

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

A Special Meeting of the Board of Supervisors of the Fiddler's Creek Community Development District #2 was held on **Thursday, May 12, 2011 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:**

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
Robert DeMarco	Treiser Collins, Special Counsel
Paul Battista (via telephone)	Genovese, Joblove and Battista, Debtors' Counsel
Elliot Miller	Resident
Amanda Barton	ITG Holdings
Torben Christensen	Resident
Eileen Robertson	Resident
Ron Albeit	Fiddler's Creek Foundation
Joe Schmitt	Resident

**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 Robertson, Correia, DiNardo, Scott and Schmitt were present, in person.

**SECOND ORDER OF BUSINESS**

**Consideration of Modified Plans of Reorganization**

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

Mr. Robert DeMarco presented a copy of the fifth modified plan of reorganization. He reviewed Page 3, Sections 5.6 and 5.7, where the debtors made revisions. Mr. DeMarco

Mr. DeMarco reviewed the Modified Plan of Reorganization for DY Associates Limited and DY Land Associates, LLC. Section 5.4 included a correction to the bond series to reflect 2003A bonds and extended the debt deferral period from November 1, 2011 to November 1, 2012. Verbiage was included to provide for debt service payments in 2011 and 2012. The debtors extended the date the deferred debt payments will begin by one (1) year, from April 15, 2012 to April 15, 2013. Section 5.5 reflected the maturity date as 2013, extended the debt deferral period through 2012, added for debt deferral payments for 2011 and 2012 and indicated the date of commencement for deferred debt service payments will be extended by one (1) year.

Mr. DeMarco reviewed the plan for GBFC Development Limited and LLC. The changes were in Sections 5.4 and 5.5. Section 5.4 was amended to clarify the bond series 2003A bonds. The deferral period was extended for one (1) year, to November 1, 2012, provided for debt deferral payments for 2011 and 2012 and the commencement date for debt deferral payments has been extended to 2013. Section 5.5.i., reflects the maturity date as 2013, clarified the 2003B bonds increased the debt deferral period by one (1) year, to November 1, 2012, provided for deferred debt service payments in 2011 and 2012 and extended the commencement of the debt deferral payments to April 15, 2013. All the changes were consistent and uniform to the aforementioned plans.

Mr. DeMarco provided the amended plan for GB Peninsula Limited and noted the changes are consistent with the previous plans in Sections 5.4 and 5.5.

Mr. Demarco presented the amended plan for FC Commercial, LLC, DY Land Holdings, LLC and Parcel 73, LLC. He noted the modifications were in Sections 5.4.3 and 5.4.4. The defined terms were amended and do not affect CDD #2. The only changes affecting the District are found in Sections 5.4.3 and 5.4.4. The aforementioned revisions were included the sections. The deferral period was extended by one (1) year, to November 1, 2012, deferred debt payments will be paid in 2011 and 2012 and commencement of debt deferral payments will begin April 15, 2013. Section 5.4.4 changes include moving the maturity date to 2013, with the debt deferral period being extended for one (1) year, to November 1, 2012. Deferred debt service payments will be made for 2011 and 2012 and the debt service payments will begin April 15, 2013.

Mr. DeMarco noted the ballots have not been modified and the plan of reorganization, affected by the ballot, is denoted. He recommended adding an asterisk that indicated the ballot was for the modification to the modified Second Amended Plan. Mr. Battista recommended

putting “*as modified*” after Second Amended Plan. He noted the bankruptcy code allows the debtor to amend or modify the plan up until the confirmation. If the creditor voted on the plan before it was modified, as long as no material changes are made to the terms of the plan, the vote will still count.

