

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

The Board of Supervisors of the Fiddler's Creek Community Development District #2 held a Regular Meeting on **Wednesday, October 26, 2011 at 10:00 a.m.**, at the **Fiddler's 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
Cleo Crismond	Assistant Regional Manager
Craig Wrathell	Wrathell, Hunt and Associates, LLC
Jeff Pinder	Wrathell, Hunt and Associates, LLC
Tony Pires (via telephone)	District Counsel
Carlo Zampogna	District Counsel
Terry Cole	District Engineer
Tony DiNardo	Gulf Bay Communities
Andrew Sanford	ITG Holdings
Amanda Barton	ITG Holdings Counsel
Elliot Miller	Resident
Ron Kessler	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mr. Adams called the meeting to order at 10:00 a.m. He noted, for the record, that all Supervisors were present, in person.

**SECOND ORDER OF BUSINESS**

**Update: Bankruptcy Proceedings - Robert DeMarco**

Mr. Adams indicated Mr. DeMarco has a court conflict this morning and is unable to attend or call in. In light of the recent response to the inquiry letter he sent, as directed by the

Board, Mr. DeMarco asked that the Board allow him to give his report at the meeting this coming Friday, October 28.

**THIRD ORDER OF BUSINESS****Discussion: Trust Estate Non-Construction Related Transactions**

Mr. Adams reviewed the items behind Tab 3. He indicated these requests are a direct result of Ms. DiNardo's letter and in anticipation of the upcoming audit season. He stated there were issues observed for which Management felt needed clarification, answers or responses.

Recalling the last meeting, Mr. Robertson stated he did not feel there was an adequate answer to Ms. DiNardo's letter and, as a result, he discussed it with Mr. Wrathell. Mr. Robertson was hopeful that the questions would be answered today.

Mr. Wrathell recalled Ms. DiNardo's letter and Mr. DeMarco's letter to the trustee, US Bank. He indicated Mr. DeMarco's letter asked specific questions of the trustee. Mr. Wrathell noted his letter focused more on the upcoming audit and some concerns and/or open-ended items that must be addressed. He referred to the October 13, 2011 letter requesting copies of invoices, followed by emails requesting copies. He noted that when the Board approved the trust indenture amendments to establish the remedial accounts, those funds were moved from trust to remedial accounts and those were expenditures that the Board, by hiring its foreclosure and bankruptcy counsel, had an awareness of as to how the funds were being expended. Mr. Wrathell advised that the District's questions are focused on the other expenditures for which it did not receive invoices. He stated about 30% of the requested invoices were not received. In response to a question, Mr. Wrathell confirmed that Management was aware of some expenditures from the remedial account. He stated there are multiple issues being addressed and the first letter relates to expenditures for which the District does not have invoices. He confirmed that the District did not have invoices for about \$689,000 in expenditures. Supervisor Robertson questioned how an expenditure can be made without an invoice or anyone approving it. Mr. Wrathell asked that he be allowed to proceed through the three (3) letters in the agenda package and answer questions later.

Mr. Wrathell reiterated the first letter requested copies of invoices for \$689,000 in expenditures from the trust account; bills were paid by the trustee, without being cut by District Management or the Board having a purview over how they were paid. He explained that, as part

of the auditing process, copies of the invoices are needed to substantiate the payments. He noted some of the invoices received appear to have the hourly information and descriptions redacted or were simply not included. Mr. Wrathell stated these payments are different than other types; when Management receives the monthly trust statements, the transactions are posted.

Mr. Wrathell reviewed the second letter, dated October 18, 2011, which relates to \$29,034.06 in trust account funds that US Bank moved from CDD #1's bond trust accounts to CDD #2's bond trust accounts and another \$164,574.70 which was posted from CDD #2's to CDD #1's bond trust accounts. He explained that when there was an expenditure, there was only one (1) invoice and the trustee would move money from one CDD to another to pay the invoice out of the other. Management questioned US Bank regarding the existence of any interlocal or intergovernmental agreements permitting bond trust account funds to be moved from CDD #1 to CDD #2 and vice versa, without the approval of both Boards. Management's letter reminded US Bank that both CDDs are independent special districts and requested an explanation as to the mechanism that enabled US Bank, as trustee, to move the funds outlined in the letter.

