

**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, June 27, 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

Also present were:

Chuck Adams	District Manager
Cleo Adams	Assistant Regional Manager
Jason Olsen	Assistant Regional Manager
Tony Pires	District Counsel
Terry Cole	District Engineer
Valerie Lord	Developer Counsel
Bill Benson (<i>via telephone</i>)	Keefe, McCullough & Co., LLP
Ron Albeit	The Foundation
Tony DiNardo	The Foundation
Robert Dieckmann	Project Manager
Marie Puckett	Fiddler's Creek Security
Tony Spinelli	Resident
Gretchen Scott	Resident
Shannon Benedetti	Resident
Laura Cox	Resident
James Wesner	Resident

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mrs. Adams called the meeting to order at 10:00 a.m. Supervisors Miller, DiNardo, Mayer and Viegas were present, in person. Supervisor Klug was not present.

SECOND ORDER OF BUSINESS

Public Comments: Non-Agenda Items

Mr. Tony Spinelli, President of Menaggio, presented photographs and a map and pointed out where a tree and a line of hedges were unjustly removed from CDD #2 property. Mr. Dieckmann confirmed that the tree that was removed was on CDD #2 land but he was uncertain whether BrightView Landscapes, LLC (BrightView) removed the tree or not because he was not privy to the details on the removals. He knew of quantities for the HOA but did not know of

specific trees on the removal list. In response to Mr. Miller's question regarding asking BrightView, Mr. Dieckmann stated that BrightView would not be able to say. He offered to replace the tree with another from CDD #2's tree program, without changing the cost. The Board unanimously accepted Mr. Dieckmann's offer. Mr. Spinelli asked if the hedges would also be replaced. Mr. Dieckmann said he would do that as well.

Ms. Shannon Benedetti, a resident and former President of Chiasso, stated that, where the tree and hedges are located, she was asked about the tree, when she was President. She stated she believed it was a tree to be removed, but not to be replaced. Mr. Miller stated that the issue was already resolved.

THIRD ORDER OF BUSINESS**Special Counsel Update**

Mr. Miller provided the following update:

- Several depositions were scheduled in the US Bank litigation.
- Mr. Miller's deposition would be two days; one day by US Bank and the other by ITG.
- A long list of depositions would be taken by all sides.
- A trial is scheduled for February of 2019.
- As to the interpleader action, CDD #2 objected to the motion for summary judgment and is trying to make certain that Wilmington Trust is included in the action, as party defendants, since they failed to make interest payments when due, and the District had not advised Wilmington against making the payments.

FOURTH ORDER OF BUSINESS**Presentation of Draft Audited Basic Financial Statements for the Fiscal Year Ended September 30, 2017, Prepared by Keefe, McCullough & Co., LLP**

Mr. Bill Benson, of Keefe, McCullough & Co., LLP, presented the Audited Basic Financial Statements for the Fiscal Year Ended September 30, 2017 and described the information that could be found on each page. The District received an unmodified opinion and is making tremendous progress in paying off debts and obligations and servicing property owners.

Mr. Miller asked if there is modified GAAP accounting for government reporting. Mr. Benson stated that fund levels are budgeted and, as of several years ago, Districts and governments were required to report all infrastructure items unique to the District; this item is clarified further in Note 9, on Page 27. With regard to capital items being expensed, Mr. Benson

called attention to the Government-wide net position deficit of \$30 million, which related to the accrual of certain expenses, namely interest, which are not recorded in the fund level, and deficits also related to infrastructure improvement, such as water and sewer lines financed through bonds, which are conveyed to other governmental entities. Mr. Miller asked for clarification regarding for-profit philosophies on the governmental accounting rules. Mr. Benson stated, when the Governmental Accounting Standards Board Statement No. 34 (GASB No. 34) was published, the focus was on reporting on the depreciation of fixed, government-wide, infrastructure assets. In response to Mr. Miller's question regarding whether the financials are prepared on an accrual basis, Mr. Benson stated that the government-wide financials are on an accrual basis and the fund levels are modified accrual.