Mr. DeMarco concurred with adding the words “as modified”. He recalled that, at the last meeting, the Board discussed the process by which the plans would be evaluated. Mr. DeMarco noted the Board has alternatives. Each Board Member has an independent vote and is required to vote yes, no, or abstain and the Board needs a majority vote to determine the deciding vote. He noted the Board has the ability to abstain but the vote will act as a no vote and the debtors will be required to show the court that the plans were fair and equitable. Mr. DeMarco reported that the indenture trustee filed an adversary proceeding in the bankruptcy court. It is a separate and distinct proceeding connected to the underlying bankruptcy case. It was a two (2)-count complaint. The first count was for declaratory judgment, which is effectively the same count that was filed in the state court case in April and virtually identical. In the bankruptcy court, the indenture trustee added a second count that was a request for either preliminary injunctive relief or a temporary restraining order. Those documents were filed after the close of business on May 9, 2011. Mr. DeMarco noted he reviewed the documents on May 10 and completed a lot of research. The notice of emergency hearing was received on May 10, for a hearing on May 11. Mr. DeMarco recalled the events of the emergency hearing and that Mr. Battista, Ms. Martinez Molina and himself spoke to the judge. Ultimately, the judge denied the indenture trustee’s preliminary injunction and temporary restraining order. Mr. DeMarco recalled that the indenture trustee provided a background for injunctive relief but they are seeking to get an order from the court ordering CDD #2 to vote in a particular fashion. The judge agreed that the requested relief, by the trustee, was not appropriate. Mr. DeMarco noted there has to be irreparable harm, inadequate remedy of law and it has to be in the public interest to issue the injunction. The judge reviewed the points and determined that the indenture trustee had adequate remedies of law and did not find any irreparable harm. Mr. DeMarco recalled his comments to the judge in which the autonomy of a public agency should be maintained. He stated he reviewed the 11<sup>th</sup> Circuit case that describes the fiduciary duty between an elected official and its constituents. He recalled the Florida Supreme Court case involving the Little River Valley District, in which the District foreclosed on properties and the bondholders wanted

the District to advertise and sell the property; the District determined that would not be in the best interest and the Florida Supreme Court found the District does have discretion in following the statute. Mr. DeMarco discussed the Board's right to vote and the Board ultimately has to make a decision based on the Board's understanding of the process. He noted the Board could split their ballot; for example, the Board could vote yes, as to the debtors' treatment of the operation and maintenance claim, and no, as to the debtors' treatment of the bond claims. The other factor is the privity of contract duty owed by the CDD is to the indenture trustee, not the bondholders. The indenture trustee has a relationship with the bondholders. Mr. DeMarco noted the unique situation where, if the Board votes yes to the plan, the District will be in default, to the extent that any of the bonds are due. If the Board votes yes, and the District is subject to a confirmation order directing the CDD to comply with the terms of the various plans, then the bondholders are left in legal limbo. Mr. DeMarco clarified that the bondholders never asked to be a party to the bankruptcy; rather, they are a party in interest. One of the questions involved is whether or not the bondholders are a party in interest and have the ability to intervene for the purpose of directing discovery to the debtors and being involved in the confirmation process. He stressed that if the Board votes yes to the plans, the situation is created that the debtors' default to the District will be cured but the District's default, under the Master Indenture, to the trustee, will not be cured. The District's default will ultimately be cured when the plan is consummated, at the end of the two (2)-year period. Mr. DeMarco noted CDD #1 voted in favor of the plan. He anticipated the bondholders to make a motion that the Districts' decisions to vote in favor of the plan were done in bad faith. The bankruptcy court would then have to determine to what extent there was any bad faith on the part of the Districts' boards or the way they voted. Mr. DeMarco noted the declaratory judgment action will be discussed in the executive session. He noted the same lawsuit is pending in two (2) different forums and, ultimately, they will have to make a decision as to which forum.

Mr. Correia asked, if the indenture trustee does not like the Board's vote and does not want to wait for the two (2) years, what kind of action can be taken against the District. Mr. DeMarco noted the indenture trustee retains any and all remedies against the District. One of the remedies available to the indenture trustee would be to attempt to involuntarily force the District into bankruptcy. He noted he can't tell the District what will happen and does not know to what extent a state court judge can provide relief to the bondholders. Mr. DeMarco noted the CDD is

an entity that is separate and distinct. Discussion followed on future, potential action that could be made by the indenture trustee against the District. Mr. DeMarco explained there are three (3) different parties, each with duties to the other. The District is caught in the middle. The District has privity of contract with debtors. The District has a bond and the right to levy and collect assessments. The debtors defaulted in the payments and, under ordinary circumstances, the District would foreclose on the property; however, the debtor is in bankruptcy. The District has a duty to pay the bond debt payments twice per year, which have not been made because funds were not coming in from the debtors. The debtors are in default to the District, while the District is in default to the indenture trustee.

Discussion followed on future potential motions. Ms. Scott asked about recovering any legal fees related to the filings. Mr. DeMarco noted Florida Statute 57.105 that allows for a recovery of attorneys fees and costs in the event that one party has brought an action against another party that is either in bad faith or void of any merit. Ms. Scott asked if that applies to the injunction. Mr. DeMarco replied the injunction was filed in bankruptcy court and Rule 9011 may apply. Under Rule 11, it would have to be shown the action pursued by the indenture trustee was in bad faith, devoid of any merit, for the purpose of harassment. Mr. DeMarco did not recommend the District pursue a Rule 9011 sanctions motion on the current basis. It was brought pursuant to a contractual relationship. Mr. DeMarco noted the case could be made that the event really was not an emergency, as the trustee delayed bringing the injunctive relief.