Mr. Wrathell indicated a response was received, via email, on October 19, 2011; however, he is unsure it fully addresses the District's questions.

Mr. Wrathell referred to the third letter, dated October 20, 2011. He explained that the way the indenture amendments were structured, when remedial accounts were set up for a particular bond issue, the money typically flowed from the debt service reserve to that remedial account and, if there were any construction account monies to be used, it was specifically mentioned in the indenture. In the case of CDD #1, it mentioned the 2005 bond, and allowed \$55,000 to be moved once; however, \$55,000 was moved over twice. He reviewed the indenture documents and concluded that CDD #2 did not have provisions to move funds. In response to a question, Mr. Adams confirmed the document in the CDD #2's possession is not countersigned. Mr. Wrathell advised that the documents state the money is to come from the reserve accounts. He felt if they were going to apply the money from sources other than the reserve account, there should be another indenture amendment to reflect the other source. Ms. Scott summarized the District has an amendment that was never executed, has no amounts and stipulates that the money to the remedial account can only come from the reserve accounts.

Mr. Adams, in response to a question, indicated the indenture trustee counsel, Greenberg Traurig, prepared the indenture documents.

Mr. Elliot Miller, a resident, noted that the amendment was only to become effective if it was approved, in writing, by a majority of the bondholders. Secondly, it required a resolution of the Board; however, the resolution was subject to District Counsel's opinion, which was never received. Additionally, it required the opinion of bond counsel, which was not received. He surmised that the document is neither in effect or relevant.

Discussion ensued regarding the timeline of events. Mr. Adams explained monies were not collected through the normal assessment process; there were ongoing negotiations between the developer and the bondholders trying to restructure the deals and there was a period of deferrals where they were deferring payment while they tried to work through the business plan being negotiated through the developer. By the time September came, the bondholders directed the Boards to proceed with foreclosure and, in doing so, established the remedial accounts to help pay for those activities. He indicated when the Board was close to filing the foreclosure complaints, the bankruptcy was filed a week or two (2) in advance of the District filing its foreclosure complaint. At that point, the District was said to be in a position of default. Mr. Adams advised that attempts are being made to locate the written notice of default but it has not been found in the District's files; however, notices of nonpayment were found, going from the indenture trustee to the various bondholders. He felt the courtesy notices of nonpayment are different than a notice of default, as they do not contain the word default. Discussion ensued regarding the validity and/or relevance of trust and other documents and agreements. Mr. Wrathell indicated, until he is told differently by Counsel, he is acting on the assumption that these documents/agreements are in place. Mr. Wrathell stated Management's position is that, based on these documents, the funds did not flow in the prescribed manner.

Mr. Wrathell discussed the movement of funds from various bond series accounts to others and whether those actions were allowable. He indicated, assuming the attorneys are okay with the trust indenture amendment, establishment of the remedial accounts, funding of them and the payments made from them, there is still the issue of the other expenses that were paid from accounts other than the remedial account. Mr. Wrathell felt the trustee's position is that if the bonds are in default, they can do what they want; however, from an auditing standpoint, the District needs something that substantiates or provides a mechanism for payment of those monies from accounts other than the remedial accounts.

Mr. Wrathell referred back to the October 20, 2011 letter and questions regarding costs identified as split but which were paid entirely from one (1) CDD's account. In response to a question, Mr. Wrathell confirmed Greenberg Traurig is trustee's counsel. Mr. Wrathell reiterated that, regarding invoices paid by US Bank, the detail or activity was either redacted and/or omitted from the invoices received. The CDD #1 Board asked Management to write a letter to the trustee asking that the invoices be split so each CDD receives its own invoices; there is no way to account for what work relates to each CDD, given the redacted nature of the invoices.