Ms. Viegas noted a discrepancy of \$4,000 in the net deficit position, on Page 5. Mr. Benson acknowledged the mistake and explained that the table was correct, despite the error in the number at the top of the page. The following change was made:

Page 5, "Governmental Activities": Change: \$8,523,619 to \$8,519,776

In response to Mr. Miller's question regarding how CDD #2 would gain approval for a loan when the financials suggest that the District is technically bankrupt, Mr. Benson stated that certain lenders understand the financials and willingly approve loans to governmental agencies because of the security of their positions. Mr. Miller asked for clarification of the Non-depreciable Capital Assets, in the amount of \$29.4 million. Mr. Benson stated that those were assets with land improvements and highlighted the table on Page 19, showing certain District-owned assets, such as land and improvements that do not depreciate. Mr. Adams stated that lake tracts, right-of-ways (ROWs), drainage pipes and street lighting are tangible assets, while the land is not a depreciable asset. Mr. Benson stated that there was \$29 million worth of land and ROWs that Mr. Adams alluded to and an additional \$30 million that were depreciating, and the amount of depreciation recorded on those items was \$17 million. Ms. Gretchen Scott, a resident, stated that the digging of the lakes was considered a land improvement. Mr. Miller asked if the District had any intangible assets that it amortized. Mr. Benson replied no and stated that the District's total debt decreased from almost \$93 million to \$87 million. He discussed the contingency note, the litigation involving Wilmington Trust, internal controls and the interpleader action. It was noted that there is an error in the case number of the litigation. The following change was made:

Page 29, Note 10, Line 4: Change Case No. 2015-CA-2763 to Case No. 2014-CA-2763

Mr. Miller stated that Mr. Benson did a very good job on the financials and appreciated the clarification on the government accounting forms. Ms. Viegas noted a minor typo on Line 6,

on Page 29, and questioned the blanked out dates throughout the report. Mr. Benson confirmed that the final report would be updated and the dates would be inserted after the meeting.

Page 29, Line 6: Delete “for” after “Wilmington Trust”

As to who will file the report with the State, Mr. Benson stated the District Manager would transmit a copy to the State and he would follow up to ensure that it was filed.

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2018-03, Accepting the Draft Audited Basic Financial Statements for the Fiscal Year Ended September 30, 2017

Mr. Miller presented Resolution 2018-03. Mr. Adams noted that the term “Draft” should be removed from any motion, as Resolution 2018 does not specify “Draft”. The Resolution and audit should be accepted, subject to the edits noted in the presentation.

On MOTION by Mr. Mayer and seconded by Ms. DiNardo, with all in favor, Resolution 2018-03, Accepting the Audited Basic Financial Statements for the Fiscal Year Ended September 30, 2017, subject to the edits noted in the presentation, was adopted.

SIXTH ORDER OF BUSINESS

Developer’s Report/Update

Mr. Albeit stated Mr. DiNardo was on his way and suggested the Board go on to the next item on the agenda and go back to the Developer’s Report/Update when Mr. DiNardo arrives.

SEVENTH ORDER OF BUSINESS

Engineer’s Report: *Hole Montes, Inc.*

Mr. Cole highlighted the following:

- Met with Mr. Spinelli and Mr. Jim Wesner, Menaggio Landscape Committee Chair, regarding lake erosion concerns about the lake in Menaggio that were raised at the last few CDD #2 meetings.
- Identified 350’ of the lake that should be considered for lake erosion repairs.
- Observed 12” to 18” of erosion drop and suggested prioritizing repairs for the Menaggio lake, as well as Lake #88, which is in need of irrigation lake repairs.
- Lake #65 also needs to be repaired.

