

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

A Regular Meeting of the Board of Supervisors of the Fiddler’s Creek Community Development District #2 was held on **Wednesday, November 16, 2011 at 10:00 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
Peggy Schmitt	Assistant Secretary
Victoria DiNardo	Assistant Secretary
Gretchen Scott	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Assistant Regional Manager
Tony Pires (via telephone)	District Counsel
Carlo Zampogna	District Counsel
Alice Carlson	AJC Associates
Terry Cole	District Engineer
Robert DeMarco	Bankruptcy Counsel
Amanda Barton	ITG Counsel
Andrew Sanford (via telephone)	ITG
Tony DiNardo	Developer
Mike Williams (via telephone)	Bond Counsel
Paul Battista (via telephone)	Debtor’s Counsel
Steve Goldberg (via telephone)	MunieMae Counsel
Chris Wiebeck (via telephone)	MunieMae
Paul Borgesen	Resident
Charles Turner	Resident
Elliot Miller	Resident
Marvin _____	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 11:06 a.m. He noted Supervisors Correia, Robertson, Scott, DiNardo and Schmitt were present, in person.

SECOND ORDER OF BUSINESS**Update: Bankruptcy Proceedings –
Robert DeMarco**

Mr. DeMarco reported the bankruptcy appeal process continues on, unabated. He noted the District has been going back and forth with respect to how to treat the assessments due from the properties that will, ultimately, be transferred to Regions Bank. He recalled that the reason the process has become difficult is there is a bifurcation of the treatment of the real estate taxes, as opposed to the non ad valorem. The object is to pay the non ad valorem taxes and, ultimately, Regions is going to be entitled to the restructure for the real estate taxes. He noted the tax collector does not have the authority, under the law, to split the bills and take a partial payment on one (1) bill. The idea was to devise a method to deal with the impediment, create an escrow agreement between the debtors and the CDD for the purpose of allowing the process to go through the escrow agent. Thus, the debtors could be assured that when they made their payment, they would get full credit of the payment and the tax collector could release the non ad valorem assessments. All the necessary paperwork would establish that the debtors were in full compliance with the plan of reorganization, which requires the debtors to make this payment. The first issue was how to get the mechanism established. The issue is what to do with the prepayment of assessments made by the debtors during the bankruptcy process, whether a net-out would be allowed.

Mr. DeMarco stated under the plans of reorganization, the debtors are required to make the payments on the properties they own. Right now, the debtor still owns the property and it has not been transferred to Regions. He did not believe there was anything in the orders that put the liability on Regions, prior to Regions taking title. He felt that the District cannot excuse the debtor from making a payment.

Mr. DeMarco reported a motion was filed by Regions Bank, with a hearing scheduled for tomorrow. The motion considers whether the filed appeal has the effect of not allowing the transfer to Regions Bank. That, effectively, is the entire process. He stated he will attend the hearing and did not object to a comfort order, in favor of Regions Bank, indicating that the appeal does not stop the original order, entered on March 1, which allows for the transfer of property to Regions Bank.

Mr. DeMarco anticipated the process to be resolved easily. He noted an escrow agreement will be needed to effect the transition from on roll to off roll. The tax collector is

going to request information from the Districts which will indicate that the on-roll assessments will become off roll. The CDD will issue the appropriate documents to the tax collector.

Mr. Robertson indicated an escrow account must be set up because the monies paid will be paid into the escrow account; then, the funds go to the tax collector. Mr. DeMarco clarified the tax collector will not receive funds. The tax collector will receive documentation from the CDD directing the tax collector to remove the amounts owed from the assessment.

Ms. Carlson explained it was agreed that the debtor would pay the CDD 2009 and 2010 debt service and operating and maintenance assessments directly to the escrow account, at Mr. Pires' law firm. Once the money is in the account, the District can state that a payment was received. Then, individual E & I forms can be completed to remove the assessment from the tax roll with the county tax collector. The county then has authorization to take all the assessments off the tax roll, leaving only real estate taxes on the tax roll. The debtor will receive notice from the tax collector of the removal and the funds can be released to the District.

