

**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, November 17, 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
Gerald Bergmoser	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 (via telephone)	District Counsel
Carlo Zampogna	District Counsel
Aleida Martinez Molina (via telephone)	Weiss Serota, CDD #1 Special Counsel
Robert DeMarco (via telephone)	Treiser Collins, CDD #2 Special Counsel
Andrew Sanford	ITG Holdings, LLC
Amanda Barton	Counsel - ITG Holdings, LLC
Elliott Miller	Resident
Bill Klug	President, Verenna Condo Association
Eileen Robertson	Mulberry HOA

**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 all Supervisors were present, in person, for Fiddler's Creek CDD #1 and CDD #2.

Mr. Brougham suggested that the Seventh Order of Business be moved up on the agenda in order for Mr. Pires to participate via telephone. He thanked Mr. Robertson for his service on the Board of CDD #1 and presented him with an award expressing appreciation on behalf of the residents.

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

**SECOND ORDER OF BUSINESS**

**Administration of Oath of Office to Newly  
Elected Supervisors James Curland [Seat  
1] and Gerald Bergmoser [Seat 2]**

- **Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees 2010**
- **Membership, Obligations and Responsibilities**
- **Form 1: Statement of Financial Interests**
- **Form 1X: Amendment to Form 1, Statement of Financial Interests**
- **Form 1F: Final Statement of Financial Interests**

Mr. Adams, a notary of the State of Florida, and duly authorized, administered the Oath of Office to Mr. Curland and Mr. Bergmoser. He reviewed the documents included in the packet and outlined the requirements of the Sunshine Law.

**THIRD ORDER OF BUSINESS**

**Consideration of Resolution 2011-1,  
Electing the Officers of the District**

Mr. Brougham presented Resolution 2011-1 and requested nominations from the Board. Mr. Slater nominated Mr. Brougham to remain as Chair, Mr. Curland as Vice Chair and Mr. Schutt, Mr. Slater and Mr. Bergmoser to serve as Assistant Secretaries.

Mr. Schutt nominated Mr. Curland to serve as Chair. Mr. Curland respectfully declined.

Mr. Adams confirmed the nominations and indicated that Staff will retain their officers' positions.

**On MOTION by Mr. Brougham and seconded by Mr. Curland, with all in favor, Resolution 2011-1, Electing the Officers of the District, as nominated, was adopted.**

## **JOINT MEETING ITEMS**

### **FOURTH ORDER OF BUSINESS**

#### **Engineer's Report**

Mr. Cole reported that progress is being made to pay everyone and he is trying to get all of the draws up to date. He presented Requisitions #49 (replacement), #51 and #52 for Fiddler's Creek CDD #1 and reviewed each. He indicated to the Board that any requisitions presented to them have been placed on the bondholders' approved list, which was approved last year.

Mr. Brougham inquired about the status of the work on Belle Meade Preserve. Mr. Cole advised no work will be done until they know they can pay the contractor; once they know they can pay the contractor, he will go back to all of the contractors and have them resume work. Mr. Adams clarified that this is for the construction. He further stated, with regard to the maintenance, Staff is not comfortable with the opinion that the maintenance is the District's responsibility and advised that a meeting will be held, in the next few weeks, to discuss this further. Mr. Cole noted, once they know they can pay the contractors, they will proceed with the maintenance spraying, which is paid for through the capital accounts.

Mr. Cole distributed photographs of a home on Mulberry Lane that he was asked to inspect, with regard to the driveway settling. He explained that the sidewalk was poured about ten (10) years ago, along the entire street, prior to the homes being built. When the homes were constructed, the driveways were cut in. He referred to the first photo, indicating it shows a string line location and the two (2) points where a screwdriver was placed to hold the string line. Mr. Cole indicated, at one point, the driveway was level with that line. The second photograph showed a 3/8" drop towards the house and a 1 1/2" drop towards the street, which he advised was due to settlement. The third photo showed a crack and, on the driveway side of the crack, a drop in the slab. The fourth photo showed the other side of the driveway, which has no damage.

Mr. Cole stated he received an email from Dr. Banaszak indicating he feels there had been a problem with the sidewalk raising; however, Mr. Cole does not agree. He recommended replacing the 12-foot piece of sidewalk, which he estimated at a cost of approximately \$500. Mr.

