IpMINUTES OF MEETING
MIROMAR LAKES
COMMUNITY DEVELOPMENT DISTRICT

The Regular Meeting of the Miromar Lakes Community Development District's Board of Supervisors was held on Thursday, March 12, 2015, at 2:00 p.m., at the Beach Clubhouse, 18061 Miromar Lakes Parkway, Miromar Lakes, Florida 33913.

Present and constituting a quorum were:

Mike Hendershot	Chairman
Doug Ballinger	Assistant Secretary
Burnie Donoho	Assistant Secretary
David Herring	Assistant Secretary
Alan Refkin	Assistant Secretary

Staff present:

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

Audience present:

Mike Elgin	Miromar Development Corporation
Mark Geschwendt	MiromarDevelopment Corporation

FIRST ORDER OF BUSINESS — Call to Order/Roll Call

Mr. Ward called the meeting to order at 2:00 p.m., noting that the record should reflect that all members of the Board were present at roll call

SECOND ORDER OF BUSINESS — Consideration of Minutes

a. February 12, 2015, Regular Meeting

Mr. Ward stated if there were no additions, corrections or deletions, a motion for the approval of the subject minutes would be in order.

Mr. Hendershot referred to first sentence on page 17 of the minutes, asked if Mr. Ward found out who the testing agreement was with.

Mr. Ward asked Mr. Cusmano for clarification, as the statement was made by him.

Mr. Cusmano thought the statement was in reference to the water use, and WUP was the acronym used.

Mr. Ballinger questioned as to page 14, line number 446, asked if the statement accurately reflected what the speaker was saying.

Mr. Hendershot said he did too, as normally the District would piggyback.

Mr. Donoho thought this was a misstatement.

Mr. Ballinger said it needed to be corrected.

Mr. Donoho asked for the language to be changed from "… saw no reason …" to "… saw reason to …"

Mr. Hendershot asked and received affirmation if the language change accurately agreed what took place at the meeting.

Mr.. Donoho sought clarification that statement made a few paragraphs above the aforementioned sentence was a correct statement by Mr. Urbancic: "Mr. Urbancic stated he was neither an SFWMD or an administrative law expert, as those two areas were a kind of specialty, so the District would probably have to piggyback on whatever the developer was doing, and join them in the effort. He believed the developer hired significant experts in the field from the State of Florida to guide them.

Mr. Urbancic agreed this was a true statement.

On MOTION by Mr. Hendershot and seconded by Mr. Refkin, with all in favor of approving the February 12, 2015, Regular Meeting minutes as amended.

THIRD ORDER OF BUSINESS **Award of Bid – Landscaping Services.**

Mr. Ward stated the subject bid for landscaping services for the District for the next eight years.

Mr. Bernard referred to the backup information in the Board's package, including all the bid information, a summary of the changes over the last bid, and the recommendation to award it to Estate, as the most qualified and responsive bidder. The landscaping services

had not been bid out since 2010, so there would be price difference over what Estate was doing presently, in light of the various add-ons over the years; for example, for whitefly spraying. He said the bid showed only a $17,000 increase from what was bid in 2010.

Mr. Refkin commented the present bid package was so complete compared to the previous ones.

Mr. Bernard indicated they took the time to break down every section, so now they actually knew the locations, what had to be done for every section, noting the old contract paid one twelfth of the bid, whereas the new contract paid for what was done each month. Thus, the District would be paying for completed work, after the fact.

Mr. Hendershot asked if it the bid was still $7,000 over budget.

Mr. Ward answered yes.

Mr. Hendershot observed the bid was still almost $200,000 less than the competitive bid. He asked if the law required the Board members to receive the whole bid package.

Mr. Ward replied he could have given the Board only the Executive Summary, but he knew the landscape services contract to be an important issue, so he decided to include in the Board's package documents showing everything District staff did regarding the bid. To ensure the record was abundantly clear, the recommendation was to award the contract to the lowest, responsive and responsible bidder, which is Estate Landscaping. He pointed out that noted in the agenda letter to the Board was that the Main Guy bid was considered nonresponsive by District staff, as it did not include any of the required information.

On MOTION by Mr. Hendershot and seconded by Mr. Refkin, with all in favor of awarding the bid for landscaping services to Estate Landscaping.

Mr. Ward remarked that the contract would commence on June 1, 2015, so staff would prepare the contracts and have them signed.

Mr. Refkin mentioned that he liked the continuity with Miromar, as there was no dividing line over what was the District's and theirs. As Mike Elgin mentioned at the last Board meeting, the continuity was worth a lot to the District, so he was glad the bid was awarded to Estate.

Mr. Bernard stated they tried to tighten up the contract, so anyone reading it could take any section and see what needed to be done in each one, rather than lumping all the required services into one overall.

Mr. Refkin thought the asset managers did a great job.

FOURTH ORDER OF BUSINESS **Staff Reports**

a. Attorney

Mr. Urbancic spoke first about the Porto Romano, stating he thought Mr. Ward had individual conversations with some of the Board members on the matter. He briefly recapped there was an issue that came up, as some time ago the CDD granted an encroachment agreement for Porto Romano, thinking it was Lot 31. They came to the District in a sort of panic right before their closing; the District gave an encroachment agreement for the overhang, and when the survey was done, it showed the house itself was a little bit into the easement.

Mr. Refkin believed the Board did the same thing for the pool on the Sorento property.

Mr. Urbancic affirmed this to be the case. He stated the other issue was there was also an AC pad and AC compressor unit in the subject easement area, so when it was sent to Mr. Krebs, he looked at it, and expressed concern that there was a really large pipe going underground in that particular location.

Mr. Krebs concurred, stating the pipe was a 36-inch reinforced concrete pipe that carried the water from the golf course and San Marino to the south through to Lake 3A, and it went through that pipe. Even though the pipe was on the opposite side of the house's encroachment, with the AC pad included, that was another obstacle the contractor would have to worry about in the event, for whatever reason, the District had to do any work on that pipe. His concern was that the District be held harmless if, for some reason, in the future the District had to do work in there that resulted in either damage to the house or the AC equipment or pad for being in the drainage easement.

Mr. Refkin questioned if the air conditioner pad was in violation.

Mr. Ward affirmed both the house and the AC unit encroached into the District's easement.

Mr. Urbancic added there was also the overhang, which the Board contemplated before, and the overhang was now a half a foot or more in.

Mr. Krebs said the overhang might be more in, as the building was not square and almost a little over four inches on one side, and a little more than three inches on one side.

Mr. Refkin asked what the process was to ensure there were no future encroachment on the District's easement areas with all the new construction taking place. He asked if the homeowners closed in the subject instance Mr. Urbancic was discussing.

Mr. Urbancic responded that the latest information was that they had close, though he was unable to find the deed of record as yet.

Mr. Refkin thought there were rules that everyone was supposed to follow, though not everybody did.

Mr. Krebs agreed, stating in the subject instance the matter was brought to District staff's attention, because the property owners came to the District staff first and asked for an encroachment agreement.

Mr. Refkin wondered if anything could be put in place to prevent such encroachments in the future.

Mr. Krebs thought there was little the District could do, as someone would have to be onsite monitoring their construction and reviewing the stakeout of every building constructed. The encroachments that really occurred were on the drainage easements, and there were two lots on the south side of the road, and two on the north side.

Mr. Refkin recalled the property owners at Sorento approached the District prior to construction and, therefore, before any encroachment occurred, and that construction moved forward.

Mr. Hendershot concurred, stating the District had discussions with the buyer's attorney at Sorento before the closing.

Mr. Ward believed Mr. Urbancic spoke to their attorney prior to the encroachment occurring, so they were on notice that there would be an encroachment, and they went ahead with the closing regardless of the easement encroachment.

Mr. Urbancic recalled them telling him they would come to the District's Board and ask for an extension of the encroachment agreement, and he informed them of the Board's agenda deadline and they were unlikely to make that deadline, telling them the date of the

next meeting. He anticipated them coming before the District, and in the interim, he had spoken with Mr. Ward and Mr. Krebs about whether to be more proactive in such instances

Mr. Refkin inquired if the footprint of the house was bigger than normal, and this was the reason for the encroachment, wondering if the house next door had the same issue, and if it did not, why.

Mr. Urbancic stated he was unsure if the house next door had the same issue, though it seemed maybe the house was a foot larger.

Mr. Krebs commented, when looking at the survey, the distance from setback to easement was 40 feet. The distance of the house that was shown on the survey was 40.1 feet, thus the house was already slightly bigger, and it was also skewed and not parallel to the site, and this could just be where the measurement was taken from one side of the building to the other. He explained from what was on the lot survey, the building encroached, and the encroachment was not that bad, but for him the bigger concern was the AC pad, as if work had to be done, say in the middle of summer, it might unintentionally wipe out the AC pad. The District should not be held responsible for such an occurrence.