In response to Mr. Miller’s question, Mr. Cole stated that there are geotubes on the Lake #88 banks, as well as around a portion of the lake in Menaggio. As to why the geotubes have not

prevented erosion, Mr. Cole stated geotubes were only installed in areas that needed repair a few years ago. Additional erosion has occurred in these other areas. In response to Ms. DiNardo's question regarding the total number of lakes requiring repair, Mr. Cole stated there were washouts behind Lagomar. Although four specific areas need to be addressed, they are not lake bank erosion problems that CDD #2 is responsible for; the builder or residents are responsible for those repairs. As to cost, Mr. Cole estimated approximately \$20,000 to repair the lakes, including installation of new geotubes.

Ms. Laura Cox, a resident, asked if the Lagomar Homeowners' Association (LHOA) was aware of the washouts and lake bank erosion problems that Mr. Cole mentioned in Lake #90. Mr. Miller stated that CDD #2 owns and maintains the infrastructure in the District and does not deal with properties owned by the various HOAs or Condo Associations. As to who is responsible for alerting Lagomar, Mr. Miller stated that it was an interesting question. Since Ms. Cox was in attendance, she could tell her HOA, but, in other instances, the information needed to be communicated; it was up to the residents to report issues to the HOA. Mrs. Adams stated that Management routinely sends notifications to residents residing adjacent to areas with lake bank erosion issues caused by them. She also stated they get proposals for them for repair.

Mr. Cole continued:

➤ A Lennar contractor, Alex has done some punch list cleanup on valley gutters in Aviamar and he would follow up with Alex regarding the status of the repairs.

Ms. Viegas asked about the Millbrook sidewalk pavers, since they have not been addressed yet. She asked Mr. Cole to follow up with Lennar and find out when they would be done. Ms. Viegas also noted to Ms. Lord that the Lennar deposit should still be held until all the repairs are made. Ms. Viegas inquired about the Pulte light issue and two missing street signs in Aviamar. Mr. Cole would follow up with Pulte and check with Lykins Signtek (Lykins).

➤ Hurricane Irma Update: Certain tree removal items identified by BrightView were not within their scope; he would defer the issue of the trees that had been missed to Mr. Dieckmann.

➤ Mr. Dieckmann stated he obtained three proposals for the cleanup around the rear of Lake #88, the south side and Creative Lane, which are the areas that were missed and discussed at the last few CDD #2 meetings.

Mr. Dieckmann stated there was \$18,000 in savings from the change in fence material that could be put towards the trees. Mr. DiNardo stated if CDD #2 does not require a performance bond from Juniper, those savings could be passed on to the District to apply towards the repair work.

There was discussion about Juniper and the performance bond for CDD #1. Juniper is a private company so we would not be able to review their financials. Mr. Dieckmann stated, once he received the proposals, he would review them with Mrs. Adams and the Board could decide how it would be funded at that point.

Ms. Cox stated that the maintenance building, at the intersection of Fiddler’s Creek Parkway and Sandpiper, looked unsightly. Mr. DiNardo stated that the area would be maintained eventually; the current focus was on completing the restoration repairs.

Mr. Cole presented Requisition #19 and stated that it is a final payment of retainage to the contractor for a variety of infrastructure items, as reflected in the exhibit he distributed.

On MOTION by Mr. Mayer and seconded by Ms. DiNardo, with all in favor, Requisition #19, in the amount of \$328,766.75, for the Oyster Harbor Phase 2 work, was approved.

EIGHTH ORDER OF BUSINESS

Consideration of Access Agreements

- A. Fiddler’s Creek Plaza I Association, Inc.**
- B. Fiddler’s Creek Foundation, Inc.**