Cole emphasized that this is not the CDD's responsibility; however, the quickest fix is to remove and replace the sidewalk.

Mr. Brougham indicated that last week, he received an email from Dr. Banaszak advising of a trip hazard because the sidewalk is raised and was not taken care of when the District completed the other sidewalk work. Mr. Brougham advised the homeowner that the Engineer determined the issue was not the sidewalk but that the driveway had fallen. When this was conveyed to Dr. Banaszak, he called Mr. Brougham back, indicating he vehemently disagreed with this conclusion. Dr. Banaszak followed up with an email reiterating his disagreement with the Engineer's determination and advised he may pursue legal action. Mr. Brougham got Staff involved and requested that pictures be taken, as documentation. He stated, after viewing the photos, he agrees that the repairs are not the CDD's responsibility. He recommended that they not spend more than \$500 to repair the sidewalk and that Mr. Cole should notify Dr. Banaszak, in writing, of his conclusion and provide copies to Mr. Pires.

Ms. Schmitt indicated this is not the only location where this has occurred. She advised that the driveways of all of the homes on the same side of the street are settling. Further discussion ensued regarding responsibility for repair.

Mr. Schutt discussed an inspection he conducted with Ms. Crismond three (3) or four (4) months ago, when an issue came up about a tripping hazard on Championship Drive. He indicated they walked the entire length of Mulberry and picked out the locations that had a differential in excess of 1/4". He stated the locations that were not associated with driveways and, where there was excessive cracking, repairs were made by the CDD. He noted this case is obviously the homeowner's responsibility.

Mr. Curland made a motion to send the pictures to the homeowner and advise him the repairs are his responsibility. Mr. Brougham suggested that Mr. Pires respond to the homeowner, copy all Supervisors and attach supporting documentation. Mr. Pires agreed. He indicated it appears that the elevation differential is not the result of the District's property or the District's improvements; the District's improvements are within code. He advised this issue is a result of events occurring on the adjacent property. He stated the property owner has an obligation to maintain their property and their improvements in a safe condition and their facility has resulted in the dangerous condition. Mr. Cole clarified that this is a private improvement

within the right-of-way and the sidewalk and the settled driveway are within the right-of-way. Mr. Pires indicated the District can then require the homeowner to perform the repairs because the homeowner must ensure that their improvements, within the District's right-of-way, are safe. He pointed out that, even if the District was to adjust the elevation of the sidewalk, there may or may not be continued settling of the driveway, in the future.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, authorizing the District's Attorney to write a letter to the homeowner, indicating the District's position on sidewalk and driveway repairs on Mulberry Road, was approved.**

Mr. Cole provided three (3) requisitions for CDD #2 and briefly discussed each. He also noted that he is researching the ability to put the performance bonds for the subdivision improvements in the name of the CDD and not the developer and he will be consulting with Mr. Pires, as well as bond counsel. He stated he will provide Mr. Adams with a summary of what the bonds are. He noted, as the work is completed, the bonds will no longer be needed.

**FIFTH ORDER OF BUSINESS**

**Continued Discussion: Belle Meade Preserve Responsibilities**

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

Mr. Pires reported he has a tentative meeting date of December 2<sup>nd</sup> with Mr. Doug Rilstone, counsel for the developer, who has very intimate knowledge of all of the permits and activities. He indicated that they will prepare a full understanding of the interrelationships of the various permits, timelines and responsibilities. He will then provide a detailed memorandum, with graphical depiction of the responsibilities and timeline, for the December meeting.

**SIXTH ORDER OF BUSINESS**

**Introduction to and Discussion with ITG Holdings, LLC (Bondholder)**

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

Mr. Andrew Sanford of ITG Land Holdings, LLC, stated ITG is the majority bondholder in the 2003 CDD #2 bonds. Ms. Amanda Barton stated she is counsel for ITG. Mr. Sanford advised that the CDD #2 Series 2003 bonds have a new trustee counsel, Holland and Knight. He noted that former counsel was Greenberg Traurig, who was the counsel for U.S. Bank and U.S. Bank is the indenture trustee. He explained that he represents ITG and the bondholders are represented by a trustee, so he cannot legally speak for all of the bonds. Mr. Sanford stated what is in the best financial interest of the bondholders should be, and is, the same as the residents and constituents of the CDD. He advised they are also aware that the largest financial stakeholders in the bankruptcy case are the homeowners and he feels the court has been appreciative of that fact and continues to seek a global solution. He stated he does not see the bankruptcy going to Chapter 7 liquidation. Mr. Sanford explained that if the developer were unable to reorganize, there are other provisions within the bankruptcy code which will allow the community to remain intact. He indicated the bondholders will approve and support anything that will keep the community intact, as a viable community.