Mr. Hendershot stated the District had to put the homeowners on notice, at a minimum and give them the option to either remedy it now or bear the consequences if they waited when the repair work was done.

Mr. Krebs concurred, stating that could be 20 to 30 years before the District had to touch the pipe in question.

Dr. Herring mentioned someone he spoke to on the subject matter said it was an example of people feeling it was easier to ask for forgiveness than ask for permission.

There was a general agreement by the Board this was the case.

Dr. Herring said it was obvious the property owners decided on their own to situate the home on the property where it was currently located, knowing it was encroaching on the District's easement. They would then just ask the District to forgive the encroachment. He noted there was nothing the District could do about the walls of the house, but the AC pad was certainly something that action could be taken on, and it was better to act now rather than later. The real issue was, in seeing the area, and in view of the 36-inch pipe not being straight down the center, so the house was not actually over the pipe itself.

Mr. Krebs affirmed nothing was over the pipe, but there was about a 15-foot drainage easement, where first there was two feet, and now there was a AC pad in there, so it was smaller than what was anticipated.

Mr. Urbancic added they did it two feet on each side for overhangs.

Mr. Krebs indicated, in the event someone in the future needed to get a piece of heavy equipment in there to dig that area up, that pad would be a liability in his opinion.

Dr. Herring remarked if the District did nothing, then builders in the future would just build however they wanted to and inform the District later, so some preventative measure should be put in place.

Mr. Refkin concurred, as not having a set policy to prevent such occurrences might give the appearance of allowing some homeowners to encroach, while holding others to standards set by the District.

Mr. Ballinger commented the way it was presented to the District, a certain number of inches of overhang was approved, but nothing was mentioned regarding the air conditioner pad. This was unacceptable, as someone knew the pad was being put in the wrong place, and that was most likely the builder.

Mr. Hendershot thought it could have been the subcontractor.

Dr. Herring felt someone must have known the walls of the house were encroaching on an area where they should not have been built, and he felt bad for the homeowner who likely had no clue any of this was going on.

Mr. Hendershot inquired if District staff wanted to ask the property owner to make the necessary changes now.

Mr. Ward wished to put them on notice first, as his concern as discussed with Mr. Urbancic was that there was currently a homeowner in residence that was probably told by someone that the encroachment was a simple issue to work out with the CDD. District staff needed to get together with the builder, the lawyer and the owner, if they could figure out that was, put them on notice that the subject issue was a major infringement on the District's easement, and they needed to remedy the situation, and let them come back to the District with a solution. If they came back with no solution, then the District would take the appropriate actions to make them remove whatever the encroachment was; but doing nothing on behalf of the CDD would only make the problem worse now and in the future.

Dr. Herring asked if the County did any kind of inspection before granting a use and occupancy of a building regarding such considerations.

Mr. Krebs felt sure the county did, but he had no idea what level of inspection they did as far as whether something was encroaching on an easement or a setback.

Mr. Ward commented, generally speaking, just from dealing with CDDs for so long and in his personal experience, usually one did not see a County or City find such an encroachment into an easement was a problem, as they cared little about such issues. District staff would put the concerned parties on notice of the encroachment, let them forward a solution/remedy, and hopefully that would pose no difficulty, staff will bring the results to the Board at a future meeting.

Dr. Herring observed that, included in the present thought process, resolving the subject matter would involve Mr. Urbancic's time, the Board's, etc., and those costs should all be included in how the matter was remedied. The Board should not be financially responsible for anything that it took to make the situation right. He received a Board consensus of agreement, as, ultimately, such costs came out of the pockets of every homeowner when the builder, for whatever reason, made that mistake.

Mr. Ballinger asked if the builder was close to completing building in the subject area.

Mr. Krebs stated he did not know how many lots were still available or open for construction, or how many they currently had under construction.

Mr. Hendershot thought there was only one lot left.

Dr. Herring asked Mr. Elgin what role the developer, Miromar, had in observing how these contractacors followed the boundaries.

Mr. Elgin responded there were simple points that were being missed in the subject issue, as that was a recorded drainage easement. When a builder, prior to construction, submitted an application for a building permit, he provided a survey, a certified site plan certified by his surveyor. He said if, in fact, the recorded easements were on that drawing, the County was responsible for ensuring that whatever was proposed conformed with that regulation. That is, one could not build a house inside an easement. WCI would have or should have submitted such requests to the District's Board to allow an overhang encroachment into the District's easement to get through the County process. He

mentioned being personally called by the County a number of times on things he worked on in the District, asking if they had all the documentation and whether the requests to allow the encroachment had been approved or denied.

The plan he saw for the subject site, the surveyed house, showed the house was not in the District's easement as it was submitted for permit, so the County did its due diligence. In his professional opinion, the surveyor had a bust when he laid out the house, and in the dimensions concerning the subject property, a few feet here or there was a critical encroachment, as it concerned an easement. It appeared as if the surveyor or layout crew just missed it, and such things did happen, nor was he justifying the error in any way. Mr. Elgin said, regarding the air conditioner pad Mr. Krebs expressed concern about, to the extent that the builder showed his mechanicals on the same site plan, the County should never have permitted and issued a building permit for a piece of the home or a utility piece of that home to be within that easement.

He indicated it was very specific in the land development code that no improvements should be built within easements. Thus, his answer to Dr. Herring's question was they went through a permitting process to ensure things did not get built on top of easements; that is, PUEs in the front, the drainage easements down the side yards, etc. He was sometimes flagged for lake maintenance easement overhangs that encroached, such as a vertical overhang on a second-story unit. If it encroached into an LME that the District had rights to, the County would ask what should be done. He would tell the builder to move their house forward, as it was very unlikely the District would approve the encroachment. He stated the County was the issuing permit agency with regard to the subject matter, and at the closing a certified survey was submitted, though if it was a cash deal involving no bank, a certified survey might not be done for closing. If a bank was involved, it was a requirement of the closing, and it was at that point in the subject case that the encroachment showed up.

Dr. Herring wished to know how would Miromar Development deal with such a situation when it reaches this point, not just the permitting point, not just the surveying point, but the builder actually built into the easement.

Mr. Elgin replied he was not the holder of easements to that degree. If a five-yard side yard setback was violated, but it was not an easement, and with setbacks there was a little more forgiveness in such situations. However, when dealing with a recorded easement

to a utility or a quasi-governmental agency, such as a CDD.. He said if the subject easement were that of the county, he was sure the County would make them move any encroachment.

Dr. Herring sought clarification if Mr. Elgin was referring to the overhanging encroachment of the house or the air conditioner pad.

Mr. Eglin said he was speaking about an encroachment on a Lee County-owned water main easement, whatever was encroaching would have to be removed. He was not giving the District direction, rather he was giving an example.

Mr. Krebs thought if it was a house encroaching, an effort would be made to work around, but the County would have the owner move whatever it was possible to move, such as the air conditioner pad; that would have to be relocated. With a house encroaching on a utility easement, the county would likely get some exception in writing from the property owner that if the house was damaged by work on the easement by the county, the county was not responsible for the portion encroaching in the easement.

Mr. Cusmano reminded the Board that the air conditioner unit on the plan was not the same size as what was in the final building, as it depended on the actual unit purchased, and the latter would show up on the final survey.

Dr. Herring reiterated, with all due sympathy to the new homeowner, the least that has to be done is to move the air conditioner pad and the District declared innocent for any anything that happened in the encroached easement area. His fellow Board members concurred.

Mr. Refkin asked if Mr. Urbancic would draft and present the wording of such a policy to the Board at its next regular meeting.

Mr. Urbancic affirmed he would. Let's discuss the Center Place development, noting he spoke with the Board members individually, though not collectively as a unit, in which he informed them the District filed for the administrative hearing, and a few things happened since filing for that hearing. He noted there were two sets of administrative hearing currently taking place. Miromar Development received a permit from South Florida Water Management District (SFWMD) to develop in its peninsula area, and it could include other areas. Center Place/Alico West Fund challenged the permit and requested an administrative hearing.

Mr. Hendershot asked if the location was on University Place.

Mr. Urbancic said it was not, he was referring to their additional development in the peninsula area. Center Place then went in to get their SFWMD permit, that permit was issued, and Miromar Development challenged that permit; this was the one the developer partnered to challenge, filing for an administrative hearing, and one property owner filed for an administrative hearing. He said, subsequent to that, there was a movement to consolidate those three petitions for Center Place into one action, and part of that was to consolidate both the Miromar permit administrative hearing and the Center Place administrative hearing. The end result was the administrative law judge said no, that there would be no comingling of the two permit hearings, but the three challenges from the property owner, Miromar Development and the CDD were consolidated and handled as one hearing, and it was this one he would speak about. Mr. Krebs and some District consultants were going to be deposed on the Miromar permit.

