

**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, July 25, 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 <i>(via telephone)</i>	Vice Chair
Joseph Mayer	Assistant Secretary
Linda Viegas	Assistant Secretary
Bill Klug	Assistant Secretary

**Also present were:**

Chuck Adams	District Manager
Cleo Adams	Assistant Regional Manager
Jason Olson	Assistant Regional Manager
Tony Pires	District Counsel
Terry Cole	District Engineer
Valerie Lord	Developer Counsel
Ron Albeit	The Foundation
Robert Dieckmann	Project Manager
Marie Puckett	Fiddler's Creek Security
Murray Barnhart	Resident
James Meneely	Resident
Thomas Lullo	Resident
Michael Laurence	Resident
John Nuzzo	Resident

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Mrs. Adams called the meeting to order at 10:04 a.m. Supervisors Miller, Mayer, Viegas and Klug were present, in person. Supervisor DiNardo was attending via telephone.

**On MOTION by Mr. Klug and seconded by Mr. Miller, with all in favor, authorizing Ms. DiNardo's attendance and full participation, via telephone, due to exceptional circumstances, was approved.**

**SECOND ORDER OF BUSINESS**

**Public Comments: Non-Agenda Items**

Mr. Miller asked Mr. Murray Barnhart, a Lagomar resident, if he would like to speak. Mr. Barnhart stated that he was in attendance because of the erosion report at the last meeting and would wait until the update by the District Engineer.

Mr. James Meneely, an Oyster Harbor resident, stated that he wanted to speak about the landscaping at the end of a cul-de-sac in Oyster Harbor and a boundary dispute or a demarcation of the area around the mailboxes. The area to the left side of the mail boxes is pristine and well taken care of, under the auspices of CDD #2, while the mailbox area, which forms an alcove, is overlooked and inundated with weeds and construction debris. Although a BrightView landscaper assured him that the area would be maintained, he was concerned about the boundary line and the right side of the area that backs up to Sandpiper; he felt that the area was atrocious and he believed the area was under the control of Taylor Morrison and that BrightView was CDD #2's landscaper. Mr. Miller stated that BrightView is not CDD #2's landscaper; this is a village issue with the builder and, since the builder has a deposit with The Foundation, Ms. Lord could contact Taylor Morrison. Mr. Miller directed Ms. Lord to contact Taylor Morrison.

Mr. Michael Laurence, a Millbrook resident, stated that construction debris from Pulte ends up in his yard, on Aviamar Circle or in the traffic circle in front of his home, as Pulte's dumpsters were overflowing. He noted a misspelled street sign on Aviamar Circle. Ms. Viegas stated that she previously reported the sign to District Staff for correction. With regard to the debris, Mr. Miller stated that Ms. Lord would contact Pulte and ask them to pick up the trash.

**THIRD ORDER OF BUSINESS**

**Special Counsel Update**

Mr. Miller provided the following update, as Mr. Reyes and Ms. Robinson were unable to attend:

- He recently met with Mr. Reyes regarding the litigation.
  - They discussed the continued depositions of Ms. Kathy Broecker and Mr. Warren Bloom and the waiver and estoppel issues raised by U.S. Bank, as defenses.
  - U.S. Bank is deposing every bondholder to try to establish that the bondholders directed U.S. Bank to use the construction fund for legal fees.
  - There was a new judge in the case because Judge Shenko was transferred to Lee County.
- Mr. Miller requested consent from the other parties to change the venue in order to keep Judge

Shenko but the request was refused. The U.S. Bank and interpleader litigations were reassigned to Judge Hart.

- Mr. Miller will meet with Mr. Reyes on August 6 to prepare for his two day deposition with ITG and U.S. Bank, scheduled for August 7 and 8.
- Regarding the interpleader case, ITG's motion for summary judgment is still pending, and the District's motion to join Wilmington Trust in the case is scheduled for August 21.