With regard to the debtor in possession loan, Mr. Sanford stated he knows there are many local firms that are capable and would be willing to assist this community if there were to be a default under the Gulf Bay capital loan, which is the name of the current debtor in possession. Ms. Barton indicated they want to open the lines of communication. She stated it seems they were more reactive in the past and they would like to be more proactive in working with the District, on an ongoing basis.

Mr. Correia stated, over the past few months, many well-known communities were driven into Chapter 7 bankruptcy and it is reassuring to hear the possibility that they will get out of Chapter 11. He asked for an example of a win-win situation, regarding defaults, in the State of Florida. Mr. Sanford assured Mr. Correia that the judge has consistently looked for a global solution that will not adversely affect any of the homeowners. He advised there have been many restructurings throughout the state which have helped the community; the bonds were restructured and they are again viable communities.

Mr. Sanford was asked to explain a 363 Sale and how it would affect the CDDs. Ms. Barton advised it is considered a part of a Chapter 11 and not under Chapter 7 liquidation. She

stated, usually, a 363 is utilized to sell the asset as a whole and offers the ability to continue the DIP financing.

Mr. Elliott Miller, a resident, asked Mr. Sanford and Ms. Barton if any of the other bondholders have the same constructive, positive attitude that they have, in trying to share their point of view with others. Mr. Sanford responded they have tried to share their point of view and will continue to provide the other bondholders with updates. He explained that he and Ms. Barton are local and the other bondholders are not able to attend the meetings and see the community. He indicated he has a speaking relationship with other bondholders and they are appreciative of what he and Ms. Barton have to say, given their experience in this area and their proximity. Mr. Sanford advised they would like to be the liaison between the CDD Boards and the bondholders to work for what is mutually beneficial.

Mr. DeMarco referred to the freeze on the construction funds being imposed by the bondholder in the 2005 bond series and asked Mr. Sanford and Ms. Barton to confirm that the 2003 bond series is not involved. Mr. Sanford indicated he will confirm with U.S. Bank, as trustee but, to his knowledge, all of the 2003 construction funds have been extinguished.

Mr. DeMarco asked Mr. Sanford if he has the ability to exercise some influence over the 2005 series bondholders, with respect to a smoother path of communication. Mr. Sanford stated if someone provides him with the specific details, he will reach out and try to encourage the one (1) single majority bondholder. He indicated the bondholder has the required amount of bonds to instruct the trustee to fulfill that request and advised if the CDD #2 Board would like to facilitate those communications so that he may reach out to the bondholder, he will do so.

Ms. Scott asked Mr. DeMarco how close they are to an agreement on the construction funds. Mr. DeMarco explained that the bondholder for the 2005 bond series is taking the position that, since the bonds are in default, it can put the draw requests under a microscope and effectively exercise its sole and absolute discretion as to whether or not the requests get paid. He stated he does not have the ability to advise the Boards whether or not that position is in conformity with the bond language itself. Mr. DeMarco indicated it sounds to him as if CDD #1 bond counsel's position is that they do have some ability to exercise the type of control they are exercising but he does not know if it is in their sole and absolute discretion. He advised the Board that they are not, in any respect, close to reaching any agreement. The last word he

received from Mr. Hutton was that his clients are looking at this very seriously and they are going to consider the requisitions on a draw request by draw request basis.

Ms. DiNardo asked Mr. DeMarco if the fees were preapproved by the bondholders, prior to the default, and they have now taken a different position. Mr. DeMarco advised they are not taking a different position as to whether or not they are preapproved; they are taking a position with respect to their ability to control the draw requests and disbursements and, at this point, they are telling the CDD to take it or leave it.

Mr. Sanford advised he has spoken with the other major holder of the Series 2003 bonds and they have come to an agreement to keep everything in the trust estate, as it is, so that they may help the community's financial situation.