Mr. Refkin believed ten people were to be deposed.

Mr. Urbancic affirmed there would be about seven people, including the Board's Chairman, and there could be others. With regard to the Center Place permit, since that came down, the District received requests for interrogatories, depositions, and trying to schedule hearing dates and mediations, etc. There was a lot that would go into the process, and he spoke to the Board members individually, and there was a general agreement that it was time for the District to get its own counsel, in light of the many circumstances of which he already informed the Board.

Mr. Refkin stated part of the discussion would be whether the District should be part of the lawsuit, and the cost it would take the District to be a part of the lawsuit, believing the cost was estimated to be a quarter to a half million dollars.

Mr. Urbancic indicated after speaking with counsel the previous day from Greenspoon Marder that had expertise in administrative law and SFWMD permits, spending 25 minutes on a call outlining the details of the process that brought things to their current state. The counsel said he had to look at all the details, but he believed if the hearing went forward, it was likely to be a six to eight day hearing, which was what was estimated, and it would probably cost the District in the region of two or three hundred thousand dollars. He thought this fit with what some Board members were thinking the cost would be as well.

Mr. Hendershot asked what was the March 10 hearing examiner's report the Board that we received.

Mr. Urbancic replied that report was from the zoning hearing that was tied up in litigation, as Miromar challenged the hearing examiner, and her eligibility to sit as the hearing examiner. He thought some of that was still on appeal in the District Court of Appeals, but for whatever reason, she issued her report that had a wrong date on it, as she put 2014 instead of 2015. It was puzzling that the report still came out, as he thought there was a motion to stay or at least a request that the report be stayed. Though that report was out, it dealt specifically with the zoning hearing, and as it was out, presumably, the next step would be for it to move onto the Lee County Board of County Commissioners for zoning.

Mr. Hendershot recalled at the last Board meeting, the members approved Mr. Urbancic requesting an extension of time to file in the litigation.

Mr. Urbancic clarified that request for extension was only as to the request for an administrative hearing, so they filed with Miromar, filing an identical petition to theirs, filing for an administrative hearing. The request for the hearing was granted.

Dr. Herring referred to page 13 of the previous meeting's minutes, where it stated: … recommended permit, Mr. Urbancic to file the extension and do whatever was necessary on a going -forward basis with the understanding that the developer was paying for the process. He asked when that changed.

Mr. Urbancic understood the developer's position, not to put words in anyone's mouth, thinking the feeling was that the District had an asset, and the developer felt strongly that they had paid the legal costs up to this point. It was now time for the Board to standup and take steps to protect the District's assets. He explained that the way it was described to him was that the concern was if Center Place built their water management system the way they intended, it was not a matter of if but when it would fail, and that failure would impact the District's assets on a long term basis. Thus, the District should either fight the matter now or later.

Mr. Refkin asked if on the legal side Miromar and the CDD, in some respects, the legal side overlapped in what they both desired, asking Mr. Elgin if the developer was totally hands off on the lake. That is, in all the details of Miromar's suit, they made certain contentions in their actions against Center Place, and in those allegations there seemed to

be an overlap in anything the District would bring forward in the cause; it was doubtful that they would mutually exclusive. Thus, if there was a huge amount of overlap in both the District's and the Developer's cases, and in looking at the impact of the cost of the hearing process, and at what the residents would get for the money spent, it was in Miromar's best interest to make sure the matter went away. He said the developer wanted to sell houses, have a beautiful community, etc., as did all the residents of the District.'

If Miromar wanted another entity in the cause against Center Place to the tune of $200,000 to $500,000 for the residents, and no one knew what the ultimate cost would be, that cost would be divided among the 1,200 homes. The Board had the ability to go ahhead and say the District would pursue its own effort, and the residents could bear the cost, though this was not the option he desired. He stated another option was what he felt to be a layman's way of thinking, that Miromar was in the middle of the suit and already paying legal fees and had hired an exemplary attorney, as the developer wanted what was best for Miromar and the community. Yet, in the whole process, for that small portion where the District and the developer's interests did not overlap, was it worth the residents of the District bearing a cost into the hundreds of thousands of dollars for what was "thought" to be the problem. He said there was no sure way of knowing, and the Center Place entities had great financial resources they could use to fight their cause and would not drop the lawsuit.

Mr. Refkin said when the District entered into the subject cause, the Board was told that Miromar would be covering the costs, recalling when various District staff attending the various hearings, Miromar paid for their time. Now, all of a sudden, there appeared to be an epiphany over at Miromar management that felt the residents should pay for the legal costs, and put pressure on them too. He opined this was unacceptable.

Dr. Herring concurred, stating the Board would have voted differently last month when it approved participating in the effort, had it known the developer would take a new stance.

Mr.. Hendershot agreed, stating it was an accommodation by the Developer on the District's behalf.

Dr. Herring said making such accommodations had been done before by both the District and the developer in the past, but the District tried to accommodate as much as

possible. If the Board had any inkling the cost to pursue the matter could cost the District over a quarter million dollars just to piggyback onto the developer's lawsuit that would take place with or without the District's involvement, the Board would likely not have approved it. He said the District did not have the funds to cover such legal costs.

Mr. Hendershot asked if the members of the Board had read the March 10, 2015, zoning hearing findings.

Dr. Herring answered yes.

Mr. Hendershot pointed out in those findings, there were a number of accommodations that were made that addressed the noise, the safety, the water purification, all the issues that were raised at the hearing. Though he could not speak to whether they were fair or not, he wondered what claim the District had left to pursue.

Mr. Urbancic responded it had to do with the District's water management system. When the District issued bonds and purchased many lakes over which it was now responsible to maintain.

Mr. Hendershot said the lakes were one of the Districts valuable assets.

Mr. Urbancic stated it was the lakes that the District was most interested in, without minimizing the issues on boats, soil, etc.

Mr. Hendershot wished to know what the District was asking for as relief in terms of water management that was not granted by the zoning examiner, based on the findings illustrated in the report.

Mr. Urbancic replied there were some stipulations in the findings as to the water management system, but the actual permitted system went through the SFWMD, noting Mr. Krebs was better able to explain the distinction better than he could.

Mr. Krebs commented he had not read the zoning report findings, but the argument from a water management point of view was that part of their systems was located on those fines, and those fines were like baking powder; it was like dust. Center Place was going to put their lakes and some outfall control structures and discharge structures in that material, and they discussed trying to stabilize it and doing reduced slopes. However, from communications at the zoning hearings, and from communications with people in the District's office who helped worked with mines and develop them, the wash material had no

rigidity, no structural integrity. He said the substance would keep becoming powder and moving.

From a water management point of view, the way District staff saw the situation, the concern was Center Place would construct their lakes somehow, and they managed to get the certified, but eventually the fine would liquefy and start moving through their system as the lakes failed. Their system discharged directly into the District's system, and based on some of the results his staff had when they were doing dredging operations in the subject area to help move some of the fines from different locations, when that material became suspended and fell out, if it fell out on the District's side of the ownership line, there could be other conditions the District could do about dredging to keep channels open. If the fines move through the District's lake system to the control structure, the District was ultimately responsible for whatever moved through the system.

This meant probably getting SFWMD involved, and likely require a lawsuit if the owner/developer did not try to remedy any of these damages, the District would have to get involved in a lawsuit to force Center/Place to clean up the problem.

Mr. Urbancic asked Mr. Krebs to explain further what SFWMD was looking at in comparison to what Lee County was looking at.

Mr. Krebs replied SFWMD, in looking at the application, was taking information that the applicant gave them on face value, that the applicant believed they could construct these improvements in those fines and make them work. He was not convinced.

Mr. Hendershot observed that Mr. Krebs was attacking the credibility of the developer of Center Place. The March 10 zoning report, included restrictions on the fines areas.

Mr. Krebs agreed, but referred to the exhibit Center Place used, whereby they went out to the area and did a dozen or two borings in those fines, and from that they came up with an area that was suitable to build these lakes. However, a dozen or two borings in an area that might be 300 to 400 acres of fines, in his opinion, did not give a good indication of where good material began and where bad material began. Center Place's measurements could be off 10 to 100 feet, or even more, and found the one pocket of good material surrounded by bad. He understood what they were trying to get approved in zoning, but they were now designing a system that corresponded to these lines of where good and bad

material was and, again, looking out for the District's interest, he did not think the data was sufficient from the District being the holder of the permit to feel safe that Center Place's lake system would work as they believed.