Mr. DeMarco stated, beginning with 2011, the non ad valorem assessments will be part of the on-roll assessment. Discussion ensued on the approximate time frame for completion of the process. Ms. Carlson noted she is sending about 280 correction forms to the county.

Discussion followed on the effect of the hearing on CDD #1. Mr. Adams noted a separate and specific escrow agreement will be needed for CDD #2.

Mr. DeMarco indicated he has a draft complaint to be filed with respect to the lawsuit to be filed against the indenture trustee, related to the monies removed from the construction, trust and acquisition account. He required a representative of CDD #2, for purposes of signing the verified complaint, as well as a go-to-guy to be a witness at a hearing for a motion for preliminary injunction. He respectively requested Mr. Adams. Mr. Robertson asked if a Board Member should sign. Mr. DeMarco explained the complaint can be signed by someone with the personal knowledge of the factual allegations of the complaint.

On MOTION by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, authorization for Mr. Adams to act as signor and testifier in the lawsuit against the indenture trustee, was approved.

THIRD ORDER OF BUSINESS

**Continued Information Request to
Indenture Trustee (for informational
purposes)**

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

Mr. Adams recalled correspondence received from Mr. Spivey with Greenberg Traurig. Mr. DeMarco believed no further action was necessary. Discussion followed on the need for a future executive session. Mr. DeMarco did not anticipate the need for an executive session.

Mr. Correia noted his concern for the cost of the legal fees. Mr. Adams indicated the first round of on-roll assessment money is coming up. Mr. Adams reported that he had Mr. Cole look at the lake bank erosion project and where that part of the \$250,000 project is located. Mr. Adams stated he requested that bond counsel review the supplemental reports and provide an opinion regarding the ability to utilize any existing construction funds with regards to the remediation efforts. Mr. Adams stated Mr. Williams reported the funds can be used in confinement with the corresponding geographic area.

Mr. Adams discussed the transfer of the property to Regions Bank and noted the prepayments will be netted out. Discussion followed on the cash flow of the District. Mr. Tony DiNardo indicated the developer will be willing to help with the District's cash flow needs, if necessary.

Mr. DeMarco discussed the potential of future litigation.

Mr. Elliot Miller, a resident, asked if there is a mandatory mediation regulation. Mr. DeMarco replied that any party can file a motion to compel mediation. The judge has the authority, under the civil rules, to order arbitration. Mr. DeMarco discussed the possibility of mediation and noted his concern for mediation without completing proper discovery.

Discussion followed on the indenture trustee's reasons for the removal of the funds and possible collection issues. Mr. DeMarco noted the rules of discovery are that, within the first 30 days of filing the lawsuit, the District does not have the ability to submit a discovery to the indenture trustee. Mr. DeMarco stated discovery can be served with the lawsuit, which would give them 45 days to respond to the discovery.

Ms. Scott noted the need to keep costs low and stated she would like to see whether the first amendment will be executed and get the opinion of the bond counsel. She stated that,

pending what those items show, maybe additional discovery is needed. She recommended sticking to the core issues and see where one stands on those.

FOURTH ORDER OF BUSINESS

Engineer's Report

Mr. Cole reported that Mr. Adams stated he heard from the bond counsel about the ability to have the lake erosion repairs funded through the construction account. Mr. Cole recalled that in the past, he prepared an updated engineer's report for each series and asked if the previously updated reports needed to be amended. Mr. Adams stated the engineer's report for each project needs to be amended and be clear on the refurbishment remediation. He explained the District is going to proceed consistent with the provisions of the trust indenture and identify the additional projects and proper amounts. It will put the District in the position to move forward with the funding of the projects through the requisition process.

Discussion ensued on the ability to proceed with the entire lake bank erosion project. Mr. Adams noted that, ideally, the entire project would be completed with excess construction funds but recommended, based on previous construction fund flow issues, completing the work in sections.

On MOTION by Ms. Scott seconded by Ms. DiNardo, with all in favor, authorization for the District Engineer to prepare an amended engineer's report for the 2003 and 2005 series, was approved.