**FOURTH ORDER OF BUSINESS**

**Special Counsel – Website ADA Complaint – Request for Executive Session**

Mr. Adams recalled providing a brief overview of the Americans with Disabilities Act (ADA) lawsuit filed against the CDD and as many as 75 other governmental entities in Florida because their websites were not ADA compliant for the visually impaired. A motion to dismiss was filed, which prompted settlement negotiations. Counsel has requested a shade meeting or Executive Session for August 22. Mr. Adams suggested scheduling the Executive Session at 9:30 a.m., followed by the Regular Meeting at 10:00 a.m., on the same day. Mr. Miller, Ms. DiNardo, and Ms. Viegas stated that they would be in attendance. Mr. Pires recalled that, as stated in the CDD #1 meeting, Mr. Adams has an email from Counsel representing the District in the ADA compliance matter requesting the Executive Session. Mr. Adams stated that he has an official letter, on letterhead, from that attorney. Mr. Pires asked that this be included, as part of the record, as Statute requires the Executive Session to be requested by Counsel. Mr. Adams stated that written request was received and he would attach the letter to today's minutes.

**FIFTH ORDER OF BUSINESS**

**Developer's Report/Update**

There being no Developer's Report or update, the next item followed.

**SIXTH ORDER OF BUSINESS**

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

Mr. Cole presented the following report highlights:

- He met with representatives from Lennar about Millbrook and Sonoma punch list items.
- 95% of the valley gutters and curb punch list items were completed.
- None of the sidewalk paver repairs were made but Lennar assured Mr. Cole that the pavers would be repaired based on the inspection. Ms. Viegas asked for the name of the Lennar person responsible for paver repairs. Mr. Cole replied that it is Mr. Ray Kershaw.

- Lennar repaired all of the street signs that they are responsible for.
- Pulte must repair a streetlight that was knocked over; an email was sent to Pulte and he was awaiting a response.
- It would likely take several weeks to complete the paver repairs.

Mr. Cole took questions from residents regarding the lake erosion in Lagomar.

Mr. Barnhart stated that four to five homes in Lagomar were impacted by the erosion and wanted to know what was being done about it and what is causing it. Mrs. Adams confirmed that the cause of the erosion was drainage and stated that several areas are in need of repair. She is waiting for the contractor to provide a scope of what will be needed for each residence and, once received, letters will be sent to home owners alerting them to what they need to do, with regard to making the repairs. Mr. Barnhart questioned why the erosion is occurring at only four homes in Lagomar and not at the others, and presumed that the cause was the drain pipes. Mrs. Adams stated that it is improper drainage, and lack of drain pipes. Mr. Barnhart asked again why the erosion issue would be limited to a few homes. Mrs. Adams stated that the District can only address current erosion issues and cannot predict erosion issues that have not yet occurred. Over time, other homes could have the same issue if downspouts are not installed and drainage is not routed into the lakes. Discussion ensued about repairing the lake banks, drain pipe installation, the builder and adjacent property owners causing issues on the District's lake bank. Mrs. Adams suggested that home owners approach the builder and request installation of downspouts and pipes. Mr. Barnhart asked again how Mrs. Adams was sure that was the cause. Mr. Miller stated that the answer is not simple. Mr. Cole stated that he inspected the entire cul-de-sac and found specific shared lot lines where pool drain overflows, and roof drain downspouts are flowing down the lot line to where the erosion is occurring. Based on his experience that is the problem and the solution is to install pipes. Mr. Miller asked if there was a reason some homes have the issue but others do not. Mr. Cole stated that, sometimes, there is a wider, flatter area that the water is disbursed across so there is not a point discharge in a few feet, it is spread over 15' to 20' or more; usually, there is a swale between lots and the water is directed to the lake in a confined area.

Mr. Thomas Lullo, a Lagomar resident, stated he has six downspouts on his home; four directed towards the street and two towards the lake in back, and there is no erosion on his property line. He felt that the erosion was on CDD property and if his downspouts were causing erosion, there would be some indication of it. Mr. Cole stated that, down by the lake, there is definite V-shaped erosion where there is obvious erosion from runoff from the adjacent lot, not

because of the lake bank eroding due to wind and wave action. Mr. Lullo reiterated his opinion that, if erosion was being caused by his downspouts, it would be evident. He also contended that properties might have been graded improperly. Mr. Miller asked Mr. Cole to inspect Mr. Lullo's property after the meeting. Mr. Lullo believes the builder, D.R. Horton, did not grade the properties correctly, which is the reason for this issue.

