

**MINUTES OF MEETING OF THE
MIROMAR LAKES
COMMUNITY DEVELOPMENT DISTRICT**

The Regular Meeting of the Miromar Lakes Community Development District's Board of Supervisors was held on Thursday, February 11, 2016, at 2:00 p.m. at the Beach Clubhouse, 18061 Miromar Lakes Parkway, Miromar Lakes, Florida 33913.

Board members present and constituting a quorum were:

Michael Hendershot	Chairman
David Herring	Vice Chairman
Doug Ballinger	Assistant Secretary
Burnett Donoho	Assistant Secretary
Alan Refkin	Assistant Secretary

Staff present:

James Ward	District Manager
Greg Urbancic	District Counsel
Paul Cusmano	Calvin Giordano & Associates
Bruce Bernard	Calvin Giordano & Associates
Charlie Krebs	District Engineer

1. Call to Order & Roll Call

Mr. Ward called the meeting to order at 2:00 p.m. The roll call determined that all members of the Board were present, with the exception of Supervisor Ballinger, who joined the meeting a minute later.

2. Consideration of Minutes

a) January 14, 2016 Regular Meeting

A correction was made to the minutes on page 3, in the second and last paragraphs, where "Mr. Byal" should replace by "Mr. Urbancic," beginning with "Mr. Urbancic responded..." Mr. Ward added that I will correct spelling of Ms. Heine's name.

On Motion was made by Mr. Hendershot, and seconded by Mr. Donoho, to adopt the amended Minutes as described above, and with all in favor the motion was approved.

Supervisor Ballinger joined the meeting in progress.

3. Discussion of Shoreline Management Report

Mr. Ward gave an overview of the shoreline management situation, stating that it was mostly an offshoot of the Alico litigation and as a part of that litigation the District had been given a Notice of Violation by the South Florida Water Management District (SFWMD) and along with all of the depositions that occurred and discussions with all of the parties, we realized that it was necessary to take a look at their own reporting requirements in connection with SFWMD's regulations, with the goal of correcting the problems that were identified and examining further problems that might exist. We would also have to determine the cost of implementing Miromar Lakes' agreement with Alico Development. Contained in the report were all of the approximately 28 SFWMD permits they currently had. Each permit had general conditions and special conditions, as identified and analyzed by Glenn Smith. One of the things that came from the report was that, in the context of the entire community, the District had done an excellent job in ensuring that all of the general conditions, and a significant part of the specific conditions, were met.

Mr. Ward stated that an issue raised by the Notice of Violation pertained to the fact that some of the special conditions in the permits are related to property not under the District's control or ownership. In their Notice, SFWMD took the position that the District was responsible for maintaining the special conditions relating to private property owner lots and HOA lots. This seemed to represent a significant, major change in policy, and as such, they needed to think about what their response should be with respect to SFWMD, relating to some of the special conditions on property not within the District. One way they could proceed would be to start a discussion with SFWMD on whether this was going to be their position going forward, and whether SFWMD could ensure that they would be proceeding in the same way with respect to every District and other governments, including Counties and Cities, under their jurisdiction. He suspected part of the issue stemmed from the litigation, and it might not have come up otherwise; however, they needed to deal with it, along with addressing the Notice of Violation.

Dr. Herring asked whether it was an arbitrary decision on SFWMD's part, or whether there was a legal basis for their stipulation that the District was responsible for property it didn't even own. Mr. Urbancic answered that he thought it stated in the permit that we are responsible. A discussion ensued in which the point was made that their responsibility pertained to lake banks and easements along the banks that might cross private property. In the end, it was up to them to show, in good faith, that they were addressing SFWMD's concerns. However, Mr. Urbancic stated, and it was agreed, that should it prove that they were being singled out in this case, they might sue SFWMD on grounds of selective enforcement. Mr. Krebs observed that SFWMD had become more stringent and exigent on their applications for permits mandated by the Florida Department of Environmental Protection (FDEP), following questions that had been asked of SFWMD, and the scrutiny SFWMD had received in the course of the

legal depositions. Mr. Ward pointed out that all of the permits referenced in the book were originally issued as construction permits to the developer, but the obligations in those permits had been transferred to the operating entity, Miromar Lakes Community Development District.

Addressing the issue of the CDD's access to properties it didn't own but purportedly had responsibility for, they would need to ask for some sort of easement from the HOAs, in order to be able to implement provisions of the special conditions. Mr. Bernard added that if they went forward and decided they had to repair the lake easement bank, they would need some type of documentation giving them access rights.