Dr. Herring commented on reading all 80 plus pages of the zoning report, and he saw the restrictions put in place, and he was very underwhelmed. The report basically said if Center Place did something that had detrimental effects in the lakes, they just had to inform the District of the problem, but they were not obligated to include the District in any discussion of how to remedy the situation. He thought it was pretty disheartening when he read the report, so the concessions made by Center Place and the restrictions put upon them, were inadequate.

Mr. Hendershot pointed out Center Place was required to file a water quality report and plan with the District as to what they had in place to ensure water quality.

Dr. Herring affirmed they did, but he believed they did not have to include the District's input in any of those plans.

Mr. Hendershot thought they did have to include the District.

Dr. Herring said not in terms of any plan of how to remedy it.

Mr. Hendershot concurred, they did not have to include the District in any plans to remedy any problems.

Dr. Herring stated if the County was unable to get someone to move their home six inches over the line, how could the County be counted on to hold Center Place accountable if, for example, the amphitheater was not aimed in the direction they were supposed to aim it. The same situation applied to the noise going beyond 11 o'clock at night, or if the lights gave off illumination above what Center Place indicated. He thought the County could not be trusted to be on the District's side.

Mr. Hendershot wondered if the County was any more reliable than the judge, feeling the word of the latter was more reliable.

Dr. Herring said he could not imagine that the County would go against what the hearing examiner recommended, though it almost seemed that this was what would happen. It did not seem to him that they even presented the scientific evidence of Miromar's experts in any detail, they just went 100 percent with the results of 10 or 12

cores, where they were not obligated to tell the District if some of the cores failed. He noted they just presented the ten or 12 best cores.

Mr. Hendershot wondered if the zoning hearing examiner's findings have any weight in the other proceedings.

Mr. Urbancic did not believe it would become a part of the SFWMD proceeding; those would be completely separate, though some of the experts might be deposed in the SFWMD proceedings, and they might be asked to testify. The zoning report would simply go to the Board of County Commissioners.

Dr. Herring felt this brought the matter back to whether or not the District would continue with the lawsuit on its own and spend $200,000 of Board money.

Mr. Hendershot asked if the District was now a party to the suit.

Mr. Urbancic affirmed this to be the case.

Mr. Hendershot questioned if the District withdrew its suit, would the matter be dismissed with prejudice.

Mr. Urbancic imagined the District's portion of the suit would be dismissed with prejudice.

Mr. Hendershot pointed out this meant the District would be forever barred from raising the issues in the future.

Dr. Herring felt if MIromar Development was raising the same issues the District was raising, why should they be raised twice at significant expense to the homeowners. He assumed that Center Place and Miromar hired the two best lawyers in the State, so other than the District spending over $200,000 to hire the third best lawyer, he failed to see the advantage of defending the District's cause separately.

Mr. Hendershot asked if there was issue, whereby, the District would have standing, and they would not.

Mr. Urbancic commented, originally, one of the concerns was the consolidation, and he thought they had some merit there. By having independence, that went against having things consolidated. If everyone was linked together, consolidation was possible, but Center Place did not want their permit consolidated, and he appreciated that concern. The District's case was consolidated only as to the Center Place permit, but there still might be some concerns about perception to the administrative law judge, and were they two

independent parties, did they have separate interests, and what separate interest did the CDD have that Miromar could not articulate.

Mr. Refkin inquired if Miromar Development opposed to paying the District's legal fees, as they were paying them before.

Mr. Elgin wished to clarify a comment made earlier that had been carried through some of the present discussion. He asked the Board not to confuse zoning action with the SFWMD petition. What the CDD was party to at the zoning hearing, where the District's experts and attorney spoke on the record, as did Miromar Development's representatives at that hearing. That was a separate action from the current petition and the SFWMD challenges. He indicated both the District's engineer and attorney could verify that the CDD was the operating entity with which the water management system for Center Place would discharge through. Miromar Development Corp./Miromar Lakes, LLC, was not the operating entity. He stated the CDD had assets and was the operating entity that would be impacted by the subject petition and challenges today, tomorrow, and into the future, and the Board was responsible for that operating entity.

Mr. Refkin restated if the District got into areas other than the water management, would Miromar be willing to pay the District's legal fees like they did in the past.

Mr. Elgin responded they are the CDD's assets, and you need to protect them.

Mr. Donoho believed Center Place's discharging through the District's assets would indirectly affect the developer, Miromar Lakes. Though the District might be the operating entity, but any problems that arose would have a domino effect that would include the developer.

Dr. Herring asked if he is permitted to ask Charlie what was in the note passed to you by Mr. Elgin.

Mr. Krebs stated it was the cost per unit, which would be $227, to cover the legal costs for the subject matter, assuming the legal costs were $250,000.

Dr. Herring thought, in reality, the legal costs would be closer to $500 to $750 per unit.

Mr. Ward said he was unsure of where those calculations came from, but $500,000 worth of legal cost would cost each resident $240 per unit.

Mr. Hendershot commented this assumed the full 2000 population, which meant Miromar would still pick up 47 percent of the legal fees.

Dr. Herring asked the other homeowners present how they would feel if they received a bill for another $250.

A male speaker replied everybody's circumstances were different, and he would be in favor of the additional assessment, as he thought most residents felt, depending on one's perspective, that the subject situation could turn out to be an amusement park, with weekend U2 concerts. Depending on one's location, some residents felt they would not be affected. Residents closer to the beach, such as he, were clearly going to be affected to a major extent and felt the easy path would be to fight tooth and nail, and put the responsibility in the District's hands. Thus, he thought many residents would go along with the special assessment, as it was a critical situation.

Mr. Refkin remarked it was unlikely that the District could stop Center Place from being developed, as the City and many other entities were behind it. The issue being discussed at present was that the residents did not want the water to look like a pan of baking soda had been dumped in the lake.

A male speaker stated the builders were not developers, rather they were flippers. With enough pressure, it slowed them down to the point where they may consider more of it coming in and making an offer. He did some advisory work with Bank of America, and SunTrust, and the developer would not get many financial backers with significant resistance from the community, and from the delaying tactics, The District needed to reevaluate how much they should wait before they begin to see any money, and who would back it.

A male speaker commented it sounded as though it was a decision to pay now or pay later. That is, pay now to defend the District's cause, or pay to fix it later on.

Dr. Herring stated if Center Place spoiled the lake in any way, they would be responsible for correcting the situation, probably via lawsuit he guessed. If Center Place ruined the lake, it was not the District's responsibility to make it whole again, if it was possible to prove that what they did spoiled it.

Mr. Urbancic thought there was an argument, as the District, as the operating permit holder, would be responsible, so that was the gave the Board the now or later scenario.

Dr. Herring wondered what role the County played in proving what happened to that water.

Mr. Krebs replied the County would have no role in the process, as it would be a SFWMD.

Dr. Herring indicated they would investigate it and say, "This lake has survived for X number of years until Center Place came in, and here's where the pollutants came from."

Mr. Krebs responded if a complaint was filed against Center Place and SFWMD came in to investigate the matter, that would be one thing, but if SFWMD determined the District's system was failing for another reason that required changes to the system, it would be necessary to track down where it was failing and why. The failure might be found to be coming from Center Place or the District as the responsible entity; there were numerous 'what ifs' on how the system could fail, and the ultimate outfall for both systems was a weir the District controlled. He said, as the District was responsible for maintaining the system, if a problem was discovered at the weir, the District would be the first entity contacted, and it could go in any direction after that.

Dr. Herring observed that the District somehow became responsible for the north lake, despite not owning it.

Mr. Krebs clarified the District was responsible for what went through the weir, as the operation of the weir and the system that went through it was in the CDD's name.

Mr. Hendershot asked if the weir was on the north or south lake.

Mr. Krebs indicated the weir was on the south lake. In 2004/2005, there was an application to connect the two lakes when that land was owned by a different party, and changes were made, the idea being that everybody would have recreational rights to use the lakes: the University, Miromar Lakes, and the adjacent landowner. The system was designed to take the water that went into the north lake, pass it through to the weir, as the main lakes did not do water quality, they did water storm water attenuation.

Dr. Herring asked if the District would be judging water quality below the lake in the District's lake.

Mr. Krebs replied the District would be judging the water quality by what came out of the weir, the downstream side of the weir.

Mr. Hendershot mentioned the District had the MPDES reporting for accounting anyway.

Mr. Refkin asked if the District decided to continue with the litigation, would there need to be an assessment imposed earlier, rather than later, since attorneys did not take IOUs.

Mr. Urbancic answered yes, in terms of paying an attorney, the District would have to pay a retainer.

Dr. Herring thought Miromar Development should pay their assessment first, and that would supply funds for the retainer.

Mr. Refkin agreed this was a great idea.

