

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

The Regular Meeting of the Miromar Lakes Community Development District's Board of Supervisors was held on Thursday, October 8, 2015, at 2:00 p.m. at the Beach Clubhouse, 18061 Miromar Lakes Parkway, Miromar Lakes, Florida 33913.

**Board members present and constituting a quorum were:**

<b>Michael Hendershot</b>	<b>Chairman</b>
<b>David Herring</b>	<b>Vice Chairman</b>
<b>Burnett Donoho</b>	<b>Assistant Secretary</b>
<b>Alan Refkin</b>	<b>Assistant Secretary (Telephonic)</b>

**Board member absent:**

<b>Doug Ballinger</b>	<b>Assistant Secretary</b>
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**Staff present:**

<b>James Ward</b>	<b>District Manager</b>
<b>Greg Urbancic</b>	<b>District Counsel</b>
<b>Charlie Krebs</b>	<b>District Engineer (Arrived - 2:10 p.m.)</b>
<b>Paul Cusmano</b>	<b>Calvin Giordano &amp; Associates</b>
<b>Bruce Bernard</b>	<b>Calvin Giordano &amp; Associates</b>

**Audience present:**

<b>Tim Byal</b>	<b>Miromar Development Corporation (MDC)</b>
<b>Mike Fabian</b>	<b>Property Manager, MDC</b>

**1. Call to Order & Roll Call**

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

**2. Consideration of Minutes**

a) August 20, 2015 Regular Meeting

Mr. Ward stated the August 20, 2015 minutes were in the verbatim format that had been utilized in the past, and the September 15, 2015 minutes were done in an

abridged format. He asked the Board members which format they preferred, so that subsequent minutes could be tailored to the Board's preferences. He noted that the two sets of minutes would be adopted in their present formats, and any formatting changes would take place on future minutes..

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

b) September 15, 2015 Regular Meeting

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

Board consensus was that future minutes be transcribed in the abridged format.

### 3. Staff Reports

a) District Attorney

Mr. Urbanic updated the Board on the finalization of the exchange the Board approved at its last meeting. Additionally, he stated he has been working with District staff regarding the landscaping issues with Lee County.

b) District Engineer

Mr. Ward noted that Mr. Krebs was running late; he asked and received the Board's consent to move to the next item, and come back to the District Engineer's report.

Mr. Krebs recalled at the last meeting some exhibits were requested, copies of which he distributed to the Board. He apologized for the difficulty reading them, stating they appeared more legible on the computer. He stated he would later supply a black and white version that would have more visible numbers. He went on to review each exhibit, the first being a list of all the permits around lake six.

Mr. Ward reminded the Board that the District received a number of letters from the South Florida Water Management District (SFWMD) regarding notice of compliance with respect to the District's water management system. He advised the Board during the pendency of the litigation that the District would receive the letters, so District staff was in the process of putting together a response to those letters. He stated the letters contained a plethora of permit numbers, so he asked Mr. Krebs, as part of the internal District staff discussions, to put together a map for the Board that identified where all the issues identified in the letters were located by permit number.

Mr. Ward stated that the information would eventually come back to the Board in a final form once staff finished the review analysis and the write up that would be drafted and sent back to the SFWMD.

Mr. Hendershot noticed there were application numbers, and asked if they were there for convenience of reference.

Mr. Krebs affirmed this to be the case, as they all fell under the same general permit. He explained that each application number had to do with the application submitted for the different residential areas or phases of the development around basins five and six.

Mr. Hendershot asked if any of them were still applications or had they all received permits.

Mr. Krebs thought the only one that had not been granted was Phase IV; Phase II was on hold for the peninsula, but all the others had been constructed, having been approved by the SFWMD. The other exhibit sought to identify all the current landowners around the main lake, including those with frontage adjacent to lake six; staff utilized information from the Property Appraiser's website. He indicated that the area owned by the CDD was not colorized but left blank; as it was Conservation Area I and did not front up against basin six, nor were the dry detention areas in Phase II colorized, as they were not directly adjacent to Lake Six.

Mr. Byal added that the process which they continued to improve over time was trying to get the lines to more properly follow the actual shoreline, as right now they were just squared off lines. For example, in Mirasol and Vivaldi the developer still owned chunks, due to Miromar Lakes not doing the work to properly give those pieces to the CDD. He said the intent was that there would be no Miromar Lakes ownership in between the CDD and private ownership. However, there was considerable engineering, surveying, and legal work to do, and it was very costly to get these little tasks complete. He stated Verona Lago was a good example of where it had been done properly.

Mr. Krebs concurred, as he felt sure there were little parcels, too, that did not show up well on the exhibits before the Board that needed to be reconciled to either the Master Association or the CDD.

Mr. Hendershot asked about the two retention areas in Verona Lago.

Mr. Krebs affirmed that they belonged to the CDD, but they were not colorized on the exhibit, as they were not directly adjacent to the lake, reiterating the present focus was on properties that had frontage on the lake, not on what the CDD owned, etc.

Dr. Herring wished to know on whose property were all the docks, piers, and boat ramps built from the shoreline going out into the lake, and what responsibilities were

those of the District and homeowners, as the uses were potential sources of lake pollution.

Mr. Urbancic replied that it was probably a mix, depending on the community, as he knew some along the northern boundary were still owned by Miromar Lakes, LLC, and some were in areas owned by the CDD.

Dr. Herring noticed on the exhibit that the dock for Caprini was on land owned by Distinctive Residential, and he rented a dock that was on land owned by Miromar Lakes for Bellamare. He stated that the docks were always maintained, and the rental fees went to the Caprini Homeowners' Association (HOA) and to the developer. He stated he assumed the area might become CDD controlled, and asked if the CDD was due rent for such structures.

Mr. Ward stated, to the extent that the District did not own the structures at present structures or had an easement over them, Mr. Urbancic and he felt whoever built the structure had the responsibility for the ownership, operation, and maintenance itself if they were located on a simple easement. He suggested if the District had not yet taken title to the underlying fee property and then later took title, the CDD should take it subject to whoever built the structure retaining ownership, operation, and maintenance of the structure, and the indemnification for removal and replacement in the event the District needed the property. He suspected the docks probably came to the CDD on property the District already owned, subject to them being there, but he had never seen documents to that effect. He stated that more research would be needed to figure out what should be done with any particular dock.

Mr. Byal said he thought there could be something in the lake use agreement Miromar Lakes drafted to allow the docks to exist.

Mr. Ballinger asked about riparian rights in such situations.

Mr. Urbancic stated that he did not know if that applied to manmade lakes.

Dr. Herring said he thought this was a matter that the District needed clarified.

Mr. Byal stated he felt it rolled back to the lake use agreement, as this was the overriding agreement that controlled how many docks, how far out, and all other issues associated with how the docks. He sought clarification that "triparty" was a term used at the time of the original agreement, but it was the lake use agreement to which FGCU, Alico West, the CDD, and Miromar Lakes were all party to.

Mr. Urbancic affirmed that to be the case.

Mr. Hendershot said he thought the lake use agreement was really a tool for recreational management.

Mr. Byal stated that the lake use agreement specified in detail how far out a dock could go, and described safety issues associated with docks, though some of the issues were mitigated by the fact that they floated. He said that the land to which the structures were affixed was private property, and they floated on water that belonged to the CDD.

Dr. Herring reiterated that it is a matter that the District needs to have solidified proactively.

Mr. Ward concurred that it should be looked at on an overall basis with respect to the ownership of all the properties, and stated that District staff would undertake the task.

Mr. Hendershot asked about the riprap permit.

Mr. Krebs stated he believes the FPA was just approved, so the discussion with County staff could be submitted individually; that is, an LDO (LAND DEVELOPMENT ORDINANCE) (Land Development Ordinance) would be submitted either by neighborhood or multiple neighborhoods. In the case of Ravenna, as they had an active DO (Development Order), they could do a minor change to approve any riprap installations they needed, or certify any riprap insulations already installed in the area of Verona Lago. Ben Dickson issued the directive that the neighborhood had to be completed, as he did not want County staff going out multiple times to do inspections. Thus, any association could pull an LDO (LAND DEVELOPMENT ORDINANCE), but they could not do a certification until the entire shoreline they wanted riprapped was completed.

Mr. Hendershot asked if the applicant would be Miromar Lakes or the CDD.

Mr. Krebs replied it could be anyone.

Mr. Hendershot asked who was the original applicant in the permit.

Mr. Krebs stated that the applicant would be the landowner. For the FPA, they identified the landowners around the lake: the CDD, Miromar Lakes, TM Condos, and whoever had an interest and showed they needed riprap at some point. Where they had the beach, there was no plan to put riprap there, but where there was no beach: channels, areas exposed for repair, etc., the CDD could come in and riprap the entire eastern property line. Then each community could pull their own LDO (Land Development Ordinance), as the process allowed them to address their area independently, rather than one large project.

Mr. Ballinger sought clarification on the meaning of Distinctive Residential.

Mr. Krebs stated this was the name of the landowner that developed Caprini.

c) Asset Manager

Mr. Bernard restated that Mr. Ward, Mr. Urbancic, Mr. Cusmano and he were working with Lee County regarding improvements to some landscaping by the golf course section and the berm. There was an issue with the size of the plants the County was putting back not meeting the size the District expected the replacement plants to be. He said Lee County indicated they would do a plan for the District and look into other ways to improve what was already planted. The County ran the waterline to the entrance of the college, and they were still using the easement the District gave them for storage of material, etc. Mr. Ward stated that he would speak with Jessica about cleaning up the area, and stress that the easement should not be used as a storage area for jobs that were not a part of the CDD property. He hoped within the next month the matter would be resolved.

The only other issue in that area was that trees installed by Miromar Lakes and maintained by the District had roots and limbs damaged; and one tree was leaning, so they would be asking the County's arborist to examine the trees to find a solution to prevent the trees dying in the coming years and the District having to replace them. He referred to the portion of his report that dealt with water quality, reminding the Board that a second meeting on water quality was held on August 2, 2015, and the report detailed the issues discussed at that meeting. He reported that the university asked the District to remove them from the list, as they would no longer participate in further discussions on water quality, due apparently to their learning of the various lawsuits being filed that involved water quality issues. He stated that further discussions would involve Miromar Lakes, the engineers, and District staff.

He mentioned that Miromar Lakes started their testing, and the analyses and reports resulting from those tests were contained in the Board's agenda packet. He summarized that the lake was in good condition and was starting to come back and hopefully would continue on that pattern. He reported that the grass carp had hit their high and the issues associated with them being in the lake should diminish over the next few years. He noted that the District would begin its quarterly testing within another six weeks. He stated that with Miromar Lakes and the District doing testing at various times, the lake would be closely monitored.

Mr. Hendershot asked if the permit would require anything different.

Mr. Ward replied that the District was doing an analysis of all 20 plus SFWMD permits and the District requirements pursuant to those permits. He stated that once that information was received from the District's litigation attorney, it would be benched against the water quality testing results of the District and Miromar Lakes.

Mr. Hendershot asked when the first new grass plantings in the lake would occur.

Mr. Bernard replied that they hoped to bring the Board the proposal by the beginning of December, and if approved, in January 2016 they hoped to kick off the new plantings, once the water level decreased.

Dr. Herring asked if the university had ever been obliged to participate in the water quality discussions. Mr. Bernard said they were not. Mr. Ballinger asked what reasons the university gave for opting out. Mr. Bernard answered that none were given.

Mr. Cusmano stated that the email received from the university simply asked to be removed from the email list of those who received notice for future meetings.

Dr. Herring stated that if any issues regarding water quality identified as possibly sourced from the university arose, the university would be informed and asked to take corrective measures.

Dr. Herring said that the university's withdrawal was no great loss to the water quality discussions. On the issue of the plantings on the golf course and the County's claiming that they were unable to find plant equivalents to the original plants they removed, it seemed the District was not diligent enough, when listening to and accepting the County's proposal, by ensuring the wording obliged the County to replace like with like.

Mr. Bernard reminded the Board the wording of the agreement stated "equal or better".

Dr. Herring surmised that the wording that was missing was the steps the District would take if the County failed to live up to its promises, and he was not looking for any more litigation or actions that would cost the District to get the County to live up to the agreement. He asked if the District had any recourse.

Mr. Ward stated that there was no recourse other than litigation, and reported that he personally held a number of rather strong conversations with the representatives of Lee County, as had Mr. Urbancic with the County attorney, stressing that replacing the plant materials with those of equal size was not debatable. He said the County's problem was they wrote their contract prior to the District granting them permission, and the contract with their contractor spoke of putting back plants of comparable quality in the local area, as defined by Collier, Lee and Charlotte Counties. Unfortunately, they found no equivalent or better plants in those areas, and he told them they needed to go to Miami. His discussions with the County had been good, and he made it abundantly clear to County staff that the replacement plant materials had to be the same size of those they removed, and they told him they would do their best. He was now waiting to hear from them, and until he received a response, there was little else the District could do.

Mr. Ward commented that working with Lee County was typical of what transpired when working with a large government entity, but he was trying to use the powers of good persuasion to get them to do their job right. The contractor was a typical utility contractor who knew very little about landscaping, resulting in getting a good utility line, but poor replacement landscaping materials. He said that District staff

had to walk them through the process, and so far they had been very reasonable and receptive

Dr. Herring expressed appreciation for District staff's efforts, as well as the communication lines being as open as they were in between meetings; and stated that the latter was an improvement.

d) District Manager

Mr. Ward stated that he had no reports for the Board.

#### 4. Supervisor's Requests and Audience Comments

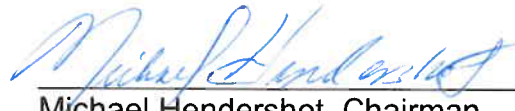
Mr. Ward asked and received no further comments from the Board or the audience.

#### 5. Adjournment

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

The meeting was adjourned at 2:37 p.m.

  
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James P. Ward, Secretary

  
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Michael Hendershot, Chairman