

**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 May 22, 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:

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| Elliot Miller | Chair |
| Victoria DiNardo | Vice Chair |
| Linda Viegas | Assistant Secretary |
| John Nuzzo | Assistant Secretary |

Also present were:

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| 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 |
| Ron Albeit | Developer |
| Valerie Lord | Developer Counsel |
| Shane Willis | Fiddler's Creek Security |
| Dan Demont | Juniper Landscaping |
| Michael Buck | Resident |
| Mark Vieth | Resident |
| Allen Kassman | Resident |

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mrs. Adams called the meeting to order at 10:19 a.m. Supervisors Miller, DiNardo, Viegas, and Nuzzo were present, in person. Supervisor Klug was not present.

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

Mr. Miller recalled that, at the last meeting, he discussed the issues with the interpleader case, the conduct of the original Trustee, US Bank, and current Trustee, Wilmington Trust (WT), US Bank's failure to remit to the 2003 B bond holders the \$1.3 million that the District paid, etc. The 2003 A Bonds were now under discussion. On May 3, 2019 WT sent approximately \$17 million to the A bond holders but, prior to that, Mr. Miller, Ms. Alice Carlson, of AJC Associates (AJC), Mr. Bill Benson, and others calculated \$15 million as the principal due. On-roll and off-roll payments were made to WT, but, for four years, WT did not pay the A bond holders and interest accrued; however, Mr. Miller does not believe the interest is CDD #2's responsibility because CDD #2 made the payments to WT on time and, since WT chose not to pay the bond holders, the interest should be paid by WT. After WT made the \$17 million payment, Mr. Reyes, Special Counsel, sent four letters to WT's lawyer asking how the principal balance was calculated, what justifies the calculation and whether WT left any money to make the payment due in November. No response was received.

Regarding the interpleader case, Ms. Robinson stated an order was entered on May 10th for both the pre-trial conference and trial dates. The pre-trial conference was scheduled for January 6, 2020 and trial was scheduled for four to five days starting February 5, 2020. Non-binding arbitration was scheduled for September 9 and 10, 2019 because, if a trial is projected to last five days or more, non-binding arbitration is required. There would be no live witnesses; evidence would be by proffer, depositions would be read, etc. The discovery period ends on November 29, 2019 and depositions would be scheduled prior to that date.

Mr. Miller asked if this was subject to summary judgment. Ms. Robinson indicated that she could not say at this time.

Ms. Robinson left the meeting.

FOURTH ORDER OF BUSINESS

Health, Safety and Environment Report

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

- An issue with the International Security Networks, Inc. (ISN) gate access system was discovered related to having to select a category when a contractor or vendor is entered. The Foundation and ISN were working to correct the issue. Everyone was urged to use email because all supervisors receive the email.

- April E-blast Topics: How to use the clicker, BBQ safety, litter pick-up, pet hygiene, bicycle safety, etc.
- Weekly gate activations totaled 11,994, for a total of 47,977 in April. The gate access numbers account for each time the gate goes up and down.
- The mobile Traffic Hawk was set up to monitor stop signs; however, it captures all movement, regardless of whether it was a vehicle, bicycle, or human, etc. The average speed was below 35 miles per hour (mph) for 85% of the vehicles. The average speed was 12 mph. Some speeders were identified and security contacted them. Speeding would be incorporated into the fining process when the fining committee establishes the procedures.
- Patrol mileage was 22,000 miles, year-to-date, and averages about 200 miles per day.
- There were 206 incident reports in April. Parking had the largest number of incidents.
- Pressure Cleaning: Some streets were cleaned in April. While one of the operators is on vacation, the other would focus on monument signs and work on The Club. The golf course cart paths would commence after the other driver returns.
- CIP Irrigation Program: The new Irrigation Manager started on May 6th.