A question was raised regarding whether District Management will inquire as to whether the indenture agreement ever became effective. Mr. Wrathell suggested that the Board direct District Counsel to look into it. The Board Member understood that but reiterated that his question is what Management plans to do. Mr. Wrathell indicated his recommendation is that the Board direct District Counsel to look into it and, once he has documentation calling this issue into question, then Management will view it as a legitimate issue to be discussed. Mr. Wrathell stated the result of that determination has a direct bearing because if it is deemed the indentures are not effective, then the questions change. Mr. Correia asked if Management received Mr. DeMarco's letter and, if so, did it not raise questions as to the effectiveness of the amendment. Mr. Wrathell indicated he will leave that question to the attorneys to determine but the purpose of this meeting is to lay things out in that direction. Mr. Wrathell stated these are the beginning steps to get answers to the questions and, if along the way, there are other issues, they will be addressed.

Ms. Scott referred to Mr. Pinder's June 23, 2011 email requesting invoices. She questioned why CDD #2's amount is so much greater than CDD #1's and wondered if it is a question of the allocation. Her feeling is that the Districts may spend a lot of time trying to determine the allocation of things that really do not matter, as her position is that money was stolen and the auditors will see it the same, resulting in an account receivable from the bondholders. Ms. Scott suggested the District take this to court as soon as possible so when the auditors are preparing the audit, they will know that contingency exists and can stipulate that it is an account receivable, pending the legal action. She surmised that the questions currently being discussed are all valid questions if there was a good first amendment, but there is not. She questioned why the Board is delaying taking action. Mr. Wrathell felt, in the end, if the

indenture agreement is not valid, then the analysis is a moot point. Mr. Correia agreed with Ms. Scott. Discussion ensued regarding items requested and US Bank's refusal to provide them. Ms. DiNardo speculated that funds are just being paid because the trustees have control; they are doing so with no Board or Management approval, with no procedural methods for providing backup. Ms. Scott asked Mr. Wrathell to inform Mr. DeMarco that the Board's main question is whether the District can get a stay to lock up the funds and stop the trustee from paying. Mr. Pires suggested that Mr. DeMarco address these issues. The questions for Mr. DeMarco are whether the District can get a stay, whether the indenture amendment is valid and what recourse the District may have. Mr. Robertson offered to pose the questions to Mr. DeMarco, prior to Friday.

Mr. Miller read his analysis, which he sent to Mr. DeMarco:

*'The entire basis for the October 20, 2011 letter from Warren Bloom of Greenberg Traurig justifying the action of the indenture trustee and the bondholders in unilaterally appropriating money from CDD #2 can be summarized in one short simple phrase, "the bonds were in default and therefore we, as bondholders, were entitled to the money".'*

Mr. Miller noted this statement has nothing to do with the 'would be' agreement, their position is different and Mr. Bloom did not respond to Mr. DeMarco's question; they just state there is a default and they are entitled to the money. The audience member discussed a July 22, 2011 document entitled 'Indenture Trustee Report and Memorandum of Law Regarding Effective Debtor's Proposed Plans on Bondholders' submitted to the US Bankruptcy Court by Mr. Bloom. He stated the report asserted that the debtor's plans were unacceptable to the bondholders because the legal impact of the plans was to render the bonds not in default. He felt the main thrust of the report is that the plans would preclude the bondholders from enforcing a default and would treat the situation as if the CDDs had been the debtors and the bonds would, therefore not be in default. He continued comparing this report to statements made in Mr. Bloom's October letter, which he finds to be contradictory. Mr. Miller summarized his feeling that Mr. Bloom argued against declaring a default but then took the CDD's money on grounds that there was a default.

Ms. DiNardo recommended the Board direct Management to send a followup letter regarding the failure to provide invoices, not following procedures and transferring monies

without Board approval. Mr. Wrathell clarified that the Board is directing him to request copies of the invoices with the costs broken out with details. He wondered if the remaining questions should be submitted by Mr. DeMarco. Ms. Scott felt Management should do the absolute minimum necessary to complete the audit report and leave the remainder to Mr. DeMarco.

