

**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 Tuesday, May 15, 2018 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:

Elliot Miller	Chair
Victoria DiNardo	Vice Chair
Joseph Mayer	Assistant Secretary
Linda Viegas	Assistant Secretary
Bill Klug	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Robert Dieckmann	Project Manager
Valerie Lord	Developer Counsel
Michael Laurence	Resident
John Nuzzo	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the meeting to order at 10:02 a.m. Supervisors Miller, DiNardo, Viegas, and Klug were present, in person. Supervisor Mayer was not present at roll call.

SECOND ORDER OF BUSINESS

Public Comments: Non-Agenda Items

Mr. Miller stated Mr. Michael Laurence, a resident, had approached him and wanted to discuss damages by Pulte, to the street lights and signs at Millbrook in front of his home at 2798 Aviamar Circle. The damage was not hurricane related. Mr. Laurence stated that the street sign issue was with Lennar. Mr. Laurence discussed the following:

➤ Aviamar Street Sign Post: When Lennar built its last home, on lot #85, the single-post signpost, with yield and speed signs, approaching Aviamar coming from the east, was knocked down and placed across the street in a lot owned by Pulte. He was uncertain if there was damage to the sign, or if Lennar just moved it out of the way of their dumpster. As Pulte trucks are speeding through and cutting across the island to arrive at their Aviamar and Amaranda building

sites he was concerned about whether Pulte could make a case that there were no yield or speed signs posted.

➤ **Light Poles:** One street light was knocked over and damaged by Pulte. Mr. Laurence stated that the light pole survived the hurricane but, when Pulte began working in the area, the post was knocked over. Mr. Robert Dieckmann, Project Manager, confirmed that he had gone out to Millbrook yesterday and the street light that was knocked over had been removed by Bentley Electric (Bentley), and they had capped off the wires. The base is all that remains. It was noted that the lead time on getting new poles is a few months.

When Pulte removed the transformer that powered additional lights, further down on Aviamar, Mr. Laurence notified Mrs. Adams and others of this issue. Mrs. Adams put him in touch with Mr. Steve Bentley. Using the lighting plan, which lights were out were identified. Mr. Laurence also stated Pulte's subcontractor was on site moving street lights. Mr. Adams would confirm whether the area where the lamps were removed was the same area Pulte recently re-platted which required Pulte to move the drainage and water and sewer connections. Mr. Adams stated the street lights may have interfered with the new driveway locations due to those moves. In response to whether Lennar and Pulte were informed of these issues, Ms. Viegas stated that Lennar was finishing their list of issues and signage was one of the issues. Ms. Viegas stated that Mr. Laurence had sent her pictures of the downed signage back in March and she had forwarded his email to Terry Cole and Marie Puckett. Ms. Viegas could not confirm if Mr. Cole had included the sign in his list of Lennar damages that he sent to Lennar.

Mr. Miller directed Mr. Adams to prepare letters informing Lennar and Pulte of the damages to the street sign and the street light, respectively. Mr. Miller requested that Ms. Lord prepare a confirmatory letter stating Pulte's construction deposit would be held until they repair the damages. In response to a question of which lights were affected, Mr. Laurence stated that, when Pulte removed the light transformer, several street lights, specifically on Aviamar, were affected. An email was sent to Mrs. Adams who forwarded it to Mr. Bentley and others. Currently, all the lights on Aviamar are functional, with the exception of the light pole damaged by Pulte. Discussion ensued regarding identifying which lights are not working, and that the lights on Amaranda were not affected by the transformer issue since they were never functional because of the stages of development or redevelopment in that area. The decision was made to focus only on the damages made to the District's property and just send letters to Lennar and Pulte. Ms. Viegas asked for confirmation that Mr. Laurence had observed Pulte damage the street light. Mr. Laurence stated he did observe it, but did not have the name of the company

with him whose truck knocked it down. Mr. Dieckmann stated that GradyMinor's map identifies the broken pole as AV 283. Mr. Miller asked that the Board be copied on both letters.

▪ **Chair Discussion of CDD Litigation**

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

Regarding the U.S. Bank National Association (U.S. Bank) litigation, Mr. Miller stated:

➤ Pre-Trial Date: Scheduled for next February. The Pre-Trial Order is now in effect and lists the discovery cut-off dates.

➤ Depositions: Discovery is scheduled for both Districts #1 and #2, U.S. Bank, and ITG.

➤ Timeline: Many years ago, when the Districts held joint meetings, the Special Counsel for CDD #1 made a statement US Bank claims it affects CDD #2, even though it was not a CDD #2 issue. The Special Counsel stated that it was okay for the Trustee bank to use construction funds to pay their legal fees, which was wrong. At the time, it was indicated, on the record, that legal counsel for CDD #1 did not represent CDD #2.

