

**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, July 16, 2020 at 1:00 p.m. via telecommunication.

Present and constituting a quorum:

Drew Miller	Chairperson
John Wollard	Vice Chairperson
Ronald Miller	Assistant Secretary
Tom Kleck	Assistant Secretary

Also present were:

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

Audience:

Tom Coffey
Martin Winters
Dave Boguslawski
Ed Staley
Zack Stamp

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.

**PORTIONS OF THIS MEETING WERE TRANSCRIBED VERBATIM. ALL VERBATIM PORTIONS WERE
TRANSCRIBED IN *ITALICS*.**

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

District Manager James P. Ward called the meeting to order at approximately 1:03 p.m. He reported with the State of Emergency in Florida, and pursuant to Executive Orders 20-52, 20-69, 20-112, 20-114, and 20-150 issued by Governor DeSantis on March 9, 2020, March 20, 2020, April 29, 2020, May 8, 2020, and June 23, 2020, and pursuant to Section 120.54(5)9b)2., Florida, Statutes, this meeting was held utilizing communication media technology due to the current COVID-19 public health emergency. He explained all Members of the Board and Staff were present via videoconference or telephone; no persons were present in the on-site meeting room location. He asked all speakers to state their names for the record prior to speaking. He conducted roll call; all Members of the Board were present constituting a quorum.

SECOND ORDER OF BUSINESS

Public Comments

- I. The Public comment period is for items NOT listed on the Agenda, and individuals are limited to three (3) minutes per person, assignment of speaking time is not permitted, however the Presiding Officer may extend or reduce the time for the public comment period consistent with Section 286.0114, Florida Statutes.
- II. Individuals are permitted to speak on items on the Agenda in accordance with the procedure in I. above.

Mr. Ward indicated public comments would be taken during Agenda Items and at the end of the Meeting.

THIRD ORDER OF BUSINESS

Consideration of Minutes

May 21, 2020 Regular Meeting Minutes

Mr. Ward asked if there were any additions, corrections, or deletions for the May 21, 2020 Regular Meeting Minutes. Hearing none, he called for a motion.

On MOTION made by Mr. Tom Kleck, seconded by Mr. John Wollard, and with all in favor, the May 21, 2020 Regular Meeting Minutes were approved.

Mr. Ron Miller: At some point I would like to have the opportunity to entertain a discussion about the approval of the proposed budget before we have any motions on it.

Mr. Ward explained the public hearing process which would give Mr. Miller this opportunity.

FOURTH ORDER OF BUSINESS

PUBLIC HEARINGS

Mr. Ward indicated the next order of business was the public hearings with respect to the Fiscal Year 2021 Budget for the District.

a. PUBLIC HEARING – FISCAL YEAR 2021 BUDGET

I. Public Comment and Testimony

Mr. Ward called for a motion to open the Public Hearing.

On MOTION made by Mr. Drew Miller, seconded by Mr. Ron Miller, and with all in favor, the Public Hearing was opened.

Mr. Ward asked if there were any public comments or questions; hearing none, he called for a motion to close the Public Hearing.

On MOTION made by Mr. John Wollard, seconded by Mr. Tom Kleck, and with all in favor, the Public Hearing was closed.

II. Board Comment

Mr. Ward asked if there were any Board Comments.

Mr. Ron Miller: I've got two things to go over; one is a repeat from the last Board Meeting. Recall that I wanted to defund the Budget with respect to all of the preserve maintenance and mitigation, as well as the Tim Hall Contract. Also, recall having made that motion, it failed and at this point, I don't want to get back into that issue. It's somewhat water under the bridge. Another Board Member may wish to resurrect that, but I don't intend to again at this time. I would, however, go on to say I felt very strongly then, and continue to feel very strongly now that the CDD should not be paying for the Taylor Morrison permit obligations that nevertheless we will just leave that alone for now. I might also add to that, while I just represent one vote on this Board, and come November after we have a somewhat fresh Board elected, I'll still only represent one Board vote at that time, so I'm not trying to make any predictions as to which way the Board will go in November. That will be a situation to develop. That kind of segues me into an amendment that I would like to have in this Budget before it's approved. I'm not make a motion at this point; I just want to get into a discussion. The discussion I would like to entertain is again saying that I can't predict what other Board Members are eventually going to do when the Board freshens up in November, but having said that, as I get into this, I could use words like "might, may, likely, highly likely, etc." but in my opinion I think there is a distinct possibility that when the Board freshens up and comes under control of the residents, that there could be legal action taken against Taylor Morrison for all of the discussions we have had in the past. Because of that possibility, I would like to see an amendment put into this Budget to put a line item in the Budget for \$100,000 dollars of legal expenses. The way I propose to go about doing that is to utilize \$100,000 dollars of the unspent carryover money from the current year, to use that into the next fiscal year. In other words, I would like to see this line item of \$100,000 dollars for legal expenses for potential action against Taylor Morrison, but this proposal will not be to increase the assessment that is somewhat locked into at this point. It is only to put in the Budget to utilize existing money, so it will not change the assessment, and I don't think that violates anything. I think that's a permissible thing. I'm not suggesting that everyone will vote in favor of it, but I'm suggesting it as a permissible action that can be taken. That's where I am on that. To close the loop on other Board Members who might raise an issue, for the other Board Member's ears, I have already discussed this with Jim Ward to the extent that Jim believes there will be excess money carried over from the current fiscal year of maybe approximately \$300,000 dollars. This \$100,000, I would like to see as a legal expense budget line item, there is plenty of money to do so. But nevertheless, to close the potentiality I would make the motion to the extent that we put in \$100,000 dollars for legal expenses, or if less, whatever money remains from the current year to carry over. That would cover the possibility that if Jim's forecast of \$300,000 dollars falls short, there may not be a full \$100,000 dollars, so it would be for \$100,000 or if less, whatever is left over. That's where I want to go with this. He asked if there was further discussion.

Mr. Kleck: I have similar concerns as Ron, being a homeowner in Esplanade. One of questions I had for the Board in general, and maybe Greg could explain it. Does the CDD Board have any fund right now to pay attorneys for such as lawsuits that would come up at a later date?

Mr. Urbancic: We have a Budget line item, but it is just a normal line item from general services. I think where Supervisor Ron Miller was going was potentially using excess funds, or fund balance of the District, to potentially fund that in the future. It would be something that I suppose could

be pulled over from that fund balance. Otherwise, your fund balance is used for contingency type factors, or emerging C type purposes. That's sort of why it's there, but Jim can speak more to that.

Mr. Ward: The Budget is amendable at any time after today. We could amend it next month; we could amend it six months from now. It doesn't really matter when. We could always move the fund balance today, tomorrow, it doesn't really matter when you do it. The key today is the assessment level. Obviously, you have to adopt a budget with something in it, but we do have the ability to amend it, and we do have around \$326,000 dollars in cash at 9/30/2020 of this year based on our current spending levels.

Mr. Kleck: So, setting up a separate fund is not a problem?

Mr. Ward: Now or in the future, as long as we have the cash, no that is not a problem. As long as we have the \$300,000 dollars it is not a problem.

Mr. Drew Miller: What I'm hearing is you don't have to identify those dollars on here now, so I think if that was the concern, that the dollars could be used for that, I think if we are going to amend the Budget to reflect the legal and use that, I would like to look at amending to reducing some of those. If he wants to have \$100,000, and we think we will have \$300,000 in the contingency, are we able to reduce some of that contingency for this year in order to not collect additional funds that are unnecessary from the existing residents that are out there. I'm not saying not to fund what Ron's concerns are, but how much excess is necessary for a CDD like this. How much money do they need to be in a good spot?

Mr. Ward: That's a loaded question, and it's loaded because of the preserve issue. Based on your spending level, which is \$600,000 a year, that means you need about \$125,000 to \$150,000 dollars to get through December, and that's because the bills don't go out till November. You don't pay bills until the end of November. The District doesn't get money until the week between Christmas and New Year's, so there has to be between \$125,000 and \$150,000 dollars sitting in the bank every year in order to fund the first three months in operations. But even if you did that you would still have another \$150,000 left over based on the current projections I've run.

Mr. Drew Miller: So, currently there is not \$300,000 dollars in an excess contingency fund. Some of that is a cash flow element.

Mr. Ward: In our world we call it fund balance. How much is in your bank account at the end of the year. At the end of September, I expect \$326,000 to be left in that bank account. That's called fund balance. Of that amount we need \$150,000 to operate the District on for the next three months.

Mr. Ron Miller: I understand what Mr. Ward says about cash flow, but adding this \$100,000 dollar line item for legal expenses, it does not mean that the \$100,000 is going to be spent between now and then on a cash flow basis, so if there were to become a cash flow issue, that money could be deferred to be spent for a few more months. I don't think that changes the equation here.

Mr. Ward: I'm fully agreeing with Ron. You could put \$100,000 in it, and I would just move \$100,000 from fund balance to fund the \$100,000 contingency, within the constraint of the budget, is all I would do. Then next year if it doesn't get used, so be it, it doesn't get used.

Mr. Drew Miller: I think if we had just said \$100,000 dollars in contingency it would have been the more polite way to have this conversation, but it is definitely tough on people who are employed by Taylor Morrison to hear that the way it was stated. It's kind of unfortunate. I don't mind having the money in there that puts the CDD in a good position, but it sounds to me that the future CDD Board can make those changes at any point in time, so why make it now other than just to throw dust in the wound. To me, I don't know if it's necessary and it's worth us even amending to do it at this point. I would ask that we don't make that change now. That would be my request.

Mr. Ron Miller: I do want to make that change now. I do recognize what has been said, that changes can be made in the future. It is not that I'm not listening to that, but I wish to make that change today as part of the Budget approval process.

Mr. Drew Miller: Could you explain why? I want to do what I can. Help me understand what the – is it strictly because you believe that in the future the CDD intends to sue Taylor Morrison? Is that what I understand?

Mr. Ron Miller: As I mentioned earlier, we don't know what the future Board will do, but I think it's fair to use words like "may, might, likely, highly likely," so I think it's important, in anticipation of the change of the Board, to get this line item in there now so the Board will at least have that opportunity and will take any further discussion out of having the funds available to do so.

Mr. Kleck: I think it is a possibility that the association or maybe other entities might see fit to sue or come after the CDD and we need to have some protection for the CDD in case that ever happens.

Mr. Ron Miller: That's another good point.

Mr. Wollard: Jim, can any excess fund be put into reserve. Is that viable option here?

Mr. Ward: Reserve, in the governmental world, in respect to a general operating account, is a very loose word. We have \$326,000 dollars that is projected to have in cash at year end. This Board, or any future Board can do whatever it wants with that cash. We just need to understand that we need \$150,000 dollars to operate the CDD in the first three years. If we move it up to a line item called contingency or legal, whatever you want to do is fine, or call it a reserve, that's fine too. I just move it into a carryforward that shows we're using cash from the prior year.

Mr. Drew Miller: The money is there, so in my mind it doesn't really matter one way of the other, so if that's the way it is run, so be it. I don't see a big difference. It's unfortunate the way it came out, but I tend to agree more with the way Tom stated it. There is certainly going to be some things that are going to happen in the future from figuring a lot of this stuff out, so I'm okay with allocating it wherever. It's going to change whenever it changes. So, if they move the conversation forward, I can't see continuing any further talks about it.

Mr. Ron Miller: Just clue me in as to when it's the proper time to make the motion to approve the Budget with that one amendment.

Mr. Ward asked if there were any more questions from the Board; there were none. He asked the Board if the audience could be unmuted for questions or comments; the Board did not object.

Mr. Ward asked if there were any questions or comments from the audience about the Budget; there were none.

III. Consideration of Resolution 2020-15 adopting the annual appropriation and Budget for Fiscal Year 2021

Mr. Ward called for a motion for Resolution 2020-4 to include the motion to amend the Budget as described during discussion.

On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2020-4 was adopted as amended to include a \$100,000 dollar line item for legal expenses utilizing carryover funds, and the Chair was authorized to sign.

b. FISCAL YEAR 2021 IMPOSING SPECIAL ASSESSMENTS; ADOPTING AN ASSESSMENT ROLL, APPROVING THE GENERAL FUND SPECIAL ASSESSMENT METHODOLOGY AND SETTING AN OPERATIONS AND MAINTENANCE CAP FOR NOTICE PURPOSES ONLY

Mr. Ward explained Resolution 2020-5 imposed the special assessments for the General Fund for next year. He noted Debt Service Fund assessments remained in place but were included in the Budget to memorialize the assessments for the current year.

I. Public Comment and Testimony

Mr. Ward called for a motion to open the Public Hearing.

On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, the Public Hearing was opened.

Mr. Ward noted the assessment rate for this coming year was \$525.08 which was adopted by the Board at the previous public hearing. He asked if there were any public comments or questions; hearing none, he called for a motion to close the Public Hearing.

On MOTION made by Mr. John Wollard, seconded by Mr. Ron Miller, and with all in favor, the Public Hearing was closed.

II. Board Comment

There was no Board Comment.

III. Consideration of Resolution 2020-5 imposing special assessments, adopting an assessment roll, and approving the general fund special assessment methodology

Mr. Ward called for a motion for Resolution 2020-5.

On MOTION made by Mr. John Wollard, seconded by Mr. Drew Miller, and with all in favor, Resolution 2020-5 was adopted, and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2020-6

Consideration of Resolution 2020-6 designating dates, time, and location for regular meeting of the Board of Supervisor's for Fiscal Year 2021

Mr. Ward stated Resolution 2020-6 set the Board Meeting dates, time and locations for Fiscal Year 2021. He noted the dates, times and locations were not fixed and could be changed, added to, or subtracted from as the Board deemed appropriate. He noted if this Resolution were not adopted, he would be required to advertise all Board Meetings individually as opposed to the entire calendar once at the beginning of the year. He recommended approval.

Mr. Ron Miller indicated he agreed with the concept of creating a schedule of meetings. He asked about the meeting location. He noted he wished the Board Meetings to be held "on location."

Mr. Ward: If we advertise it that way, it just means that the "on location" has to agree to all of these dates for next year, which has in the past been a little bit difficult. If I were you Ron, I would advertise it at this location for now and if we can get that on a going forward basis, I can always amend the Resolution.

Mr. Kleck: I think the conditions and the environment at the learning center where we had our last Board Meeting were less than acceptable. I think until we get a good clubhouse with a nice Board Room with quietness and private-ness, I think we should continue to do as we are doing now. I was not a bit pleased with the way that meeting was held with all the distractions and noise in the background. It did not suit our purposes.

Mr. Ron Miller asked if there would be opportunity in the future to change meeting locations. Mr. Ward responded in the affirmative; changes to the date, time and location could be made in the future.

Mr. Ward asked if there were any additional questions; hearing none, he called for a motion.

On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2020-6 was adopted, and the Chair was authorized to sign.

SIXTH ORDER OF BUSINESS

Staff Reports

Staff Reports

I. District Attorney

Mr. Greg Urbancic had nothing to report.

II. District Engineer/Environmental Consultant

Mr. Jeremy Fireline had nothing to report.

III. District Manager

- a) Financial Statements May 31, 2020 (Unaudited)
- b) Financial Statements ending June 30, 2020 (Unaudited)

Mr. Ward had nothing to report.

SEVENTH ORDER OF BUSINESS

Supervisor's Requests and Audience Comments

Mr. Ward asked if there were any audience comments.

Mr. Martin Winters: On June 9, Nathan Stith (ph) put out a communication to the residents of Esplanade. Among other things, he made the statement that regarding the external preserve, that hiking, mountain biking, and equestrian activities are all permitted in the preserves. I would like to ask Drew Miller to comment on whether or not those activities are permissible under the Army Corp of Engineer Permit, and if so, who has responsibility for monitoring those activities? Who has access to those activities? Does the general public have access to the external preserves? Who establishes the rules? Who has liabilities for any accidents or fires or injuries or danger to or from the animals? What happens to any damage to the ecosystem in there as a result of all of these activities? If these are not permissible activities under the Army Corp of engineer Permit, why would Nathan Stith make such a misstatement of fact?

Mr. Drew Miller: Let me confirmation and I can follow up with that. I know passive recreation is permitted, but if I started to tell you exactly what passive recreation is, I don't want to tell you the wrong thing, so I would like to get Tim on Board. We can ask for a request for him to identify that. But it is my understanding that passive recreation like walking, hiking and those things are. I think as far as injury there, you're talking about residents; right now it is residents only because it's part of the CDD and it's part of your community, so I don't know if there is any different liability from them walking at the amenity site or any of the trails or riding bikes than in the preserves. I'm not really sure how to answer that question. Maybe Greg will be able to answer liability wise better, but I can get an answer from Tim on the rest.

Mr. Urbancic: I do agree with the statement Drew made. Liability is going to be – if it's property of the District we have liability as if we have any other property. Really, it could be a variety of claims, but probably going to be something like a negligence claim perhaps, if something were to happen. But the question comes back to whether or not we had a duty? Did we breach the duty? And was that the proximate cause of whatever injury existed or occurred? So, there is a bit of an analysis that comes in. I mean the one benefit from the District is we have a limited waiver sovereign immunity which provides a liability cap. As to what our exposure is in a typical tort situation that could arise. That is one benefit to the District. In terms of wild animals, this is sort of an unsettled area of the law, but one that's come up in the last several years because of alligators in Orlando. There was that one prominent sort of situation. Essentially, there is no strict liability from a wild animal attack in their native habitat; however, the courts have sort of trended toward the situation of if there was a situation where we reasonably knew, or that we could have warned about, then there could be some liability to CDD or Community Association, but that case law hasn't really developed entirely, so there is some speculation as to potential liability for a

CDD and HOA. I guess I would say in that particular context, if we know of a particular danger, then as a Board would try to take some reasonable steps either to ward or prevent that danger in some way. I think we would have to determine what was reasonable. I may have gone beyond what the scope of the question was, but I just was trying to address liability. If I didn't hit it, feel free to ask a followup.

Mr. Ron Miller: I was surprised by the email blast that Nathan put out because I didn't think that anyone was allowed to enter the preserves. They have all the signs saying you can't enter. I was confused and remain confused by that. What I'd like to do is to ask the Chairperson, Mr. Drew Miller, to maybe have a conversation with Nathan and see if it would be worthwhile, assuming there are some issues here, to put out an additional message about that to clarify it. Just being pragmatic.

Mr. Drew Miller: I think it's worth a conversation. I'll reach out. I've said in the past I believe me, as Taylor Morrison, and Taylor Morrison didn't do well enough. We did the trails map that's kind of up on the wall, and if you look at the trails map up in the preserve area, there's little feet that go up there, and there's a panther on it, so we had intended to do a better job of marketing the benefits of the preserve and some of the passive recreation, so I think that's what they are doing, just trying to get the word out that hey, this is an accessible area, and it's nice. I will get with Nathan and we will get with Tim and I would also look at the liability waiver that the community has signed for the HOA. Maybe there is a chance to expand that a little bit too. I think that makes sense. We can look into both of those topics.

Mr. Ward: Two or three months ago, I don't know when I was made aware of some – the external preserves, as you can get into them from outside of Esplanade, were problematic. And I have authorized No Trespassing signs from the preserves that we own that you can get to from outside of Esplanade. They will be going up in the next couple of months.

Mr. Martin Winters: Greg, it is your understanding that mountain biking is a permissible activity in the preserve? Can you provide Army Corp Engineer documents that show this is a permissible activity? And as a second question: we know that there are bears in the preserve because they come into our community, so there are known hazards and risks in the preserve, are you suggesting that all residents have unfettered access to the preserve without trails or safety signs or gateways or specific trails that are marked? Or do we just have free access to go mountain biking anywhere we want to in the preserve?

Mr. Urbancic: I had not seen the letter, and I didn't know of the issues, so I have not looked into it. I don't know the specific answer to the question without having the Board have me go and take a look at that particular issue. In terms of bears, it's really one of those situations of a wild animal in its habitat. Essentially what the law is trending to, is if we knew, or reasonably should have known of some hazardous condition or activity under our control that could injure a plaintiff, and we have reasonable opportunity to guard against the hazard, then the recommendation is we should take reasonable security measures to prevent that from happening. Now the question is, what is reasonable? What is reasonable under our particular circumstance? It may be simply warning people of the habitat, so we can always talk about what's reasonable in those particular circumstances. I think that may answer your part 2, I just don't have the answer to part 1.

Mr. Ron Miller: Just to remind everybody, I believe that the CDD has given South Florida Water Management District the total easement to all of these external preserves, and maybe that's the document or that's the organization that has some play or some authority in this.

Flow Way Community Development District

July 16, 2020

Mr. Ward indicated he would look into the situation along with Mr. Drew Miller. He asked if there were any additional questions from the audience; there were none. He asked if there were any additional Board Member questions or comments; there were none.

EIGHTH ORDER OF BUSINESS

Adjournment

Mr. Ward adjourned the meeting at approximately 1:45 p.m.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Ron Miller, and with all in favor, the Meeting was adjourned.

Attest:



James P. Ward, Secretary

Flow Way Community Development District

DocuSigned by:


Drew Miller, Chairperson