Referencing slides, Ms. Valerie Lord stated that the proposed Shopping Center Development shows access from US41, down through the back of the Publix Shopping Plaza, and the Developers in previous negotiations, requested unimpeded access rights, for Publix trucks to go through the Fiddler's Creek security gate after exiting onto Sandpiper from their location. In response to Mr. Miller’s question, Ms. Lord confirmed that, without the access onto Sandpiper and through the Fiddler's Creek security gate, the Publix trucks would have no way out. There will be two agreements because The Foundation will own and build the gate, and Fiddler’s Creek Plaza 1 Association will control and manage the commercial plaza. Mr. Miller questioned the need for an Access Agreement, by The Foundation, if the road is a public road. Mr. DiNardo stated it is necessary because Publix is requiring it and will not make a large investment without it. All documents will be completely scrutinized by attorneys. Apart from Publix trucks, Mr. DiNardo stated no employees or other vendors can gain access to Sandpiper, behind the Fiddler's Creek security gate, because there will be another gate with a security code. Sandpiper will be resurfaced, from the entrance of US41 to the access point inside the community, with a high value blacktop. Mr. DiNardo summarized that, even though it is a public road, an access agreement is necessary.

In response to Ms. Viegas' question regarding trash trucks, Mr. Miller stated that the agreement is limited to Publix trucks. Since the 18 wheelers will be delivering when the gate is not staffed, Ms. Viegas asked how they will get through the security gate and will the District have to pay for additional staffing. Mr. DiNardo stated the 18 wheelers will have to call the front gate and they will raise the gate arm remotely to let them out.

Ms. Viegas stated, based on the Exhibit in the agreement, there is an opening behind the security gate that would allow anyone accessing the commercial site and using that drive lane to do a u-turn behind the gate and have free access to Fiddler's Creek. Mr. DiNardo stated they do not know what it will look like, as to whether or not the median would go up to the gate, but it does not matter because Sandpiper is a public road and anyone can use it. Ms. Viegas noted that the commercial site is going to attract a lot more of the public, who will be given free access to Fiddler's Creek through this drive lane.

Ms. Scott noted that it is a security issue and that CDD #2 pays for security; therefore, it should be considered before the agreement is signed.

Mr. Adams noted that he believed there was going to be some type of security on the drive lane. Mr. DiNardo stated the drive lane is going to be a private road and should have a security code for the Publix trucks.

Discussion ensued regarding granting access, the gate, the median, public roadways, zoning approval from Collier County and the commercial center.

On MOTION by Mr. Mayer and seconded by Ms. DiNardo, with Ms. DiNardo, Mr. Miller and Mr. Mayer in favor, and Ms. Viegas dissenting, the Fiddler's Creek Plaza I Association, Inc. Access Agreement, granting Publix trucks access to exit through the Fiddler's Creek security gate, was approved. (Motion Passed 3-1)

NINTH ORDER OF BUSINESS

Consideration of Agreements Regarding No Assessments

- A. FCC Commercial Tract**
- B. FCC Preserve Tract**

Ms. Lord stated that the Agreements regarding No Assessments are related to CDD #2 charging Operation and Maintenance (O&M) expenses for a specific area, where CDD #2 will not be providing any services, except for Sandpiper, from the access point to US41. Mr. DiNardo stated that is where Publix has a requirement that the quality of the road must be improved, as explained in the agreement, which The Foundation would handle. The road in