Mr. Urbancic affirmed the District would have to pay some funds up front, regardless of the lawyer selected, as they would want to be paid something, so they could begin working immediately to get up to speed, which the District would need them to do very quickly.

Mr. Ward commented, not to minimize the cash issue, but the District had $400,000 in cash in the bank, and if the litigation might cost $500,000 before the end of the current fiscal year, the District would not have the funds. Thus, at the end of the day, this line of action was not feasible. He said the District had to do something else, as it could not incur those kinds of costs and even remotely begin to think of ways to pay for them, as it just was not possible.

A male speaker remarked as a ten-year resident in the District, he was witnessing these forces coming together with monumental legal fees, and the logic of what was taking place escaped him. Somewhere along the line, it became much easier if the District could simply exchange University Place property for this property, however there needed to be some accommodating money to make the deal go through. With all the entities involved and the size of the legal fees being discussed, it would lay waste the entire neighborhood. He believed there were was a great deal of similarity between the two projects at University Village and what was taking place at Center Place, and he did not want the university owning property that wrapped around Miromar, as they were continuous properties. The exchange would keep everybody happy, avoid years of back and forth, as he believed they would destroy that lake.

Mr. Hendershot commented the problem was now that the District was a party to the suit, but not being a position to effectuate a compromise as suggested above, Miromar Development was the only entity that could take such action. The Board had no real authority, but since the District was a part of the litigation, if the Board did not want to abandon the case and prejudice the District's rights in the future, the District had to remain as a party to the suit.

A male speaker understood that position, but he failed to understand Miromar Development's logic behind getting involved in a heavyweight fight over the subject issue that would take years to resolve. Their home sales on the peninsula could be adversely affected once the word got out that would be an assessment on property owners to cover legal costs, particularly if the end result might be, for example, a 24-hour Wal-Mart visible from someone's property. He suggested letting cooler heads prevail now.

Mr. Urbancic indicated there was probably only so much Miromar Development wished to say for the present, as representatives of both the developer and the District would be deposed, so it was necessary to be careful what questions were asked of Mr. Elgin. However, the Board was at liberty to respond.

Dr. Herring noticed the homeowner had been present for the whole meeting, so he knew it was not the Board's intent to spend half a million dollars of District funds on legal fees, not just as Supervisors, but as landowners. The Board was just trying to devise a better mousetrap on how to address the situation.

A male speaker felt if the data on the subject matter were placed before ten reasonable people, a solution might be difficult to find.

Mr. Hendershot asked, assuming the decision-makers were reasonable men, and the District had to fund the process, what type of assessment would the District be looking at procedurally.

Mr. Ward stated, outside of the constraints of levying an assessment pursuant to the District's budget, and collecting it on the tax roll, the District had to go through the same process as when the budget was adopted. This meant a notice had to be sent to residents, a method of collection had to be devised for billing 2,000 units, residential plus the Miromar Development units, and wait for the funds to come in. If the money did not come in, the District had to go through a process to collect the monies.

Mr. Hendershot asked if the District started special assessments on residents, how would this affect future home sales.

Mr. Elgin stated he could not comment as to the question, as he was not involved in sales and marketing, so he could not predict the effect on future home sales.

Dr. Herring restated his belief that the Board would not have approved entering into the subject litigation at the previous month's meeting had they known such an expense was forthcoming. He asked the Board if they felt this was a correct statement.

Mr. Hendershot recalled passions were very high over Center Place, as many residents were up in arms, and he was not sure whether the Board would have made the same decision. However, the Board's decision was made based on the guarantee from the developer that the District's legal fees would be covered by Miromar Development. He received a chorus of agreement as to his latter statement from fellow Board members.

Dr. Herring remarked that element played a large part in the Board's decision, as they all agreed that in theory the litigation should go forward, but had they looked at it logistically and saw that it might take $500,000 to do it, he was unsure if the Board would have approved the District's becoming involved.

Mr. Hendershot agreed, stating costs of that size had a way of cooling passions.

Mr. Refkin observed the Board was certainly never told when the process started that the District would go down this road of spending funds of that amount on the matter.

Mr. Donoho thought the District was just being asked by Miromar Development to join in the litigation, according to the minutes.

Mr. Hendershot added in the zoning matter.

Mr. Refkin commented the fact of the matter was the Board had no idea what the legal fees were.

Mr. Urbancic affirmed there was no way of to tell, as if the matter went to mediation and was settled, this was all the better, as it would save all parties concerned a lot of money, etc.

Mr. Donoho understood that the District's revenue came from what was collected on the tax roll.

Mr. Ward answered that was correct.

Mr. Donoho felt the District was in a situation, whereby it was crunch time, as the District did not have the cash to pay such legal fees, so would the District need to borrow the funds to cover such costs.

Mr. Ward replied the District could not borrow monies for that purpose.

Mr. Donoho asked how the District was to get an attorney to represent the CDD in the subject matter.

Mr. Ward responded the $400,000 cash the District had was its reserves, and if $100,000 of those monies were spent, the District would be hurting in the months of late November and December in terms of paying bills. If an assessment was put on the residents' tax bills, some of the money came in during the latter part of December, so there would be some revenue to pay the fees. He said if the Board decided to move forward with hiring an attorney, it might be possible to work out some deal that the District would pay them later in the year, versus sooner in the year.

Mr. Hendershot noted the District's 2016 Budget is in September.

Mr. Ward clarified the 2016 budget as adopted at the public hearing in September, but the budget process began in May, but at the end of the day, whatever the Board adopted, the funds would not be forthcoming until the end of the December, as the tax bills were not sent out until November.

Mr. Hendershot said if the funds were built into the budget, it was arguably not an assessment.

Mr. Ward recommended, if the Board decided to hire an attorney, was to build the cost into the District's budget and not go through a separate assessment process.

Dr. Herring wondered if the cancelation of or the imposition of more restrictions on Center Place was the goal the Board hoped to achieve if the decision was made to hire a lawyer for the subject litigation and paid them a half a million dollars.

Mr. Urbancic felt there would be a Center Place someday, it was going to happen, it was just a matter of how, and if the District could prevent them from building their storm water management system in a way in a way that it was likely to fail. The latter would be the success. However, no one knew what it would take to reach that outcome. As contentious as the process had been thus far, it appeared matters would go to an administrative law

judge, it was unlikely that it would be settled in mediation. He said even when matters went to the judge, after that decision, there was an appeal process the losing party could use.

Dr. Herring observed the CDD could spend $500,000 and still end up with Center Place be spoiling the District's waters, and the District having to sue them in the future

Mr. Urbancic affirmed, if a chart were laid out, this to be one possible outcome.

Dr. Herring asked if that outcome was a good possibility.

Mr. Urbancic responded that he could not make such a prediction.

Dr. Herring remarked, based on the zoning report and how the administrative judge ruled on the zoning litigation, Center Place seemed to be getting everything they wanted, as he thought the restrictions the judge placed on them were minimal. Water management issues were addressed in the zoning hearing, as the report indicated, and the judge approved Center Place's plan on water management.

Mr. Krebs explained what was done regarding zoning did not necessarily mean that the District would grant them. They were two different entities, and the District had control over how a water management system was approved. He stated the zoning might outline aspects of the system, but the real mechanics of what made it work and why was approved by the District. Thus, the two area were similar but definitely separate, and the controlling entity is the SFWMD.

Mr. Hendershot wished to confirm the zoning had to be approved by the County Commissioners.

Mr. Krebs affirmed this to be the case.

Mr. Hendershot asked if the County Commissioners would require a SFWMD report.

Mr. Krebs replied that was part of a development order process; in order to begin construction, a developer had to have a District permit.

Mr. Hendershot asked if the litigation would possibly impact that process.

Dr. Herring asked if the District had weighed in on that process.

Mr. Urbancic stated that the District did not want to issue the permit to Center Place, and the SFWMD issued the permit, and that was what instituted the challenges. Thus, the permit was issued and had been challenged, and this was what the administrative law judge would review, whether or not it was proper to issue that permit.

Dr. Herring asked if the SFWMD already came down in favor of Center Place.

Mr. Krebs answered yes, the SFWMD looked at the information supplied to them and, based on that information and that it satisfied certain requirements, they had to issue the permit, as they went through and got answers to all their questions. However, this did not necessarily mean that the SFWMD had the ability to look at everything, or there were areas that they were not allowed to look at. For example, the borings were taken at face value as to what was provided, and the frequency of the borings, and he did not think the SFWMD was allowed to ask about the structural nature of the soil material. At least, he had never had them ask about that aspect in any of the permit processes with the SFWMD, as the general assumption was that they were dealing natural, native soils, so they don't worry whether the soils were suitable to support a building. That was the building engineer's department. Thus, there were limitations on what the SFWMD reviewed as part of an application, and as far as he understood, there was insufficient information when it came to the results of the fines used come to their decision to grant the permit.