**SEVENTH ORDER OF BUSINESS**

**Consideration of Proposals for Website**

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

- **Unifusion Web Design**
  - **CDD #1 Retainer**
  - **CDD #2 Retainer**
  - **CDD #1 and CDD #2 Combined Retainer**
  - **Hosting Agreement**
- **Emcc Web Design**
- **Total Concept, Inc.**

Mr. Adams reported that five (5) responses were received over the last two (2) months. He indicated the two (2) proposals that are most reasonable are from Emcc Web Design and Total Concept, Inc. He distributed the formal proposal from Total Concept, Inc., for the Boards' consideration and indicated the reasons he feels they are a better choice.

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, directing Staff to engage Total Concept, Inc., for website hosting, was approved.**

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Bergmoser, with all in favor, directing Staff to engage Total Concept, Inc., for website hosting, was approved.**

**EIGHTH ORDER OF BUSINESS**

**Approval of October 27, 2010 Regular Meeting Minutes**

Mr. Brougham presented the October 27, 2010 Regular Meeting Minutes and asked for any additions, corrections or deletions.

The following changes were made:

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

Line 41: Change "Portknot" to "Portnof"

Lines 372 and 375: Change "Demarco" to "DeMarco"

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Schutt, with all in favor, the October 27, 2010 Regular Meeting Minutes, as amended, were approved.**

**On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the October 27, 2010 Regular Meeting Minutes, as amended, were approved.**

**NINTH ORDER OF BUSINESS**

**Other Business**

Mr. Adams advised the Boards they will receive a refund from the Collier County Tax Collector's office, as a result of the over collection of fees that were collected for placing the CDDs' assessments on the tax roll. He explained that the fees are estimated by percentage and, at the end of the year, they are reconciled against the actual expenditures and the various taxing authorities are refunded. Mr. Adams indicated CDD #1 will receive a refund of approximately \$29,000 and CDD #2 will receive approximately \$14,000.

**TENTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

There being no report, the next item followed.

**b. Manager**

**i. NEXT MEETING DATE: December 15, 2010 at 8:00 A.M.**

Mr. Adams indicated the next meeting will be held on December 15<sup>th</sup> at 8:00 a.m. Both Boards agreed to modify the meeting agenda to move up the reports from the attorneys regarding updates on the bankruptcy proceedings.

**c. Operations Manager**

Ms. Crismond reported on the reasons for the imbalance in the water feature. She stated Management is in the process of having the fountains reviewed for a resolution and, once she has obtained this information, it will be provided to the Board for consideration.

With regard to landscaping, Ms. Crismond indicated that the palm tree trimming is underway. She also advised that the installation of mulch has commenced. She provided the breakdown of the mulch and labor costs for CDD #1 and CDD #2, as requested by Mr. Robertson.

Ms. Crismond noted she requested a quote from the landscaper to replace the damaged sod located at the corner of Mulberry and Fiddler's Creek Parkway, which was caused by the trenching being completed on Mulberry. Once the quote is obtained, she will request reimbursement from TECO.

Ms. Crismond reviewed the Patrol Services statistics. Mr. Slater inquired about the legality of a Collier County patrol car sitting on private roads. Mr. Zampogna indicated he will follow up with Mr. Pires.

Ms. Crismond concluded by advising the pressure cleaning continues. Mr. Brougham asked Ms. Crismond to reiterate the Boards' previous policies regarding pressure cleaning. Ms. Crismond stated the priority is slip and fall situations due to mildew, which is the current focus. This project commenced on Mulberry Lane and Mahogany Drive and they are continuing on various locations on Fiddler's Creek Parkway, Championship Drive, Club Center Boulevard, Sandpiper, etc.

Mr. Schutt noted that the back gate has been up for a month or so. Ms. Crismond advised they are waiting for a bar code reader, coming from Taiwan, and the shipment has been delayed.

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

Mr. Robertson reported that a question arose at the Unsecured Creditors Committee Town Hall meeting a week ago that he was not able to answer regarding the exact breakdown between individual homeowner owned residents' ERU's, in CDD #2, versus developer-owned. He stated the answer was roughly 50-50. He indicated that he and Mr. Adams are attempting to come up with exact numbers and will provide them at the December meeting. Mr. Schutt pointed out that the latest revision to the budget shows 195 developer off-roll, 195 developer on-roll and 488 residents.