Mr. Cole distributed and presented the Hurricane Update Report, including the following items:

- BrightView is working on completing a few very minor tree removal punch list items.
- The landscape restoration work began in CDD #2, including grading, irrigation and planting area work. The project will take a few months to complete but it should be completed by the beginning of snowbird season.
- The streetlight and signage repairs were substantially complete.

In response to Mr. Cole's question regarding the status of fence on the opposite side of Veneta's main entrance, Mr. Dieckmann stated that the material should arrive in a few more weeks and, once received, installation can commence. Mr. Miller commented that the District has been waiting patiently and hoped that the project would be underway by the next meeting.

The Hurricane Update Report resumed:

- All the planned sidewalk repairs were completed.
- Tripping hazards that had been raised before the hurricane were now being addressed, including spray painting to identify areas, lift grinding and sidewalk panel replacement.
- There were no pay draws to present this month.

Mr. Klug asked if the Lake #88 tree removal issue was settled. Mr. Dieckmann stated that the issue was unresolved; however, four proposals were recently received. In response to Mr. Klug's question regarding payment, Mrs. Adams stated the District was partially responsible for payment. Mr. Miller asked for the price. Mr. Dieckmann stated the most affordable bids ranged from \$27,000 to \$28,000. Mrs. Adams recalled that the District would be credited \$18,000 for the change in fence material. Mr. Miller stated that meant it would be \$9,000 out-of-pocket for the missed trees.

Mrs. Adams stated she was recently contacted by Lykins-Signtek (Lykins) and asked for an update regarding a stop sign at Fiddler's Creek Parkway and Sandpiper that had not been replaced yet, following the hurricane. Mr. Dieckmann stated that there was a dispute with Lykins because Lykins wants to be paid extra because of the damage to the sign but his position was that the sign was part of the original Restoration Plan contract. Mrs. Adams stated that it is

on the punch list; Lykins wants an additional \$700. Mr. Miller questioned Lykins' position, considering the amount of business that the District gives them. Mr. Dieckmann was hesitant to voice his opinion of Lykins. Mrs. Adams stated this was the first she was hearing of any indication that it was not part of the Restoration Plan contract; she would call Pete, at Lykins, as what Mr. Dieckmann reported did not make sense to her. Mr. Miller stated, over the years, Lykins has not always been prompt and he found them to not be very diligent but the District continued to utilize their services; therefore, he felt it was inexcusable that Lykins was "making a fuss" and requesting an additional \$700 for that stop sign.

Ms. Viegas noted that Mr. Cole should be aware of a dispute that was brought to her attention by a Millbrook homeowner, who resides at 2939 Aviamar, which is where the sidewalk ends, regarding completion of the sidewalk by Lennar. The resident contacted Lennar directly and Lennar asserts that the Water Department dug up the sidewalk pavers after Lennar completed the sidewalk. The homeowner contacted the Water Department and was told that was not the case. Mr. Cole stated he had reviewed that with Mr. Kershaw and he did not say anything at the time.

**SEVENTH ORDER OF BUSINESS****Review of Fiddler's Creek Tree Pruning  
Evaluation Report by McGee &  
Associates**

Mr. Miller found it unfortunate that the residents from Varenna and Laguna who attended the last two meetings regarding their concerns about the tree pruning were not in attendance. Mrs. Adams stated that the Evaluation Report was requested by CDD #1, who, as of this morning, refused to accept it. CDD #1 asked District Staff to confer with McGee & Associates (McGee) and ask them to make recommendations to the current bid specifications, in bullet points, to be reconsidered at the next meeting. The specs were previously changed to meet American National Standards Institute (ANSI) standards. Mr. Miller stated that the report is very critical of the predecessors' report, rather than giving recommendations on how to correct issues, which he was surprised to see. He pointed out the negative issues raised and the lack of detail, consequences of the shortcomings and/or recommendations. Mr. Adams agreed that the report disparaged the current program, while not providing any corrections or solutions. CDD #1 would not compensate McGee until recommendations were provided at no additional cost. Staff will contact McGee and request a thorough Report. Mr. Miller asked if there were other companies that can be engaged, if McGee proves too difficult to work with. Mr. Adams replied

affirmatively. In response to Mr. Klug's question regarding cost of the Report, Mrs. Adams believed that it was \$1,800. Ms. DiNardo asked if anyone checked with Collier County regarding its standards for pruning and if the District followed them. Mr. Adams replied affirmatively and stated that the CDD criteria supersedes Collier County's standards. The standards brought about the JRL Design specifications that the District uses. Unfortunately one of the founders of JRL passed away and the company is no longer in existence. Mr. Klug recalled a discussion at a previous meeting and asked if The Foundation was still considering taking over all trimming within Fiddler's Creek. Mr. Albeit stated that The Foundation decided against it. Ms. Viegas asked about a statement in the Report on Page 2, Section 2, regarding a PDF document that was attached giving more detailed recommendations. Mrs. Adams stated she could give the PDF to the Board, but it was only the prior specifications with a lot of "red Xs" and no explanation.

**EIGHTH ORDER OF BUSINESS****Continued Discussion: Fiscal Year  
2018/2019 Proposed Budget**

Mr. Adams stated that, since the previous meeting, the access control payroll figure was revised because an updated amount was provided by Mr. Albeit. Mr. Miller suggested totaling the revenue and adding a Total Revenue line item for all on-roll and off-roll, on Page 2. Mr. Adams stated that that will be implemented. Mr. Miller noted an error on Page 5, under "Landscaping services"; change: "an outside company" to "two outside companies".

Mr. Klug asked if re-painting the light poles was included in the budget. Mrs. Adams replied no and stated that Mr. Olson conducted an inventory of all streetlights and signage within CDD #2 and one more proposal was pending. A previously received proposal quotes a not-to-exceed amount of \$65,000. CDD #2 maintains all the streets, as it is responsible for all the neighborhoods in CDD #2, which is why it was so high. She reminded the Board that CDD #2 has never completed this exercise in the past and all should be considered so that they all look the same. Mr. Adams suggested completing one entire neighborhood in 2018 and another neighborhood in 2019, to divide the financial impact. It should not be necessary to complete Oyster Harbor, as it was new enough. Mrs. Adams stated that Veneta was the oldest phase so it should probably be completed first. Regarding budgeting for this in Fiscal Year 2019, Mr. Adams stated that it was not specifically budgeted but there is money in other areas of the budget that could be used. Mr. Miller asked if the expense would be half, if it is completed in phases. Mr. Adams stated it depends on the actual number of street lights and street signs in each

neighborhood or phase. Mr. Olson is waiting on a second proposal requested from Lykins, for comparison purposes.

Mr. Klug stated that the Veneta fountain is down again and questioned the decrease in the "Fountains" line item from \$137,500 to \$127,500, given the constant maintenance issues. Mr. Adams replied that the decrease was primarily related to the reduction in electrical costs because of the switch to LED lighting. Mrs. Adams stated that she was not advised that the fountain was down. Mr. Miller stated that, when operational, only certain sections are running. The Board and staff discussed the Veneta and Aviamar fountains. Mr. Klug asked about landscaping services and if the new Oyster Harbor areas that would be coming on were included in the Fiscal Year 2019 budget. Mr. Adams said affirmatively. Mr. Klug asked if tree trimming and pruning, based on the McGee Report, was sufficiently budgeted. Mr. Adams replied affirmatively. Ms. Viegas reminded Mr. Adams of a change that needed to be made to the Table of Contents and asked if the corrected assessment rolls were being worked on since the ones in the agenda were still in error. The following change was made:

Table of Contents: Change "Amortization Schedule" to "Debt Service Schedule"

As to the corrections on the assessment rolls, Mr. Adams stated that AJC & Associates (AJC) was in the process of reconciling all the last-minute changes. Mr. Miller commented that the assessment rolls were a moving target for the details and suggested a fixed date be chosen. Ms. Viegas explained that Millbrook lots were still showing as unsold and the CDD #2 bond portions that had been paid off in Millbrook were not noted. Mr. Adams stated that it was a budget-neutral change because, in transitioning from off-roll to on-roll, the additional cost of collection is already built into the on-roll assessment, which is the difference between the assessment levels. Discussion ensued regarding Millbrook, bonds and assessments. Ms. Viegas asked Ms. Puckett about the new Clickers line item and if clickers would go away with the new tag system. Ms. Puckett stated The Foundation would not be pursuing the RFID tag system for gate access so the clickers would not be phased out. Mr. Albeit noted they were collecting the information for license plate information for the camera system. Ms. Viegas noted Ms. Puckett's email said it was for the tag system.

**NINTH ORDER OF BUSINESS****Acceptance of Unaudited Financial Statements as of June 30, 2018**

Mr. Adams presented the Unaudited Financial Statements as of June 30, 2018. Ms. Viegas questioned why the "Electricity" line item, on Page 2, had no entry for the month and it

was only at 33% of budget, when it should be at 75%, and asked if any bills were being held. Mr. Adams replied no but would check. Ms. Viegas stated it had been mentioned in previous meetings that vendors sometimes hold bills. Mr. Adams stated that Florida Power & Light (FPL) does not hold bills; he would research the item to provide an answer by the end of the meeting. Discussion ensued regarding Bentley Electric Co., Inc. (Bentley) previously holding bills. Mrs. Adams stated that was previously a problem but has not been in recent years.

**TENTH ORDER OF BUSINESS**

**Consideration of Minutes**

**A. June 6, 2018 Regular Meeting**

Mr. Adams presented the June 6, 2018 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Page 1, "Also present were": Insert "Valerie Lord Developer Counsel"

Line 65: Change "made.." to "made."

Line 126: Change "representative capacity" to "individual capacity"

Line 303: Change "subject for" to "subject of"

**On MOTION by Mr. Klug and seconded by Ms. Viegas, with all in favor, the June 6, 2018 Regular Meeting Minutes, as amended, were approved.**

**B. June 11, 2018 Continued Meeting**

Mrs. Adams presented the June 11, 2018 Continued Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 70: Insert a period after "assessment"

Line 77: Change "AOP" to "All Other Perils"

**On MOTION by Mr. Klug and seconded by Ms. Viegas, with all in favor, the June 11, 2018 Continued Meeting Minutes, as amended, were approved.**

**C. June 27, 2018 Regular Meeting**

Mrs. Adams presented the June 27, 2018 Regular Meeting Minutes and asked for any additions, deletions or corrections. The following changes were made:

Line 78: Change “gap” to “GAAP (Generally Accepted Accounting Principles)”

Line 80: Delete “to try” after “required”

Line 104: Insert “a depreciable asset” after “land is not”

Line 178: Delete the comma after the semi-colon

Line 189: Change “they could decide” to “the Board could decide”

Line 269: Change “is going to be a linear park” to “north of the linear park”

**On MOTION by Mr. Klug and seconded by Ms. Viegas, with all in favor, the June 27, 2018 Regular Meeting Minutes, as amended, were approved.**

**ELEVENTH ORDER OF BUSINESS**

**Staff Reports**

**A. District Counsel: *Woodward, Pires and Lombardo, P.A.***

There being no report, the next item followed.

**▪ Operations Manager: *Wrathell, Hunt and Associates, LLC***

**\*\*\*This item, previously Item 11C, was presented out of order.\*\*\***

Mrs. Adams stated the required lake erosion repairs in Lagomar were previously discussed and she had nothing further to report at this time.

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

**i. Consideration of ADA Site Compliance Proposal for Website Compliance Shield, Accessibility Policy and one (1) Annual Technological Audit**

This item was discussed during the Fourth Order of Business.

**ii. NEXT MEETING DATE: August 22, 2018 at 10:00 A.M.**

Mr. Miller asked if the time for the next meeting should be changed to 9:30 a.m. Mr. Adams stated that the Continued Meeting would commence at 9:30 a.m., but the Regular Meeting would still commence at 10:00 a.m., on August 22, 2018, at this location.

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

This item was addressed following item 11A.

**TWELFTH ORDER OF BUSINESS**

**Supervisors’ Requests**

Regarding the litigation, Mr. Miller asked if everyone that needed to speak to Mr. Reyes did so. Mr. Adams stated that he and Mr. Pinder participated in a conference call with District Counsel regarding the litigation.

Ms. Viegas asked if the meeting minutes from 2010 that Mr. Miller previously inquired about were preserved on audio. Mr. Adams replied affirmatively and stated he had provided Mr. Miller with a copy to prepare for his deposition.

Ms. Viegas stated that one of the Aviamar benches was knocked over possibly due to vandalism. She photographed the bench and alerted Mrs. Adams and Ms. Puckett and an incident report was created. Ms. Puckett felt it may have been knocked over due to someone standing on it.

Mr. Adams stated that this meeting would be continued to August 22, 2018 at 9:30 a.m., at this location, for the sole purpose of conducting an Executive Session with the attorney hired by the District’s insurance carrier regarding the website ADA compliance issue.

- **Resignation of Mr. Joseph Mayer from Seat 4; Term Expires November 2020**

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

Mr. Mayer stated that he is moving to CDD #1 and submitted his resignation, effective August 1. Mr. Miller stated that Mr. Mayer will be missed. A replacement should be appointed and suggested Mr. John Nuzzo, as he has been attentive to CDD #2 matters, over the years, including the Manatee housing/zoning issue. Discussion ensued regarding protocol related to resignations, the effective date, and appointing a new Board Member. Mr. Adams stated that Mr. Mayer could resign, effective immediately, which would enable the Board to immediately consider appointing a replacement.

Mr. Mayer stated that his resignation would be effective immediately.

**On MOTION by Mr. Klug and seconded by Mr. Miller, with all in favor, Mr. Mayer’s resignation, effective immediately, was accepted.**

- **Consideration of Appointment to Fill the Unexpired Term of Seat 4; Term Expires November 2020**

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

Mr. Miller nominated Mr. Nuzzo to fill Seat 4.

Mr. Pires stated that, since consideration of an appointment was an addition to the agenda, the Board should entertain public comments. There were no comments.

**On MOTION by Mr. Miller and seconded by Ms. DiNardo, with all in favor, the appointment of Mr. John Nuzzo to fill the unexpired term of Seat 4, term expires November 2020, was approved.**

▪ **Administration of Oath of Office to Board of Supervisors**

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

Mr. Adams, a Notary of the State of Florida and duly authorized, administered the Oath of Office to Mr. Nuzzo. He provided and briefly explained the following documents:

- A. Guide to Sunshine Amendment and Code of Ethics for Public Officers and Employees**
- B. Membership, Obligations and Responsibilities**
- C. Review of Special Act and Chapter 189, *Florida Statutes***
- D. Financial Disclosure Forms**
  - i. Form 1: Statement of Financial Interests**
  - ii. Form 1X: Amendment to Form 1, Statement of Financial Interests**
  - iii. Form 1F: Final Statement of Financial Interests**
- E. Form 8B: Memorandum of Voting Conflict**

Mr. Adams discussed the importance of maintaining CDD files and documents separate from CDD items, along with a separate CDD email address. Mr. Pires stated that any matters related to the Sunshine Law or public records requests should be forwarded to him and Management for a response. Mr. Pires stressed the importance of not discussing past, current or potential future CDD matters with other CDD #2 Board Members.

**THIRTEENTH ORDER OF BUSINESS                      Adjournment**

There being nothing further to discuss, the meeting recessed.

**On MOTION by Ms. Viegas and seconded by Mr. Klug, with all in favor, the meeting recessed at approximately 11:23 a.m. and was continued to Wednesday, August 22, 2018 at 9:30 a.m., at this location.**



Secretary/Assistant Secretary



Chair/Vice Chair