Mr. Cole provided corrections to the meeting minutes.

Mr. Cole stated he has two draws for the 2003 bonds, including \$2,000 for work related to updating the bond and lake conveyance documents. He reported the lake conveyance is an ongoing process. Draw 72, for \$700, was for work related to water use monitoring for the irrigation system.

FIFTH ORDER OF BUSINESS

Developer's Report/Update

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

Mr. DiNardo reported that DR Horton closed on October 27, 2011.

SIXTH ORDER OF BUSINESS

**Consideration of Award of Contract –
Lake and Wetland Maintenance**

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

Ms. Crismond reviewed the bid recommendation and stated the current contractor was the lowest bidder. She stated the current contract price is \$2,000 higher than the bid amount. Ms. Crismond recommended LakeMasters be awarded the contract.

Ms. DiNardo stated LakeMasters has done an outstanding job and immediately addresses any issues. Mr. Correia thanked Ms. DiNardo for her monitoring of the contract.

On MOTION by Ms. Scott and seconded by Ms. DiNardo, with all in favor, awarding the Lake and Wetland Maintenance Contract to LakeMasters, with a two (2)-year option, was approved.

Mr. Correia asked if the lake bank erosion work will affect the LakeMasters contract. Mr. Adams anticipated minor affects but not enough for a monetary consideration.

SEVENTH ORDER OF BUSINESS

**Consideration of Award of Contract –
Landscape Maintenance**

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

Ms. Crismond reviewed the bid analysis. She noted TruGreen's bid was for \$420,259 and Gulfscapes was \$414,816. She stated Gulfscapes has a high-end clientele but no contracts near the value of the Fiddler's community. Mr. Adams stated they are a brand new company. Mr. Correia noted the current contractor is TruGreen.

Ms. Crismond indicated she included an Option A in the contract, relating to a section of property that the CDD has been maintaining for years and the property needs to be transferred to the District's name. She noted it is an administrative issue and recommended the Board look at the total bid amount.

Ms. Crismond pointed out the difference between the TruGreen and Gulfscapes bid amounts is 1%.

Mr. Pires recommended the Board deem ValleyCrest and Brickman non-responsive. Ms. Crismond explained the contractors altered the provided bid schedules and marked out certain

line items. Mr. Adams noted the detailed specifications allow for a level playing field for all bidders. Mr. Adams stressed the importance of having the bid specifications completed appropriately, as he believed the contractor's modification of the specification is a significant problem.

Ms. Crismond confirmed all contractors attended a mandatory pre-bid meeting in which an explanation was provided.

On MOTION by Mr. Correia and seconded by Ms. DiNardo, with all in favor, deeming ValleyCrest and Brickman as non-responsive, was approved.

Mr. Robertson recalled awarding a marginally low bid to a contractor and the problems that followed. Mr. Adams discussed the price difference and noted the concern in Gulfscape not having another contract of a similar size. He advised that the landscaping is a significant service of the community.

Mr. Paul Borgesen, a resident in Laguna, discussed issues with TruGreen in Laguna.

Ms. Crismond explained that she works with TruGreen on a weekly basis to discuss community issues. Ms. DiNardo believed TruGreen is the better company and requested that they address the turf weeds.

Discussion ensued on the reasons for TruGreen being dismissed by Laguna.

On MOTION by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, awarding the landscape maintenance contract to TruGreen was approved.

EIGHTH ORDER OF BUSINESS

Findings Regarding CDD Ownership and Maintenance Responsibility for Property Between Sidewalks and Roads in Single Family Neighborhoods

Mr. Adams discussed the issue going on in District #1 relating to the sidewalk maintenance and the resolution created by the District. He recalled the need to address the liability versus aesthetics. He noted the Boards are addressing liability. He stated the item can be considered in the future when the District's fund balance is at a different level. Mr. Adams

explained that the liabilities are being addressed and the contractor charges on a per linear footage basis.

