

**MINUTES OF THE 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, January 11, 2018, at 2:00 p.m. at the Beach Clubhouse, 18061 Miromar Lakes Parkway, Miromar Lakes, Florida 33913.

Board members present and constituting a quorum:

Dr. David Herring	Chairman
Mr. Doug Ballinger	Vice Chairman
Mr. Alan Refkin	Assistant Secretary
Mr. Michael Weber	Assistant Secretary

Board members absent:

Mr. Burnett Donoho	Assistant Secretary
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Staff present:

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

Audience:

Tim Byal	Miromar Development Corporation
Mike Elgin	Miromar Lakes Master Association
Mike Rizzo	Bellini

1. Call to Order & Roll Call

Mr. Ward called the meeting to order at 2:00 p.m. A roll call determined all members of the Board were present with the exception of Supervisor Donoho.

2. Consideration of Minutes

a) November 9, 2017 Regular Meeting Minutes

Mr. Ward asked if there were any deletions, corrections or additions to the minutes. A point for clarification was brought forth concerning exactly what the Board had approved regarding the cost of hurricane damage as it pertained to properties that were not currently owned by or turned over to the CDD.

Mr. Ward responded that his understanding was the Board had indicated it would be the property owners' responsibility to make repairs up to the point that the property was turned over to the District. He continued that to the extent there was additional work to be done related to Hurricane Irma once it had been turned over, the District would pick up that differential. He said that included Bellini and Voltera which were the two primary areas. Mr. Ward added that both he and Mr. Urbancic spoke about this issue before the meeting, and the minutes were not clear on this point.

Mr. Ward stated it was up to the Board what was to be done in this situation. He said the property had not been turned over yet, and the District was ready to do the work in those areas if they could get the documents ready. He said he had halted the repair work at this time.

Dr. Herring suggested that the Board should begin with a clarification of what the process was for turnover. The understanding was that when a Community was ready to be turned over to the CDD, the CDD came in and inspected the property and identified any issues which needed to be addressed prior to turn over. If there were issues, they would be repaired by the Community or the HOA, and then turned over to the CDD. From that point, the CDD was responsible for everything going forward.

Mr. Ward responded that as it related to new construction, this was correct. He said essentially the developer, upon completion of construction of a facility, went through a process where the District inspected and brought back the necessary documents for the turnover. He said frankly this had been the first time this issue had occurred, where the property had already been turned over to homeowners without these documents being done, and it was also the first time they had had a hurricane of magnitude.

A comment was made that the Board needed to assess the situation without taking the hurricane into consideration. It was stated that when property was accepted from the Developer, the Board required that all of the permits be filed, and there was no construction that needed to be done. There was no need to handle the current situation any differently. Once the property was turned over in a condition that the Board accepted, from that point forward, the CDD would maintain it. It was stated this was what some of the Board members thought had been said at the last meeting.

Mr. Ward said the decision was up to the Board.

It was pointed out that what Mr. Ward was saying was a little bit different. Mr. Ward was saying that if there was a \$200,000 assessment on a property, then that \$200,000 was going to go towards repairs. Following this, the CDD would take over the future repairs and maintenance of that property. If there was anything found that needed repairs that might have been related to damage caused by the hurricane, the CDD would pick it up at that point.

The Board agreed and was saying to go through the normal process; however, Mr. Ward was saying go through the normal process, but if there was anything that needed to be done once the turnover occurred, the CDD would be responsible for it. It sounded like an engineering study would not be done prior to accepting the property, and if one was done, then based on Mr. Ward's interpretation, the CDD would be saying here's a list of items that still needed to be addressed, but the CDD would pick it up.

Mr. Ward responded this was a different condition in that two Communities had been turned over to homeowners without the Developer going through the process of turning the Communities over to the CDD. He said he did not think the homeowners had known this, and they had been blind-sided. He said he had sympathy for these residents, and the magnitude was rather monumental when the CDD was paying for the entire restoration of the hurricane damage in the rest of the Community. He said it was clearly the Board's decision.