Referring to the US Bank statement payments and transfers, Ms. Scott summarized that money was transferred to another trust remedial account, which brings the question back to whether there is a valid first amendment that authorizes the trustee to put money into a remedial account.

Mr. Pinder clarified that the only payments brought to the Board's attention are those that do not appear to be in line with the trust indenture amendment. He stated the remedial accounts were to be funded by specific accounts, namely the reserve accounts; however, in this case, the majority were funded by the construction account, which is not addressed in the trust indenture. Ms. Scott asked if there is money in the reserve account. Mr. Pinder felt there is money in the reserve account but he must verify. He referred to the financial statements at the end of the agenda. Mr. Wrathell reviewed the reserve accounts and funds remaining. Mr. Adams further explained his interpreted difference between the notices of nonpayment and a notice of default, of which the CDDs can find no evidence of receiving. Mr. Correia questioned why the Districts have not requested copies of the alleged notices of default from US Bank.

Mr. Robertson recalled previously directing the District Engineer to determine construction projects for completion and, at which time, several items were approved, but not all of which were completed.

**FOURTH ORDER OF BUSINESS****Engineer's Report**

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

Regarding approved construction work for which work was completed and/or pending but has been unpaid or for which there are not sufficient funds in the construction account, Mr. Cole indicated similar discussions about this were held with CDD #1. For CDD #2, both the 2003 and 2005 bonds still have plenty of money in the construction account to complete the work identified two (2) years ago. He reviewed tracking reports for each bond and concluded there are sufficient funds to complete the work that was started and approved. There is work that was not started. Ms. Scott spoke of lake erosion issues and questioned if the lakes are

completed. It was indicated that the lakes are a different issue, not construction; however, if there is extra money in the construction fund, it could be allocated to it. Mr. Wrathell indicated in other districts, excess construction monies have been used for other purposes, within the community. Mr. Adams indicated it may very well be possible but would, as a minimum, require a modification to the Engineer's Report.

Regarding the 2003 Series bond, Mr. Cole reiterated his opinion the identified work completes all the work originally anticipated in the 2003 bond. Ms. Scott asked if a revised Engineering Report could be completed to include the geotube work into this bond's work. Mr. Adams indicated he felt that the funds can only be spent in the geographical area where the bond is overlying, but would look into that issue, as well. In response to disagreement with his statement, Mr. Adams indicated Management will report back regarding whether it is allowable. Discussion ensued regarding lake and construction projects and utilization of the excess funds.

Mr. Cole asked for confirmation that the Board is directing him to prepare an Amended Engineer's Report for the 2003 Bonds to include the lake erosion repairs. He indicated the status of the lake erosion repairs is that Mr. Adams is advertising for bids and detailed the timeline, with the work scheduled to begin in January. Ms. Scott directed him to prepare whatever is necessary to move that project from O&M to construction. Mr. Cole will prepare a report for review.

Mr. Cole referred to his second report, with a cover email dated October 19, 2011, relating to the 2005 Series bond. He stated it shows the September 2009 budget was about \$1.8 million; about \$630,000 was spent, to date, and the estimated work to complete is about \$915,000 so the revised overall cost is approximately \$1,543,000, making it under budget. In summary, as of the end of August, there is approximately \$3 million in the construction fund account and the estimated remaining budget is about \$915K; therefore, there are sufficient funds to complete the identified work. Regarding the lake erosion work, Mr. Cole will email Mr. Adams his breakdown of what amounts are within the various geographical bond areas.

Ms. Scott asked Mr. Wrathell if he will figure out how the funds can be used, whether they can be commingled or if they must be used specific to the geographical area. Mr. Wrathell indicated he wants to obtain bond counsel's opinion on the matter; however, he and Mr. Adams both felt the funds are usually required to be used in the specific geographical area covered by

the bond. Ms. Scott acknowledged Management's opinion but reiterated her request for confirmation.