Discussion followed on liability and aesthetic areas. Ms. Scott noted that if an area is an aesthetic problem, then it is a liability issue.

Discussion followed on the problem of tree sap and the frequency of touch-up work. Ms. Crismond explained that she provides the contractor with a list of areas that need to be addressed.

Ms. DiNardo noted the increase in debris in the streets and right-of-way. Mr. Adams anticipated the debris to increase with increased construction activity.

Ms. Scott stated she did not see the point of the street sweeper because the landscaper blows and cleans the area every week. Discussion followed on the need for the street sweeper. Ms. Scott recommended only street sweeping along the construction path.

NINTH ORDER OF BUSINESS

Approval of Minutes

- **October 26, 2011 Regular Meeting**

Mr. Adams presented the October 26, 2011 Regular Meeting Minutes and asked for any additions, deletions and corrections. The following change was made:

Line 252: Change "915" to \$915,000

On MOTION by Mr. Robertson and seconded by Ms. Schmitt, with all in favor, the October 26, 2011 Regular Meeting Minutes, as amended, were approved.

- **October 28, 2011 Public Hearing and Regular Meeting**

Mr. Adams presented the October 28, 2011 Public Hearing and Regular Meeting Minutes and asked for any additions, deletions and corrections. The following changes were made:

Line 34: Change "ITC" to "ITG"

Line 38: Insert "(via telephone)" after "Paul Battista"

Line 571: delete "not"

Line 832: Change "8:00 a.m." to "10:00 a.m."

On MOTION by Mr. Robertson and seconded by Ms. DiNardo, with all in favor, the October 28, 2011 Public Hearing and Regular Meeting Minutes, as amended, were approved.

TENTH ORDER OF BUSINESS

Other Business

Mr. Marvin _____, a resident, recommended including a bankruptcy update on the website. He discussed the condition of the brick pavers surrounding the circle and recommended monitoring the condition as construction proceeds.

Discussion followed on the construction and the roadway. Mr. Robertson stated he will talk to Mr. Charbonneau regarding the construction traffic.

Discussion ensued on high grass on Camponile.

ELEVENTH ORDER OF BUSINESS

Staff Reports

a. Attorney

There being no report, the next item followed.

b. Manager

i. Unaudited Financial Statements as of October 31, 2011

Mr. Adams presented the Unaudited Financial Statements as of October 31, 2011.

ii. NEXT MEETING DATE: December 14, 2011 at 8:00 A.M. (Joint Board Workshop followed by Regular Meeting)

Mr. Adams noted the next meeting scheduled for December 14, 2011.

c. Operations Manager

Ms. Crismond reported palm trimming and mulching are ongoing. She stated now that we are in season the patrols have been increased to twice per week, through the month of April.

TWELFTH ORDER OF BUSINESS

Audience Requests

Comments/Supervisors'

Ms. Amanda Barton, representing ITG, reported that Ms. Carlson discussed the number provided in the chart in the supplemental methodology and believed the number in the chart to be inaccurate. She noted her support for the progress of DR Horton and stated she will be signing

off on the agreement. Mr. Andrew Sanford, with ITG, stated the Regions Bank agreement will also be supported.

Discussion followed on the Regions Bank title issues, including potential appeals.

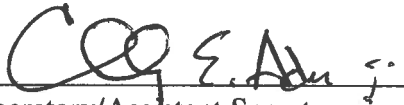
Mr. Turner thanked the Board for the support of the security program through the Foundation. He requested that, as part of the advisory board, the Board consider possibly adding additional personnel at the main gate due to congestion areas during peak times or bring personnel to Championship Gate to relieve the burden.

Mr. Correia recommended increasing staffing at the Main Gate. Mr. Turner clarified that they do not want the roving patrol used to supplement the staff at the Main Gate. The Board agreed and voiced their support for the roving patrol.

THIRTEENTH ORDER OF BUSINESS

Adjournment

On MOTION by Mr. Correia and seconded by Ms. Scott, with all in favor, the meeting adjourned at approximately 12:45 p.m.


Secretary/Assistant Secretary


Chair/Vice Chair