

**MINUTES OF MEETING
FLOW WAY
COMMUNITY DEVELOPMENT DISTRICT**

The Regular Meeting of the Board of Directors of the Flow Way Community Development District was held on Thursday, May 16, 2019 at 1:00 p.m. at the offices of Coleman, Yovanovich & Koester, P.A., 4001 Tamiami Trail North, Suite 300, Naples, Florida 34103.

Present and constituting a quorum:

Drew Miller	Chairperson
John Wollard	Vice Chairperson
Tim Martin	Assistant Secretary
Ronald Miller (phone)	Assistant Secretary
Tom Kleck (phone)	Assistant Secretary

Also present were:

James P. Ward (phone)	District Manager
Greg Urbancic	District Counsel
Jeremy Fireline	District Engineer

Audience:

Tom Coffey
Ed Stahley
Martin Winters

All resident's names were not included with the minutes. If a resident did not identify themselves or the audio file did not pick up the name, the name was not recorded in these minutes.

FIRST ORDER OF BUSINESS

Call to Order

District Manager James P. Ward called the meeting to order at approximately 1:00 p.m. and all members of the Board were present at roll call.

SECOND ORDER OF BUSINESS

Consideration of Minutes

April 16, 2019 Regular Meeting Minutes

Mr. Ward asked if there were any additions, corrections or deletions for the April 16, 2019 Regular Meeting Minutes. Hearing none, he called for a motion.

On MOTION made by Mr. John Wollard, seconded by Mr. Drew Miller, and with all in favor, the Minutes from the April 16, 2019 Regular Meeting were accepted.

THIRD ORDER OF BUSINESS**Consideration of Resolution 2019-8****Consideration of Resolution 2019-8 amending 2018-12 Setting the Board Meeting dates, times and location for the balance of the Fiscal Year 2019 which ends on September 30, 2019.**

Mr. Ward stated Resolution 2019-8 considered changing the time, date and location of Board Member Meetings. He reported the possibility of holding Meetings at the Amenity Center 8906 Torre Vista Lane, Naples, FL was discussed previously. He noted if the Board wished to move Meetings to this location a time and date needed to be determined. Mr. Drew Miller asked if Mr. Ward had coordinated with Brittany to determine a time. Mr. Ward responded in the negative. Discussion ensued regarding speaking with Brittany regarding acceptable Meeting dates and times prior to approving Resolution 2019-8, holding Meetings on the third Thursday of each month, and tabling this Item. The Board agreed to table this Item. Mr. Ward stated he would coordinate with Brittany and email the Board regarding the date and time of the next Meeting.

FOURTH ORDER OF BUSINESS**Consideration of Resolution 2019-9****Consideration of Resolution 2019-9 Approving the Proposed Fiscal Year 2020 Budget and setting the Public Hearing on Thursday, August 20, 2019 at 3:00 P.M. at the offices of Coleman, Yovanovich & Koester, 4001 Tamiami Trail North, Suite 300, Naples, Florida 34103.**

Mr. Ward stated the Budget was required to be approved for the purpose of setting a Public Hearing date; approving the Budget at this point did not bind the Board to the programs or costs within the Budget. He stated he coordinated with Brittany to schedule the Public Hearing Meeting August 20, 2019 at 3:00 p.m. at the Amenity Center of the Esplanade Golf and Country Club in Naples.

Mr. Ward briefly reviewed the Budget which was unchanged as compared with last year's Budget. He noted on page 1 through page 5 was the General Fund Budget and was exactly the same as in the prior year with an assessment of \$487.68 per unit for each of the 1,157 units for Fiscal Year 2020. He explained while the cost of the maintenance of the preserve area went up and down dramatically on a yearly basis he created a reserve for future operations in an effort to keep the amount the same annually. He stated on page 6 through page 21 were the Bond Debt Service Funds and he briefly reviewed the Funds. He noted page 22 was a summary of the entire Budget which listed the General Fund, the Debt Service Fund, and the total which would be paid by Bond Series.

Mr. Tom Coffee asked about the number of units. Mr. Ward explained 1,157 units was the number of potential units which could be constructed, exclusive of the Hatcher Units, including portions of Esplanade which were not built at this time. He stated this number would only change if Taylor Morrison did not build the total units. He stated the 1,157 units applied only to the General Fund; the Bond Series unit numbers were different. Discussion ensued regarding the number of units.

Mr. Ronald Miller asked about the possibility of a better interest rate on cash funds. Mr. Ward responded he was in the process of investing the Reserve Funds in a five (5) year breakable Certificate of Deposit at 2.75% which met the requirements of the Trust Indenture. He explained it was necessary for the CD to be breakable. He noted he had not yet identified any new investment opportunity

appropriate for the Revenue Account. Mr. R. Miller asked if there were penalties associated with breaking the breakable CD if necessary. Mr. Ward responded in the negative. Mr. R. Miller asked about the possibility of money market funds or AAA commercial paper for the Revenue Accounts. Mr. Ward responded in the negative regarding money market funds; he noted he was still investigating possible options. He explained the money in the Revenue Accounts were present in full for approximately five (5) months annually. Mr. R. Miller stated commercial paper might be a good option. Mr. Ward noted he would take this into consideration. He stated he and the Trustee were investigating possibilities which might meet the indenture requirements.

Mr. Tom Coffee asked about the internal and external preserve properties and maintenance costs. Mr. Ward explained the CDD only maintained preserve property which was owned by the CDD. Discussion ensued regarding when the external preserve property was transferred and the costs incurred upon said transfer.

Mr. Ed Stahley asked about the phrase "external preserves." Discussion ensued regarding "external preserves" referring to the preserves which were located outside the footprint of the Community, internal preserves being located within the footprint of the Community, the CDD being transferred ownership of the external preserves in 2018.

Discussion ensued regarding the Public Hearing date and time. Mr. Ward amended the Resolution as follows: **Consideration of Resolution 2019-9 Approving the Proposed Fiscal Year 2020 Budget and setting the Public Hearing on Thursday, August 22, 2019 at 3:00 P.M. at the Esplanade Golf and Country Club, 8918 Torre Vista Lane, Naples, Florida 34119.**

On MOTION made by Mr. Drew Miller, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2019-9 was adopted as above and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS

Consideration of Retention of Counsel

Consideration of Retention of Cheffy Passidomo as counsel to review the documents related to the transfer of the preserves from Taylor Morrison to the District.

Mr. Ward reported at the last Meeting the Board discussed obtaining a legal opinion in regard to the abundant documents related to the preserves. He explained Mr. Greg Urbancic's office may have a conflict of interest with respect to any legal opinions. He stated Cheffy Passidomo, a well-known law firm in the Naples area, proposed to review the preserve documents. He noted the proposal was included in the Agenda Packet.

Mr. Drew Miller suggested tabling hire of an attorney at this point. He stated Taylor Morrison contacted Lewis, Longman and Walker who were listed on many of the documents and had completed the permitting for the preserves. He explained through Lewis, Longman and Walker, Taylor Morrison could amend the permit to clarify the preserves would stay in perpetuity with the CDD, eliminating the possibility of CREW demanding ownership of the preserves. He stated he understood there was a desire for the CDD to pursue Taylor Morrison for \$4.2 million dollars for preserve maintenance; however, Taylor Morrison was unwilling to relinquish \$4.2 million dollars to the CDD as the CDD was designed to

work in situations such as this. He stated he and Taylor Morrison felt the Community as a whole benefitted from the CDD owning and maintaining the preserve.

Mr. Ronald Miller stated he disagreed and felt an outside legal opinion was still important.

Mr. Tom Coffee stated he read the Court Summary regarding the preserve area which he felt indicated the Court clearly intended for CREW to take the preserves in perpetuity with an escrow fund whereby the financial stability was assured. He noted he did not recall there being an option to transfer the preserves to another entity. He stated as CREW and South Florida Water Management were intimately involved with the legal process over the years, he wished to have a representative of CREW and South Florida Water Management opine regarding the legal documents. Discussion ensued regarding Mr. Coffee's recommendation, the various other entities involved with this project who recommended donation/transfer to CREW, and the importance of discovering where the CDD stood legally.

Mr. Drew Miller suggested asking specific questions of counsel to narrow the scope of research. Mr. Ward stated outside counsel was being asked specifically if the CDD had the right to continue to own the preserves in perpetuity, did another entity have the right to procure the preserves, would the CDD be held responsible in any way for the funding requirement, and would the CDD retain ownership of the current walking trail if another entity procured the preserves. Mr. Drew Miller noted the trail was outside preserves borders. Mr. Ward asked who owned the trail currently. Mr. Drew Miller stated he was unsure, but he believed if Taylor Morrison still owned the trail it would be deeded to the HOA this year.

Discussion continued regarding the trail, the preserves, the contract property owners signed discussing the trail/preserve area, the language within said contract, the preserves being considered a Community amenity, the cost of preserve maintenance, who was responsible for the funds to maintain the preserves, how the preserves benefited the Community, the fact that the existence of the preserves was required by law, the environmental assessment of the preserves, the Memorandum of the Settlement Agreement imparting Notice of Covenant and Release of the Covenant, and discussion with Lewis, Longman and Walker being a good first step. Mr. Ronald Miller requested a copy of the Memorandum of the Settlement Agreement be distributed to the CDD. Mr. Drew Miller agreed.

Discussion ensued regarding a cap for attorney fees. Mr. Ward stated if Cheffy Passidomo were retained, he would attempt to keep the fees as low as possible. Discussion ensued regarding attorney fees.

On MOTION made by Mr. Ronald Miller, seconded by Mr. Drew Miller, and with a 4 to 1 vote (Mr. Tom Kleck voted nay), retention of Cheffy Passidomo as counsel to review the documents related to the transfer of the preserves from Taylor Morrison to the District was approved.

SIXTH ORDER OF BUSINESS

Staff Reports

Staff Reports

a) District Attorney

There was no Report from the District Attorney.

b) District Engineer

There was no Report from the District Engineer.

c) District Manager

I. Financial Statements March 31, 2019 (Unaudited)

There were no questions or comments regarding the unaudited Financial Statements of March 31, 2019.

II. Report on the Number of Registered Voter's in the District

Mr. Ward noted Statute required the District to determine the number of registered voters within the District by April 15th yearly. He reported there were 649 Registered Voters in Flow Way. He explained this was applicable once two Statute thresholds were met, one was "six years from date of establishment" and the other was "250 qualified electors." He noted Flow Way met both thresholds; the elections began to transition last year and would continue over the next few years towards Registered Voter status. He stated the next election would be in November 2020. He stated Mr. Wollard's and Mr. Martin's seat would be vacated in 2020. He stated there was no action required by the Board; this information was provided as a matter of law.

SEVENTH ORDER OF BUSINESS

Supervisor's Requests and Audience Comments

Mr. Ronald Miller – Request to discuss preserves.

Mr. Ronald Miller reported he had discussed the preserves at the previous Meeting; subsequently he discovered a significant amount of additional information. He noted the repeated use of the words "permittee" and "applicant" seemed only to apply to Taylor Morrison, not to the CDD, and any funding requirement seemed to be Taylor Morrison's responsibility. He noted he was untroubled by the idea of the CDD owning the preserves, but was worried about the possibility of the CDD being held responsible for funding preserve maintenance while not maintaining ownership. He read excerpts of the various court cases involved and reviewed his findings. He noted the transfer to the public management agency was to be done within six (6) months following litigation. He noted the maintenance Escrow Fund endowment was required to include extensive specific funding types such as fencing, insurance, monitoring fees, fire prevention, etc., and he believed it was clearly indicated Taylor Morrison was required to cover the Escrow Fund. He stated the Biological Report by Hall Associates reviewed the Escrow Fund as well. He read "the donation of the preserves to an entity specifically charged with property maintenance and preservation in lieu of perpetual management by a home owners association would be more appropriate" and stated he felt this meant the preserve was to be donated to an entity such as CREW or Southwest Florida Water. He read "maintenance and management of the preserve areas were the responsibility of the owner and developer in perpetuity" which he believed clearly indicated Taylor Morrison. He read "once restorations activities have met the success criteria the

preserve will be offered to CREW or another suitable land management entity along with the escrow funds to perpetually maintain the preserve.” He stated he believed this statement meant CREW or a similar entity was to take control of the preserves; however, he wished to obtain a professional legal opinion, especially to ensure the CDD would never be responsible for the escrow funding requirement. He reported turning the property over to the CDD in the fall of 2018 was a premature conveyance of the property. He noted he felt the property should have been turned over to the HOA or the CDD only after Taylor Morrison met the 90% sale bar, and only until such time as the property could be turned over to CREW or another such agency. He stated he wished to have an attorney’s opinion in this regard as well. He stated he believed Taylor Morrison had full financial responsibility to bring the preserves up to the standards indicated in mitigation. He stated he believed the CDD should never have spent, nor should spend in the future a penny to bring the property up to the mitigated responsibility laid on Taylor Morrison.

Mr. Drew Miller stated he would not support hiring an attorney to determine whether Taylor Morrison turned the property over prematurely. He suggested bringing in Mr. Tim Hall for discussion. He stated he believed Taylor Morrison had brought the preserves up to a maintenance only position. Mr. Ronald Miller agreed; Mr. Ward should contact Mr. Tim Hall regarding the mitigation process and timeline. He asked Mr. Drew Miller to discuss the situation with Taylor Morrison and provide feedback at the next Board Meeting. Mr. Drew Miller agreed.

Mr. Drew Miller noted Taylor Morrison hired Lewis, Longman and Walker and intended to move forward with ensuring that the permits were properly amended regarding the CDD and CREW. He stated it was Taylor Morrison’s opinion, once the success criteria was met, the burden to maintain the property would then fall to the CDD. Mr. Ron Miller stated if Taylor Morrison was indicating the CDD was an authorized public agency which could keep the preserves in perpetuity the documents specifically indicated Taylor Morrison was required to provide an escrow fund to said public agency (which in this case was the CDD). Mr. Drew Miller stated he was not an attorney, but he understood it was the intent of Taylor Morrison to amend the permits so the perpetual responsibility belonged to the CDD while no entity which was not financially able (such as CREW) could take responsibility of the perpetual maintenance. Discussion ensued regarding the attorneys making this determination regarding the escrow fund. Mr. Ron Miller suggested obtaining a warranty and an indemnity contract from Taylor Morrison which absolved the CDD from the escrow fund in perpetuity. Mr. Drew Miller stated he would discuss this with Taylor Morrison’s internal counsel.

Mr. Coffee stated he was concerned about where funding to maintain the preserves would originate. He stated he believed the CDD should engage South Florida Water Management System and CREW in conversation to determine said entity’s positions. He intimated he believed Taylor Morrison was attempting to shift liability without funding and amending permits without approval from the entities with knowledge of the court cases. He stated Mr. Drew Miller needed to have a clear stance on what Taylor Morrison’s legal and moral position was. Mr. Drew Miller responded Taylor Morrison’s moral position was if Taylor Morrison were to establish a large escrow fund for perpetual maintenance it would be more beneficial to put the preserves into the hands of another entity (such as CREW). He stated Taylor Morrison believed, with the upcoming changes of flow through the area by the State, the CDD would benefit from maintaining control of the preserve property. Mr. Coffee asked what Mr. Drew Miller felt “a non wasting escrow fund being funded by the plaintiff” meant. Mr. Drew Miller stated he understood Mr. Coffee’s point and was not arguing the language in the document. He stated Taylor Morrison wished to ensure the property and preserves were maintained in perpetuity by an entity which had the financial ability to maintain said preserves in perpetuity.

Mr. Ronald Miller stated he understood Mr. Drew Miller's point; however, he believed the Courts determined the preserves would be owned by CREW or Southwest Water Management and there would be an escrow fund provided. He stated while he did not disapprove of the CDD owning the preserves in perpetuity, he did not believe it was an option; he believed the CDD was a transitory owner and said ownership would come to an end 6 months following mitigation. Mr. Drew Miller indicated Taylor Morrison had hired Lewis, Longman and Walker to ensure compliance of the requirements for the property. Mr. Coffee stated he was less concerned about who owned the preserves and more concerned about who was required to fund the preserves with an escrow fund.

Discussion ensued regarding the escrow fund, the settlement, determining what the courts intended, and liability. Mr. Drew Miller stated Taylor Morrison would not leave the matter open ended in any way and would do due diligence in this regard. Mr. Ronald Miller stated he did not believe this would be a simple matter. Discussion ensued regarding whether CREW would fight for the preserve and the escrow account, and the circular language in the court documents.

Mr. Drew Miller stated the CDD would obtain a legal opinion from Cheffy Passidomo while Taylor Morrison would continue with Lewis, Longman and Walker. He stated Taylor Morrison's intent was not to leave the CDD with a huge liability; it intended to leave the CDD with the perpetual maintenance ONM obligation on the preserves. Mr. Coffee stated he felt Mr. Drew Miller's statement was contradictory. Discussion ensued regarding Mr. Coffee's position.

Mr. Ronald Miller stated he felt it was important for Cheffy Passidomo and Lewis, Longman and Walker to be in communication. Mr. Drew Miller concurred.

EIGHTH ORDER OF BUSINESS

Adjournment


Mr. Ward adjourned the meeting at approximately 2:40 p.m.

On MOTION made by Mr. Drew Miller, seconded by Mr. John Wollard, and with all in favor, the Meeting was adjourned.

Flow Way Community Development District



James P. Ward, Secretary



Andrew Miller, Chairperson