**ELEVENTH ORDER OF BUSINESS**

**Update: Bankruptcy Proceedings –  
Robert DeMarco**

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

Mr. Robertson stated he requested that Mr. DeMarco not appear in person, in an effort to save money. He explained that Mr. DeMarco had to spend a lot of time responding to the lawsuit that was brought against the Board regarding the 2004 series bonds and the way they were assessing the on-roll versus off-roll assessments. He indicated a large amount of legal fees were incurred so he asked Mr. DeMarco to try to save his time for the upcoming omnibus hearings.

Mr. Miller inquired about a Supreme Court of Florida decision regarding an interpretation of the Sunshine Law involving Lee County's and Fort Myers' dealings with the building of the Baltimore Orioles stadium. He stated there were some issues about whether some of the contacts were in violation of the Sunshine Law and the Supreme Court of Florida rendered a significant interpretation. He requested that the Board have counsel review this interpretation.

Discussion returned to Mr. DeMarco's dialog with bankruptcy counsel for the bondholders with regards to freezing of the construction funds. Mr. DeMarco summarized his communications regarding the construction funds being considered property of the estate. He indicated he received a terse message from Mr. Hutton saying the bonds are in default and it is essential for their bondholders to scrupulously review the draw requests to ensure they know what they are before they disburse and basically said, "when you send them to us, we will review them." Mr. DeMarco advised there was further dialog with respect to whether or not all of the

draw requests had been submitted. He stated an attorney letter had to go with the requests and he was unsure whether Mr. Pires had provided the letter.

Mr. DeMarco stated he has not read the bond documents. He explained that he does not know what the language says with respect to the trustee or bondholders' powers, in the event that the bonds are in default and whether that changes the role of the various parties with respect to the responsibilities and authorities they may have with regard to whether or not the draw requests will get paid. He stated there has to be a contractual provision within the bond that says if the bonds are in default, here are the respective authorities or powers. Mr. DeMarco stated he would not be surprised to see that it changes the authority of the bondholder, with respect to approval of various draw requests. On the other hand, he would be surprised if it left the issue to the bondholder, in terms of their sole and absolute discretion. He stated the communications he received suggest to him that CDD #1 bond counsel's opinion is that the bondholder has some ability to take a more active role and he does not know whether they can say "no", even though the draw requests have been approved.

Mr. Adams stated he took the communication to be more positive, knowing the history in terms of having the bondholders approve the list of outstanding projects that Mr. Cole generated and their commitment to fund them, as they were completed. He indicated the bondholders have always scrutinized the requisitions and, up until the freeze, they were reviewing them to ensure they were consistent with the projects that were previously approved. He does not feel that position has changed dramatically. Mr. Adams stated the bondholders did indicate their concern initially was with regard to the way the construction funds were being claimed as a part of the debtor's bankruptcy estate. He indicated there is an agreement that puts everyone at ease, has been executed by the appropriate parties and is in everyone's hands.

Mr. Adams stated he has seen the dialog between Mr. DeMarco and Mr. Hutton with regard to processing the requisitions. Mr. Hutton's response was, all they have, at this time, are some consultants' invoices, which are essentially Mr. Cole's and Mr. Pires' invoices related to processing requisitions. Mr. Adams attempted to follow up on the status of the requisitions, as he was under the impression that they had already been submitted to the trustee and, in fact, they were not. He noted they were waiting on the authorization letters from Mr. Pires' office, which are essentially the General Counsel's release, or waiver, on those requisitions. He indicated that

several of the letters were prepared in the last few days and the requisitions were submitted; a few others have to be revised. Mr. Cole is making the revisions and Mr. Adams stated he anticipates they will be submitted by the end of this week. With regard to the requisitions received this morning, Mr. Cole will get the packages out in the next day or so and Mr. Pires should be able to put his letter to them and send them out next week.

Mr. Adams stated, at the last meeting, bond counsel for CDD #1 indicated that, under the default, the bondholders have greater control of the trust estate and that includes the construction funds. Mr. Adams advised he believes their intentions are to still process the requisitions and he will keep the Boards updated regarding any denials.

Mr. Robertson asked Mr. Sanford and Ms. Barton for their opinions. Mr. Sanford stated he will defer to the attorneys. He indicated those monies are in trust and held by the trustee for the benefit of the bondholder and the bonds and precedent leads him to that conclusion. He further noted that he would defer to precedent and as soon as bonds are in default, generally, the trustee goes into lockdown mode and takes direction from the bondholder and the prescribed number of bonds.

**TWELFTH ORDER OF BUSINESS**

**Consideration of Bond Counsel Legal  
Services Agreement from Bush Ross**

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

Mr. Adams referred to the engagement letter from Bush Ross, located behind Tab 11. He advised he shared the exercise they recently went through and the outcome with Bush Ross and they are willing to wait to be engaged. He indicated a \$5,000 retainer is required.

**On MOTION for Fiddler's Creek CDD #2 by Ms. Scott and seconded by Ms. DiNardo, with all in favor, the Bond Counsel Legal Services Agreement with Bush Ross was approved.**

**THIRTEENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
October 31, 2010**

Mr. Adams presented the Unaudited Financial Statements as of October 31, 2010 and explained two (2) changes to be made on Page 2. He also noted the insurance is slightly over budget and explained that this is due to the review of their assets, which grew since the prior review. He indicated the increased value of their assets resulted in a higher premium for their property insurance and this will be adjusted in the upcoming budget.

**FOURTEENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Bill Klug, a resident, inquired about the special assessment process, should it become necessary for CDD #2 to impose a special assessment on all properties to fund the operating budget. Mr. Adams explained the procedure. Mr. Klug asked if bankruptcy protection is a consideration to get CDD #2 into bankruptcy so that there is bankruptcy oversight. Mr. Adams advised they do have the ability to file a bankruptcy; however, they were in the process of filing a foreclosure on the delinquent properties when the developer filed bankruptcy. He indicated the default has been declared so the trigger points in the trust indentures have already taken place and the trustee has taken control of the process. Further discussion ensued.

**FIFTEENTH 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 was adjourned at 9:47 a.m.**

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

**SIXTEENTH ORDER OF BUSINESS**

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

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

Mr. Brougham stated no significant issues have come up, from his perspective as a member of the Unsecured Creditors Committee. He advised by November 19<sup>th</sup>, the debtor must declare to the court whether they intend to file another interim debtor in possession (DIP) loan. Ms. Martinez Molina concurred. Mr. Brougham stated that outcome will give some direction as to which way they should go. He indicated the next major event is in Tampa on November 30<sup>th</sup>. Ms. Martinez Molina stated a number of hearings will be held regarding fee applications and things of that nature.

Ms. Martinez Molina indicated the debtor is incurring serious fees regarding the class action. She advised, since the last meeting, the trustee has appealed the single asset real estate decision by the court and that will be developing in the next few months. She asked the Board to clarify that their decision is to take no position and let the trustee take whatever action they deem appropriate. Mr. Brougham stated the Board previously voted to take no position with respect to the single asset real estate motion by the bondholders. He explained that the bondholders filed a motion before the court to have the court declare that the estate was single asset real estate and the court denied the motion. His understanding is if the court would have approved it, it may have accelerated the bankruptcy proceedings. Ms. Martinez Molina stated it would have allowed parties in interest to file stay of relief motions. She indicated the judge has given the debtor the opportunity to reorganize and they are on the eve of the debtor filing a final reorganization. She stated either the case will reorganize through a plan of reorganization or the plan of reorganization will be dismissed.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Curland, with all in favor, supporting the Board's previous decision to take no position, with regard to the single asset real estate appeal by the bondholders, was approved.**

Ms. Martinez Molina advised the next deadline is December 3<sup>rd</sup> for the debtor to file their plan of reorganization. Mr. Schutt asked Ms. Martinez Molina if she has any sense that the creditors, or anyone standing in the wings of the reorganization plan, will jump in quickly, if the debtor does not file a plan by December 3<sup>rd</sup>. Ms. Martinez Molina responded she has no information regarding that.

The Board requested that Ms. Martinez Molina attend the November 30<sup>th</sup> meeting by phone, prepare a digest of the key results of the meeting and distribute it to all Supervisors and District Staff as soon as possible after the meeting.

Ms. Martinez Molina advised at 9:00 a.m. this morning, she received an email from counsel for the trustee. She explained that she had followed up on the issue of the construction fund freeze and the debtor has confirmed, in writing, that is not an asset of the estate. She then inquired about the holdup. Counsel's response was a request to clarify what requisitions they believe are outstanding on the CDD #1 2005 bonds. She advised the Board that she will follow up with Mr. Cole regarding Draws #49, #50 and #51. Mr. Adams advised there were actually four (4) draws and approximately six (6) draws were presented this morning that they expect to follow up next week. Mr. Brougham advised Ms. Martinez Molina that things are back to where they were and they will call on her if there are any delays. Ms. Martinez Molina clarified she will let the trustee know that the Board advised her that they are speaking directly with the parties that be, the information is flowing directly and they do not need her to get involved.