Dr. Herring asked if none of the District's experts had been able to pass on information to the SFWMD persons prior to the granting of the permit.

Mr. Krebs indicated he never had anyone provide secondhand information on an application, as the information relied on for the decision came from the applicant, so there were no outside or interest parties supplying alternate data.

Mr. Urbancic commented the affected parties could then challenge the permit after it was granted.

Dr. Herring asked if it was Miromar Development's opinion that the District was the only entity that had standing in the subject litigation.

Mr. Elgin answered no, all interested parties with an interest in the water management system for Miromar Lakes should be a party and were parties to the litigation.

Mr. Hendershot agreed, stating economic and legal title.

Mr. Urbancic affirmed, as they already gave an order allowing these three requests for hearing to go forward, so there had already been a sort of preliminary decision on that.

A male speaker remarked on one hand, the District could spend the money and get no results for it, but on the other hand, if Center Place spoiled the lake, even they ultimately paid to rectify it, the lake would be damaged, and it was already going through issues now.

Mr. Hendershot thought there was a lot more than $500,000 at stake.

A male speaker asked if Center Place, as a property owner, was obligated to pay CDD fees.

Mr. Urbancic answered no, they were not within CDD boundaries.

Dr. Herring observed in the document they did suggest that they have a CDD, but Center Place was not obligated to have one.

Mr. Hendershot said the CDD had no control over Center Place, and that was why the District complained on a nuisance, scientific and other bases at the zoning administrative hearing, and the judge granted some relief. However, the only way for the District to secure any real relief was through a legal process or through the final zoning determination of the County Commissioners. He thought the best way to influence that was through the SFWMD challenge.

Dr. Herring sought confirmation it was Miromar Development's position that they would give the District no financial assistance regarding their obligations in the subject lawsuit, other than what they already paid the District as a landowner.

Mr. Elgin replied he made a statement on record in reply to the question when it was asked earlier in the meeting; he was not going to repeat it for a fourth time. The District had an asset, your the operating entity.

Dr. Herring apologized for asking Mr. Elgin to repeat his answer.

Mr. Elgin understood but noted his response was the same as before.

Mr. Hendershot observed there still was a lot of interest and passion about the District doing anything and everything possible to stop or delay Center Place as much as possible, or have as much influence over it to mitigate any problem anticipated, whether it was nuisance, safety, water quality, etc. He thought the District ought to continue the legal process, put it off as a budget item for 2016, and fund it out as best the District could until then. He asked about the timeline for the hearing.

Mr. Urbancic stated the hearing process would move fairly quickly, though the aim was for a hearing date at the end of May, but due to the unavailability of Center Place representatives, it was more likely to be in June or a little later. The hearing process was a lot quicker than a court proceeding, so by July the process could be over.

Mr. Refkin asked the monies the District might have to spend might be required quickly. He asked Mr. Ward if the funds would be available, given the possible speed of the litigation process, as the District could not go through all its reserves.

Dr. Herring asked if the public would be allowed to make comments at the administrative hearing.

Mr. Urbancic said he did not think so, as in his experience the process was similar to that of a court proceeding, and it was unlikely that the judge would allow public participation.

Dr. Herring wondered if there was some strategy by Center Place trying to push the hearing date into the summer months, as it was with the zoning hearing.

Mr. Urbancic answered no, they would set up the hearing location, and it would hearing would take place in a similar fashion to a court proceeding with a court reporter.

Mr. Ward concurred.

Dr. Herring asked if residents could be called by parties as witnesses if desired.

Mr. Urbancic stated they could theoretically, noting most of the persons at the present meeting were already on the witness list, and could testify in some capacity at one or more of these hearings.

Mr. Ballinger felt sure this was not the first time Mr. Ward has seen such matters unfold in his field.

Mr. Ward answered no.

Mr. Ballinger asked him how, in Mr. Ward's experience, had other CDDs faced with similar situations handled them, as he imagined other CDDs did not keep such a sizeable amount of funds readily accessible.

Mr. Ward replied that Mr. Ballinger is correct, they did not have those kind of funds available, but in years past, Districts had the ability to do short-term financings with banks and borrow the money on a short-term basis for a year to deal with such issues. Since 2006 when the market collapsed, that market completely dried up, and there was now no ability for a CDD to borrow money from a bank, mostly due to all the defaults that occurred in Districts. At present, I can't tell you the solution to the financial end to the subject litigation, but if the Board wished the District to proceed with the litigation, we could see what could be done.

Mr. Refkin said, assuming the monies had to come from the residents, that the timeline would be condensed, and knowing the District only had $400,000 in the bank, it appeared the Board and District staff had to devise a plan on how to build a sufficient reserve to cover the potential cost of legal fees.

Mr. Ward stated there was no way the District could get revenue from the residents via the tax roll before December 2015, even if the special assessment process was begun in April 2015, it would be June before it could be adopted, and August before any money would be forthcoming. This was assuming all the residents paid the money in that timeframe, and that was a big assumption.

Dr. Herring commented the District knew Miromar Lakes Development would pay 47 percent of the assessment right away.

Mr. Hendershot thought the problem was what happened if some residents did not pay the assessment, hence it being better to incorporate the cost into the District's budget, so it would be billed on the regular tax roll.

Mr. Ward felt the worst step the District could take was to levy a separate assessment outside the regular budget.

Mr. Hendershot likened the present financial issue to that of a hurricane.

Mr. Ward agreed it was like a major disaster.

Mr. Refkin stated District staff had to try to get any legal counsel to work with the District with regard to some kind of deferred payment of fees until it corresponded with the District's normal revenue collection process.

Mr. Urbancic believed any legal counsel would want to be paid up front and know they could collect a certain amount at the beginning.

Mr. Hendershot asked about the alternative of the District not proceeding with the litigation and withdraw from the case.

Mr. Urbancic presumed the District could withdraw, but he was unable to say if that action would expose the District to fees on the side of Center Place claiming costs for delaying the process in the District filing the suit.

Mr. Ward felt the Board should take it one step at a time, and if the Board wished to move forward with the process, he would meet with Mr. Urbancic and try to come up with a financial solution by the next Board meeting. They needed to speak with an attorney to

figure out what kind of fee structure could be put in place, the type of retainer that was needed, and he would find out how much of the fees could be deferred to later in the year. He would inquire at a number of banks to determine if there was any potential for the District to get a loan to cover the legal fees.. Thus, they would do some due diligence in the interim until the next Board meeting.

Mr. Urbancic commented that his only concern was that if the Board wanted to proceed with the litigation, the District needed counsel immediately.

Mr. Refkin asked if staff had a list of potential attorneys they wished to approach.

Mr. Urbancic replied they spoke with Glenn Smith from Greenspoon Marder the previous day, and they received a recommendation on another. Mr. Smith appeared very knowledgeable and experienced, and he was already familiar with all the parties in the litigation.

Mr. Hendershot asked if there was more than one lawyer in the legal firm selected by Miromar Lakes Development.

Mr. Urbancic thought joint representation was ideal, but he asked the questions previously, and it seemed this would not be possible for the reasons already discussed regarding the separation of interests and responsibilities the developer wished to maintain. Doug Manson was the other lawyer who was recommended to the District by the developer's counsel, the thinking being if the District engaged a lawyer on friendly terms with the developer's counsel, there would be some benefits that came with that association. Mr. Manson was out of Tampa, and he was unable to contact him prior to the present meeting, though he was able to have some email correspondence. He pulled up Mr. Manson's website and read about him, and it appeared he was extremely experienced in the subject form of litigation.

Mr. Refkin wished to know where Mr. Smith of Greenspoon Marder was from.

Mr. Urbancic responded that Greenspoon Marder was a statewide firm, and Mr. Smith was located on the Florida east coast.

Mr. Ward thought Mr. Smith was located in either Boca Raton or Fort Lauderdale.

Mr. Urbancic recalled Mr. Smith indicating he had been practicing administrative law in SFWMD permitting on the Florida west coast for over 30 years.

Mr. Ward mentioned Mr. Smith too knew all the parties involved, as well as the counsels on both sides.

Mr. Hendershot asked the Board for a consensus on whether or not to proceed or leave it to the next meeting.

Mr. Ward replied that District staff needed a decision from the Board now with respect to hiring the attorney, as there was no more time to wait.

Dr. Herring asked if there were any more comments from the public about a willingness of the residents to cover the legal fees via the regular budgeting process.

A male speaker asked who the current bondholder was for the District.

Mr. Hendershot replied the District had a number of bondholders.