question was built in 2005 and, in 20 years, will require maintenance. The Foundation will extend the life of that portion of the road for another 20 years by paving with heavy-duty asphalt. In response to Mr. Miller's inquiry, Mr. DiNardo confirmed that provision is in the agreement and emphasized that CDD #2 will be absolved from servicing or maintaining that property. Mr. Pires clarified that the agreement under discussion is the one between FCC Preserve LLC and the District. Mr. Miller stated that the agreement clearly states that The Foundation would fund the project. Ms. Lord stated that there is also a companion agreement, with very similar terms, but for a property located farther out on US41, with no access road connections and totally disconnected from this property. It is for future reference. Mr. DiNardo stated that the other commercial parcel is north of the linear park and there will be no road access, no services from the District and, whatever The Foundation does with the parcel when it is commercially-zoned, there will be no services from the District to that property; it is not the preserve property and CDD #2 is not providing any current or future services to it. Ms. Viegas called attention to two sections of the agreement and stated that, eventually, the District may be responsible for the improvements. Mr. Miller explained that CDD #2 will not pay for the improvements; if CDD #2 prevails in the litigation, the funds will go into the construction account and the improvements will be financed with bond proceeds. Mr. DiNardo stated that the construction account is for the benefit of development and the purpose of those funds is to develop the roads and, if CDD #2 collects funds, The Foundation will utilize those funds to improve the road on Sandpiper. In the event CDD #2 does not prevail in the litigation, the Developer will pay for the road improvements. Regarding liability and damage to the roads, Mr. Miller stated that CDD #2 is not waiving any rights or claims against any third party other than what is specific and explicit in the agreement. Ms. Viegas stated that there is no mention of the future traffic light, from which the commercial property will benefit. Mr. Miller stated that an Interlocal Agreement is in place regarding the traffic light and, when the time comes for the construction on Sandpiper, CDD #2 will be in charge of it. Ms. Viegas stated that the agreements maintain that the commercial properties are not benefiting from any expenditure or anything that the District is doing but they will benefit from the traffic light. Mr. DiNardo stated that the Developer will pay up front and, when the District recovers construction funds, the Developer will then use those CDD #2 construction funds to install the traffic light and the County will maintain it.

Ms. Scott stated that the Developer, through the bonds, will not pay for any of the items being discussed; rather, the homeowners will wind up paying for improvements, through the CDD #2 debt assessments. Mr. DiNardo stated that this is a false statement and is represented to every homeowner with a debt service. Ms. Viegas asked if cocktail lounges, as a permitted use,

could be eliminated from the agreement. Mr. DiNardo stated no; that that is related to zoning regulations. Further discussion ensued.

On MOTION by Mr. Mayer and seconded by Ms. DiNardo, with Ms. DiNardo, Mr. Miller and Mr. Mayer in favor, and Ms. Viegas dissenting, the Agreements Regarding No Assessments, were approved. (Motion Passed 3-1)

TENTH ORDER OF BUSINESS

Continued Discussion: Fiscal Year 2018/2019 Proposed Budget

Mr. Adams stated that the Board was given one month to review the budget. He received and incorporated Ms. Viegas’ comments, from a numerical standpoint; however, a few narrative and/or grammatical errors still need to be amended.

Mr. Adams provided a brief review of the adjustments:

- The year-over-year budget and assessments are flat on the operational side.
 - There was a \$20,000 decrease in legal litigation.
 - All Management fees remain unchanged.
 - There is a slight increase in water management, based upon a recently-executed contract.
 - Since the fountains are being retrofitted to LED lights, electrical costs would decrease.
- Fiscal Year 2018 landscape services were projected below budget, as the District would not undertake certain activities, such as tree trimming and plant replacement.
- Regarding access control, Management would obtain the annual figures from Mr. Albeit and incorporate them into the budget by the next meeting.
 - Utilities and Clickers were added, as separate line items, under “Operating supplies.”

In response to Mr. Miller’s inquiry, it was confirmed that the clickers referred to resident clickers and not vendors.

- There is a slight increase on the supply system, under “Irrigation control”, including repair costs and maintenance.

Mr. Adams will continue to adjust the budget as he receives feedback from Mr. Albeit on the contractual services along with reconciliation from AJC Associates, Inc. (AJC) regarding any new units coming on. Mr. Miller asked how many of the 1,288 new residential units in CDD #2 compare to CDD #1. Mr. Adams replied that CDD #1 has 1,910 units, but at full buildout CDD# 2 will have 2,200⁺ units. In response to Ms. Viegas’ question regarding the fountains, Mr. Adams stated that there was considerable overhaul on the fountains, including new pumps, motors and controls. In the Fiscal Year 2019 budget projections, he anticipated \$120,000 in

costs, primarily due to the LED lighting project, as reflected on Page 1. Ms. Viegas noted that the projection for “Capital outlay”, under Access Control, was incorrect because the District is already above that amount and asked if there is something unusual about the current year that CDD #2 does not have to budget for next year. Mr. Adams stated that the capital outlay amount was difficult to predict, as it covers the electronics, including cameras, gate arms, card readers, etc. In response to Ms. Viegas’ question regarding the “Road maintenance” projection, Mr. Adams stated that numerous curb and gutter repairs were completed and funds came from the operating budget; he expected that they were one-time expenses. Regarding the Fiscal Year 2019 assessments, Mr. Adams stated that would be part of AJC’s reconciliation before transmittal of the lien roll.

