

**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 18, 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	Assistant Secretary

Also present were:

James P. Ward	District Manager
Greg Urbancic	District Counsel
Tim Hall	Turrell, Hall and Associates
Clay Brooker	Cheffy Passidomo
John Asher	GL Homes

Audience:

Ed Staley (phone)

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

June 20, 2019 Regular Meeting Minutes

Mr. Ward asked if there were any additions, corrections or deletions for the June 20, 2019 Regular Meeting Minutes. Hearing none, he called for a motion.

On MOTION made by Mr. John Wollard, seconded by Mr. Tom Kleck, and with all in favor, the June 20, 2019 Regular Meeting Minutes were accepted.

THIRD ORDER OF BUSINESS**Discussion of Legal Opinion****Discussion of Cheffy Passidomo legal opinion regarding the preserves.**

Mr. Clay Brooker stated he was a land use attorney with Cheffy Passidomo. He indicated he was asked by Mr. Jim Ward to research the ownership and maintenance responsibility of the "main preserve." He noted he prepared an opinion letter which he distributed to the Board Members. He noted the letter was nine pages long and he delivered the letter, as well as the referenced documents, to District Attorney Greg Urbancic. He indicated he reviewed only the documents referenced in the letter, nothing else. He explained this project was two decades old; therefore, there were documents relevant to this project which he had not seen and was unaware of. He noted he had spoken with Mr. Tim Hall and Mr. Steven Walker regarding these issues. He indicated the first question he was asked to answer was "should the ownership and maintenance responsibility of the main preserve lie with the CDD in perpetuity." He stated based upon the documents he reviewed, which included the South Florida Water Management District ERP, ACOE permit, plat of the property, declaration of covenants and restrictions filed by the developer of Esplanade, the settlement agreement with the environmental groups, court rulings and statements, as well as PUD ordinances, etc., his opinions were as follows: 1) Upon completion of mitigation and restoration requirements, set forth in the environmental permits, a transfer of ownership of the main preserve must be offered to CREW or another appropriate public or land management entity capable of maintaining the preserve lands in perpetuity. He explained there was always a possibility the offer was not accepted. 2) Before mitigation and restoration requirements were completed, ownership and maintenance responsibility of the main preserve may be transferred to the property owners association or the CDD; however, the transfer of the property to the property owners association or the CDD was to occur after "turnover" of the project, as indicated in the SFWMD and the Army Corps permit. He stated the developer had not yet "turned over" the project, assuming that the phrase "turnover" referred to the transition of the control of the property association from the developer to the members and residents. He noted he was not certain this was what the term "turnover" actually meant in the permits; however, if he was correct the transfer of ownership to the CDD of the main preserve in 2015 and 2018 may have been premature, or at least at odds with the language in the environmental permits. 3) If ownership of the main preserve was offered to CREW or another appropriate entity which did not possess the inherent power or capability to finance the maintenance cost, and if CREW or another entity accepted the offer, then the transfer must include a non-wasting escrow fund in an amount sufficient to finance the cost to maintain the main preserve in perpetuity. 4) In his opinion the documents were ambiguous as to whether the non-wasting escrow fund was required if the appropriate entity ultimately owning the main preserve possessed the inherent power and capability to finance the maintenance cost. He noted according to his conversation with Mr. Tim Hall it was not the developer's intent to require the escrow fund under these circumstances. He stated it was his understanding modifications to the environmental permits would be sought to clarify the ambiguity. 5) The US Fish and Wildlife Service, which worked hand in hand with the Army Corps in terms of processing of this permit, must approve the entity which ultimately would own and assume maintenance responsibility for the main preserve in perpetuity. He stated it was his understanding both the South Florida Water Management District and the Army Corps had over the years warmed to the concept of a CDD or a Master Property Owners Association (MPOA) being an appropriate entity. He noted both a CDD and an MPOA had the inherent power to finance the cost by assessing membership.

Mr. Brooker indicated currently the CDD was in ownership of the main preserve, the developer was the permittee under the environmental permits, the mitigation and restoration requirements were not yet

complete. He stated in 3 to 4 years, upon completion of mitigation and restoration requirements, the permits required an offer to CREW, unless the permits were modified in the meantime.

A Board Member 10:15 asked for clarification of the sentence which referenced transfers “of the main preserve in 2015 and 2018 to the CDD may have been premature.” Mr. Brooker explained in 2015 tract T5 of the main preserve was deeded to the CDD and in 2018 the remainder of the northern main preserve portion was deeded to the CDD. He stated the permits indicated the transfer to the CDD (or the MPOA) was not to occur until the time of turnover. He noted “turnover” was up for interpretation; however, HOAs typically deemed “turnover” to be a transition of control. He stated if these facts were true the transfer to the CDD was premature; however, the consequence of the premature transfer may be irrelevant or inconsequential; he was unsure.

FOURTH ORDER OF BUSINESS

Consideration of FMS Bond Agreement

Mr. Ward reported FMS Bonds had been the underwriter for the District for approximately nine years. He noted a retainer agreement was required with FMS Bonds on an individual bond basis. He stated the Board had a copy of the fee structure and terms of the agreement. He noted the agreement letter was consistent with standard bond lawyer agreement letters. He noted the bonds had been issued and the CDD would be closing on the bonds next week. He recommended the Board approve the FMS Bond Agreement.

On MOTION made by Mr. John Wollard, seconded by Mr. Tom Kleck, and with all in favor, the FMS Bond Agreement was approved.

FIFTH ORDER OF BUSINESS

Resolution 2019-18

Consideration of Resolution 2019-18 regarding request to vacate a portion of two public access easements.

Mr. John Asher with GL Homes reported he was very familiar with Esplanade, having been a former employee with Taylor Morrison. He noted GL Homes owned property immediately north of the Esplanade Preserve Property and had residents facing the preserves who complained of trespassers. He stated this problem began with the development of Logan Boulevard north, up to the northwest corner of the Esplanade Preserve and this opened access to the preserve for the general public. He indicated GL Homes was involved with the construction of Logan Blvd. and installed a fence and gate along the Logan Blvd. right-of-way from the Lee County line south extending approximately 2,000 feet which helped; however, visitors were still entering the Esplanade Preserve property. He displayed a map which illustrated parcels for sale (which were accessed through the Esplanade property), the Esplanade Preserves and surrounding area. He indicated where the public easements were located on the map. He stated he believed it was in the best interests of GL Homes and the Flow Way CDD to limit access to the area by vacating a portion of two public access easements. He stated GL Homes would construct a fence and gate to discourage trespassing once the public access easements were vacated.

Discussion ensued regarding the gate not eliminating all trespassers, the fence and gate sealing off public access onto the preserves, cattle fence being relatively ineffective, and cattle fence with a large diameter steel cable being more effective.

Mr. Asher reported he obtained “no objection” letters from the public utility companies, sheriff’s department, and transportation department, as well as the surrounding residents.

Mr. Asher indicated Taylor Morrison of Esplanade Naples would be required to provide an easement for Flow Way to crossover. Mr. Tim Hall stated the gate would help prevent four wheel ATVs from driving through the preserve area and damaging the preserve.

Discussion ensued regarding who would pay for the gate installation and be responsible for gate maintenance, GL Homes installing the gate, Flow Way being responsible for maintenance in perpetuity, no-trespassing signage, and the Resolution being amended to include the conditions contained in the letter.

Mr. Ed Staley asked if this Resolution was premature with the questions of preserve ownership which were still unanswered. Mr. Ward responded in the negative. He explained this Resolution did not affect the preserves. He noted it did not hurt or harm the District’s position with respect to the preserves whatsoever. Mr. Greg Urbancic explained the CDD was not vacating any property; the property in question was a public right-of-way on Taylor Morrison property, contiguous to property owned by the Flow Way CDD; GL Homes was required to obtain a “no objection” letter from the CDD prior to vacating the public right-of-way. He explained Resolution 2019-18 provided said “no objection” letter. He explained once the public right-of-way was vacated it would no longer be open to the public for access. He noted there was no reason for the public to have access to this property, in fact it was problematic. He indicated the “no objection” would not negatively impact the CDD in any way.

Discussion ensued regarding the cost to maintain the gate and mow the land, a stipulation in the “no objection” statement to include a “no cost” to the CDD stipulation, the easement property not being included in the conservation area, the easement property measurements (approximately one acre), consideration of the easement property being of value to the CDD, and the easement property not automatically becoming preserve property upon vacation.

On MOTION made by Mr. Drew Miller, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2019-18 was adopted with revisions to provide the vacation of the public easement right-of-way be done at no cost to the Flow Way CDD, and as a condition to granting no objection, Taylor Morrison would give the CDD and/or the CDD’s successor an access easement over the property, and the Chair was authorized to sign.

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 June 30, 2019 (Unaudited)

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

Mr. Ward indicated there was a Board Meeting scheduled Wednesday July 25, 2019 for the closing on the Bonds. He reported the Bonds were sold. He noted the underwriter did an excellent job of selling the Bonds at outstanding rates.

SEVENTH ORDER OF BUSINESS

Supervisor's Requests and Audience Comments

There were no Supervisor's Requests.

Mr. Winters asked if there was an opportunity to refinance any existing Bonds at a lower interest rate. Mr. Ward responded in the negative; no refinancing could be considered until 2023.

Mr. Dave Boguslawski (ph) asked when the Cheffy Passidomo Legal Opinion would be posted on the CDD website. Mr. Ward noted the Opinion could be posted immediately; however, the extensive accompanying documents would take some time to transfer into website-friendly PDF format.

An Audience Member 38:09 asked about the Property Appraiser payment in March 2019 for \$3,600 dollars. Mr. Ward explained the Collier County Property Appraiser billed the CDD for assessment collection periodically. Discussion ensued regarding engineering services being reimbursed through bond issuance and environmental services being budgeted for.

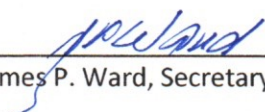
EIGHTH ORDER OF BUSINESS

Adjournment

Mr. Ward adjourned the meeting at approximately 1:40 p.m.

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

Flow Way Community Development District


James P. Ward, Secretary


Drew Miller, Chairperson