Mr. Ward affirmed this to be the case, but he was not sure who they currently were.

A male speaker asked if a second bond be issued quickly to cover the legal fees.

Mr. Ward answered absolutely not, as the District was precluded by indenture from doing that.

Mr. Ballinger remarked the funding would have to come through either an assessment or incorporated as a cost in the next fiscal year's budget.

Mr. Ward affirmed this to be the case.

Mr. Hendershot stated if the District decided to do an assessment, Mr. Elgin should seek to determine the effect it might have on the developer's future home sales.

Mr. Elgin stated he was not sure the developer could ever answer that question, as that was a projection he did not thing anyone could make.

Mr. Hendershot commented if the route of a special assessment was chosen by the Board, then an assessment letter had to be sent to all existing homeowners, as well as to the builder/contractor with a copy to prospective buyers under contract.

A male speaker asked if an assessment was tax deductible, versus regular taxes.

Mr. Urbancic thought the District could not take a legal position on that issue, as it was more of an individual issue.

Mr. Hendershot remarked however property owners were treating their CDD fees, he assumed they could continue in this fashion.

Mr. Ward concurred, residents should consult their tax professional.

Mr. Refkin asked that when Mr. Urbancic spoke with the various potential legal counsel, he should see what kind of payment terms they were willing to negotiate with the District and how flexible they might be to accommodate the District's present cash flow situation.

Dr. Herring thought it would be very helpful, once the District verified the numbers Mr. Elgin presented, to know that it would not be an astronomical amount of money per household to fight the subject litigation. Most residents would likely be amenable to paying an additional $250.00 to join the litigation.

Mr. Ballinger commented if the District was going to go to the residents for the money to cover the legal fees, then it should be for the correct amount, as it would not be well received by residents if the cost was underestimated and the District had to go back to them for more money. Thus, it might be better to estimate an amount that was more than what was deemed absolutely necessary to start the process, rather it should be a figure that would ensure residents would not be asked for additional funds.

Mr. Hendershot said if the cost was built into the District's annual budget, $500,000 could be allocated each year for those legal costs if necessary.

A male speaker asked if the CDD had the authority to add a special assessment to the quarterly Master Association bill.

Mr. Hendershot was unsure how this would be billed, as, currently, residents received their bill through their tax bill.

A male speaker said the cost could come with the quarterly Master Association assessment broken down into four-$100 increments with a well-crafted explanation to the residents.

Mr. Hendershot agreed it would be buried with all the other Miromar increase in expenses the District did.

Dr. Herring believed the District had no financial association with the homeowners' association (HOA).

Mr. Urbancic affirmed this to be the case, so the assessment would not be legally enforceable by the District.

Mr. Ward concurred.

Mr. Urbancic commented, theoretically, the Master Association could collect a pot of money for and give it to the District for purposes of the lawsuit, the District could accept the funds.

Dr. Herring felt, on behalf of the Board, that Mr. Urbancic and Mr. Ward could be trusted to negotiate terms with the potential counsel mentioned above, so the District had to at least proceed and find out what the possible costs could be. It appeared the Board had no choice but to proceed with the litigation.

Mr. Ward agreed, and in terms of the finances, the Board needed to grant Mr. Urbancic and him with the authority to proceed with retaining the counsel, as it was unlikely that they would spend even $100,000 in 30 days. Thus, they could hire the lawyer, get him to analyze the matter and get the process started as quickly as possible, and initially use some of the District's reserves to begin.

Mr. Refkin pointed out if the District hired its own counsel, Mr. Elgin would have to leave the room during discussions between the Board and its legal counsel at future meetings.

Mr. Urbancic answered no, Mr. Elgin had a right to be present, as this was a public meeting. However, there was an exception to the Sunshine Law, whereby governmental entities could have a closed session on pending litigation matters, but it was an administrative difficulty to go through it.

Mr. Ward added the exception of the law was only related to settlement negotiations related to the suit, settlement negotiations related to ongoing litigation costs, and a settlement agreement; it was a very limited exception to the statute.

Mr. Urbancic stated it was very difficult to convene a closed session, as the District would first have a meeting with the lawyer to request the session, it would then have to be advertised, and a court reporter had to be present at the closed session. Once the litigation was over, the transcripts of the closed session had to be released.

Mr. Ward indicated the Board's motion would be to authorized the District Manager and District Attorney to retain the appropriate counsel for the Center Place, SFWMD administrative hearing.

Mr. Refkin asked if that included authorizing payment up to a certain amount in legal fees.

Mr. Ward thought it best to leave the amount of legal fees up to the Mr. Urbancic and his discretion at this point, and they would come back to the Board at the next meeting with more fine details.

> **On MOTION by Dr. Herring and seconded by Mr. Refkin, with all in favor of approving authorizing the District Manager and District Attorney to retain the appropriate counsel for the Center Place, SFWMD administrative hearing.**

Mr. Urbancic updated the Board at the next meeting on some pending bills in the Legislature; one had to do with the way local governmental entities reported audits, as well as website requirements. He would allow those matters to playout more in the Legislature, and then update the Board as the session proceeded.

b. District Engineer

None

c. Asset Manager

Mr. Hendershot remarked on having an issue, based on the minutes from the last meeting, where apparently there had been a lot of correspondence going back and forth between residents and Miromar and others in terms of the water quality of the District's lake. There appeared to be a difference of opinion between some of the lab work generated by the FGCU and that generated by District staff. Earlier Board discussion focused on how important an asset the lake was to the CDD, the residents, and to property values. He said he had been cornered by a few residents and received a considerable amount of correspondence from them. He stated there were many concerned persons in terms of them feeling the lake quality continued to decline, and most of those who expressed complaints were fishermen, and they were basing much of their beliefs on the information from FGCU. He asked if there was a way to get information out to residents about the testing of the water done by the District, as well as by the developer on the quality of the water and the results of those tests.

He understood there was a meeting on March 6, 2015, with Mr. Elgin, asking him to brief the Board on what transpired at that meeting.

Mr. Elgin affirmed he met with some residents, but he preferred if the District's Asset Manager first gave his perspective, as he had been providing all the feedback to the Board regarding the subject matter. To the extent that he could add to that information, he would, particularly with regard to the grass carp situation.

Mr. Cusmano commented they went back from day one and looked at everything FGCU was doing and what they were doing, and Mr. Bernard had a meeting with Bill Kurth who did some testing. He said to keep in mind there was a difference between clarity and quality, and that was where many people lost sight of what was really going on out there.

Mr. Bernard noted the results of the meeting was included in the memo to the Board, noting the original testing was done by university students who sent back reports that the lake was failing, etc. They conducted independent tests, and those results were contained in the testing lab report, along with monthly testing that was now being done by the developer and MPDES downstream on the lake condition. He said they were putting together a database for all the years back from 2004 to 2009, and it showed the condition of the lake was better now than it was then. On the grass carp issue, the grass carp were flourishing so much, that they had problems keeping the plants in the mitigation areas, and the littoral shelf was being eaten by the carp. He stated they hoped to devise a plan that would give options to resolve the situation, including removing some of the carp, replanting the shelves, putting barriers out on the shelves to keep the carp out, etc., and present it to the Board at their next meeting. Bill Kurth from Lake Masters did the testing to ensure what was coming from the university was true of false, and as his report contained in the Board's agenda package illustrated, the results were not nearly as bad as those reported by the university students. He said the testing done by the students was not supervised by their professors with no consistency or due care being done. He said they would begin their own testing in the next budget cycle, along with the developer's testing to create an updated database, the aim being to get the lake conditions back to where Mr. Kurth thought it should be.

Mr. Hendershot asked if the university was onboard with the numbers the District now had, or had the numbers not yet been shared with them.

Mr. Cusmano replied the independent results had yet to be shared the university, and the intent was to have a meeting with them to share the results.

Mr. Bernard affirmed they would bring all the concerned parties together once the database was established, share those results, so everyone could come to a consensus as to what was the best method by which to maintain good water quality of the lake.

Mr. Hendershot remarked on reading about one test that was done at the Ben Hill Griffin Bridge that said the phosphorous was high, asking where that was located.

Mr. Krebs explained this was the bridge that flew over the wetland area south of the university entrance, and this was at his request for Mr. Kurth to get water samples from an area downstream of the District's outfall just as a comparison. Mr. Kurth found some standing water where the bridge spanned the CDD's own mitigation area to the north and south of the area. He said Mr. Kurth explained that because of the standing water, the concentrations were higher as the water evaporated, leaving nutrients in the water, so he was not surprised they were higher, and it was unlikely those results were typical for that spot during the rainy season.

Mr. Hendershot mentioned some residents reported seeing algae blooms in two or three areas just below the surface, and this had them very worried.

Mr. Cusmano stated he would speak with Mr. Kurth, as when algae blooms appeared, they were sprayed and then they disappeared, so he was not too worried about them. Regarding the clarity, there were additional boats on the lake, and with the carp eating much of the grass, the material at the bottom got kicked up, but the water quality met the parameters set.

Mr. Hendershot noticed in last month's meeting they spoke about the possible need for additional plantings, and that a study was done to see if there were additional roots. He believed the carp would not allow any of the grass come up to the water again, as they were eating the lawns when they ran out of lake vegetation.

Mr. Bernard reiterated their suggestion of putting barriers in place on the shelves to keep the carp back and allow the plants in the lake to grow.

Mr. Elgin mentioned issuing some specific memos to some residents late last week based on specific questions directed to the developer. He paraphrased from those memos, stating Florida Fish & Wildlife Conservation (FWC) indicated the CDD held the grass carp permit, as the responsible entity, and they approved the amount of carp to be released, and the Board authorized that release. In December 2014, the developer had FWC come out,

and some of the residents were part of that review, along with people from the university, and it was a large meeting with a lot of discussions, and the CDD managers were a part of that process.

Dennis Giardina of the FWC stated in a follow-up analysis done in December 2014 that five years after the release, the impact of grass carp would begin to decrease, as most the carp would disappear between a seven to ten-year timeframe. They were very hungry early in their life, and that dissipated as they aged and ate less. Mr. Giardina determined that the success of the grass carp in the removal of the exotic growth took place faster than originally anticipated when FWC issued the original permit. Mr. Elgin thought everyone could agree that the timeline with which the exotic grown in the lakes was addressed by the natural grass carp release happened more expeditiously than anticipated. He continued with Mr. Giardina's report that stated, based on the successful removal of the exotic growth, consideration could be given to apply for a permit to reduce the quantity of carp within the system. If the District chose to do this, FWC would determine the appropriate reduction via the permit process regarding water quality.

Mr. Elgin said this meant that FWC recognized through their review that the District's lake system could benefit from some reduction in the grass carp due to the effectiveness achieved by the original release of the carp into the lake. Because the CDD as the permit holder, it would need to apply for a take permit, and Mr. Giardina indicated in his email that Ronda Howell was the contact person about that permit and included her contact information. It was not a very difficult permit to obtain, and he recommended that the Board direct District management to review the opportunities to acquire the take permit, and allow FWC to determine what the appropriate reduction would be. He said no one present was in a position to make that determination, and the FWC biologists should be relied on to make that decision. He encouraged the Board to direct District management to address devising a short and long-term approach as to means and methods with which this could happen, noting correspondence indicated there were three or four methods of extraction o explore.

There were licensed professionals who did such removals, and he recommended if the District decided to pursue a take permit, that the Board direct District management to explore those extraction methods. Thus, if a take permit was acquired, the quantity to be removed should be determined, and the District could then pursue that removal as a means

of expediting the reduction of the grass carp or the slowing down of them eating the remaining vegetation. Mr. Elgin indicated the developer was supportive of the removal of some of the grass carp but based on the abovementioned parameters involving FWC and their recommendations.

Dr. Herring commented the District would have no money left to hire professionals to remove the carp.

Mr. Hendershot asked how long the take permit process took.

Mr. Elgin believed it was a very expeditious process, as he saw the contact person on the email stream of the biologist that issued the original permit to the District, and she stayed abreast of the situation. He believed there was a piece of correspondence that said it was a very simple process, and as the biologist was very familiar with the District's system, he did not have to start from scratch. The biologist issued the permit, understood the environment, and he did his follow-up, and the recommendations were paraphrased from one of his follow-up emails to the District's Asset Manager and engineer, some residents, and him.

A male speaker stated when he was on tour with the biologist, he said he knew of someone with an electroshocking boat the District could use, and two or three of the professors at the university indicated they could incorporate some of the removal activity into their course work. Thus, there might be a low cost association.

Mr. Hendershot agreed this would save the District money in the cost of the removal process.

A male speaker said the University felt it was not possible to have a healthy lake without vegetation, and the students were involved in the re-vegetation of a small, fenced in area of Lake Trafford that went from a quarter of an acre to seven acres of vegetation in less than a year. The professors thought they could get the students to do similar work in the District's lake.

Dr. Herring felt he would be more comfortable having the carp removed by a professional rather than university students. He could accept the students helping with the replanting of the vegetation, as long as it did not grow back to a level that led to the District putting in the carp originally; there had to be a happy medium.

Mr. Hendershot commented that in putting together a plan, what would drive the remedy and the method chosen could well be the number of carp the FWC would allow to be removed from the District's lake.

A male speaker indicated the District originally put in ten carp per acre, and that was the upside of what was recommended, but with a 700-acre lake that was a deep, with the weeds growing primarily around the edges, so the amount of vegetation was substantially less than the 700 acres. Thus, they had put in not only the highest number of carp possible, but they were put in an area that was restricted in terms of where the weeds were located.

Mr. Hendershot asked if the situation did not raise any sort of litigation issues with Center Place, since the District did not own the big lake, and all the nutrient producing elements out of it.

Mr. Urbancic said he could not answer that question.

Dr. Herring pointed out the vegetation was not just around the edges of the lake, as the vegetation had made it almost impossible to boat straight through the big lake.

A male speaker said that was only in shallow areas, as the vegetation was not coming from 20 feet up.

Dr. Herring found the vegetation all over the lake.

Mr. Hendershot agreed the overgrowth of the vegetation had been very bad.

A male speaker acknowledged that the water quality was high, but thought the real issue was presently was the appearance of the lake, the greenish, yellow water that did affect property values for all owners. This was one of the concerns people continued to have. A professor at the university claimed that if the algae blooms continued and became significant with the lake being high in nutrients, and there was currently nothing to absorb the nutrients with the decreased vegetation, the algae could sink deep and suck out the oxygen in the lake. He said it was this issue that had some residents worried, not the fishing, as the fishing was still quite good. On behalf of the residents, he was very grateful the Board sought to address the subject topic in its meeting, as it was not the current conditions or the carp they were worried about as much as what could happen if the algae blooms continued.

Mr. Refkin commented that Center Place would be built, and the District did not own the big lake, so the developer and the District would have to work with Center Place.

A male speaker said the FWC person Mr. Elgin mentioned said that the carp were drawn to flowing water, and the canals had some circulation, so the carp could be trappable in a weir. He agreed the District should rely on what the experts advised as to reducing the carp population in the lake.

Mr. Ward asked that he record reflect that Supervisor Donoho left the meeting.

Mr. Hendershot thought much of the situation was managing the expectations and the perception of the residents of what was going on, as much as the process itself.

Mr. Bernard remarked now that the District's website was operational, once all the options of the steps that would be taken were decided upon, they could be posted on the website to keep everyone abreast of what would take place.

A male speaker stated there was one resident, unknown to him, who called about the color of the water, and that was an important topic that was addressed in the discussion of the present meeting. Residents would be pleased to know that the Board was considering various actions to deal with the various lake issues.

Dr. Herring pointed out this was not a unique meeting, as such discussions took place at almost every Board meeting, as the Board members were residents too.

d. District Manager

I. Financial statements for the period ending January 31, 2015

None

FIFTH ORDER OF BUSINESS **Supervisor's Requests/Audience Comments**

Dr. Herring felt, in reference to the legal fees District would now be exposed to in order to proceed in the administrative hearing with the Center Place and the SFWMD, that the District had been sold a bill of goods by Miromar Lakes Development. That is, that the District was led to believe that one thing was going to happen, that Miromar knew that that was not going to happen, and this was now revealed one month later to the Board. He was putting these happenings in the category of things that happened to the CDD in the past that he had gone on record as saying he would no longer rubberstamp anymore. While he firmly believed and might even have made the motion for the District to join the lawsuit at the Board's last meeting, and he knew it could be done by statute, but he did not think that

the Board should rubberstamp things anymore. The Board could no longer assume things would happen based on promises made to the District and, henceforth, they should be gotten in writing prior to the Board approving such actions.'

He stated this was one of the things that bothered him about what took place, and District staff and the Board needed to continuously follow up matters now that the District was fully involved, restating his belief that the District was again sold a bill of goods by the developer.

Mr. Refkin thought with Mr. Urbancic's help, the District should be okay.

Dr. Herring indicated his comments were not being directed at Mr. Urbancic or anything he had done.

Mr. Refkin understood.

SIXTH ORDER OF BUSINESS **Adjournment**

On MOTION by Dr. Herring, seconded by Mr. Hendershot, with all in favor of adjourning at 4:05 p.m.

James P. Ward, Secretary

Mike Hendershot, Chairman