ELEVENTH ORDER OF BUSINESS**Update: Hurricane Irma Recovery**

This item was previously addressed.

TWELFTH ORDER OF BUSINESS**Acceptance of Unaudited Financial Statements as of May 31, 2018**

Mr. Adams presented the Unaudited Financial Statements as of May 31, 2018. On-roll assessment collections were at 98%. There may be a few more tax certificate sales. Mr. Miller asked why the Interest and Miscellaneous line item was 3,959% over-budget. Mr. Adams stated that most of the year-to-date amount was related to the Hurricane Irma recovery, through The Foundation restoration program, and the District’s expenses were 100% recovered. Discussion ensued regarding the lake maintenance billing.

THIRTEENTH ORDER OF BUSINESS**Staff Reports****A. District Counsel: *Woodward, Pires and Lombardo, P.A.***

Mr. Pires provided an update about the Americans with Disabilities Act (ADA) compliance issue. Mr. Miller asked what damages the plaintiff asserted. Mr. Pires stated that the plaintiff asserts that certain CDD websites are not in compliance with ADA requirements. Management was served first and received advanced knowledge that the lawsuits would be filed against CDD websites. Mr. Adams stated Management’s insurance carrier referred a few companies that deal with website compliance and ADA Site Compliance (ADASC) was subsequently engaged to provide guidance and render each CDD website compliant, at \$200 per client. The courts have ruled that, even though there are no laws or rules in effect, it is not

enough reason for CDDs to not be compliant. Going forward, Management Staff is being trained on how to convert certain documents and post them so that they are recognized by text-to-speech software programs, to accommodate the blind. The company will also complete an annual review of all websites and issue a certification of its ADA-compliance. Mr. Miller opined that he could not see any damages accruing in favor of the plaintiff in any of the cases. Discussion ensued regarding Rule 11, various motions to dismiss the filings, and public entity websites.

B. District Manager: *Wrathell, Hunt and Associates, LLC*

i. NEXT MEETING DATE: July 25, 2018 at 10:00 A.M.

The next meeting would be held on July 25, 2018 at 10:00 a.m., at this location. In response to Ms. Viegas' question regarding how long meeting recordings are kept, which Mr. Miller previously requested, Mr. Adams stated that no audio files were purged and, prior to using audio files, which are stored, Management used cassette tapes, which have likely deteriorated. Mr. Miller recalled asking Management if a 2010 discussion was preserved. The exchange was regarding the US Bank litigation, involving an attorney that represented CDD #1, who made an erroneous statement that it was okay for US Bank to use construction funds for their legal fees. Mr. Adams stated it should be preserved and would check the files.

C. Operations Manager: *Wrathell, Hunt and Associates, LLC*

Mrs. Adams presented the Monthly Status Update and highlighted the following:

- A report from the landscape architect/arborist is forthcoming.
- Management, on behalf of CDD #1, requested a proposal to revise the tree trimming specifications, based on his recommendations.

In response to Ms. Viegas' question regarding the Aviamar fountain, Mrs. Adams stated the contractor was scheduled to complete the LED light installation by the first week of July. Mrs. Adams also stated the height of the fountain is where it will be for the future.

FOURTEENTH ORDER OF BUSINESS

Supervisors' Requests


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


FIFTEENTH ORDER OF BUSINESS

Adjournment

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

On MOTION by Ms. DiNardo and seconded by Mr. Mayer, with all in favor, the meeting adjourned at 12:01 p.m.


Secretary/Assistant Secretary


Chair/Vice Chair