**SEVENTEENTH ORDER OF BUSINESS**

**Consideration of Resolution 2011-2,  
Amending the General Fund Portion of  
the Budget for Fiscal Year 2010**

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

Mr. Adams presented Resolution 2011-2 for the Board's consideration. He explained that the amendment is to help avoid a technical finding during the audit process. He advised there was a shortfall in revenue because the on-roll assessments that were due and payable by the developer, were not paid because they were not paid prior to the bankruptcy and have not been paid since. As a result, funds were utilized out of the fund balance to offset expenditures during the course of the year. He indicated they recognized a drop in revenue in the amount of \$245,572 and they utilized \$227,260 out of fund balance, which means net, they were actually under budget for the year.

**On MOTION for Fiddler's Creek CDD #1 by Mr. Schutt and seconded by Mr. Bergmoser, with all in favor, Resolution 2011-2, Amending the General Fund portion of the budget for Fiscal Year 2010, was adopted.**

**EIGHTEENTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of  
October 31, 2010**

Mr. Adams presented the Unaudited Financial Statements as of October 31, 2010, for the Board's consideration.

Mr. Bergmoser inquired about the \$150,000 increase for landscaping in Fiscal Year 2011. Mr. Adams indicated they increased the tree trimming budget by \$100,000, primarily for the ficus trees. He advised that is tree trimming outside of the normal scope of the landscape contract with TruGreen. Ms. Crismond explained this is being done in phases every year. Mr. Adams gave a brief history of the tree trimming expense. Discussion ensued regarding removal of the ficus trees.

Mr. Bergmoser inquired about the legal foreclosure fees and asked if they anticipated any expenses that might come from a Chapter 7 liquidation or a 363 Sale. Mr. Adams stated they asked the attorneys what their anticipated costs would be for the current proceeding, without knowing if it would be resolved. He explained that, through the majority of the year, they had a transfer in, from the debt service reserve funds, to help offset that cost.

Mr. Bergmoser asked if they have a contingency, should they incur unanticipated legal fees. Mr. Brougham stated they do not, with the exception that the debtor has committed to pay any shortfalls of operation and maintenance expenses for both districts, up to this point. He advised, if they go to liquidation and the flow of funds stops, from the bankrupt entity, it would force the District to go to special assessments, as a source of funding. Mr. Adams stated, if they are headed toward liquidation, his recommendation would be go to the bondholders, as they stand to benefit tremendously from the liquidation and the upkeep and maintenance of the existing assets is key to liquidation value.

Mr. Brougham inquired about the cash flow analysis. Mr. Adams advised he identified their usable revenue sources against the prorated operating expenses to determine their average monthly operating expenses for the next two (2) months. He stated by mid to late December,

generally the bulk of the assessment revenues for the year are received. He indicated he provided the Board with the financial statements from last November and December and, under the assessment levy bond roll, he boxed in the year-to-date amount received last year. Mr. Adams stated the cash flow analysis indicates their existing cash will carry through into January, without taking into consideration the 30-day net on their bills.

Mr. Brougham advised that the Unsecured Creditors Committee is united in pressing for a firm commitment date by which the currently, now due, on-roll CDD assessments will be paid. He noted that a commitment was made to pay the assessments; the Committee is pressing for a firm date.

**NINETEENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

Mr. Slater indicated to Ms. Crismond that the water needs to be turned on for the CDD property between Bent Creek and Peppertree.

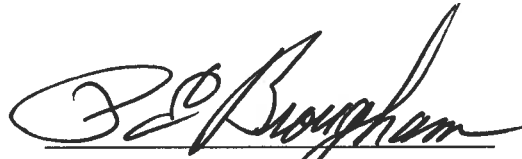
**TWENTIETH ORDER OF BUSINESS**

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


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

**Fiddler's Creek CDD #1**

  
Secretary/Assistant Secretary

  
Chairman/Vice Chairman

**Fiddler's Creek CDD #2**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair