

**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, May 10, 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 member 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 Fabian	Resident

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. Continuation of Discussion Relative to Fiscal Year 2019 Budget

Mr. Ward advised the Board he had had a conversation with Mr. Byal after the last Board meeting, and Mr. Byal had suggested a format which was consistent with other Districts that both Mr. Urbancic and Mr. Ward work with. He said instead of the District actually maintaining some of the assets owned by the District, there was an option to enter into an agreement with the Master

Homeowners' Association to permit the HOA to maintain those assets for whatever period the Board decided. He continued that with these types of agreements, there was no fee which the HOA was paid by the CDD, the HOA would charge their members whatever it decided to cover the cost of the agreement, and it was a simple agreement for maintenance. He stated an exhibit could be added to the agreement in terms of the quality of maintenance, but he was not sure that would be necessary, in this instance.

Mr. Ward stated this arrangement would do two major things: One, eliminate in totality the need for any reserves which would be required in the event of a hurricane since, as he understood, the reserves in the HOA were relatively healthy; two, it would reduce the operating budget by roughly \$710,000 a year, so the assessment levels instead of increasing to \$1300 would decrease to the level of \$330-\$340.

Mr. Ward said then the District's obligation would be solely the operation and maintenance of the drainage system.

Mr. Ward explained the HOA's fiscal year was different from the CDD's fiscal year. The District's fiscal year ended September 30; the HOA was probably a December 31 fiscal year. He suggested the District could terminate its maintenance on September 30, or leave some funds in the budget and continue maintenance until December 31. He said the second option would be consistent with the HOA's budget process on a going forward basis and would not impede them if they did not have sufficient cash to handle the last three months of the current calendar year.

Mr. Ward indicated if the Board decided to move in this direction, it would have to be done in the next 30-45 days in order to modify the budget to be ready for the Public Hearing in September.

Mr. Ward stated if the Board chose to keep the maintenance of the landscaping, there was another alternative, which would be to remove the reserves, leave the assessment about the same, and then work from there on dealing with the reserve issue. He said it was the Board's decision, but this issue needed to be resolved. He added the final piece of the puzzle was to work with the developer in order to try to eliminate MSBU Overlay District, which would reduce the budget by \$50,000.

Dr. Herring asked if Mr. Ward knew whether the HOA would be capable of assuming the maintenance in September.

Mr. Byal responded he had not known that Mr. Ward was going to offer a December option, which would amount to approximately \$100,000 for the quarter. He commented what worked best for everyone was what should be done.

Dr. Herring asked how this agreement transfer would affect the contract with Brightview.

Mr. Ward stated there was a short termination term on the contract, and a date would be decided with a 60-day notice.

Dr. Herring asked if everything else would be turned back over to Estate Landscaping, and Mr. Byal responded in the affirmative.

Mr. Ward explained the reason he had suggested the December 31 date was to assist the HOA because he knew their fee structure was through December 31. He said the District's assessments could still be lower because only \$100,000 would be needed to cover landscaping fees, instead of \$710,000. Assessments would still go down.

Mr. Weber commented there would be a contract between the Master Association and the CDD to support the landscaping of CDD properties, and there would be money exchanged between the two entities.

Mr. Ward responded that was not the case as it would be an agreement to maintain with no money exchanged. The HOA would derive its revenue on its own to cover the cost of the maintenance.

Mr. Byal explained the assessment from the HOA would most likely go up; however, there would be some savings.

Mr. Refkin commented he was in favor of this suggestion. He said he was concerned about having Estate do the landscaping because in the past they had done a poor job.

Mr. Weber agreed with Mr. Refkin, and said he was still trying to understand two entities with one supporting the other and not paying for it.

Dr. Herring stated the residents were paying for it because the HOA dues would go up.

Mr. Weber responded the Master Association dues would go up, so residents would be paying for it through the Master Association instead of the entity which actually owned the property and was responsible for it. He pointed out HOA fees were not tax deductible, but the charge on your tax bill by the CDD was deductible. He said this was not a big deal because it was not a great deal of money.

Dr. Herring stated there was precedent, and it had been done many times before in other CDDs.

It was said that the reverse situation, however, was not the case in that the CDD could not maintain HOA property and pay the cost of it without being reimbursed by the HOA.

Mr. Ballinger asked if this was in the form of a property tax, and the response was affirmative. He added this year's limitation was \$10,000, so it would not affect anybody.

Mr. Weber's response was it would affect many people in Miromar.

Mr. Ward stated the big issue was the reserve.

Mr. Weber responded he now understood why the CDD would not need the reserve if the Master Association was responsible and there was another disaster. The Master Association had reserves which could handle the disaster, and any replenishment of the reserves would be through the dues, rather than through tax assessment.

Dr. Herring asked if there were provisions which allowed the HOA to back out of the agreement, for example if there was another hurricane with large expenses. He asked what risks the CDD was taking. The response was that the risk to the District was that the HOA terminating the agreement.

Dr. Herring commented the issue was quality control. He said he could not imagine the HOA would tolerate poor quality and would have more influence over Estate Landscaping.

Mr. Ward pointed out that looking inside Miromar Lakes showed the quality was there. He added the quality would most likely be better than presently seen.

Mr. Refkin asked Mr. Byal what his thoughts were on this issue.

Mr. Byal responded the reserve amount was a concern to him, and obviously the HOA was not volunteering for the additional responsibility. He said he had talked to Mike, Chris, and Bob about the efficiencies and how a team, which was on the premises daily, could more effectively handle the additional responsibilities. Most likely, he said additional staff would be added, but overall the job could be done more effectively. He said this decision was logical for the community.

Dr. Herring said he was in favor of this suggestion, but there was a part of him that was disappointed this alternative was not suggested sooner. He asked Mr. Bernard how this decision would affect his department, and his response was this was the first time he had heard about it.

Mr. Ballinger asked where residents would now go with questions concerning landscaping and security and would a place be established for residents to come to talk about concerns.

Mr. Byal responded that place already existed.

Mr. Ballinger said in the past invitations for residents to come and speak at an HOA meeting had not been made and would that change?

Mr. Byal responded the HOA meetings were open to residents, but they did not participate. He said the meetings were not advertised, other than at the desk and on the website, but the HOA was not obligated to publicly advertise. He suggested a good forum was the voters' rep meetings.

A question was asked concerning what would happen to the capital plan which was in place. Mr. Ward responded that would no longer exist, and it would be for the HOA to handle.

Mr. Byal explained simple maintenance could be handled more easily through this new arrangement.

A resident in the audience expressed that going through the CDD's process gave residents confidence and assurances a check and balance process was being followed. She said the minutes reflected items were voted on. She said she was not sure it would be the case with the HOA where they could be sure the money would be spent on things which had been agreed to.

Mr. Byal responded the difference was between the responses to Hurricane Irma the HOA was able to accomplish versus what the CDD was able to accomplish. He said the HOA had the ability to execute the plan without encumbrances.

The resident responded she did not disagree, and the HOA had done a fabulous job. She said she was concerned about the little guy who did not get as much attention, and as long as Mr. Byal was there, she was in agreement.

Mr. Refkin asked about the berms and if ownership would be transferred to the CDD.

Mr. Byal responded future berms would transfer to the CDD.

Dr. Herring commented if this agreement was approved, the CDD's main concern would be water maintenance, future lakes and the like. He said he would see no reason whatsoever to accept any more monuments or berms.

Mr. Ward shared some history of the District and pointed out these type of agreements were usually developer driven and not CDD driven. He said in this particular instance, Hurricane Irma was a force that made them rethink the process. He said he gave Mr. Byal credit for making the suggestion. He said he felt the agreement was a good thing and would make the community appear more consistent. He added the agreement could always be ended.

Mr. Ballinger asked if this agreement would delay the Budget process.

Mr. Ward responded it would not as long as the contract could be done by next month. He asked Mr. Byal to determine which date the HOA would prefer, 10/1 or 1/1.

Mr. Ballinger asked if this agreement would call for a revision of the contract with CGA.

Mr. Ward responded this contract had already broken out into its various parts, so yes, they would lose the part related to the landscaping piece, but they would still handle the drainage, which would not likely decrease.

Mr. Bernard stated the only issue he could see with the reserve was another hurricane could hit and the erosion control to be spent on the lakes would not be there for the reserve portion. He indicated almost \$500,000 had been spent fixing lake beds.

Mr. Ward said in his opinion it would allow Mr. Bernard to focus.

It was stated that portions collected from FEMA would go into a fund which would not have to be used for landscaping.

Mr. Ward responded Mr. Bernard had some erosion repairs which had not been budgeted on which he would spend the FEMA money.

Mr. Ward stated if the Board was in agreement, then Mr. Urbancic would work on the agreement, and he would amend the budget accordingly and bring the budget to the Public Hearing.

Dr. Herring asked the Board for their input, and all agreed the HOA maintenance agreement was to be pursued.

It was suggested it be made clear to residents who should be contacted in the event of an issue with landscaping.

Mr. Byal stated when the budget was increased, he would have to deal with the change, and the explanation would include an understanding of the fact the HOA was now responsible for all landscaped areas. He said he thought it would be a well-known fact.

Mr. Ward asked if there was any further discussion, and hearing none, continued to the next item.

Mr. Ward explained that over the last couple years, the District had had no consistency in how to maintain the drainage system. We have had to deal with

litigation and regulatory infractions, hurricanes, etc., however with that behind us, it is important for the District to come up with a policy on how to maintain the drainage system. He said his opinion was if it was a drainage system, the CDD would maintain it, which meant road drainage to lake system drainage. He said they could not maintain parts of the system and expect it to function properly in a storm event.

Mr. Ward suggested the Board also consider maintaining only to control elevation, except around the recreational lakes. Residents would be responsible for anything above control level.

Mr. Refkin asked if he meant their neighborhoods, and Mr. Ward responded yes, the homeowners.

Mr. Ward continued the District would maintain to control elevation and deal with shelf planting programs as necessary. He said around the recreational lakes, they could go a little further up the line because of the core jurisdictional issues which had arisen as a result of the Alico litigation. He said internal to the community, as long as the homeowner was complying with Lee County codes to get permits to do what they wanted to do, they could do it. He said the homeowners and HOA would deal with any problems. He added the hard part of this was there was not consistency in who owned what in the internal drainage system. He said he was willing to overlook the issue and maintain the system correctly.

Dr. Herring suggested a map which described the drainage system be made and whether or not the CDD owned it.

Mr. Ward said a couple things were needed. In addition to a map, access to certain areas was needed. He said possibly the HOA could help with that, so the District could affectively maintain the drainage system on a long term, consistent basis.

Mr. Refkin asked Mr. Bernard about the ongoing program, which was started a number of years ago, where every three years all the communities were cycled through. He asked what the increase would be with adding the new drainage system areas.

Mr. Bernard responded it would be tripled.

Mr. Refkin commented many residents were confused as to what they owned and the District owned.

Mr. Ward said he understood this confusion because it was inconsistent. He said if the District put some consistency to what was done, it would help.

Mr. Ward continued the next step was to figure out the logistics in terms of engineering and legalities and then the budget, which would not be a large amount.

It was commented that over time, there would be savings.

Mr. Bernard stated the District would be in violation of the permit from the Army Corps of Engineers of Southwest Florida Water Management District if the slopes were not correctly maintained by the HOA because the permits were in the CDD's name.

It was suggested should a neighborhood not comply, the CDD could bill the neighborhood.

Mr. Ballinger commented he did not think that had ever been done before by the CDD.

Mr. Ward responded it had not, and what he wanted to do was put some consistency around what was done. He said if they had to maintain above control, this would be fine. He said the District would assess the individuals who caused the problem, and they would pay for it in that way. He said at least a fixed rule would be in place regarding this situation.

Dr. Herring asked if this could legally be done.

Mr. Urbancic responded affirmatively, but the CDD needed to be sure they did not own above control.

It was commented the control line was staked when shoreline work was being done.

Mr. Ballinger asked if this was in line with the Directive from Southwest Florida Water Management. The response was affirmative, and it was added as long as the issue was fixed, Water Management did not care how it was done.

Mr. Ballinger also asked how this maintenance by the homeowner could be enforced.

Mr. Ward said he would do an assessment of each home.

Dr. Herring asked what the Board would need to do.

Mr. Ward responded if the Board agreed, he would start to put the procedures in place to handle the agreement.

It was suggested a reserve was still necessary in case of a disaster. Mr. Ward agreed but suggested waiting a year to do so.

Mr. Ballinger asked what was being done, in view of what was decided today, as regards the number of units and how would that affect the budget.

Mr. Byal said he had done a slight reduction. He said Track D which was a parcel of land across the street from University Village did not make sense anymore, and they should not be paying for units there. He said there were 114 units assigned to Mirasol, and he did not think anyone wanted to see that many units built there. So, he stated the developer wanted to reduce the number.

Mr. Ballinger asked how many units that would total, and the response was approximately 124.

Mr. Byal said the developer had not addressed the bigger number which was all of the assumed units which could happen on the balance of Costa Maggiore, which would most likely not happen.

Mr. Byal continued those were the two parcels it was agreed clearly did not make sense to have the number of units assessed, 83 units on Track D and the balance of Costa Maggiore.

Mr. Ward advised the Board that on undeveloped property, the tax was levied on a per acre basis not per unit. So when the units were reduced, the number was spread over all remaining undeveloped property. As the developer develops, then a unit assessment was done as the property was platted. Mr. Ward said this gave the developer the flexibility of putting the assessment out there when needed on the parcel, but gave the District the assurance it would be paid the debt service necessary on an overall basis for the year.

Mr. Ballinger asked if this would affect this year's budget.

Mr. Ward responded it would reduce the General Fund by 124, and he added based on his calculations with changes made today, it would be in the 330 range for an assessment for next year, which would not make much difference.

Mr. Ward added negotiations to eliminate the MSBU were in progress, which would eliminate \$50,000 from the budget.

Mr. Byal gave an update on MSBU saying the County would be preparing a proposed agreement, and when he received it, he would give it to Mr. Urbancic.

Mr. Ward called for further discussion, and there was none.

3. Staff Reports

a) District Attorney

Mr. Urbancic stated he would be bringing some information regarding cleaning up shoreline to the next meeting. He said he was working with the Developer on this.

- b) District Engineer - No report.
- c) Asset Manager – No report.
- d) District Manager - No report.

4. Supervisor's Requests and Audience Comment

Mr. Ward called for comments from the Board and the audience.

A question was asked if there was anything in the budget for dredging, and Mr. Ward responded there was not. An example was given of certain areas within the lakes which were impassable as boats were hitting the bottom. He asked if this could be addressed.

Mr. Refkin stated there had been a dredge out in the lake about two years ago, and as he recalled, it was a definite problem. It was stated rock could not be dredged, and the lake entrance had been excavated down to rock. It was mentioned the lake had gotten lower. A discussion ensued of how and if the rock could be removed.

An audience member asked Mr. Bernard about his statement that residents were responsible for above control and how this would impact the three year erosion program that was in place.

Mr. Bernard responded he could not tell until the program was in place. She asked when would he know and if that would change what maintenance was done.

The Board discussed what the consequences might be, and changes to this rotation were pointed out.

Mr. Refkin summarized the discussion by stating once Mr. Bernard developed a new plan to reflect the changes, then her question would be better answered as to whether each community would receive the same maintenance.

5. Adjournment

Mr. Ward asked for a motion to adjourn.

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

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

Miromar Lakes Community Development District



James P. Ward, Secretary



Dr. David Herring, Chairman