➤ Interpleader Case: The 2003A bonds are owned by ITG and its colleagues. The 2003B bonds are owned primarily by the Developer and the private equity firm backing the Developer. The B bonds were due and the A bondholders, ITG, sent a notice to not pay the B bonds because ITG was claiming there was a default; ITG claims the District must pay ITG first. The Interpleader action was started because the CDD was in the middle of two claimants requesting the same funds. An issue occurred a few years ago when the substitute Trustee, Wilmington Trust, made a \$5 million payment to ITG without consulting the District and, CDD #2 asserted that if Wilmington Trust was making payments for the CDD, it must let the CDD know before the payments were made; however, Wilmington Trust was never instructed to not make payments when payments were due. When ITG sought payment, it was informed that the CDD wanted a letter stating that, when ITG received the money they were claiming, it satisfies them and there would no longer be a claim of default. CDD #2's Special Counsel, Mr. Rick Reyes, informed the attorney for ITG that CDD #2 was willing to make the payment but required the Letter. Both attorneys wanted the other to prepare the letter but neither prepared it, no other payments were made, and interest payments have been and are accruing. ITG filed a Motion for Summary Judgment claiming that the mere request for a non default letter by CDD #2 was the equivalent of an instruction to Wilmington Trust to not make any payments. The District's position is that, ultimately, there was no default, Wilmington Trust was never instructed not to make payment, and there was no objection to the non default letter but, before that, the District wants Wilmington Trust to be put back in the case as an indispensable party, because, if they

were not making payments and the District did not tell them not to, then Wilmington Trust and not CDD #2 should be responsible for the accrued interest. Also, a Motion for Summary Judgment cannot be sought because then there would be outstanding material issues of fact; a Motion for Summary Judgment was premature until there are depositions, interrogatories, discovery, etc. Discussion ensued regarding the next steps, a potential hearing, etc.

Mr. Miller stated that Judge Schenko, who is assigned to both cases, is being reassigned to Lee County. To prevent any further delays, Mr. Reyes would find out if Judge Schenko could remain on both cases, instead of the Court assigning another Judge.

THIRD ORDER OF BUSINESS

Discussion: Alternative Fence Material Replacement Options

Mr. Dieckmann presented a revised proposal to change the vendor and fencing materials and discussed the following:

➤ Veneta Entrance: Originally the Board decided to replace the 726' fence with like-kind stackable concrete. Because Coastal Concrete is backlogged and not expected to complete the project until August, an option to change materials and also hire a separate vendor to demolish the existing fence sooner, was being considered. If approved, the new material would be purchased from a supplier who will deliver it on site and a certified company would be hired to demolish the existing fence and install the new one. The potential new vendor was hired to demolish and install the fencing along Championship Drive.

Mr. Dieckmann proposed hiring a separate company to complete the demo instead of waiting two months for the original company to do it. The materials, once ordered, are expected to arrive in six weeks. This proposed change of materials and vendor would save the CDD approximately \$17,940, which potentially could be used to offset the costs related to the downed trees that were not listed in the original scope of work. The demo company could remove the fence within four weeks. Mr. Dieckmann followed up with the demo company and was told that the project could be completed before the end of that week. The Board approved the changes and Mr. Dieckmann will cancel the contract with Coastal Concrete.

On MOTION by Ms. DiNardo and seconded by Mr. Klug, with all in favor, authorizing The Foundation to engage Naples Trucking to demolish existing walls, was approved.

Mr. Dieckmann distributed a photograph of the vinyl “rock look” fence material installed at the corner of Mahogany at Fiddler’s Creek Parkway and mentioned that Waldrop had landscaping plans to replant in front of the fencing at Veneta Way. The fence color will stay the same, for consistency, throughout Fiddler’s Creek. Mr. Klug asked if the proposals could be attached as exhibits to the minutes. Mr. Adams replied affirmatively.

On MOTION by Ms. DiNardo and seconded by Ms. Viegas, with all in favor, authorizing The Foundation to engage C&C Tree Service Fence Builders LLC, to install vinyl “rock look” wall at Veneta Way, consistent with CDD #1, at the price set forth, was approved.

Mr. Dieckmann stated the installer is already on site completing the Championship Drive project and starting Pepper Tree Way, to be followed by Bent Creek Way. Weekly updates would be obtained to confirm when the vendor expects the materials to arrive and inform the installer of the expected date. Discussion ensued regarding possibly borrowing from CDD #1’s existing materials so that CDD #2’s projects could begin and replacing them once the order arrives, checking the installer’s current schedule, and that, by CDD #1 lending materials, both Districts would benefit stylistically. Mr. Dieckmann will review the project schedules and determine if borrowing these materials would cause any further delays to the current projects.

*****Supervisor Mayer arrived at the meeting at 10:52 a.m.*****

FOURTH ORDER OF BUSINESS

Supervisors’ Requests

There being no Supervisors’ requests, the next item followed.

FIFTH ORDER OF BUSINESS

NEXT MEETING DATE: June 6, 2018 at 10:00 AM

The next meeting would be held on June 6, 2018 at 10:00 a.m., at this location.

Mr. Klug asked if the CDD changed its position regarding Waldrop. Mr. Adams affirmed that Mr. Pires was preparing the letter to The Foundation’s attorney requesting they pursue Waldrop on the potential claim of overlooking items and not submitting a complete inventory. Both Mr. Pires and Ms. Lord were expected to present this issue at the next meeting. Mr. Adams will forward a copy of the letter to the Board.

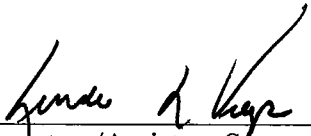
SIXTH ORDER OF BUSINESS

Adjournment

There being no further business to discuss, the meeting adjourned.

On MOTION by Mr. Klug and seconded by Ms. DiNardo, with all in favor, the meeting adjourned at 10:57 a.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]


Secretary/Assistant Secretary


Chair/Vice Chair