Mr. Ballinger asked Mr. Urbancic where the Board stood legally, if their decision invited law suits. He responded he did not have any concern with either decision.

It was pointed out it was important not to deviate from past practices.

Mr. Refkin stated that the Board needed to set a standard for the future dealings of these issues.

Mr. Urbancic stated that if the corporate organization had done the right thing to begin with, this conversation would not be necessary. Mr. Ward said that was his point.

It was also pointed out the operating budget of the CDD did not include the cost of maintaining that property.

Mr. Ward responded that some of the property went into a lake, but as it related to shoreline maintenance, that program had just started this year.

Mr. Refkin said there was a great deal the CDD was just becoming involved in which it had not been in the past. He said the Board was seeing an evolution of issues such as the drainage system.

Mr. Byal said that after hearing this discussion, there was a little confusion concerning Bellini in restoration versus improvement. He said the CDD could

take the responsibility to restore back to condition; but if there was a decision that an addition of riprap was an enhancement to the shoreline, that would be different from restoration back to the original condition. He said the shoreline without riprap would be okay if there was not another hurricane.

Dr. Herring asked if the Board would accept the properties from the developer in the condition that they are in now, and he stated that they would not.

Mr. Byal said what the Board didn't know and the homeowners didn't know was that the situation would occur.

Dr. Herring said what people knew was not important, and the fact was this property was now being turned over to them, but it needed to be brought up to acceptable levels.

Mr. Byal pointed out that these homeowners paid the same fees as other homeowners to the CDD, which included a principal amount, which was for the cost of the infrastructure and an O & M piece for maintenance. He said all along Bellini has been paying their proportionate share of the principal cost of the infrastructure. The fact that it was not physically turned over to the CDD was a legal engineering formality as opposed to an economic event.

Mr. Refkin said that he understood the point Mr. Byal was making.

Mr. Byal clarified that he was not saying that the Board should be responsible for the riprap, but rather he was trying to come up with a compromise. He said Ravenna paid for their own cost to riprap their shoreline, but restoring the lake bank was a different situation.

Mr. Refkin said having a standard to adhere to was critical in going forward. He asked if when the CDD got involved in an issue, would they be paying to bring it up to a standard where they would normally accept it. He said the CDD should not accept it until it was brought up to the minimum acceptable standard.

Mr. Byal said he would argue that the CDD had accepted this property a long time ago and had been maintaining it. He said the fact that there was no transfer of documents did not change how they maintained it. The CDD had been treating the property as if it was theirs. He said the CDD did not realize until recently that the property had not been turned over.

Dr. Herring pointed out that the CDD could not do water management and exclude that part of the lake.

Mr. Byal responded that the properties were effectively turned over a long time ago, but the paper work had not been properly done.

Mr. Ward stated that prior to Hurricane Irma, everything in the Communities was fine; it was post hurricane that was the problem.

Mr. Refkin asked what the dollar amount was for these repairs. It was also asked if the section being discussed was the shoreline or the internal lake. The response was the shoreline.

Mr. Bernard stated he would break down the cost into riprap and restoration. The restoration was basically \$64,000, and the riprap was about \$80,000. He said there was riprap in certain sections prior to the hurricane. He said the riprap was put in place by the builders, but the hurricane took the riprap and the shoreline all the way up to the buildings.

The question was asked if the shoreline and riprap were replaced, and another hurricane occurred, would it destroy it again.

Mr. Bernard stated he was not saying that. He said the reason it took it away this time was the prevailing winds came across there. He said that was the place where the most damage occurred, and only the east facing riprap was gone.

It was said that there was special assessment coming up because they had depleted the reserves to cover the cost of repairs, and if the CDD were to take the cost of these repairs and include it in the special assessment, even though its legally not their property, could they be sued.

Mr. Urbancic said it would need to be their property to do the work; otherwise, it would be problematic.