Discussion ensued regarding the satellite report that would be received, insects in the satellite boxes, landscapers accessing the boxes, and obtaining keys for locked boxes. Mr. Willis stated that, after repairing one, four of the 62 satellite boxes were fully functioning, 27 were not communicating with the central computer, 31 were in standalone mode, and 16 of the 27 were still not communicating. The report would have an assessment of each satellite box, with an estimate of the cost to make them fully functional. Mr. Albeit stated that, after all the satellite boxes are fixed and operational, the locks would be changed and the boxes would be locked; then landscapers would have to call the Irrigation Manager or security to gain access. In response to Mr. Miller's question, Mr. Willis stated that five radios were missing but landscapers could be using them. Ms. DiNardo asked if the radios would be locked up, once replaced. Mr. Willis replied affirmatively. Mr. Miller asked if the radios must be replaced and, if so, whether they were covered by insurance. Mr. Willis stated there is no insurance and the estimated cost of each radio was \$800 so it would be a \$4,000 expense. Ms. DiNardo stated that, once the system is set up, it would be the key holder's obligation to make sure the radios are returned. Mr. Willis stated he would create a standard operating procedure for security to follow, if contacted to open a box.

Resident Michael Buck asked if the software was replaced. Mr. Willis replied no. Mr. Buck stated Mr. Kevin Powers told him that his satellites cannot get on the central computer until the software is upgraded. Mr. Willis stated that the software upgrade was not his decision.

Ms. Viegas asked if the villages would receive the same detailed report, by satellite, with the assessments. Mr. Willis replied affirmatively.

- Upcoming Programs: Cane toad removal was underway; some were removed and traps would be set next week by the University of Florida.
- Storm Drain Protection for Emergencies and Hurricanes: Temporary protections would be installed before storms to prevent debris from entering the storm drains.

Ms. DiNardo asked if the protections would be used during heavy rains. Mr. Albeit stated that would not be possible; they would be used if a hurricane was approaching.

- Staff would be training with the Greater Naples Fire Department for crowd control and first aid. The training would be repeated during season when a lot of employees come back and they are at full staff.
- Work on the "What To Do" list that Ms. Viegas discussed at the last meeting was underway; the information submitted by Ms. Viegas was under review.

Discussion ensued regarding residents and renters not knowing who to call so they call security and including an introduction about what each group is responsible for and does. Ms. Viegas gave an update on what she had done so far, who she got involved, and who reviewed it before she sent it to Mr. Willis. Mr. Willis stated that it was being reviewed by Ms. Lord and Mr. Albeit and Mr. DiNardo must also review it.

Ms. Viegas asked about the US 41 and Sandpiper visitor exit gate, which had been up since the last meeting, as Mr. Willis stated at that meeting that it would be fixed first. Mr. Willis explained that the main gate resident exit gate went out the next day so work shifted to repairing that one. Also due to the milling and paving project everything was torn up so that became the primary focus. Attention was now being redirected to the US 41 Sandpiper gate.

FIFTH ORDER OF BUSINESS**Developer's Report/Update**

Mr. Albeit stated there was nothing to report.

SIXTH ORDER OF BUSINESS

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

Mr. Cole presented Requisition #151 for \$8,268.70, which included costs related to engineering soft costs for final acceptance of utilities in Aviamar.

Mr. Cole reported the following:

- Concrete repairs on the valley gutters and curbs were completed.
- Mussorie residents submitted hundreds of photos identifying issues; some were attributable to the Developer, some to Taylor Morrison (TM), and some to the CDD; the Developer's portion was much higher. The proposals were approved and TM agreed to fix its issues.
- Asphalt repairs at the construction entrance to Aviamar were completed.
- The fence on Sandpiper Drive, from the construction opening to US 41, to join the fence on US 41 was completed; some outstanding punch list items remained.
- Follow up on the Oyster Harbor issues related to landscaping, lakes, and potholes was necessary. A proposal for the street work was pending. The Developer is responsible and all the repairs must be completed before the District accepts them.
- The estimate for the paver block repairs around the Veneta fountain was very high so another proposal was being sought.

Mrs. Adams suggested a company she used. Ms. DiNardo asked if construction in the area was completed. Mr. Cole replied no. Ms. DiNardo questioned the sense of redoing the pavers now if construction traffic was still passing by and could damage the pavers again. Discussion ensued regarding waiting to do the work. Mr. Cole would obtain more proposals and this would be discussed at another time.

Ms. Viegas asked if she understood correctly that curb repairs were completed because the curb issue on Sandpiper that she raised in April, 2018, was still not fixed. Mr. Cole knew the location of the damaged curb and would check on it.

Mr. Miller asked Mr. Albeit if he had anything to discuss related to Oyster Harbor. Mr. Albeit stated he wanted to make sure everyone works together, if the land is still under Fiddler's, and that who is responsible for what is determined, as he does not want any area neglected. Mrs. Adams stated that when a builder finishes an area they should let Mr. Albeit know that it is ready to be turned over to the District. Discussion ensued regarding the entire process and turning areas over to the District.

SEVENTH ORDER OF BUSINESS

Presentation: Juniper Landscaping, Urban Forest Hurricane Recovery Program

- **Discussion/Consideration of Arbor Care Maintenance Proposal**

Mr. Dan Demont, of Juniper Landscaping (Juniper), stated his goal was to discuss the importance of an arbor program and the five objectives, as well as the types of pruning.

The five objectives were as following:

- To reduce the risk of failure and minimize tree damage.
- Promote human safety.
- Allow for safe passage.
- Increase sun penetration to the ground.
- Maintain the health of the trees.

Mr. Demont reviewed the proposal and noted that Fiddler's has a lot of new trees since the hurricane so it is important to keep them pruned. Ms. DiNardo asked if each tree would be reviewed before work commences. Mr. Demont replied affirmatively; it would be a standard arbor maintenance program and decisions would be made when a unique situation arises. Ms. DiNardo asked who evaluates each tree because she observed landscapers trimming freely. Mr. Demont stated that Juniper is one of the bidders, but Mrs. Adams would be sending out a Request for Proposal (RFP). Mrs. Adams noted the RFP would require having an experienced arborist on site for all pruning. Mr. Miller asked how many arborists Juniper has on staff. Mr. Demont replied five or six. Mrs. Adams noted that only one was located in Southwest Florida.

Mr. Demont continued his presentation of the types of pruning, why pruning is important, what pruning accomplishes, etc.

Ms. Viegas noted that the unit pricing page did not match the Mahogany price in the individual proposals for the villages, resulting in a \$5,260 overcharge. Ms. Viegas also noted 17 villages were missing from the proposal. Mr. Albeit stated the intent was similar to other businesses they took over. One supplier was desirable to benefit from economies of scale, which would result in a dedicated team working in Fiddler's every day. So far 11 villages and The Foundation had signed up; Juniper would be the only landscaper in Fiddler's, if everyone signs up for the arbor care maintenance.

Ms. DiNardo asked when the RFP would go out. Mrs. Adams stated she hoped to have a report at the next meeting.

Ms. Viegas asked if the District would need to remove sections of the scope on the current landscape agreement that also covers some of this work. Discussion ensued.

Mr. Demont stated, if Juniper wins the bid, his agreement would be for pruning trees over 16'. The rest would remain within the current landscapers' agreements. Discussion ensued regarding Juniper having 820 employees, whether that would be enough after a hurricane, having a single-source arborist, whether there was enough work to justify Juniper committing a full-time crew and equipment to the Fiddler's Creek community, the missing villages, Juniper performing work in some areas out of convenience during the restoration, Juniper currently maintaining three of the villages that signed up, etc.

EIGHTH ORDER OF BUSINESS

Discussion/Consideration of Tree Pruning Specifications

Mrs. Adams stated that CDD #1 approved the pruning specifications.

Ms. Viegas presented the following issues with the specifications and her recommendations:

- Section 4.1: Stated "Severely pruned trees shall be replaced by the Owner." She suggested adding "unless it has been pruned by the Contractor." to protect the District. Everyone agreed to the addition.
- Section 5.7: Maintenance of Traffic Control needs to specify who is responsible for traffic control, similar to all the other subsections in Section 5. All agreed to the addition.

On MOTION by Mr. Miller and seconded by Ms. DiNardo, with all in favor, the Tree Pruning Specifications, as amended, were approved.

NINTH ORDER OF BUSINESS

Discussion/Consideration: International Security Networks, Inc., (ISN) Invoices

Mrs. Adams stated Mr. Albeit sent invoices for the monthly expenses for the ISN Gatekeeper system and Traffic Hawk. Mr. Albeit was seeking reimbursement of \$1,620, and the ongoing expense would be \$519 per month. It was confirmed that CDD #1 and CDD #2 would split these costs, consistent with the current percentage share.

On MOTION by Ms. DiNardo and seconded by Mr. Nuzzo, with all in favor, the International Security Networks, Inc., invoices and the ongoing \$519 per month expense, were approved.

TENTH ORDER OF BUSINESS

Consideration of Settlement Offer from Oppenheimer

Mr. Miller stated that, subsequent to CDD #2 receiving a settlement from Oppenheimer in the past US Bank litigation matter, CDD #2 requested additional documentation from Oppenheimer, but Oppenheimer refused to provide it. For that reason, CDD #2 took Oppenheimer to court but CDD #2's claim was denied and denied again on appeal, which led to the court ruling that CDD #2 must pay Oppenheimer's legal fees in relation to taking Oppenheimer to court, after the initial settlement. Oppenheimer originally requested \$50,000 plus \$6,000 interest but, after negotiations, Oppenheimer agreed to accept payment of \$32,500. If CDD #2 were to go to litigation over this matter, the cost would be more than \$32,500 so it made sense to settle for \$32,500.

On MOTION by Ms. DiNardo and seconded by Ms. Viegas, with all in favor, the settlement with Oppenheimer, in the amount of \$32,500, was approved.

ELEVENTH ORDER OF BUSINESS

Consideration of Resolution 2019-02, Approving a Proposed Budget for Fiscal Year 2019/2020 and Setting a Public Hearing Thereon Pursuant to Florida Law; Addressing Transmittal, Posting and Publication Requirements; Addressing Severability; and Providing an Effective Date

Mr. Adams presented Resolution 2019-02. The Fiscal Year 2020 budget would be reviewed in detail at the June and July meetings.

Mr. Albeit stated that, commencing January 1, 2020, the intent is to bring security back under The Foundation; therefore, the CDDs would only need to budget for security expenses in October, November and December, 2019.

Mr. Adams stated that Ms. Viegas submitted several corrections to the definitions.

Mr. Miller asked about the “Legal - litigation” line item reduction to \$40,000. Mr. Adams stated it was reduced because the litigation was settled and only the interpleader case remained. Mr. Miller felt that \$60,000 should be budgeted. The following changes were made:

Page 1: Increase “Legal – Litigation” from \$40,000 to \$60,000.

Mr. Miller asked why the “Arbitrage rebate calculation” expense was \$8,000. Mr. Adams stated it was high because there is a charge per fund.

Page 6, Contractual services (street sweeping): Change “sub-contractor” to “contractor”.

Mr. Miller referred to the Debt Service Schedule for the 2003 A Bonds, on Page 9, and numerous discussions leading to agreement that the principle balance was \$15 million. He wanted to include an explanation about the payments CDD #2 made to WT that WT did not remit to the 2003 A bond holders. Mr. Adams stated that this was the repayment schedule that is part of the yearly collection; it did not relate to the use of monies previously collected or how the Trustee distributed the funds. It is the budget and go-forward collection and repayment of an outstanding obligation. The \$17 million payment that WT made was funds already collected on and off-roll to meet an obligation that had already come and gone; Page 9 reflected the remainder of the schedule to meet the still outstanding obligation. Mr. Miller believed that WT is depending on what the Depository Trust Company has on record, which does not reflect the four years that CDD #2 paid WT, but WT did not pay the bond holders.

Mrs. Adams stated the LED street lamps upgrade would be included in the budget.

On MOTION by Ms. DiNardo and seconded by Ms. Viegas, with all in favor, Resolution 2019-02, Approving a Proposed Budget for Fiscal Year 2019/2020, as amended, and Setting a Public Hearing Thereon Pursuant to Florida Law for August 28, 2019 at 10:00 a.m., at Fiddler’s Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114; Addressing Transmittal, Posting and Publication Requirements; Addressing Severability; and Providing an Effective Date, was adopted.

TWELFTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of April 30, 2019

Mr. Adams presented the Unaudited Financial Statements as of April 30, 2019.

Ms. Viegas discussed the following line items and questioned if the budgeted amounts should be increased for Fiscal Year 2020:

- “GIS”: Already at 96% of budget for Fiscal Year 2019.
- “Contractual services” line item, under “Street lighting”: Already at 155% of budget for Fiscal Year 2019. Mr. Adams stated the street lights were painted in Fiscal Year 2019, which accounted for a lot of the expense.

Ms. Viegas asked about the reclassing that appeared to have occurred under Access Control. Mr. Adams stated the cause of the miscoding was found and was corrected.

- “Pressure cleaning”: Already 156% of budget for Fiscal Year 2019.
- “Improvements and renovations”, under “Landscaping”: Already at 83% of budget for Fiscal Year 2019. Mrs. Adams stated the cause was the fill in work that was not covered by the restoration; this should not happen in Fiscal Year 2020 so an increase was not necessary.
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On MOTION by Ms. DiNardo and seconded by Ms. Viegas, with all in favor, the Unaudited Financial Statements as of April 30, 2019, were approved.

THIRTEENTH ORDER OF BUSINESS

Consideration of April 24, 2019 Regular Meeting Minutes

The following changes were made:

Line 68 and 69: Change “He and Mr. Reyes and two lawyers from WT met.” to “He, Mr. Reyes, Ms. Carlson and two lawyers from WT had a lengthy telephone discussion.

Line 81: Insert "in advance" after "the District"

On MOTION by Ms. DiNardo and seconded by Ms. Viegas, with all in favor, the April 24, 2019 Regular Meeting Minutes, as amended, were approved.

FOURTEENTH ORDER OF BUSINESS

Staff Reports

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

Mr. Pires reported the following and responded to questions:

- The Irrigation Agreement was finalized.

- The County approved the proposed Land Development Code language for placement of items, such as generators, to require site plans and agreement from all easement holders.
- The Encroachment Agreements were finalized and the fees were paid.
- The County Pollution Control hearing would be June 25, 2019.

Mr. Pires stated that there was a good discussion about the County Pollution Control proposal during the CDD #1 meeting and CDD #1 Board Member Joe Schmitt suggested sending it back to the Planning Commission. Mr. Pires would attend the June 25th hearing to propose the exemption be left in that protects CDDs. Mr. Miller asked who was pushing for the exemption to not be included. Mr. Pires replied it was a person in the Pollution Control Department who drafted the Executive Summary that recommended against including any exemptions.

- Work was still underway on the Signage License Agreement requested by Pulte, at the last meeting. The location of the sign was still being determined because the land may be owned by Fiddler's and not CDD #2. Mr. Pires was working with Ms. Lord.

Mr. Miller asked Mr. Pires to be very firm at the June 25th hearing and directed him to review the liability if the retroactive exemption was removed.

Ms. Viegas asked for a status of the Tract E turnover. Mr. Pires stated that he was still trying to push it through at his office. Ms. Viegas asked if the notice about the oil spill was sent to TM. Mr. Pires stated that it was not completed yet.

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

- **NEXT MEETING DATE: June 26, 2019 at 10:00 A.M.**

The next meeting will be held on June 26, 2019 at 10:00 a.m.

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

Mrs. Adams presented the Operations Manager's Report, which was in the agenda, and responded to questions, as follows:

- The number of wax myrtles being ordered for Lake 85 would be reduced based on the photos Ms. Viegas sent showing their growth.
- A proposal to install a wind sensor on the Veneta fountain to keep water from blowing and damaging the copper leafs around the fountain was being obtained. The hard cut was completed and they are growing back.

➤ Regarding the plants in the urns at the Veneta fountain, the issue was raised but it is a maintenance problem and Mr. Olson would follow up.

Mr. Olson reported the following:

➤ Of the 11 trees along the Aviamar buffer that were thought to be dead, eight showed new growth, one would be replaced, and two are being monitored.

FIFTEENTH ORDER OF BUSINESS

Supervisors' Requests

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

SIXTEENTH ORDER OF BUSINESS

Adjournment

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

On MOTION by Ms. DiNardo and seconded by Ms. Viegas, with all in favor, the meeting adjourned at 12:06 p.m.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



Secretary/Assistant Secretary



Chair/Vice Chair