Going back to the original question, Dr. Herring stated that the District would have to ask owners of a property, however many times it took, to rectify problems on their property. Then Miromar could report back to SFWMD that they had brought the problem to the homeowner's attention. Mr. Ward suggested that they could charge each homeowner, or multiple homeowners, anywhere in the District for remediation of the problem, levying an assessment within one specific community for their particular problem. From the standpoint of administration it would be difficult, with a lot of details to work out, but it was a simple solution. He added that some of the problems of lake bank erosion were being caused by people putting roof drains or pool drains into District facilities and although it was affecting our facilities, it was not necessarily consistent with the special conditions of the permits in South Florida. We would need to deal with such small details, as well.

Mr. Krebs commented that, in connection with most of the single-family communities, the CDD already had easements, so that access should not present a problem. They could proceed as they had done in the past in bringing roof drainage problems to Vivaldi's attention and working with them to get it fixed. It was important that they had pointed out Vivaldi's own obligation of addressing the problem before it became a SFWMD issue, because ultimately the residents would have to pay for it anyway. Issues regarding multi-family developments under an HOA, where there was no drainage or lake maintenance easements allowing access by the CDD, were another matter. Mr. Urbancic added that in addressing properties on a case by case basis, they could look at the declaration and other documentation of provisions regarding a particular property, which might give them some authority or right to go in if the owner were not cooperative.

Mr. Hendershot commented that one big question that remained was whether they would be not only legally, but financially responsible as well, for advanced erosion that was no fault of the homeowner. Also, how were they going to bill for the repairs? There was discussion on the problem of assessing if only a portion of a property's residents were affected by an issue. Mr. Ward responded that no matter where a problem cropped up, construction of a water management system for an entire community benefitted the entire community. Whether the resident's home was on a lake or not, drainage from their home was still going into the lake, and Charlie Krebs

could determine the quantifiable benefit to the community so that they could be charged for the repairs.

Mr. Hendershot reiterated the situation and their position with regard to remediation. They had to fix the specific violations listed by SFWMD. With reference to other problems that were uncovered through the Staff's astute inspection, they could formulate a cost estimate for the work they would have to do and take it to the homeowner. Mr. Bernard stated that he wanted to know what the CDD's responsibility was. They had met with a few of the HOAs and told them that Miromar couldn't do the work themselves. The HOAs didn't know how to go about it and wanted help to get the work done. Most of the cost incurred had to do with drainage improvements, not erosion, and in fact, it was lack of good drainage that caused erosion. There were properties where nothing had been done, as far as shore maintenance was concerned, for 15 years, and the potential for the resident to lose half his backyard from erosion existed. If the HOA didn't want to take care of it, they should send three or four letters to them and if SFWMD came back and blamed them, then Miromar Lakes would need to take legal action against SFWMD. Mr. Bernard added that there was \$200,000 of work to be done and that a crucial point to consider too, in light of the fact that SFWMD was insisting that they get the work done, was that they could not proceed unless the property above them were fixed first, as the logistics demanded. Mr. Bernard commented that most of the cost estimates had been broken down into drainage and erosion costs, cost to the HOA and cost to the CDD.

Returning to his main point, Mr. Ward stated that from his experience, often when you were dealing with infrastructure improvements in regard to water management systems, HOAs had no clue what they were doing. In his mind, they had an opportunity, having a District that could do it and could assess it through a specific Association, to get some of the work done in a reasonable way, to solve the problem. He said that they had to think about the larger system, as Bruce had aptly brought up, so that they had about \$300,000 worth of improvements they couldn't do because the upstream system is not fixed. Dr. Herring remarked that if they decided to go that way, they would have to bring in the HOAs whose property needed the work, and they would need to prioritize and lay out the program for them. Thanking Bruce Bernard for exceptional prep work he had done, Alan Refkin commented that they were seeing photos of people's decks and fences in the water and it was a complicated issue that involved more than just repairs. Clearly, education of residents was required. They needed to approach Tim or Miromar and tell them that homeowner's needed to be informed and educated, when they purchased property, to get CDD approval if they were going past a certain point in their construction projects. They could get a permit from Lee County and think everything was fine but there were ramifications that would affect the Staff, since they would be responsible for clean-up. Mr. Hendershot? (51:14) commented that Mr. Refkin's point referred back to an earlier question on disclosure documents presented to the homeowner at the time of closing. He thought, and Mr. Refkin agreed, that a letter from the CDD should be included with the documents at closing. Mr. Ward commented that a problem arose at closing when there were transfers from the second owner to the third, and the third to the fourth, and the fourth to the fifth, and so on, and things tended to fall through the cracks. Also, no one really

read much of what was included in the documents at closing. He concluded that at some point, they either needed to make residents take the responsibility of doing it themselves or they would do it and charge them for it, when it came to roof drains, docks, etc. It was really part of the larger issue that they were in the drainage business, they were the experts who should be handling things, and they needed to operate from that standpoint.

