial Statements as of September 30, 2010.

Mr. Correia asked about the possibility of a special assessment. Mr. Adams stated the assessments will have to be addressed in the bankruptcy and the legal fees are being paid by the trustee.

**NINTEENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Ms. Amanda Barton introduced herself, stating she represents the new majority holder of the 2003 Series bonds, ITG Tax Free Income and Capital Appreciation Fund. She stated the 2003 series bonds engaged new bankruptcy and bond counsel, Holland & Knight.

**TWENTIETH ORDER OF BUSINESS**

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


**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the Fiddler's Creek CDD #2 meeting adjourned at 11:00 a.m.**

**Fiddler's Creek CDD #1**

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman

**Fiddler's Creek CDD #2**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair