

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

The Regular Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #2 was held on **Wednesday, July 22, 2009 at 9:00 a.m.**, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the meeting were:

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

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Julio Aponte	Trustee Counsel, Greenberg Traurig
Doug Gonzalez (via telephone)	Special Counsel, Weiss, Serota, et al.
Patrick White (via telephone)	Key Bank Counsel
Warren Bloom (via telephone)	Greenberg Traurig
Leigh Fletcher (via telephone)	Stearns Weaver
Mike Charbonneau	Fiddler's Creek Foundation Security
Ron Albeit	Fiddler's Creek Foundation
Phillip Brougham	Chair, Fiddler's Creek CDD #1

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

The meeting was called to order at 9:00 a.m. Mr. Adams announced that all Supervisors were present and constituted a quorum at Roll Call. He indicated that Mr. Doug Gonzalez, Special Counsel to the District, was attending by conference call, as well as Mr. Patrick White, Mr. Warren Bloom and Ms. Leigh Fletcher.

SECOND ORDER OF BUSINESS

**Continued Discussion: Foreclosure
Action**

Mr. Adams stated the first item of discussion is a continued discussion/update on any potential foreclosure action/Forbearance Agreement. He indicated that Ms. Fletcher was attending with regard to this item and he asked her to give an update.

Ms. Fletcher advised that the Developer sent a proposed Forbearance Agreement to Greenberg Traurig, Mr. Bloom, to propose to the Bondholders, and they have reviewed it. She further advised that late last night, they sent some comments that are now being reviewed. They were generally positive. Their comments were that they are interested in pursuing this Forbearance. They now have to look at the changes they would like to make.

Mr. Aponte reported Greenberg Traurig received two (2) forms of Forbearance Agreements on Friday of last week from Stearns Weaver. They had the opportunity to discuss those agreements yesterday afternoon with the Bondholders and wrote back a list of additional terms that they would like to see in those agreements and requested that they discuss them with their client. He advised they got an email from Jane saying, without having reviewed them or having discussed them with their client, she does not think those terms would conceptually be a problem. He further advised that, assuming that there are no problems with those additional terms, it should not take very long to put together an agreement, but they would like direction from the Board to the effect that, if there is no signed agreement in play by August 14th, the Board has already authorized Mr. Gonzalez to begin the foreclosure process.

Mr. Gonzalez indicated his firm is ready to take whatever measures the Board would like them to take, in terms of a foreclosure action, or to wait, if the timing was not an issue with the Board.

Mr. Robertson stated he heard Mr. Aponte saying they are very close to a Forbearance Agreement and asked what was "magic" about an August deadline?

Mr. Aponte responded there is no rhyme or reason to it, other than the fact that he thinks that is more than sufficient time to get an agreement in play and, if it isn't, then at that point, it will be very clear to everyone that there will be no agreement and, therefore, they are opting for foreclosure. He commented that he is trying to save the expense of an additional meeting just for that purpose and then explained that a Board meeting has to be held in order to adopt an agreement, but if there is no agreement, it wouldn't be necessary to have another Board meeting.

Mr. Adams noted that this Board has met every two (2) weeks for the past three (3) months on this particular issue. He asked if there was any reason to believe that they cannot get

this done sooner versus later and, if not, that they deal with this at the Regular Meeting scheduled on August 26th.

Mr. Aponte indicated he thinks everyone is hopeful that this can be resolved sooner rather than later. His only problem is, to the extent that there is no agreement, they obviously would like to get it done without having additional meetings. His suggestion was that the Board authorize Mr. Gonzalez to file foreclosure on August 14th if, by that date, there is no signed agreement. That would not necessitate the Board having to take additional action.

Mr. Robertson stated, just to confirm, nothing happens on August 14th, hopefully. The only thing that happens is they wait until the first of November, when this body will or will not make its financial obligations.

Mr. Gonzalez clarified that, on August 14th, Counsel is indicating that if there is an agreement, there will be no need for further action. If there is no agreement signed by August 14th, Counsel is saying there is not going to be any additional movement towards an agreement between August 14th and the next meeting on August 26th. He further indicated there is only a two (2)-week period of time where he will not be filing a foreclosure action, if he is not asked to do so today. They will wait until the August 26th meeting, get an update and proceed at that time. Counsel is trying to eliminate the need for further meetings of this Board. Since a meeting is already scheduled for August 26th, there is no problem with waiting until then to find out the status, at that point.

Mr. Robertson indicated that was his personal preference.

Mr. Adams stated on August 26th, either they were agreeing to a Forbearance Agreement or they were absolutely moving forward with foreclosure. He asked Mr. Aponte if that would work.

Mr. Aponte answered, conceptually, it will work. He stated the only problem is that they were basically waiting another two (2) weeks to do something that they could have done two (2) weeks prior. This is just an additional delay.

Mr. Bloom advised if they were saying they want another two (2) weeks to make sure that agreement is put in place, but they are going to report back on the 26th that they are going to begin foreclosure, that is more saleable than saying, come the 26th, there is no agreement and they are not going to do anything now.

Mr. Adams indicated they were either approving a Forbearance Agreement or they were authorizing foreclosure and one (1) way or the other, the date is August 26th.

Mr. Bloom commented that they should get that on the record now.

Mr. Adams stated this Board recognizes its fiduciary responsibility, but at the same time, is trying to put this all into one (1) meeting agenda and, preferably, that would be the regular meeting date.

On MOTION by Mr. Robertson and seconded by Ms. DiNardo, with all in favor of taking no action today, setting August 26th as the date to either have a written Forbearance Agreement or to initiate Foreclosure Proceedings.

THIRD ORDER OF BUSINESS

Continued Discussion: Proposed Budget for Fiscal Year 2010

Mr. Adams stated the next item is a continued discussion regarding the Proposed Budget for Fiscal Year 2010. He indicated that he implemented the changes discussed at the last meeting and, as a follow-up to the Fiddler’s Creek CDD #1 meeting and the Budget discussion there, he also implemented a change in the Access Control Program and that change is about trying to save some “man hours”. He noted since the largest expenditure in the Access Control Program is Contractual Services, which is the “man hours”, what he placed into this Budget, based upon that discussion, are adjustments for unmanning Championship Drive. He stated several years ago, they began the process of unmanning it; putting the technology in place to allow monitoring of certain visitors; essentially, delivery people, Staff and, of course, residents would be able to go through that gate. As they modified that technology program a year or so ago, they removed what is called the “ticket spitter” from the program, which was going to allow remote issuance of a pass from the main gate to non-routine suppliers.

Mr. Adams advised, the thought process at the time was that if they ever got to the point of unmanning this gate, it would become an entrance for the Staff of the Rookery, who already have the credentials and a bar code on their vehicles or they have a pass to scan, or for residents, who obviously have clickers. What this Program is anticipating is to unman that gate and those are the individuals who would be allowed access through. That will move any construction or delivery activity over to Sandpiper, because they will not have the credentials to come through

the Championship gate with the existing technology. He reported that resulted in about an \$80,000 savings and, split between the two (2) Districts, the savings were somewhere in the \$25,000 - \$30,000 range. He advised he wanted to bring that to the Board's attention.

He then indicated that, under Rentals and Leases, he also added a temporary Guardhouse and an expense related to the temporary Guardhouse, which is the monthly rental of the Scottsman-Williams trailer, as well as the sanitary tank and the routine service on that tank. He advised their proportionate share was just under \$1,500.

Mr. Robertson indicated this was being discussed in budgetary terms. He wanted to also discuss it in terms of traffic management within Fiddler's Creek. He stated that by this proposal, they are going to unman Championship gate and that on Monday through Friday, all of the daily contract vehicles go out through the manned Championship gate. He noted they cannot go out of there on Saturday, when it is unmanned, because they do not have the technology installed at Sandpiper gate to accommodate that; however, they do have technology at Sandpiper that will allow clicker operation for all residents. Since this is Cost Neutral, they were suggesting unmanning Sandpiper gate, which will allow the residents of District #2 to click in and click out, and all of the daily commercial traffic will continue to use Championship gate, as they have learned to do for the last ten (10) years.

Mr. Robertson expressed his concern that if they unman Championship gate, they will have to re-educate every small businessman in Collier County where to go and potentially increase cost to the residents. For example, if a delivery person comes from Marco Island and has to drive by the main gate, drive by Championship gate and go around to the Sandpiper gate, drive all the way through the Fiddler's Creek to where he has to make a delivery, he is going to either stop doing business for us, or he is going to add costs to us, which is not in the residents' best interest. He suggested, as a cost neutral, unmanning Sandpiper gate and manning Championship gate for 12 hours a day, six (6) days per week, which seems to work very well. He stated the concern is that if that gate is unmanned, they will have to deal with traffic all the way out Championship to 951 and that will require either moving the guard from the front gate to Championship, on an ad hoc basis, or require that the Rover Patrol go to the gate to handle the backed up traffic. He indicated that can be resolved by swapping out manning of the Sandpiper gate for the Championship gate.

Mr. Robertson indicated he assumed the concern was the number of hours for one (1) guard 12 hours a day, six (6) days per week, which is about \$82,000, or \$2.51 per resident, per month; so they can skip that and say cost neutral and swap out the two (2) gates.

Ms. Schmitt stated when a company comes in that does business here on a daily basis, such as a pool company or landscapers, they do not have clickers; they get a pass. She asked if they get a pass each day.

Mr. Charbonneau responded yes, they do. He advised they do not issue a permanent pass. The residents have different vendors and they may not notify the Safety Department when they change, etc. He explained that if he gave them an open-ended pass, they would have free access to the community with that permanent pass. With a daily pass, they come in and do their business and leave, just like a guest. Each transaction is registered in and out.

Ms. Schmitt asked, if that pass was good for a week, would it give them the opportunity to check in, for example, at Sandpiper gate, and get them out of the other gates.

Mr. Charbonneau responded yes, no matter what the time stamp on it is, they could exit any three (3) of the locations.

Mr. Albeit explained currently, all service deliveries come in Championship Drive, seven (7) days a week, 24 hours a day. If it is after hours, when Championship is unmanned, there is a call box; they call the front gate, they validate who the delivery is for, they will look it up and let them through and they manually input into the computer that they let this person in. On Sunday, they can do the same thing. Right now, the current Budget says unman that gate and put all that business to the Sandpiper gate. He indicated they do not have the technology at the Sandpiper gate to allow access to the property after the hours of being manned. He stated what he understands Mr. Robertson is proposing is to keep the same dollars, for Budget purposes, but unman the Sandpiper gate, in the Budget today, make that a "members only" gate, open 24 hours a day, seven (7) days a week and keep the Championship gate manned, primarily because the hours between 9:00 a.m., and 11:00 a.m., are very busy and you have backup to 951. He confirmed they cannot do what the Budget says, which is to shift all of the business to Sandpiper.

Mr. Robertson advised he wanted to make a motion to vote on that proposal, recognizing that it is subject to concurrence or non-concurrence by the CDD #1 Board. He added if they do not concur, it will be addressed again at a Budget meeting.

Ms. Scott asked if they need the temporary trailer at Sandpiper.

Mr. Robertson indicated the trailer is mandated by Collier County.

Mr. Adams stated it will be activated at some point. There is a permit in place. They are required to have it there as part of the Public Gate Program. It accrues about \$400 a month in expenses, between the rental of the trailer and the rental and service of the sanitary tank.

Mr. Robertson commented there is a possibility that a year or more down the road, construction could increase again and they might want to change this position at that point.

Mr. Adams stated if you get to the point where construction is picking up and there is heavy equipment, which is the largest burden on the Championship Gate Program, you will have to reactivate it.

Mr. Robertson stated this allows the residents of District #2 to get in and out, 24-7, with their clicker only, at Sandpiper gate, which requires no Guard and no change to the equipment we have already installed out there.

Ms. Schmitt stated we still will have whatever construction traffic that we have now; we have huge tractor trailers filled with sod and other heavy materials coming into this community and they are coming in on Championship.

Mr. Charbonneau advised there are two (2) houses that are under construction on Mahogany. They are at the stage where there are only personal vehicles. He indicated the only large vehicle would be a sod delivery to those two (2) houses.

On MOTION by Mr. Robertson and seconded by Ms. Scott, with all, except Ms. Schmitt, in favor of changing the current Budget to unman the Sandpiper Gate, rather than the Championship Gate, which is cost neutral, subject to concurrence with CDD #1. (Motion passed 4-1)

Mr. Adams reported that another highlight is, based on direction by the Board at the last meeting, the assessment levels will remain the same, from the current year to the Proposed next year. He indicated that equates to bumping up the Contingencies from \$10,000 to \$48,000. He explained they never anticipate spending Contingencies, so, to that extent, that number will provide additional Fund Balance, which this District is in need of.

Mr. Robertson indicated he concurred with these actions. He commented that his personal preference would have been to have a larger contingency assessment for this year and

the next foreseeable three (3) or four (4) years, but in these economic times, doing anything to change the assessment level is not in the interest of the residents of District #2.

Ms. Scott noted the 3% they get from the Tax Certificate sales is not on this particular Budget.

Mr. Adams stated they will see that reflected in the future financials as we receive those funds.

Mr. Robertson stated the consensus is that the assessment level be kept at last year's level for the budget year, giving Mr. Adams a small increase in the Contingency Fund. He indicated that would keep the level at \$15.02.

Mr. Adams explained that would negate the necessity to send out a notice for an increase in assessments. They will actually be at, or slightly under, by pennies, so there is no requirement to do a separate mailed notice. He indicated that the revisions that they discussed this morning will be continued to the August 26th meeting.

FOURTH ORDER OF BUSINESS

**Notice of Landowners' Election/Meeting,
November 25, 2009 (Seats 1, 2 & 5)**

- a. Election Information/Sample Agenda**
- b. Sample Official Ballot**
- c. Sample Landowners' Proxy**

Mr. Adams stated every two (2) years, there is a Landowners' Election. Seat 1, which is held by Ms. Schmitt, Seat 2, which is held by Mr. Correia and Seat 5, which is held by Ms. Scott are up for election. All three (3) terms expire in November of 2009. He further stated, by Statute, the District is required to make a public declaration that we will be having a Landowners' Election at least 90 days from today's date. He proposed holding the election the same date as the Regular Meeting on November 25th. The Landowners' Election will be held prior to the Regular Meeting. He advised that he will ask the Board to adopt the schedule that indicates the Landowners' Election starting at 8:30 a.m., and have the Regular Meeting, at the appropriate time, which is 9:00 a.m.

Mr. Robertson asked Mr. Adams to explain the statutory requirements for a Landowners' Election.

Mr. Adams explained that they are entitled to one (1) vote for each acre of owned property, each platted or habitable unit, or a portion thereof. As homeowners, if they own a unit, they will have one (1) vote for that unit, regardless of the number of occupants, unlike a General Election, where the number of registered voters will come into play. This means all property owners/unit owners have a right to come to that meeting on November 25th and cast a Ballot or Proxy. He further explained that they are able to secure Proxies from other landowners and entitled, through the Proxy, to cast their votes.

Mr. Adams noted that the Developer is the largest property owner and has the largest number of votes. He explained they will cast their vote for each Seat and who they would like to see in that Seat. They will go through a nomination process first and then the casting of ballots. He stated the reason they are provided with Ballots and Proxies is that they have the ability to secure Proxies, if they wish, and any property owner has the right to contact the District and the District will provide them copies of the Ballots and the Proxies, as well. He stressed that they must be a property owner within the boundaries of the District.

FIFTH ORDER OF BUSINESS

Approval of Minutes

• **June 10, 2009 Continued Meeting**

Mr. Adams asked for any additions, corrections or deletions to the June 10, 2009 Continued Meeting minutes and requested they be indicated by line number.

The following changes were requested:

Page 2, Line 44: After “payments”, add “as to the off-roll maintenance assessment”.

Page 2, Line 56: After “off-roll”, add “maintenance”.

On MOTION by Ms. Schmitt and seconded by Mr. Robertson, with all in favor of approving the June 10, 2009 Continued Meeting minutes, as corrected.

• **June 24, 2009 Regular Meeting**

Mr. Adams asked for any additions, corrections or deletions to the June 24, 2009 Regular Meeting Minutes.

The following changes were requested:

Page 1, Line 30: Change "Toli Christenson" to "Torben Christensen".

Line 23: Delete Mr. Albeit, as he was not present.

Line 26: Mr. Bloom was present via telephone.

Page 2, Line 50: Add "discussion regarding" before "a Forbearance";

Line 65: After "a copy of the", add "points of the".

Page 5, Line 159: Change "contactors" to "contractors".

Line 160: Change "nullify" to "modify".` 1

Page 6, Line 195: Change "Verena" to "Verenna".

Page 10, Line 303: Change "Ms. DiNardo" to "Mr. Adams".

On MOTION by Ms. DiNardo and seconded by Ms. Schmitt, with all in favor of approving the June 24, 2009 Regular Meeting minutes, as corrected.

SIXTH ORDER OF BUSINESS

Other Business

There being no Other Business, the next item followed.

SEVENTH ORDER OF BUSINESS

Staff Reports

a. Attorney

There being no report, the next item followed.

b. Engineer

Mr. Cole presented four (4) Pay Draws. He indicated Pay Draws 41 and 42, have actually been presented and the difference is that they have the checks going directly to the Vendors, as opposed to the Developer. He then referred to a new Draw 43, for approximately \$51,000, and indicated the majority were soft costs related to the Professional fees for Engineering and Inspection services, as well as costs for Subdivision Bonds.

The last draw presented was Pay Draw 60. Mr. Cole noted he presented this in a Draw previously, the difference being, when Mr. Pires reviewed it, they had discussions related to non-CDD costs related to the Subdivision Bonds, and therefore, the revised amount is about \$55,000, which is about \$5,000 less than the previously prepared Draw.

c. Manager

i. Unaudited Financial Statements as of June 30, 2009

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2009.

ii. NEXT MEETING DATE: August 26, 2009 at 9:00 A.M.

Mr. Adams advised that the next meeting date is August 26th and that is when the Board will have a Public Hearing to officially adopt the Budget for Fiscal Year 2010.

d. Operations Manager

Ms. Crismond reported there were some repairs to the Aviamar fountain. The contractor had to repair one (1) fountain head and install a filter element and the fountain was also acid washed on Friday. She advised that the July tour for lake maintenance was completed on Monday, July 13th, with Lake Masters and Supervisor DiNardo. She indicated there were minimal signs of algae and Alligator Weed noted and that right now, they are also treating the Water Lilly at Cherry Oaks.

Ms. Crismond reminded the Board that the Lake & Wetland contract will be expiring on November 30th and Management will be advertising, for bid purposes, in the next few weeks.

Ms. Crismond stated, for the landscaping, they have a Progress Report from JRL Design. A Field Verification meeting will be scheduled in the next few weeks, when Management will be meeting with Jim Vajen, as well as John Ribes, to review. She indicated that the bid specifications should be completed by August 28th and she will continue to keep the Board updated on the progress. Also, it was recently brought to her attention that numerous lights at the Veneta entry were not functioning, so she had all of those repaired.

Ms. Crismond then gave the statistics for Patrol Service: there were 25 total stops: 15 residents, five (5) guests, three (3) vendors and two (2) Staff. There were 13 warnings, with 12 citations; 9 Stop signs, 13 speeding and 3 other.

EIGHTH ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

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

NINTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Robertson and seconded by Ms. DiNardo, with all in favor of adjourning.

The meeting was adjourned at 10:00 a.m.


Secretary/Assistant Secretary


Chairman/Vice Chairman