Going back to cost per unit for all the necessary repairs and infrastructure, Mr. Hendershot said it worked out to be about \$1,100 per resident. The question was how they could bill it. If they went to an individual HOA and it would be equitable, they would be pitting homeowners against homeowners, communities against communities. Some better, more creative way, to bill what was needed. Dr. Herring stated said that instead of dividing the total figure by the number of houses already in the development, they should divide it by the number of houses permitted to be built by future assessment and that would drop the cost per person down to about \$600, with the developer paying their fair share. Dr. Herring added that, as Bruce had indicated, they would have to go in and identify at what point along the shore to start, as they would have to address problems upstream first. Mr. Krebs commented that they would be laying the groundwork for ongoing and future projects. Mr. Krebs pointed out that, as other CDDs did, they could treat the water management system as an overall asset, where everyone is assessed as that maintenance responsibility. The lake provided benefits to everyone and afforded permanent compliance.

Mr. Hendershot inquired about the timeframe in which they could get it all done, if he made available the full \$1.3 million. Mr. Bernard replied 12 to 18 months. Dr. Herring referred to Mr. Hendershot's comment about if they could get Miromar to go along with their approach. Mr. Hendershot asked if they could not assess them. Mr. Hendershot answered that as a CDD, they assessed them just like anyone else. Mr. Hendershot commented that equitably, many of them counted on Miromar's involvement at the beginning of any project anyway. Mr. Refkin observed that Miromar would want it because it would make the property better, raising it to a higher standard and making it more sellable.

Mr. Hendershot asked if there was anything they were proposing that a homeowner might take issue with, based on what the homeowner already done on his property. He gave the example of a step-down wall built by a homeowner. In answer to another comment, Mr. Bernard stated that encroachment issues in regard to that would have to be addressed separately. Another question was, would the structures there be grandfathered in? Mr. Krebs inquired about approval of such structures, asking whether the matter of permits could be brought before the Board beforehand, by having the homeowner submit and informational letter that would serve to avoid compliance issues going forward.

Mr. Hendershot asked how they all felt about paying for the work to be done in the way they had discussed, with a cost of \$600 per unit, or \$150 per quarter in the first year. The general consensus was that it was a great idea. After doing some calculations, Mr. Ward stated that it turned out to be \$740 per unit, based on the 2016

budget numbers. However, it would not have to be charged in one year. We could charge \$350 in 2017, and the same in 2018 and 2019, so there would be no increase over 2016 and the increase already in place would remain relatively consistent. There was agreement that residents would complain, especially since Gulf Shore was getting ready to bring in rip rap to take care of the shoreline. They would wonder why they had to pay for the rest of the lake when their area was going to be perfect. Mr. Krebs commented that it was to everyone's benefit if all the lakes were in compliance and everyone was affected negatively if they were not. Mr. Hendershot added that the homeowner's were already conditioned to pay that sum and they might not even notice that they were paying it again. They could also make homeowners understand that the CDD was acting on behalf of the community and that before homeowner's had paid individually for own construction projects. Mr. Ward stated that conceptually, the Board's idea of taking the responsibility for the overall management of the water management system, was a great idea. The financing idea was a good solution also, with construction and billing spread out over a couple of years. He didn't believe SFWMD would balk either. He observed that there was no state funding for such structural improvements and federal funding remained questionable since it would be considered as maintenance performed in an affluent community. At any rate, a prioritization list could be drawn up as they had agreed on how to proceed. Board members congratulated staff each other on the good job they had done in preparation for the meeting.

Mr. Hendershot about the permitting that needed to be done is that included in these numbers. Mr. Krebs replied that they would have to pull a SFWMD permit to get the rip rap that was in place brought up to compliance. It would be the same with Lee County, going in to restore or modify an existing wall, where they would have to submit a Development Order stating what they were going to repair. Permitting should be simple. A Dock and Shore Permit would have to be pulled for jobs around the rip rap. The groundwork had been laid, however, by the Zoning Resolution, making it much simpler to deal with Lee County. Responding to a question, Mr. Krebs said the number of permits required would depend on how they approached it. They could do it all under one permit and put phases in, stating so much would be done per year. When the work was completed they would certify that it was done. Everything would be considered a maintenance issue, with the exception of the rip rap that hadn't been approved.

Mr. Hendershot? (1:16) inquired about their reserves, asking whether they would be back to normal if they went down the road they'd decided on. Mr. Bernard? (1:16) replied that he would probably know in another month, after clearing all the payables they had off the books. As of December 31, 2015, they were at 86% of collections on one of the taxes and they would obviously be collecting all the developer's assessment. They still had some ways to go, as on December 31 there was still \$170,000 in payables on the books. By his next financial report, he would have a much clearer handle on the status of their reserves. The key to the reserves, he pointed out, was how much of the existing \$350,000 in the fund they didn't spend. It was really a little early in the year to tell where they were. Mr. Hendershot observed that Miromar prepaid one section of the bonds and removed them from some of the buildings, and asked if they were still able to use the 2100 number for purposes of assessment. Mr.

Ward explained that prepayment of the bond did not affect the number of units they assessed for General Fund purposes.

3. Staff Reports

a) District Attorney

Mr. Urbancic provided an update on the FGCU pier, in reference to Mr. Byal's talk at the previous meeting. It was Mr. Urbancic's understanding that they (FGCU) had pulled it off the table for now. Nothing would be happening in the near future and he would inform them if the matter was taken up again.

b) District Engineer

Mr. Krebs said that he had begun a discussion with Carl Baracco and would try to set up a meeting date when they could actually go to look at the exhibits. Mr. Krebs had communicated his first thoughts to him, which he had shared beforehand with the Board and Staff, regarding the turbidity barriers, locations, and responsibilities. They agreed that at their earliest convenience, they would schedule a meeting to go over it.

c) Asset Manager

Mr. Bernard stated that there was nothing of note to report. They were looking into doing some replanting by the golf cart crossing bridge, on Ben Hill Griffin, which had proved a problem area to maintain. He would be submitting some thoughts to Tim with regard to undertaking a new design that would include flowering plants.

d) District Manager

Mr. Ward stated that it had been a long and informative meeting. Dr Herring however, he wondered how they had gone from water management to the landscaping business. He didn't think they had owned all the berms originally, and he didn't see the importance of their decorative function as compared with water management. He thought it needed to be acknowledged that they had moved from water management to aesthetics. Comments were made that the emphasis on the aesthetic was clearly aimed at driving sales and it was pointed out that some of the berms did have water features requiring management. Dr. Herring asked if most CDD's had responsibilities like they had. In answer to Mr. Herring's question, Mr. Ward replied that you did see CDD's across the State that did, essentially, nothing, but had a ton of capital assets. Miromar was different, being a gated community where privacy was of the utmost importance. Because of that, fewer of the assets were in the CDD, and most were in the HOA. Outside of the gated facility at Miromar, the assets did become CDD assets for purposes of ownership, operation, and maintenance, on a long-term basis. If they weren't in the CDD, they would end up in the Master HOA, and you would have to pay anyway. Over the life cycle of Districts across the State, from 1980 to the present, there were as many CDD's doing everything as there were CDDs doing nothing, depending

on the developer's wishes and what the community eventually decided it wanted, as things evolved over time.

4. Supervisor's Requests and Audience Comments

Dr. Herring reported that in the Spring of 2017, a major renovation of the golf course would be undertaken. The golf course would be closed from Spring to Fall 2017. He indicated that he did not know how much impact it would have on any water management matters affecting Miromar Lakes, but there were lakes on the golf course that they were responsible for. He did not have any details on the plan. No specifics had been divulged and only a general announcement had been made. Mr. Bernard said that he would include a plan in the coming budget on how the project would be funded.

Mr. Ward said that they could go forward with addressing the SFWMD violations, but their other plans with regard to decisions they had made that afternoon could not be acted upon till 2017, with the exception of emergency remediation done for a homeowner, which could be accounted for in the budget process.

5. Adjournment

On Motion was made by Mr. Herring and seconded by Mr. Ballinger to adjourn the meeting, and with all in favor the motion was approved.

The meeting was adjourned at 3:36 p.m.


James P. Ward, Secretary


Michael Hendershot, Chairman