Dr. Herring said in his area, Caprini, there was going to be an assessment done, and if his Community found out the CDD covered the assessment of property it didn't own, that would be a problem. He said he was not anti-Bellini, but in the past, property had not been accepted unless it met a certain criteria. He said that would be the safest guideline to follow.

Mr. Ward said the only difference was that it was in a condition that the CDD would have accepted prior to Irma.

Dr. Herring said if house was being purchased and not settled when the hurricane came and knocked the roof off, you would not buy the house.

Mr. Rizzo said this was a total change in direction to what they had been told over the last three months, and his Board would be surprised. He followed on Mr. Byal's comments, and stressed Bellini's owners comprised over \$750,000 of CDD assessments since 2008, and they were not aware that their properties were not covered like everybody else's properties were covered. He said the CDD Board and its managers and advisors had some responsibility to advise Bellini of this fact. He said the issue arose over the storm water retention pond, which was

on the Board's plan as L6 and was on the permit. Bellini did not have the permit; the CDD had the permit. He asked for verification of this fact, and it was said that the CDD owned the permit but not the application.

Mr. Rizzo asked how the owners in Bellini were to know this fact if the CDD Board did not tell them. How were they to know if the people that held the permit, the CDD, did not tell them that the asset had not been transferred?

Mr. Refkin pointed out that the CDD did not know the asset had not been transferred either.

Mr. Rizzo responded that Bellini residents were never told that part of the money that they were paying was going to support other people's maintenance, but not theirs. He said he thought that was an issue that the Board had to think through.

Dr. Herring said he did not think the money had necessarily been paid to support other people's maintenance, but to maintain the water quality in the entire Community and the maintenance of the grounds outside of the Community, median strip, berms on I75, so that everyone's property values would be maintained. He said there was a great deal more involved to whatever dues were paid.

It was pointed out that up until South Florida Water Management had done their inspection and made the determination that regardless of applications or ownership of applications, the water management system was the CDDs, the CDD only maintained up until control. So, any improvements up to control, which was elevation 18 and below in the water elevation, was what the CDD maintained. Everything from control up was all maintained by the homeowner. So, any of the riprap that was in the shoreline in an easement, even if the CDD owned the lake and the CDD owned the easement, that riprap, that shoreline, would have been the responsibility of the homeowner. That changed, as far as his understanding, when the South Florida Water Management District came in and threw caution to the wind and started changing how they were going to enforce permits. This situation was similar to what happened with Vivaldi where the residents in Vivaldi were responsible for maintaining everything from 18 up. They had to make all of their fixes, all of their improvements, before the CDD was going to do any repairs from 18 down.

The comment was made that there was \$1.2 million in Storm Water Management improvement which included items above the 18 foot mark, to restore lake banks on Storm Water Management lakes. It was pointed out that came into effect after South Florida Water Management came in and made the statement that it did not matter. If the CDD owned it and it had an easement, the CDD had the requirement to maintain it if the homeowner did not.

It was stated there were other communities where ponds had not been improved or maintained that now the CDD had stepped in and improved.

The comment was made that the lakes which had been improved were lakes the CDD already owned, and the shoreline that was being improved had gone through its life cycle where it needed to be restored. It was stated as the lakes go up and down, they create steps and material which has eroded away. Every so many years, the lakes must be restored to be brought into compliance with the District permit. He stated that anything being done on existing lakes was anything more than what would have been done prior to the District requirement.

An argument was made that this work extended beyond the 18 foot control elevation. He said they were now going up into private property on an easement and improving private property.

Mr. Ward stated that in a few minor instances they have had to go above control because of the storm, but generally that would not be a normal event. He said if it was in an easement that was controlled by the District, they had the right to maintain that easement area in its sole and absolute discretion. The underlying fee title may be owned by anyone, but the District has an easement on top of it and the District maintained. So, it was not correct to say the District maintained private property. There was an easement over that which gave the District the right to go into the easement areas and maintain them.

Mr. Elgin responded to a comment made that if they improved Bellini, they would be improving private property. He said it would not be right to make that argument with Bellini and then have other property treated differently in the same format. He said the CDD was a quasi-public quantity that had some fiduciary responsibility to all the people who were paying assessments, including the Bellini residents. He said he was only asking for fair treatment, but with respect to the legal problem, some of the responsibility for that had to go to the CDD Board and its advisors. He said the Bellini residents had no idea this was the case.

Dr. Herring asked Mr. Byal when people buy property in Miromar, were they told about the various HOA responsibilities and the existence of a CDD.

Mr. Byal responded no one would have the documentation in question without conducting exhaustive research into the plats and condo docs and so forth to be able to discern this situation existed. It was not possible that someone during a normal course of acquisition of a property would be able to discern the situation. They were told there was a CDD and an HOA and a Condo Association. He said it would not be reasonable that anybody in Bellini could have ever understood one way or another.

Dr. Herring said what needed to be addressed was Mr. Rizzo's comment that it was the CDD's responsibility to let the Bellini residents know.

Mr. Ward said he did not agree with Mr. Rizzo's comment.

Mr. Byal said he did not agree either and commented that it was just the situation that existed. He said the transfer and easement was not established and this conveyance did not occur in its normal course of events.

Mr. Ward added that it had happened because there was a developer who went bankrupt.

Mr. Byal said at the end of the day, it was important to make sure that assets were tested and inspected, but the CDD wanted to own this asset to have a complete system. He said the CDD could say there won't be a transfer, not pay the money to have an easement done, and the residents would just leave it or repair it back to the way it was, and that wouldn't be good.

Mr. Refkin asked how much difference this would make in the assessment.

Mr. Ward responded this was a \$144,000 problem over 1900 units.

Dr. Herring pointed out this was a dangerous precedent.

Mr. Ward stated the larger issue was they were going into Fiscal Year 2019 looking at probably a million dollar assessment to restore from Hurricane Irma. Plus, he said after this storm, he realized that the CDD did not have enough cash to deal with these issues. He said a million dollars over 1900 units was a big number.

Mr. Refkin said the amount would be \$76 extra on the assessment of \$144,000. He said he could see both sides of the issue. He said this assessment would go from about \$500 to \$600, but if a bigger reserve was necessary, it could go higher.

Mr. Elgin stated if they get reimbursed from FEMA that could be their reserve.

Mr. Refkin said they may not know for years about FEMA. He asked how much that would be, and the response was \$360,000, but anything that was not owned could not be claimed. He said the question was not fixing property that was not owned; the question was whether to assume the asset and then fix it for \$144,000. He said if they had bought the property as it should have happened, this would not be an issue. He said the Board generally tried to not spend the resident's money. He said his choice would be to just take responsibility, make the repairs and go forward.

A comment was made that anything above 18 would be covered by the easement, which Mr. Bernard pointed out FEMA would not reimburse. Anything from 18 below, the CDD owned, and so FEMA would reimburse those repairs. Mr. Ward stated that has always been the case.

Mr. Ward called for a motion.

Motion was made by Dr. Herring and seconded by Mr. Refkin to proceed with the acquisition of the Bellini and Volterra property as described above, and with three members in favor, and Mr. Weber abstaining for financial reasons, the motion was approved.

Mr. Ward said he would provide a conflict of interest form to Mr. Weber which would be filed. He then called for a motion to approve the minutes.

Motion was made by Mr. Refkin and seconded by Dr. Herring to approve the minutes of the November 9, 2017, meeting, and with all in favor, the motion was approved.

Mr. Bernard asked in the future what the method would be, and Dr. Herring responded that the method would be to look at each case individually.

3. Consideration of Award and Bid for Lake and Wetland Maintenance

Mr. Ward asked Mr. Bernard to present information for this item.

Mr. Bernard explained there were three vendors. He said Lake Masters was the current service being used, and their bid was \$2500 higher than Superior. He said Lake Masters was the only company that answered all the questions in the bid, concerning financial status and equipment. He said on a daily basis Lake Masters would give them the same work force, but they have a bigger work force if there were issues. He said another consideration was knowledge of the project, and Lake Masters had been there for years and were familiar with issues. If the Board awarded the bid to this company, they knew what was going on and what to do. He said their prior contract was \$108,000, and the current contract was \$90,000.

Mr. Ballinger asked if dealings with Lake Masters had been satisfactory, and Mr. Bernard responded they had been using this company for over 10 years, and it had been very helpful and responsive.

Mr. Ward informed the Board that Lake Masters had been merged into a company called Solitude, which was a British based international firm that acquired firms worldwide. He said he had received an email stating Lake Masters would now be operating under the name of Solitude.

Mr. Ballinger asked if different ownership might cause any problems. Mr. Bernard said he did not foresee any, and it was a one year removal with a 30-day notice.

Mr. Weber asked if it made sense to have some type of a document from Solitude stating that they were accepting the offer that was made as written with no changes.

Mr. Urbancic responded that they would be doing a new contract which would reflect the new name.

Mr. Ward called for a motion to approve the bid with Solitude Lake Management.

Motion was made by Mr. Refkin and seconded by Mr. Ballinger to accept the bid of Solitude Lake Management as presented, and with all in favor, the motion was approved.

4. Staff Reports

a) District Attorney

Mr. Urbancic gave an update on the permitting situation and the Army Corps of Engineers. He said there had been some correspondence relating to the permitting of the riprap with South Florida Water Management District. The Army Corps of Engineers had stated the CDD was in violation of the permit and the Clean Water Act. He said the Army Corps of Engineers stayed the enforcement of that process while the CDD pursued an after-the-fact permit for the riprap, and simultaneously pursued an extension and modification of the permit, so it applied to both the remainder of Miromar Lakes and University Village. He said the hope was to get a separate after-the-fact permit issued for the riprap, but what the Army Corps did was merge the two together. However, there were different requirements for each, and this was broken down into sections. Mr. Urbancic stated this would eliminate the enforcement action.

Mr. Ward added the riprap that had been installed, which had been subject to the enforcement action, was now approved. He said all that needed to be done on a going forward basis was to notify the Corps on the installation of any new riprap.

Mr. Urbancic said if the Board wished to put in any new riprap, all they needed to do was notify the Corps. He said they were approved up to 34,000, which was what had been approved with South Florida Water Management and zoning with Lee County. He explained that did not mean Miromar Lakes had to have 34,000, but they could if they needed. He said after the development work around the lake was completed, a certification letter would be provided which would indicate the linear feet of shoreline and riprap, and this would close out the riprap portion.

Dr. Herring asked whose cost the riprap would be, the developer or the CDD. Mr. Urbancic said it was the developer's cost.

Mr. Urbancic pointed out the 34,000 was 65% of the shoreline approved to date. He said if the shoreline increased, there would need to be another Corps permit.

Mr. Ward asked about new installation of riprap and the requirement that it be approved by the Corps before it was installed. Mr. Urbancic said he didn't think it needed to be approved, but they needed to inform the Corps that it was being installed.

Mr. Urbancic said to be informed of when riprap was being installed, the CDD needed to rely on the Master Association or Lee County. The Board discussed a possible process by which this communication could take place.

b) District Engineer - No report.

c) District Manager - No report.

5. Supervisor's Requests and Audience Comment

Mr. Ward called for comments from the Board, and their were none.

Mr. Ward called for further comments from the audience, and there were none.

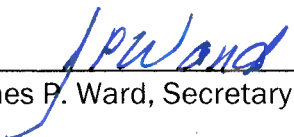
6. Adjournment

Mr. Ward asked for a motion to adjourn.

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

The meeting was adjourned at 3:12 p.m.

Miromar Lakes Community
Development District



James P. Ward, Secretary



Dr. David Herring, Chairman