Ms. Schmitt noted that a ruling was made in the bankruptcy court and questioned if it could be reheard in the state court. Mr. DeMarco replied that the injunctive relief is unrelated to the declaratory judgment and the declaratory judgment was not considered.

Mr. DeMarco asked for any questions related to the voting process. There were no further questions.

Mr. Robertson noted there were five (5) different plans to vote on.

**On MOTION by Mr. Robertson and seconded by Mr. Correia, with all in favor, after considering the proposed plans, individually, proceeding with a collective vote on all proposed plans was approved.**

Mr. Robertson noted the Board has heard opinions from all involved entities on the proposed plans and recommended the Board vote in favor of all the plans. He recalled the Florida Supreme Court decision that specifically says an elected body has a fiduciary responsibility to the electorate.

Ms. DiNardo recalled the bondholders' statements informing the Board about their legal obligation but did not provide any plans for the District. She believed the bondholders did not address the issues and did not answer any questions asked of the Board Members.

Ms. Scott recalled the bondholders request, prior to bankruptcy, to foreclose on the bonds in which the bondholders would take care of the O&M obligations but did not provide specifics for the payments.

Mr. Correia recalled that Gulf Bay put a plan on the table and there is money that will help through the next three (3) to four (4) years but no one knows the long-term effect. He stated he looks forward to the future and that he would vote for the approval of the plan.

Ms. Scott noted the existing condition is not conducive to Chapter 7 and recommending proceeding with Chapter 11.

Ms. Schmitt stated it is time to move forward, as the bankruptcy has been on going for 15 months.

**On MOTION by Mr. Robertson and seconded by Mr. Correia, with all in favor, the acceptance of the proposed plans of reorganization, as modified, were approved.**

Mr. DeMarco noted today is the deadline to object to confirmation and asked if the Board desired to object.

**On MOTION by Ms. Scott and seconded by Mr. Robertson, with all in favor, there were no objections to the filing of the confirmation.**

The Board asked for comments from the audience.

Mr. Elliot Miller, a resident, stated he did not believe the Board would have any issues as to their decision. He noted the investment banker, Mount Kellett, made a judgment that they are not going to lose money and put up additional funds.

Mr. Torben Christensen, a resident, thanked the Board for their work.

**\*\*\*The Special Meeting recessed at 9:18 a.m.\*\*\***

**\*\*\*The Special Meeting reconvened at 9:25 a.m.\*\*\***

Mr. Adams noted all Board Members were present.

**THIRD ORDER OF BUSINESS**

**Executive Session**

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

Mr. Adams noted the Executive Session was properly advertised and the participants include the five (5) Board Members, Mr. Robert DeMarco and himself.

**\*\*\*The Special Meeting recessed at 9:26 a.m.\*\*\***

**FOURTH ORDER OF BUSINESS**

**Public Session - Consideration of Action Items Resulting from Executive Session**

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

**\*\*\*The Special Meeting reconvened at 10:01 a.m.\*\*\***

Mr. Adams noted all Board Members and Mr. DeMarco were present. He asked the Board if there was any action they would like to consider as a result of the Executive Session.

**On MOTION by Ms. Scott and seconded by Mr. Robertson, with all in favor, authorization for counsel to take action, as discussed in the Executive Session, as it relates to both declaratory actions filed against the CDD, by the indenture trustee counsel, without prejudice, by discussion with opposing counsel, and, if necessary, filing motions to dismiss, was approved.**

Mr. Adams stated he would FedEx the official ballots to Mr. Battista's office.

Mr. DeMarco expected a motion, with respect to the bad faith vote, and a related emergency hearing. Ms. DiNardo asked if District #1 is being treated the same way as District

#2. Mr. DeMarco anticipated Ms. DiNardo and Ms. Scott to be directly targeted, due to their respected affiliations.

**FIFTH ORDER OF BUSINESS**

**Supervisors' Requests**

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

There were no Supervisors' requests.

**SIXTH ORDER OF BUSINESS**

**Adjournment**

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

Mr. Adams noted the next regular meeting is scheduled for May 25, 2011.

**On MOTION by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the meeting adjourned at 10:10 a.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair