

**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 February 27, 2019 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          |
| Bill Klug        | Assistant Secretary |
| Linda Viegas     | Assistant Secretary |
| John Nuzzo       | 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                |
| Carrie Robinson (via telephone) | Special Counsel                  |
| Valerie Lord                    | Developer Counsel                |
| Shane Willis                    | Fiddler's Creek Security         |
| Shannon Benedetti               | Resident and Landscape Committee |
| Craig Chamberlin                | Resident                         |
| David Rock                      | Resident                         |
| Ronald Holmes                   | Resident                         |
| Christine Brubaker              | Resident                         |
| Jonathon and Rhonda Ile         | Residents                        |
| Gerard Gorman                   | Resident                         |
| Allen Kassman                   | Resident                         |
| Michael Buck                    | Resident                         |
| Michael Laurence                | 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, Viegas and Nuzzo were present, in person. Supervisor Klug was not present at roll call.

Update: Storm Water Utility Fee

Mr. Miller asked about the storm water utility fees and the Board of County Commissioners (BOCC) meeting held yesterday and noted that Mr. Pires presented a very effective document at the meeting.

Mr. Pires stated the meeting went differently than he expected, but it was very positive. There were two main items on the BOCC agenda. The first was to adopt a resolution to have the property appraisers and tax collectors add the fee to the annual tax bill. Staff asked the BOCC to accept the resolution to have a place holder for the fee on the tax bill. The second item was to fund the fee; this part was continued to March. The BOCC discussed the first item and the majority were against it because they had just added the additional infrastructure sales tax and did not feel a second fee or tax should be added at this time. The BOCC voted against the non-ad valorem tax for the storm water utility fee for this year. The storm water work must still be done so funding it will still be discussed in March. The Productivity Committee recommended to the BOCC that the fee not be implemented this year and for the BOCC to do what was stated in 2001 to fund it.

Mr. Miller asked for clarification of what year was being referred to when it was voted to not add the fee this year. Mr. Pires stated that the decision referred to Fiscal Year 2019-2020, which commences October 1, 2019 and ends September 30, 2020.

Mr. Pires said this is a staff-driven issue. Three BOCC Commissioners made it very clear they were against the fee. The BOCC and Productivity Committee meetings have been very well-attended and people were very outspoken about the fee, which helped the vote. Other funding options considered involved Florida Power & Light (FPL), but it would still be a cost to residents. Mr. Miller praised Mr. Pires on his presentation.

**SECOND ORDER OF BUSINESS**

**Public Comments: Non-Agenda Items**

Mr. Miller asked if there were any public comment cards submitted. There were none.

**THIRD ORDER OF BUSINESS**

**Special Counsel Update**

This item was presented following the Fifth Order of Business.

## FOURTH ORDER OF BUSINESS

## Health, Safety and Environment Report

Mr. Willis gave a PowerPoint presentation and highlighted the following:

➤ Three gate access options are available now.

1. The auto attendant, which is tied into the ISN gate keeper system and will recognize the resident's phone number when they call to give access to a visitor.

2. The Fiddler's Creek website gate access system, which is downloaded into the ISN system every few hours.

3. A phone app.

➤ There are issues with the data, which is requiring a lot of manual updating. The data did not transfer over well from the previous system.

➤ Mr. DiNardo asked him to mention that the security officers are not first responders. There is an insurance limitation on the officers.

➤ Communications to the Fiddler's Creek community consist of e-blasts and safety presentations. E-blasts cover various topics such as bicycle safety, vehicle parking, etc. Staff is parking in an area at Isla del Sol and an area out front, on heavy activity days at The Club, to assist with parking. Safety presentations have included preventing crime, community safety, and wildlife. Alligators helped with eliminating pythons and the Florida Fish and Wildlife Conservation Commission (FWC) will not remove any crocodiles, unless they pose a threat, as they are protected.

➤ The gate arms at all three entrances went up and down 71,141 times in January.

➤ There were 19 service calls. The Legacy equipment used is not made any more so it is difficult to get parts to repair.

➤ The Traffic Hawk mobile unit has been used all over the community to determine if there is a speeding problem. It took 25,000 pictures in January. Over 20,000, or 85%, are traveling below the speed limit so the community does not have a speeding problem.

➤ Illegal turns were also monitored and, if people are not going the correct way around traffic circles, security contacts them.

Mr. Miller asked if those with repeated violations were sent to the fining committee. Mr. Willis stated there weren't repeated instances yet, since use of the Traffic Hawk just commenced. He is working on the process to send repeat offenders to the fining committee.

Mr. Craig Chamberlin, a resident, asked about cars not stopping at stop signs. Mr. Willis stated that the system is "asleep" unless a vehicle goes by. Generally, drivers slow down at a stop sign so Traffic Hawk would not catch those but he is working to develop something.

- In January, patrol officers traveled 6,300 miles doing community checks.
- There were 287 incidents in January. The highest number was parking violations.

Mr. Klug asked about the 92 other incidents. Mr. Willis stated those were fountain and fountain lights being down, which he is working on with Mrs. Adams, garage doors being left open, and Design Review Committee (DRC) violations.

Mr. Miller asked about trucks. Mr. Willis stated pickup trucks that are visibly parked in driveways or on streets are not allowed, but trucks can be parked in a garage. In the past, variances were given out for short term truck parking, but they were never given for permanent placement. There have been a lot of truck violations, which are given to Ms. Lord for each individual instance, if there are repeat offenders. Ms. Lord stated that she pursued repeat offenders and some have parked off site or put the truck in their garage. Some repeaters went to the fining committee. In one case the owner refused to do anything, as the truck belongs to renters, so they will have to escalate it and go to litigation. Mr. Klug asked how the owner is notified. Ms. Lord stated that a letter is sent. Ms. Viegas added that stickers are also put on the trucks. She was aware of the truck in question and stated a sticker is on the truck every other day. Mr. Willis noted that, in the future, ISN will generate emails to residents regarding violations.

Mr. Klug asked how many violations it takes before it goes to Ms. Lord. Mr. Willis stated five violations because they take into consideration that a resident may have a family member visiting, whose truck does not fit in a garage.

- The upcoming programs included:
  1. Construction Signs and Crime Prevention: The Sheriff's Department recommended installing signs in two languages at the construction sites stating the sites are being watched; this is being pursued.
  2. Conservancy Relationship: The goal is to improve the relationship with the Conservancy that assists with the wildlife in the community.

3. Monthly Collier County Sheriff's Office Meetings for Safety & Security Coordination.
  4. Permanent Traffic Hawk installation at Cherry Oaks Trail: This is expected within the next few weeks.
  5. ISN Database Completion: Should be completed by the end of the month. Ms. Viegas stated that it would actually be the end of March.
- Contacted Google to try and remove Cherry Oaks Trail from GPS directions to get to Marsh Cove to try and eliminate the use of Cherry Oaks Trail by trucks.

Mr. Miller asked how security coordinates with the Sheriff's Office and how, specifically, security interacts with them when they are in the community. Mr. Willis explained that there is no interaction when the Sheriff's Office enters Fiddler's Creek responding to a call. They stop and tell the guards when they are in the community to monitor traffic.

Ms. Viegas asked for confirmation that the gate arms are brand new and that the issue with the Legacy equipment being old only related to the towers. Mr. Willis confirmed Ms. Viegas' understanding. Ms. Viegas asked why the exit gates were going up allowing residents to exit without using clickers. Mr. Willis stated there is a transmitter issue that is not communicating with the arms to go up so the choices were to leave the gate arms up or put them in motion sensor mode, which allows them to go up when a vehicle approaches. The second option was selected and the Board agreed it was the correct option. Once the transmitter issue is resolved, clickers will need to be used.

Ms. Viegas asked for the procedure when a resident calls about an irrigation issue, such as irrigation not shutting off, or a broken head that is causing flooding. Mr. Willis believed that is a property management issue. Mrs. Adams stated that was not correct; security is supposed to contact the respective landscapers for the villages and CDD property with any irrigation issues. Security is not supposed to contact the property management companies or CDD District Management. Ms. Viegas asked Mr. Willis to make sure Security does not give out landscapers' cell phone numbers because one was given to a resident in her village. Mr. Willis stated that his officers would be advised of the correct procedure and not to give out cell phone numbers.

There being no report, the next item followed.

▪ **Special Counsel Update**

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

Ms. Robinson reported the following regarding the US Bank litigation:

- As a result of one hearing, the new judge realized how much information and history was involved so she pushed the trial back from April, to between May 30<sup>th</sup> and June 30<sup>th</sup>, but not the week of June 17<sup>th</sup>.
- Some pending motions and hearings were set.
- On April 25<sup>th</sup>, there will be an all day meeting to hear the pre-trial motions.
- CDD #1 resolved its issues with US Bank and will not go to trial.
- CDD #2 will go to trial.
- An emergency motion was filed by US Bank and moved to March 5<sup>th</sup>. The District's response was filed yesterday. The emergency motion had to do with certain documents that were requested and default group papers and whether they were privileged or not.

Mr. Miller asked for an update on the interpleader case. Ms. Robinson stated nothing official has happened since the last meeting.

Mr. Klug asked if anything in the settlement between CDD #1 and US Bank would have a direct impact on CDD #2's case. Ms. Robinson replied no.

Mr. Miller asked if the court would reconsider mediation, in place of arbitration, now that CDD #1 has settled. Mr. Miller asked if the arbitration would be based on proffers, rather than testimony. Ms. Robinson replied affirmatively. Arbitration was scheduled for the week of April 16<sup>th</sup>. Mr. Miller asked if that would be after the filing of the motion that has been talked about. Ms. Robinson replied affirmatively; the hearing on motions is scheduled for April 25<sup>th</sup> so, to the extent that either party wants to have a dispositive motion heard at that hearing, it must be filed necessarily, before April 5<sup>th</sup>.

- **Ms. Robinson left the meeting.**

**SIXTH ORDER OF BUSINESS**

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

Mr. Cole distributed and presented Requisition #149 for the Series 2005 Bonds, for approximately \$1,036 related to a sub-division performance completion bond renewal that is

required by the County. He distributed a reconciliation of costs to complete the remaining work, which was based on information received from GradyMinor and in speaking with Mr. DiNardo. There is a budget shortfall of about \$45,000. The bond was created in 2005 and is still not completed. Every time a subdivision bond is renewed the costs add up. He proposed deferring the closure of the Aviamar construction entrance, on Sandpiper, and permanent sign posts until receipt of litigation monies. The two remaining are Lagomar and Aviamar. The wall on Sandpiper, which is part of the 2005 Bond work, was held up due to permitting and materials; he estimated it would start in May.

Ms. Viegas asked about deferral of the Aviamar construction entrance being closed because, since the security gate is being pushed back behind the construction entrance, due to Publix, it would give the public free access into Aviamar, from Sandpiper, since the timing of the availability of litigation funds was unknown. Mr. Miller stated he has every expectation that the litigation funds would be available before the Publix is built.

Mr. Cole reported the following:

- A proposal was sent to Mrs. Adams for sidewalk and curb repairs. The work should be completed within the next few months.
- The signage in the Aviamar traffic circles, brought up by Mr. Leroy Smith, a resident, at the November CDD #2 meeting, was correct so no change was needed. Traffic Hawk has caught some going the wrong way.
- Mr. Cole sent a letter to GradyMinor regarding the transformer in Amaranda that was moved, as requested by Ms. Viegas at the last meeting. GradyMinor forwarded it to Pulte. A response was pending.

**SEVENTH ORDER OF BUSINESS**

**Update: Drainage Easements and Encroachments at 3126 and 3130 Aviamar Circle**

- **Discussion: Possible Vacation of Certain Drainage Easements Dedicated on Plat of Fiddler’s Creek Phase 5, Aviamar, Unit One**

Mr. Pires distributed corrected copies of the memo, since the address was incorrect in the version in the agenda, and recapped the discussion at the last meeting. He reported the following:

- In addition to CDD #2 having an easement, Collier County also has an easement. It is a backup for the County, if CDD #2 is not maintaining it and performing the necessary functions.
- Per the memo, a plat vacation process is costly and takes a lot of time.
- Pool equipment and AC equipment are installed on the easement already.

Mr. Miller stated that the first issue is vacating the easement between Lots 1 and 2, which would require the County to participate, since they also have an easement, which raises the question of who would pay for that application, etc. Mr. Pires stated that the parties requesting it, the homeowners, would bear the cost.

Mr. Klug asked about using an encroachment agreement. Mr. Miller asked if it would require the County's agreement. Mr. Pires replied no.

Mr. David Rock, homeowner at 3126 Aviamar Circle, requested to set aside the generator issue for now; he would install the generator wherever the Board wants. He questioned how the pool and A/C equipment got passed at the closing and stated that he is now concerned about the title and worried about the cost to move his pool and A/C equipment. He just wanted a solution.

Mr. Miller asked if Mr. Rock had title insurance. Mr. Rock replied affirmatively. Mr. Pires stated that most title insurance state that easements in effect are accepted. Ms. Viegas recalled that, at the January meeting, she stated that the simplest solution would be to give the homeowner an encroachment agreement, as was done in Oyster Harbor. Mr. Rock stated he just wants clear title on his house. Mr. Miller stated the encroachment agreement would be the quickest, easiest way to do it. Discussion ensued.

Mr. Miller asked if an encroachment agreement was possible, since the County also has an interest. Mr. Pires replied that, since the County told the homeowner to go to CDD #2 for permission, it implies that the County did not have an issue with it.

Discussion ensued regarding Mr. Rock's deed, the County still having rights, possible issues when Mr. Rock tries to sell his home, the County's easement carrying no responsibility but the Districts carrying maintenance responsibilities, etc. Mr. Miller wanted it known, for the



record, that there is a difference between the County having a right and the County having an obligation. Mr. Pires stated that the County has a right. Mr. Miller stated that the District has the maintenance obligation but the County has rights and the District cannot divest the County of those rights, which may impact Mr. Rock's title.

Mr. Klug motioned to authorize Mr. Pires to create an encroachment agreement between Mr. Rock and CDD #2. Mr. Rock agreed to pay Mr. Pires' legal fees of approximately \$200 to draft the agreement and recording fees.

**On MOTION by Mr. Klug and seconded by Ms. DiNardo, with all in favor, authorizing Mr. Pires to create an encroachment agreement between Mr. Rock and CDD #2, subject to Mr. Rock paying Mr. Pires' legal fees to draft the agreement and the recording fees, was approved.**

Ms. Viegas asked about the encroachment of the A/C equipment from Lot 1. The homeowners of 3130 Aviamar Circle were asked if they wanted a similar encroachment agreement so they would not have to move their A/C equipment. They replied no.

Mr. Miller stated that the District was not waiving any rights to allow the A/C equipment to stay. Mr. Pires stated that a letter should be sent to the homeowners of 3130 Aviamar Circle regarding the encroachment and asking them to remove it and stating that the District preserves all its rights and remedies.

**On MOTION by Ms. DiNardo and seconded by Mr. Nuzzo, with all in favor, authorizing Mr. Pires to prepare and send a letter to the owners of 3130 Aviamar Circle regarding the encroachment, asking them to remove it, and stating that the District preserves all its rights and remedies, was approved.**

Mr. Holmes, home owner at 3130 Aviamar Circle, asked if the A/C equipment must be removed if he receives the letter. Mr. Miller recommended he review that with his legal counsel.

Ms. Viegas asked if the District received Tract E yet. Mr. Miller asked if the encroachment agreement would be subject to that. Mr. Pires stated that Tract E was not

received yet. Ms. Lord stated that she sent the information to Mr. Mark Woodward and had not heard back from him. Mr. Pires would follow up with Mr. Woodward.

Ms. Viegas asked about the 20' lake maintenance easement next to Lot 1 and if that gives the District the easement needed to work on the pipe in Tract E. Mr. Cole stated it would be better to have an easement on Lot 1 because the pipe is very close to the property line.

Mr. Klug pointed out to Mr. Holmes that what the District was offering is not detrimental to him in any way and Mr. Holmes could certainly say no, but this is an interim solution. Mr. Holmes expressed his belief that he was being forced to give an easement on his lot. Ms. Viegas explained that had nothing to do with the discussion; what was being offered was an encroachment agreement on the opposite side of his lot to allow him to leave his A/C equipment in the easement. Mr. Holmes then stated it was no problem. Mr. Miller suggested that Mr. Holmes talk to a lawyer and have the lawyer contact Mr. Pires.

Mr. Rock asked if the County has any input or response, once the encroachment agreement is filed. Mr. Pires replied no, because it is a different section of the County that would receive the agreement.

**EIGHTH ORDER OF BUSINESS**

**Presentation/Consideration: Passarella & Associates, Inc., Proposal for GIS Map Services**

Mr. Adams asked the Board to focus on just the Scope of Services. He explained the following:

- Geographical Information Systems (GIS) is a mapping technology that brings data into digital form.
- Plats, easements, construction documents, etc., would all be part of the GIS application, which would be used to better manage the District.
- It could also be used with The Foundation to populate information into the same database.
- The information could also be linked into the Property Appraiser, Tax Collector, etc., so it would be updated automatically.
- CDD #1 approved this six months ago and it is in the final stages.

Mr. Adams gave a demonstration of the system using CDD #1 information.

- The system could also be used for irrigation.

Mr. Miller asked about street lights. Mr. Adams stated that street lights could be another layer. The application would be on the CDD #2's website, since all information is public.

Mr. Klug asked who controls the information that goes into the database. Mr. Adams stated that the Board controls it. Mr. Klug asked if it will be tamper-proof. Mr. Adams stated that Passarella, who will develop the application, has control of what is allowed in and acts as the administrator. Mr. Miller asked about other intrusions. Mr. Adams stated that it is in the cloud and only the administrator can manipulate the documents and others can view it.

Mr. Adams stated that the cost would be \$20,000 to create GIS mapping for CDD #2. He estimated \$4,000 to \$5,000 per year to update it because CDD #2 is still growing. Ms. Viegas asked if the \$20,000 cost was a not-to-exceed amount. Mr. Adams replied affirmatively.

**On MOTION by Mr. Klug and seconded by Ms. DiNardo, with all in favor, the Passarella & Associates, Inc., Proposal for GIS Map Services, in a not-to-exceed amount of \$20,000, was approved.**

**NINTH ORDER OF BUSINESS**

**Acceptance of Unaudited Financial Statements as of January 31, 2019**

Mr. Adams presented the Unaudited Financial Statements as of January 31, 2019.

Ms. Viegas stated that she emailed Mrs. Adams and Mr. Adams regarding several items that were significantly over budget, including the Street lighting "Contractual Services" line item, at 354%, and the "Miscellaneous" line item, at 489%. They responded that some costs were misclassified. Once they were corrected "Roadway maintenance" increased to 85% of budget, due to the street light painting and signage replacement that were not budgeted. Landscaping contract services had also been hit twice this month which caused the increase in that line item.

Ms. Viegas asked Mr. Cole if there would be any more hurricane billings from his firm. Mr. Cole stated that there may be one more.

Mr. Miller stated that there will be a revised analysis submitted for the Series 2003 bonds, by Ms. Alice Carlson, of AJC Associates.

## TENTH ORDER OF BUSINESS

## Consideration of Minutes

## A. January 23, 2019 Regular Meeting

Mrs. Adams presented the January 23, 2019 Regular Meeting Minutes.

**On MOTION by Mr. Klug and seconded by Ms. DiNardo, with all in favor, the January 23, 2019 Regular Meeting Minutes, as presented, were approved.**

## B. January 24, 2019 Continued Meeting

Mrs. Adams presented the January 24, 2019 Continued Meeting Minutes.

The following change was made:

Line 6: Change "Osprey Room" to "19<sup>th</sup> Hole"

**On MOTION by Ms. DiNardo and seconded by Mr. Klug, with all in favor, the January 24, 2019 Continued Meeting Minutes, as amended, were approved.**

## ELEVENTH ORDER OF BUSINESS

## Staff Reports

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

Mr. Pires reported the following:

- The demand letter to Pulte for payment of the street light in Amaranda will be sent next week.
- The Americans with Disabilities Act (ADA) issue has been a topic of discussion again, with a surge in cases and non-compliance. Management's Districts were on the leading edge in bringing its CDDs' websites into compliance and a settlement was reached. As of February 19<sup>th</sup> the same plaintiff had filed 211 cases.

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

- **NEXT MEETING DATE: March 27, 2019 at 10:00 A.M.**

The next meeting will be held on March 27, 2019 at 10:00 a.m.

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

Mrs. Adams presented the Operations Manager's Report and highlighted the following:

➤ She was not able to collect the costs from the contractor who knocked down the street light at 3173 Aviamar Circle. It was reported to her by Mr. Doug Duprey, but a police report was not made so there was no insurance company to contact. Several attempts to get reimbursement from the contractor were made and she is continually told the check is in the mail.

➤ The contractor, TruScapes, owes the District \$4,714.

➤ She asked the Board to authorize Mr. Pires to send a demand letter. The Board consensus was for Mr. Pires to send a demand letter.

Ms. DiNardo asked if the District had an obligation to notify the HOA that its contractor is refusing to pay for the damage. Mr. Klug asked if the HOA has a secondary obligation to pay. Mr. Pires replied no.

Mr. Pires will send letter.

Mr. Miller felt that the HOA should be notified.

**TWELFTH ORDER OF BUSINESS**

**Supervisors' Requests**

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

**THIRTEENTH ORDER OF BUSINESS**

**Adjournment**


The meeting recessed at approximately 12:10 p.m.

**On MOTION by Ms. DiNardo and seconded by Mr. Klug, with all in favor, the meeting adjourned at 12:10 p.m.**

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



Secretary/Assistant Secretary



Chair/Vice Chair