Mr. Cole presented 2003 Bond Series Pay Draw 74, for approximately \$3,300, related to preparing documents to convey the lakes, permitting updates for South Florida Water Management District (SFWMD) and a soft cost item for a subdivision infrastructure bond from the developer to the CDDs. He presented 2005 Bond Series Pay Draw 71, for approximately \$2,300, related to monthly water monitoring by CDM and work on lake conveyance documents. Discussion ensued regarding the actual balance remaining for the 2005 bond series account.

**FIFTH ORDER OF BUSINESS**

**Developer's Report/Update**

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

There being no report, the next item followed.

**SIXTH ORDER OF BUSINESS**

**Approval of September 28, 2011 Joint  
Regular Meeting Minutes**

Mr. Adams presented the September 28, 2011 Joint Regular Meeting Minutes and asked for any additions, deletions or corrections.

The following changes were made:

Line 32: Insert "(via phone)" after "Molina"

Line 43: Delete "(via telephone)"

Line 49: Change "Clutia" to "Klug"

Line 52: Change "Alyse" to "Elysee"

Line 615: Change "Clutia" to "Klug"

Line 662: Change "Alyse" to "Elysee"

Line 743: Change "Verenna" to "Varena"

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

**SEVENTH ORDER OF BUSINESS**

**Other Business**

There being no other business, the next item followed.

**EIGHTH ORDER OF BUSINESS**

**Staff Reports**

**a. Attorney**

There being nothing additional to report, the next item followed.

**b. Manager**

**i. NEXT MEETING DATES:**

- **October 28, 2011 at 8:00 A.M., or as soon thereafter as such matter may be heard**
- **November 16, 2011 at 10:00 A.M.**
- **December 14, 2011 at 8:00 A.M. (Joint Board Workshop followed by Regular Meeting)**

Mr. Adams indicated the next meetings will include a public hearing and regular meeting on October 28, 2011 at 8:00 a.m., a regular meeting on November 16, 2011 at 10:00 a.m., and a joint Board workshop with Regular Meetings to follow on December 14, 2011 at 8:00 a.m.

In response to questions about the October 28 meeting, Mr. Adams indicated both CDDs' meetings will be opened together, as the content is similar, but each Board will take separate and distinct action.

**NINTH ORDER OF BUSINESS**

**Unaudited Financial Statements as of September 30, 2011**

Mr. Adams presented the Unaudited Financial Statements as of September 30, 2011, noting an ending balance of \$43,708. He discussed the status of assessment collections and Mr. Battista's presentation to CDD #1 where they are trying to enact a process that will allow them to pay just the O&M portion. Mr. Adams confirmed the District's funds are very low and it is not in a position to pay any bills except basic utility bills, until prior year assessments are paid by the reorganized debtor or current year assessment revenues are received, which should begin by mid-December.

▪ **Operations Manager**

**\*\*\*This item, previously Item 8c, was presented out of order.\*\*\***

Ms. Crismond presented the Operations Manager report. She indicated mulching and palm trimming will be completed in November. She reminded the Board that the lake and wetland contract will expire on November 30, 2011 and that the proposals received, along with the landscaping proposals, will be presented for consideration at the November meeting. Pressure cleaning of sidewalks continues, throughout the community.

Mr. Ron Kessler, a resident, discussed landscaping issues in the area near the park. Ms. Crismond acknowledged delays in mowing, due to the large amount of rain.

Mr. Robertson recalled that sheriff's patrols were reduced during the summer. Ms. Crismond indicated patrols will increase beginning November 1.

**TENTH ORDER OF BUSINESS**

**Audience  
Requests**

**Comments/Supervisors'**

There being no audience comments or Supervisors' requests, the next item followed.

**ELEVENTH ORDER OF BUSINESS**

**Adjournment**

**On MOTION by Ms. Scott and seconded by Ms. Schmitt, with all in favor, the meeting adjourned at 12:02 p.m.**

  
Secretary/Assistant Secretary

  
Chair/Vice Chair