

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

A Joint Continued 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, June 2, 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 (via telephone)	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

**Also present were:**

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Terry Cole	District Engineer
Tony Pires	District Counsel
Carla Barrow (via telephone)	Special Counsel
Doug Gonzalez (via telephone)	Special Counsel
Amy Lowellyn (via telephone)	Bond Counsel
John Hutton (via telephone)	Bond Counsel
Paul Battista	Debtors Counsel
Elliot Miller	Resident
Jack Perrin	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order and noted, for CDD #1 Supervisors Brougham, Robertson, Curland and Slater were present. Supervisor Schutt was present via telephone. For CDD #2, Supervisors DiNardo, Scott, Correia and Robertson were present, with Ms. Schmitt absent.

**SECOND ORDER OF BUSINESS**

**Continued Discussion**

Mr. Brougham requested nearly verbatim minutes.

Mr. Brougham recalled that at the last meeting Mr. Battista and Mr. DiNardo left the meeting to have a conference call with Mr. Bloom and Mr. Hutton. Mr. Brougham stated the Board does not know the result of the conference call and has not received any information as to an accommodation between the debtors and the bondholders.

Mr. Battista explained, after the meeting, Mr. Bloom, Ms. Lowellyn and he discussed a potential resolution to present to the bondholders and trustee. Mr. Battista stated he received a response from Mr. Hutton that the bondholders were not willing to receive the proposal. He stated he spoke with Mr. Hutton last night about the bondholders' response and, as of right now, there is not a resolution.

Mr. Brougham requested Mr. Bloom or Mr. Hutton to respond, for the record.

Mr. Hutton stated what Mr. Battista recalled is correct; there is no resolution.

Mr. Brougham asked Mr. Battista if he could place the debtors offer or proposal on the record, officially for the meeting.

Mr. Battista recalled that the debtor agreed to fund, out of the DIP fund, \$45,000 to the CDDs, for the District's O&M shortfall. The developer is prepared, in connection with the June 4<sup>th</sup> hearing, to fund a total of about \$220,000 to \$230,000 in the next 13-week budget to cover the same operating short fall on the O&M for both Districts. He recalled District #1 shortfall as \$6,000 and District #2 shortfall as \$220,000. He stated the developer is committed and prepared to commit to the court that the debtor will continue to fund the shortfalls on future budgets; on a 13-week basis. Mr. Battista clarified that the continued advancement will cover the on-roll O&M assessments, as the developer has always agreed to pay the off-roll assessment. In exchange, the developer requested the Districts withdraw their objection to DIP financing for the

upcoming hearing on June 4<sup>th</sup>; as well as, the objection to investment banker employment of Moelis.

Mr. Brougham requested Mr. Hutton to state the Trustee for the bondholders' position, for the record.

Mr. Hutton stated his position is the same as last time and that they do not believe that the District should accept the debtor's proposal because it requires the District to potentially accept partial O&M payments for an interim period and, in exchange for that, it does not account for payment of debt assessment payments that are accruing at a substantial amount. He noted the District is obligated to transfer collection of payment on behalf of the bondholders, under the Master Trust Indenture and statutory terms. Mr. Hutton asked that the District not compromise the position of the holders.

Mr. Brougham questioned if anything materialized regarding Mr. Bloom's statement that other Districts have funded, from reserves, the O&M assessments, as done with other Districts throughout the State. He questioned if the bondholders were willing to put anything on the table, with respect to the bondholders funding O&M.

Mr. Hutton stated they are not going to negotiate that on the record; however, they have spoken with the District's counsel. He stated it is an obligation of the developer and he refused to negotiate the point on the record.

Mr. Slater recalled the non-payment from Gulf Bay and questioned if payment was received. Mr. Adams stated the monthly off-roll assessments, for both CDDs and the additional \$45,000, for CDD 2, were received.

Mr. Barrow clarified that, with respect to the offer that is on the table for O&M funding for this 13-week period and future 13-week period, the request has been that the Districts' withdraw their objection. Ms. Barrow questioned if that is still without prejudice, meaning that the District can carry forward with objection at a future point in time.

Mr. Battista responded that, with respect to Moelis, the final answer will be answered on Friday and there would be no opportunity to object. He continued, with respect to the DIP financing, the Developer would commit to continue, in future budgets, an advance for the O&M shortfalls for the Districts; he would expect that, unless something changes, the Districts would continue to support those future financing requests. He stated he is prepared to make the future

presentations and expect the Districts' support in the future; however, he understands the Districts' right to assert the objection.

Mr. Robertson commented that the bondholders and the developer failed to negotiate on the subject of fully funding the debt service payment. Mr. Brougham stated there has been no accommodation. Mr. Robertson questioned if the bondholders' offer to offer up some money was all air. Mr. Brougham stated that it was requested but did not work out.

Mr. Brougham questioned if any of the attorneys wished to clarify anything or make any statements to the Board.

Ms. Barrow indicated that there is a pending objection since the inception of the case and some of the elements look to the short side of what the District will get in a 13-week period; but also the question of is this a case that is going to reorganize. She asked the Board to keep the long term strategy in mind and referred to a directive by the Trustee of the bondholder that directs the District to act in alignment with them. She reminded the Board of possible negative action from the bondholders' counsel, if the District does not follow through with the bondholders' request.

Mr. Brougham questioned if Mr. Hutton had a comment.

Mr. Hutton stated that, if the Districts do not follow the directive of the Trustee and/or not seek payment of debt assessment, it is the bondholders' intent to bring a mandamus action against the Districts. He stated, the bondholders believe, the Districts are required to do such under the Master Trust Indenture and Statute.

Mr. Brougham questioned if the bondholders have "super-priority", in terms of the pecking order in bankruptcy. Mr. Hutton stated it is not a function of bankruptcy, it is a function of State law; the assessment liens have first priority. Mr. Brougham questioned, in the normal course of events, the bondholders are above the banks. Mr. Hutton replied the assessment liens and O&M liens are above the banks.

Mr. Brougham questioned if other Board members have comments.

Mr. Schutt questioned if there is any uncertainty as to the contract that we have with the Trustee/bondholder; meaning, is the language so precise that it says the District agreed to follow the direction of the bondholders.

Mr. Gonzalez referred to a prepared email for Mr. Brougham regarding the directives from the bondholders and he referred to an email, prepared by Mr. Hutton, which outlined the

District's statutory and contractual obligation requiring the Districts to accede to the bondholders' mandates. Mr. Hutton's email was accurate regarding the statutory provisions indicating the District "shall take action to collect past due assessment". Secondly, the contractual provisions with the bondholders would require the District to take action, such as a foreclosure, in order to protect the interest and security of the bondholders in the expended funds. He noted there are both statutory and contractual obligations on the Districts; whether those obligations are strong enough to support a mandamus is a different issue. He noted case law would allow a sufficient argument if the District does not accede to their demands. The Court is either going to say the Districts must do a,b,c-all the way through x- as required by the bondholders, pursuant to the analysis of the case or they may say, the District only needs to do up to c, or, the Court can say you have to do everything the bondholders asked. In summary, Mr. Gonzalez stated Mr. Hutton is correct in his recitation of both the law and contractual obligations of the District, to protect the security of the bondholders.

Mr. Schutt questioned the possible cost of litigation with the bondholders.

Mr. Gonzalez replied, if the District decides to go against the bondholders request and the bondholders file an action, he anticipated the action to be expedited, giving the ongoing nature of the bankruptcy and the District would do their best to defend the action. He did not anticipate a lengthy time frame, but anticipated a high level of work.

Ms. Barrow stated she agreed with Mr. Gonzalez and that the elements of a mandamus action require a clear, legal duty. She stated the other issue is whether not there is another legal remedy available to the bondholders, other than taking action through the District. She recalled cases in the bankruptcy code that allow indenture trustees to take certain stands, but the District can not deny the provided quotes from the statutes and master trust indenture. She stated a mandamus is a limited scope; however, an action like a breach of agreement may be longer. The less specific an issue is, the litigation will be prolonged.

Mr. Brougham questioned if there is precedence for these situations in Florida law.

Ms. Barrow replied, not in this instance with a CDD; however, mandamus actions have been involved where a municipal officer is being directed to take a ministerial duty. She recommended that the Board not limit their focus to a potential mandamus action.

Mr. Slater questioned the legal definition of shall.

Mr. Gonzalez stated shall means must.

Mr. Curland requested clarification that the bonds held by CDD #1 and CDD #2 are two (2) distinct and different obligations. Mr. Gonzalez replied correct.

Mr. Brougham stated that each CDD is going to vote separately, as they have separate risks. He discussed the issue is all about money. He noted the only source of funds that the District has is the proposal from the developer, since the bondholders did not present anything, or the homeowners, through a special assessment. He noted if the District assessed the residents, off roll assessments from the debtor are unlikely, which means that each-debtors property and other property owners-would be assessed. This would mean considerably higher assessments. If the debtors offer is accepted, the District is faced with the potential of the bondholders to do other things.

Mr. Adams stated CDD #2 has about 369 non-developer units that the District can reasonably rely upon making payments, with a shortfall of about \$720,000, until we could expect our next round of on roll tax assessment revenue, the special assessment would be about \$1,953 per unit. Considering just the next 13-week period, removing the off-roll assessment, the special assessment would be \$822.

Mr. Adams stated CDD #1 General Fund 002, with 936 non-developer units, the short fall special assessment would be \$256 per unit, through the end of the calendar year. The short term, 13-week special assessment would be \$86.59.

Ms. Barrow noted in some ways it is easy to say it is either the debtors or the bondholders. She explained the hearing on June 4<sup>th</sup> will be determined by the Court; even if the debtors make an agreement with the District that they are willing to advance the funding for the shortfalls, the approval by the Court is needed. She noted that the District needs to recognize there will be creditors opposed to the DIP financing because they believe that this is a case that is not confirmable and they are considering more long term. She noted this is a risk. She stated, if the District does not go with the debtor's proposal, the option to argue the funding is possible.

Mr. Brougham requested Mr. Adams to complete his numbers.

Mr. Adams stated CDD #1 General Fund 001, with 1,190 non-developer units, the through the end of the calendar year end short fall assessment would be about \$365 per unit.

Ms. Scott thanked the attorneys for their comments. She noted the importance of making sure the Fiddler's Creek community comes out healthy. She noted the existing issue of short sales and foreclosures will be exacerbated by a high assessment.

Mr. Battista recalled that the case began with 8 secure creditors; as of this Friday, six (6) have resolved their differences in terms of the DIP financing, with written objections from Regions Bank and Fifth-Third Bank. Neither one of them has ever raised an objection to the debtors desire to fund the O&M assessments to the Districts. He did not expect those objections to be raised on Friday. He explained that he is not asking the Board to not make the principal and interest payment to the bondholders; the debtor is simply saying that they have enough money to fund the O&M shortfalls. The debtors' goal is to get an investment banker in place to help the debtor find new debt financing that would allow the debtor to emerge from the bankruptcy. He respectfully suggested that, by agreeing with the debtors, and continuing down the path, the District is maintaining the status quo for the next 13-weeks, and hopefully beyond. Cutting such process short will put an end to the process and not allow the debtor to do so.

Mr. Robertson referred to a memo from Mr. Hutton to Ms. Barrow directing the District to: object to the DIP financing and file a motion to compel the debtors to make payment. He noted the trustee is able to go to court and make all the issues they want, but why should they demand that the CDD make their case in court. He continued that the threat of mandamus can be made and the trustee's counsel can go to court and take that action. He recommended directing counsel to withdraw their objection to the Moelis engagement and DIP financing.

Mr. Schutt stated that the District has not seen a reorganization plan and it is not known if the developer has a viable reorganization plan. He recalled the possibility of the developer paying the investment banker around \$1½ million and questioned the assurance that there is going to be any success.

Ms. DiNardo stated that both sides are one-sided; everyone is concerned about collecting their money and not about the homeowners. She stated she was disappointed in the bondholders not offering the Districts any funding.

Mr. Slater asked if there were anymore negotiations going on between the debtor and the bondholder. Mr. Hutton said that is not correct; however, there is no resolution at this point. Mr. Slater continued that the CDD will go one way or another and noted his dislike for having the CDD placed in the middle while the two (2) sides play their games. He recommended continuing the meeting to June 4<sup>th</sup>.

Mr. Correia expressed frustration as a homeowner and noted the rejection of the debtor's recommendation would impose a financial burden on the Districts, immediately. He recommended that the Board accept the debtors offer, even though we may get sued.

Mr. Curland questioned if an investment banker is not approved, what is debtor to do next. Mr. Hutton noted the concern that the debtor has blown some money long before this bankruptcy and has a track record of not being able to obtain funding. He stated he does not have any confidence of their ability to get a reorganization plan. He explained it is their obligation to pay all the debt assessments and O&M assessment. One of the principal objections to the investment banker is the terms of the agreement, which involves a transaction fee, but also a \$125,000 a month stipend, regardless of the results of the case. The terms of the engagement, speculative nature of the assignment and the putting of money out for this obligation while leaving other obligations outstanding. Mr. Curland asked what would be expected of the debtor if Moelis is turned down. Mr. Hutton stated they do not agree with the terms and they can find better terms. He does not believe a reorganization plan is feasible in any event. He stated he does not accept it as a take it or leave it proposition.

Mr. Curland questioned where the bondholders see their obligations to the homeowner.

Mr. Hutton noted some participants assume the option choices that the debtor has provided: first, the O&M assessments will not be made-and that is not so; second, the debtor is attempting to drive a wedge between the Board and the bondholders and he urged the Board to not fall for that ploy. He noted the bondholders have demonstrated a willingness to work with the Board in this community and whatever happens in this case, the Board will have to live with the bondholders going forward. Mr. Hutton noted the bondholders helped build the infrastructure for the community and it is not in the interest of the bondholders to see the community in a state of disarray.

Mr. Curland questioned why the bondholders are not willing to carry the District forward, in lieu of the developer. Mr. Hutton replied that is not going to be negotiated on the record and he referred to other Districts throughout the State in which the bondholders are currently supporting.

Mr. Gonzalez stated one Board voting to not accede to the bondholders' demands and the other Board voting in the other direction would create a conflict in our representation; however, if both Boards vote in the same direction there would not be a conflict.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the direction to District Counsel to withdraw the objection to Moelis and to withdraw the objection to the DIP financing for the next interim 13-week was approved.**

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Robertson, with Mr. Schutt dissenting, the direction to District Counsel to withdraw the objection to Moelis and to withdraw the objection to the DIP financing for the next interim 13-week was approved. (Motion passed 4-1)**

Ms. Barrow stated another unit sale is pending and there is a limited objection by the trustee, only to the extent that they want to make sure that the order approving the sale indicates, very clearly, that the lien and the obligation to pay assessments on a going forward basis would be assumed by the homeowner. She noted that this is something they have been careful to protect in prior orders and speculated that the debtor may agree to it. She noted this protects the District and should not impair the sale. She supported this and recommended a joinder in the limited objection.

Mr. Battista explained that the mechanism is going to follow the same procedure that was filed with the first four. The same payments will be made to the Districts. Otherwise, on a voluntarily basis, he did not think that a joinder is needed because the motion actually says that is what we are going to do.

Ms. Barrow clarified on the point that the language that specifically insures that the liens and the assessments would be assumed by the homeowner, the debtor has no objection to that.

Mr. Battista said he has no objection and intends to use the same order.

Mr. Battista stated that, the debtor said in their motion that they will in fact make that language in the order, as it was put in prior orders, and we have no problem adding it to this order-that the homeowner will assume those obligations going forward.

Mr. Brougham stated the Board will assume that, with it on the record, that the debtor will amend their order, going forward. He asked for any audience comments.

Mr. Elliot Miller congratulated both Boards on the action they have taken in representing the homeowners.

Mr. Jack Perrin stated he concurred with the Boards vote on the matter.

Ms. Gretchen Scott read the following:

“I typically ignore the blog for months on end because I tend to place little credence and opinions of anyone named anonymous. However, it came to my attention last week that there have been personal attacks on the blog against fellow CDD supervisors, which in my mind would be libel if the authors had actually submitted their name. I wonder if any of my fellow supervisors would join me in reprievating the blog as a mouthpiece of a half-a-dozen or so, which I view as mal-content persons (inaudible) to the overall Fiddler’s Creek community. Any thoughts.”

Inaudible response.

A Board Member noted the blog master creates the rules and the statements followed the rules.

Mr. Adams recommended the District stay away from the blogs, due to the Sunshine law.

**On MOTION for Fiddler’s Creek CDD #1 by Mr. Slater and seconded by Mr. Brougham, with all in favor, the meeting adjourned.**

**On MOTION for Fiddler’s Creek CDD #2 by Mr. Correia and seconded by Ms. DiNardo, with all in favor, the meeting adjourned.**

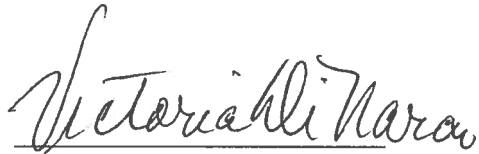
**Fiddler's Creek CDD #1**



Secretary/Assistant Secretary

  
Chairman/Vice Chairman

**Fiddler's Creek CDD #2**



Secretary/Assistant Secretary

  
Chair/Vice Chair