

**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, January 21, 2020 at 1:00 P.M. in the conference room of the offices of Woods, Weidenmiller, Michetti, & Rudnick, 9045 Strada Stell Court, 4th floor, Naples, Florida 34109.

Present and constituting a quorum:

Zack Stamp	Chairperson
Ron Miller	Vice Chairperson
Tom Kleck	Assistant Secretary
Martinn Winters	Assistant Secretary
Andrew Miller	

Also present were:

James P. Ward	District Manager
Greg Woods	District Counsel
Jessica Tolin	District Counsel

Audience:

David Boguslawski
Joanne Holt
Karl Schneider
Kristin Howlett
Ed Staley
Bruce Bernard
Michael Connor
Jonathan Oriole

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

Chairperson Zack Stamp called the meeting to order at approximately 1:00 p.m. Roll call was conducted and all Members of the Board were present constituting a quorum. He stated there would be a period of public comment at the end of the meeting for non-agenda items.

SECOND ORDER OF BUSINESS

Public Comments for NON-Agenda items

Individuals are permitted to speak on items on the Agenda during that item and will be announced by the Chairperson; comments limited to three minutes

Chairperson Stamp indicated there would be a time for public comments regarding non-agenda items at the end of the meeting; however, he would be happy to recognize speakers for brief comments during regular Agenda Items.

THIRD ORDER OF BUSINESS

Consideration of Minutes

December 17, 2020 Regular Meeting Minutes

Chairperson Stamp asked if there were any additions or corrections to the Minutes; hearing none, he called for a motion to approve the December 17, 2020 Regular Meeting Minutes as presented.

<p>On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the December 17, 2020 Regular Meeting Minutes were approved.</p>

FOURTH ORDER OF BUSINESS

Authorization to Advertise

Authorization to Advertise for District Engineer in accordance with the Consultants Competitive Negotiations Act (Chapter 287 Florida Statutes)

- a) Letter of resignation of Waldrop Engineering as District Engineer for the Flow Way Community Development District, dated December 21, 2020 and effective March 21, 2021**

Chairperson Stamp asked District Manager Jim Ward to review this Item.

Mr. Jim Ward: Waldrop Engineering who was the District Engineer has resigned as the District Engineer for this particular District. The effective date of the resignation is March 21, 2021. That is based the firms contract with the District. The way which the Statute works is Chapter 287 of the Florida Statutes indicates a District must advertise publicly for retention of a new District Engineer. You can hire interim people on a temporary basis. In order to have a permanent engineer, we need to go through the CCNA process. This means we need to advertise in the newspaper in Collier County and any engineer may submit their proposals to us. The way in which this statute works these are non-price-based proposals. They are only qualification-based proposals. Based on those qualifications, if you receive at least three of them you have to rank them, #1, #2, and #3. If you receive more you do not need to rank the additional ones, if you receive less you will rank however many you receive. Once you rank those three firms then I will have to go back and negotiate a contract with them. They will identify their fee structure. The fee structure will simply be what their hourly rates are for their charges and then I bring the contract back to you for approval at a Board Meeting. This process takes 3 months generally speaking. This particular item on the Agenda is simply for authorization to go through the process of advertising for a new District Engineer.

Mr. Rom Miller: Is this purely hourly or a set fee for services?

Mr. Ward: They are generally hourly rate contracts, and then we authorize them to do specific tasks. If it's me authorizing, sometimes when it's a 1-hour job, I don't ask for a proposal. If it's something more than that I will ask for a specific scope and fee to do that and sometimes I will bring it back to the Board depending upon how much it is, or I will go ahead and authorize the work as appropriate. They don't have carte blanche to go out and do anything.

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

On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the District Manager was authorized to advertise for a District Engineer in accordance with the Consultants Competitive Negotiations Act

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2021-2

Consideration of Resolution 2021-2, a Resolution of the Board of Supervisors of the Flow Way Community Development District Declaring Special Assessments; Indicating the Location, Nature and estimated cost of those Improvements which cost is to be defrayed in whole or in part by the Special Assessments; Providing the portion of the estimated cost of the improvements to be defrayed in whole or in part by the Special Assessments; Providing the manner in which such Special Assessments shall be made; Providing when such Special Assessments shall be made; Designating lands upon which the Special Assessments shall be levied; Providing for an assessment plat; Adopting a preliminary assessment roll; Providing for a Public Hearing to consider the advisability and propriety of said Assessments and the related improvements; Providing for Notice of said Public Hearing; Providing for publication of this Resolution

Chairperson Stamp: Next item is the consideration of the Resolution regarding the Hatcher property. Is there a motion on that?

Mr. Drew Miller made a motion to approve Resolution 2021-2. There was no second.

Chairperson Stamp: Is there a second? Hearing none, we'll move on.

SIXTH ORDER OF BUSINESS

Consideration of Resolution 2021-3

Consideration of Resolution 2021-3, a Resolution of the Board of Supervisors of the Flow Way Community Development District setting a Public Hearing to be held on March 18, 2021 at 1:00 P.M. and held at a Location to be determined during this meeting, for the purpose of hearing public comment on Imposing Special Assessments on certain property within the District generally described as the Flow Way Community Development District in accordance with Chapters 170, 190 and 197, Florida Statutes

Chairperson Stamp: Item 6 becomes moot. We will move on.

SEVENTH ORDER OF BUSINESS**Consideration of Resolution 2021-4****Consideration of Resolution 2021-4, a Resolution of the Board of Supervisors of the Flow Way Community Development District designating new location for the remaining Regular Meetings of the Board of Supervisors of the District for Fiscal Year 2021**

Mr. Ward: The District adopted a Resolution which sets our board meeting dates, times, and location. At that time, they were at the prior attorney's law offices. I have redone this Resolution to set the balance of the meetings for 2021, same dates, same times, but at the location here of Woods, Weidenmiller, Michetti, & Rudnick, 9045 Strada Stell Court, 4th floor, Naples, Florida 34109. This simply allows me to advertise the balance of the meetings at this one location rather than having to post a separate meeting notice for each meeting. It doesn't preclude you from changing dates, times, or locations of meetings in the future. It merely allows us to have a regular board meeting date, time, and location.

Chairperson Stamp asked if there were any 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 2021-4 was adopted, and the Chair was authorized to sign.

EIGHTH ORDER OF BUSINESS**Staff Reports****Staff Reports****I. District Attorney – Woods, Weidenmiller, Michetti, & Rudnick****a. Code of Ethics Complaint process**

Mr. Drew Miller: Last month I asked Mr. Woods to review, just to make sure that the CDD wasn't opening itself up for any kind of litigation risk on not passing the Resolution 2021-2, and 2021-3 Hatcher Resolutions.

Mr. Greg Woods: No, there is no exposure for not moving forward on those Resolutions.

Mr. Ron Miller: I understand you maybe had a touch of COVID? How are you doing?

Mr. Woods: I am in day 5 and day 5 is much better than days 1 and 2, but day 5 still isn't a picnic. I'm doing pretty good. Thank you, Ron.

Mr. Ron Miller: I wish you a speedy recovery.

Chairperson Stamp: You want to talk about the code of ethics complaint? Does anyone have any questions on that?

Mr. Ron Miller: I think last month we left this open for further discussion. I've been back and that Section 112.1341 or whatever, talking about Board Members being required to abstain from voting on financial matters that would benefit their employer. I think that statute has been violated, and I think it has been violated numerous times. I would like to visit on what I think was the most egregious violation. It was where the three Taylor Morrison Board Members presented motions and passed them to allow the Chairman to work with South Florida which was definitely an adverse position financially for the CDD per statute with respect to Taylor Morrison it was to retroactively relieve Taylor Morrison of mitigation and to totally eliminate the funding of the preserves. Clearly it benefitted Taylor Morrison, and clearly it was adverse to the CDD. I think there has been a violation and my job kind of got at that time and it was brought up and clearly mentioned at that time about fiduciary responsibilities and even the site of the Florida Code of Ethics. That did not slow down the three Taylor Morrison Board Members. They made the motion and passed it, and so I think the Board needs to pursue the code of ethics violation. It might be unfair to the other Board Members to make a motion at this point because this might be pressure on your minds. Maybe you read the Statute, maybe you haven't. maybe you've thought about the South Florida situation, maybe you haven't. I want to at this point make a motion that we ask the CDD to file that Code of Ethics violation at this point. I would ask the Board Members to think about that between now and the February meeting where we can further discuss it and perhaps add that motion to do so.

Mr. Tom Kleck: Is there any recommendations from Counsel as to how the CDD should approach this?

Mr. Woods: Because of the nature of our litigation against Taylor Morrison, I think there are a lot of reasons, in traditional litigation, and even for the CDD, I would recommend against filing the Ethics violation. It turns – Taylor Morrison will use it in the litigation against us and will say basically the CDD Board is now trying to be vindictive and taking personal shots back at them. I think it undermines our very good position in the litigation. That's the primary reason. The second, an ethics violation, it's arguable whether or not there was a technical violation or not. I understand your position and your reading of it, and you could get there, but it is not as clear cut as I think you think it is. It would be an opportunity, if an individual not on the Board, if a resident of the community wanted to file an ethics violation, I think that would be fine, but I would try and dissuade the Board from engaging in that activity itself.

Chairperson Stamp: I understand the frustration, with the Taylor Morrison people on the Board. The difference is, (indecipherable) As he said, if a private citizen wants to bring this, I wouldn't tell them not to. They could certainly do that on their own dime. And I also don't know that the CDD is authorized to bring this. I don't think they are authorized to own the preserve either, but that's another question. You know that what the duties of the CDDs are, they're there to file ethics complaints, but I'm not sure about that. That's my reading of it. Maybe it falls into some of our general powers to do that. I would also say we might want to revisit this down the road if what I think will happen happens, and that is during discovery we are going to find out that these earlier Taylor Morrison Meetings were totally scripted and directed outside of all the Sunshine Laws. If you look at their minutes, there is no debating, there is no discussion, there was no dissent, there was no "what's in the best interest of the resident?" It was all fairly scripted. I think that may come out and that may be something more substantial, more easily proven, than what you're talking about. So, we will leave it open as an item at this point.

Mr. Martinn Winters: I have a copy of the minutes from the September 18, 2018 Board Meeting wherein the Board voted to accept the external preserves, and it looks like maybe some of the Taylor Morrison representatives on the Board were omitted from the litigation, and I was wondering whether or not the litigation is going to be modified to make sure we get all the Taylor Morrison Board Members.

Chairperson Stamp: There was a mistake there. There will be an amendment. Two of the named members will be dropped, two will be added. There might be a couple of other amendments as well. Potentially the homeowner's association, because it's my assumption and others that in a few months the homeowner's association will probably be a co-plaintiff with us. But they were brought in in an abundance of caution, so any rights they had, if they wanted to preserve them, they were at the table. So, yeah, at the end of this we will talk about the lawsuit, and I've been working with counsel on getting that going.

II. District Engineer

No District Engineer report.

III. District Manager – JPWard & Associates, LLC

a) Financial Statements ending December 31, 2020 (Unaudited)

Mr. Ward: I have nothing for you.

NINTH ORDER OF BUSINESS

Agreement with MHOA and District

Agreement with Master Homeowner's Association and District

Chairperson Stamp: We had hoped to have a joint call between the HOA and the HOA Council and the CDD Council, but unfortunately that was not able to be arranged. It will be held next week to work this out, but it is my feeling, and I think most in here feel we ought to cancel this and move on, but Jim do you want to give us your thoughts?

Mr. Ward: As you know, there is an agreement that has been in place with the Master Homeowner's Association since 2013 or 2014 and it really covers the maintenance of the District's water management system which are lakes and littoral shelf plantings, the use of irrigation line that supplies irrigation water to the community and entranceway landscaping. Generally speaking, in transition CDDs, many of them choose to move those agreements back into the CDD for operation and maintenance for efficiency purposes, and for the District's overall ability to actually manage that type of an asset in a fashion different than the way I see most homeowner's associations do that. Last year, this was in your budget. I recommended to you that it be done. I haven't changed that recommendation to you at all on a going forward basis, and I think it's something you should consider, especially now that I know you are going to begin the transition to a resident controlled HOA board which I know will put 10,000 things on their plate to deal with.

Mr. Drew Miller: You have property and landscaping. I pointed out the map last month. I suggest with you work with the HOA on a new agreement. Not to say the HOA would stop maintaining that area, but if you just wholesale get rid of this without having an agreement on that area, to me why don't we vote one of you to coordinate with the HOA and at least put together something that makes sense. There are still property and assets that are in the CDD that probably make sense to stay in the HOA, like the front entrance landscaping. That's probably the easiest thing, a simple amendment to the agreement rather than just a wholesale get rid of it. It's up to you guys. I'm just throwing that out there to help.

Mr. Ron Miller: I think the best way is to terminate that agreement, and we can do that on 30 days' notice, it's pretty easy for us to do. In my mind the question is more about timing. It's gone on this long and maybe think about a timing coterminous with the turnover on the HOA side. I like Drew Miller's thoughts about the landscaping. If that's the only landscaping the CDD is involved in and the HOA has everything else under the sun, we might want to continue. The HOA would have to go along with, but we need to think about leaving that with the HOA.

Mr. Drew Miller: I have it from last month's – things like 142, the landscape exhibit, it shows you what the CDD's land deeded that requires landscaping, it might help you to use that exhibit in the agreement and work something out where at the very least, they would take that. That would be my suggestion.

Mr. Ward: There are three elements of the existing agreement. There is landscaping out on where the arterial road is, the irrigation system, and the drainage system. Drew has a good point with respect to the landscaping, and irrigation. I am unfamiliar with those two pieces of that puzzle. The water management system actually is, while the biggest part of the transaction, the easiest part to transition. Working out another agreement with them I think would not be that difficult to do, and clearly maybe they would like to keep that. Maybe it's better for you all to turn the landscaping and the irrigation over to the HOA and let the District handle the drainage system. In any event, waiting till that transition point is probably not something I would do. I would suggest we start that now, but unless we have some idea of where we want to go with that, I think there is nothing to do. I would suggest we start that and at least have some direction. We can at least start that transition with one of those assets, at least with the drainage system, and maybe deal with the other two parts on a going forward basis without me having to terminate the entire agreement. I think I can take a look at that and pull-out pieces of it if necessary.

Chairperson Stamp: We have to give them 30 days. We can give 60 days, which would give us time to work things out.

Mr. Ward: Yeah, or alternatively if you just want to give me direction to work out a solution to this problem, whether it's the entire agreement or parts of it, we could move forward with something without having to do a full termination at this point.

Mr. Winters: There has been a new story on Link News three times that Esplanade is laying off its employees, and while that may be a mandatory 60-day notice to the employees, it is having an unsettling effect on the employees and staff that maintain the HOA and my concern is that people are going to be paying more attention looking for jobs, than they are for maintaining things. I think as soon as we get control of the assets that the CDD is ultimately responsible for, the better. My second concern though is any more of Taylor Morrison's responsibilities than we already have, to the extent that there is deferred movements on some of the ponds and waterways, grasses growing where they shouldn't be,

that need to be removed. Plantings that haven't been done. I want to make sure the CDD does not inherit any of Taylor Morrison's responsibilities. They've deferred enough to the residents as it is.

Mr. Kleck: I wanted to go along with what Mr. Winters' said and get some clarification for, not only the Board, but for the homeowners about the status of the lakes and the ponds. I'm getting several emails and nasty calls about why our ponds and lakes are turning into swamps. My point is, at this point I don't think the CDD is responsible for it, and doesn't the County have to approve it before you guys can turn that over Drew?

Mr. Drew Miller: I don't know about what the turnover process is. There is definitely a permit out and some bonds out. The fixtures I've seen are all looking good as far as I can tell with my laymen eyes. I don't think there is – but my understanding is we just hired somebody last time to go do the review of it, so I think all of that is being processed.

Mr. Kleck: So, who is responsible for it right now? Taylor Morrison?

Mr. Drew Miller: I don't know that answer. There is some responsibility for both.

Chairperson Stamp: So, would the solution here be to authorize Jim to move forward starting to negotiate the ultimate cancellation of the contract and let us cancel it at the next meeting? Does that get you to where you need to be from a time standpoint, and we can –

Mr. Ward: If we cancel it or not is – if you want to start it, we need to start the process. It doesn't go anywhere without action.

Mr. Ron Miller: Jim, in your thought process about moving forward, would we think we would be knocking with the HOA about that and get their viewpoint before we start taking lateral action?

Mr. Ward: I think talking to the homeowner's association is a good idea, whether the existing or whoever the new board members will be, it wouldn't hurt to have a talk and let's see what we can do about moving the process forward. That's always a good thing.

Mr. Winters: Is this something we could do Jim? Could we get the authorization to do it? Or is it something one of us is better positioned to do?

Mr. Ward: It's easy for me to do it, but if you want to do it you can try to do it. I'll be glad to do it, but I'll be glad to work with you on it.

Mr. Winters: You are probably better qualified to do this than I am, but I'm happy to ride shotgun with you and try to act as a liaison or go between with the HOA.

Chairperson Stamp: So, the consensus here is you are going to terminate it at some point, but we are not agreeing on it being certain.

Mr. Martinn Winters made a motion to give the District Manager authority to move forward to carve out sections of the maintenance agreement such as the appropriations CDD and lead with the HOA agreement towards something more appropriate with the HOA, and Mr. Ron Miller seconded the motion.

Mr. Tom Kleck: Will the CDD Board and the HOA Board have the ability to meet together and hold a meeting according to the Sunshine Laws, etc.?

Mr. Ward: They are always welcome to attend your meetings and provide input. A joint meeting would be them attending a CDD meeting.

On MOTION made by Mr. Martinn Winters, seconded by Mr. Ron Miller, and with four in favor and one opposed, District Manager Jim Ward was given authority to move forward to carve out sections of the maintenance agreement such as are appropriate to the CDD and leave with the HOA what deems to be more appropriate for the HOA.

TENTH ORDER OF BUSINESS

Discussion of Preserve Funding

Discussion of Future Funding of Preserve Mitigation and Maintenance

Chairperson Stamp: What I am thinking here is having the Board pass a nonbinding resolution saying that basically we are through funding the preserves coming from the Fiscal Year we are in and give Jim some direction on putting together the budget and also lets us go to the Corp of Engineers and say we don't intend to fund this anymore. We don't think we should. How are we going to work this out? This is not going to be a binding resolution. If I can go to them and say the board agreed 3 to 2 or whatever but that is certainly our intent. We can go a different direction, but that's my thought.

Mr. Ron Miller: So, you are looking for a nonbinding resolution to open a discussion with the Corp.

Chairperson Stamp: Yes. I don't want to just walk in and say this is what I think as we are just going to do it. I want to be able to go in and say the Board has told me this is what they want.

Mr. Drew Miller: Can we ask Greg to chime in on whether making that motion opens us up for litigation from bond holders because we have an obligation to maintain the assets the CDD owns? I don't know how that ties into what the bond holder obligations are. Have we looked at that? If we are making a move that says hey, we are definitely not going to pay, are we making any kind of statement that might put us in jeopardy?

Chairperson Stamp: We are not talking about not funding the operations and maintenance or paying off the capital debt. This is only the preserves. Greg, do you have an opinion? Jessica?

Mr. Woods: We have not spoken with the bond holder's counsel as to any specifics. Our understanding is we would probably not be violating the terms, but we are trying to confirm that with the bond holder counsel, so I would like us to take a look at that before we express an opinion one way or another.

Chairperson Stamp: Would it be your advice to hold off on this move of the Board for a resolution or otherwise deal with it? We can always come back and reverse it.

Mr. Woods: (Indecipherable.)

Mr. Ron Miller: Greg, there are different reasons to be looking at the bond indentures, the 2014 bond indenture for the purposes of looking forward to refinancing it which we cannot do until 2014. For that reason, totally different from what we are talking about here, I just recently went through one of those, and I recall reading the indenture that was specific to the boundaries of the CDD and the internal preserves. I didn't see anything in that bond indenture with respect to the external preserves whatsoever. That bond holder didn't even know they existed; it wasn't a part of it. You might want to take a look, but I don't think that should be an issue because it is not even a part of the indenture.

Mr. Woods: Let us confirm. That's a good point Ron. Let us confirm that and if that is in fact the case, you are right.

Mr. Zack Stamp: We would prefer if you could hold off until the next meeting on this issue.

Mr. Ward asked if Mr. Ron Miller and Mr. Kleck were willing to withdraw the motion and second; the motion and second were withdrawn.

ELEVENTH ORDER OF BUSINESS

Staff Items

I. District Attorney

a. Ethics Complaint

Chairperson Stamp indicated this Item had already been discussed.

b. Petition for Administrative Hearing SFWMD Permit Modification transferring operations to the Flow Way CDD.

Chairperson Stamp asked if there were any updates regarding this Item?

Ms. Jessica Tolin: On the petition that was filed, there was the order entered dismissing it, so what you could do to pursue it further, there is a 30-day deadline to appeal. We are still within that 30 days. That would be something that you all could consider doing. I think it would be our suggestion just to pursue the lawsuit at this point, because the South Florida Water Management District's opinion was essentially that it is out of their jurisdiction and they want the courts to decide. It probably makes sense to pursue the issue with the courts and let them come down to a position as opposed to putting it on appeal and potentially having an appellate decision happen first that may or may not be favorable for the CDD.

Mr. Woods: We are kind of late to the game in the South Florida Water Management District action. Our stronger position is with the Army Corp of Engineers and with the litigation itself. I would rather focus our efforts on the things I think are positive for us as opposed to trying to appeal the South Florida Water Management District where we are more likely to lose and diffuse the momentum we may gain in the other venues.

Chairperson Stamp: Would it be fair to say that South Florida didn't say necessarily that we were wrong, they said you should have been bringing these actions years ago? But because Taylor Morrison controlled the Board --

Mr. Woods: That is a fair statement.

Mr. Drew Miller: Is it? I read it totally different. Approximately five years prior to the commencement of construction on September 13, 2007, the ERP was modified to update the long-term operating entity to the Flow Way Community Development District, a newly created CDD established by Collier County Ordinance 2002-09. Listen, it would not have come off the ground without modifications to these permits. It's pretty clear. I just want to make sure anybody listening in the audience actually recognizes that, in my opinion, it is not at all what this letter says. This letter clearly says that SFWMD sees the Flow Way CDD as the long-term operating entity.

Chairperson Stamp: And if we didn't, we should have objected several years ago. We blew the timing.

Mr. Drew Miller: I don't see where that says that anywhere.

Mr. Ron Miller: I thought we had already filed an appeal.

Chairperson Stamp: We did, and they ruled against us basically saying, too late.

Mr. Ron Miller: When did that ruling come out?

Ms. Tolin: I'm pulling up the document. You could do a judicial review, which would put it in the District Court of Appeals. It was January 5, 2021.

Mr. Ron Miller: I find it somehow ironic to be talking in that regard, because the CDD was under control of Taylor Morrison people and those very people are the ones who asked on behalf of the CDD, to change the permit. So, how could the CDD possibly object if they are the ones who requested it?

Mr. Drew Miller: I don't understand that logic because there is no point in a CDD period – if you follow that logic, that logic would go through for everything? Then it doesn't add up. There is no reason for a CDD to do stormwater and there is no reason for a CDD to do roads. Now you are finding the whole purpose of a CDD and that seems different than what I felt your intent on this suit was. This seems interesting. That logic doesn't follow in my head.

- c. Memorandum/Complaint regarding Ownership and Maintenance responsibilities for the Main Preserve. Document Link: <http://jimwardcdd.com/Files/FW - Taylor Morrison - Filing 12 30 2020.pdf>**

Chairperson Stamp: The complaint, as we indicated earlier in the conversation, there will be an amendment report coming, and the counsel will work on getting that fine-tuned. We will file that in the next couple of weeks if not sooner. Jessica or Greg do you have anything to add to that?

Ms. Tolin: I think you've covered the primary changes, which is swapping out the two individual defendants that were previously named with the two that were on the Board at the time of the transfer in September 2018.

Mr. Ron Miller: Jessica, at the last meeting, I thought what I heard was the intent was to name the five Taylor Morrison personnel on the Board that approved the transfer of the preserves. Is that still true?

Ms. Tolin: I'm sorry, my audio isn't that good. What were you asking?

Mr. Ron Miller: I thought that when we discussed at the last meeting the intent was to name the five Taylor Morrison personnel on the Board that approved the transfer of the preserves. Their names added. Is that my understanding?

Ms. Tolin: Yes, that's what we are correcting it to do.

Mr. Ron Miller: Okay. That's good. And we also discussed, and we left it open, about adding the three new Taylor Morrison members, post conveyance of the preserves, as named defendants. Are we talking about that as well or is that a different subject?

Mr. Woods: We are right now adding John Wollard and Drew Miller.

Mr. Ron Miller: Why are we excluding Tim Martin who was part of the three working on the Board at the time? We're adding two, but not him as a third. Before we talk about that I would like to ask if you are a named defendant, can you be deposed or are you exempt from being deposed?

Chairperson Stamp: He will be.

Mr. Ron Miller: even if (Indecipherable.41:00)

Chairperson Stamp: (Indecipherable.)

Mr. Ron Miller: Why are we excluding Tim Martin? If we are naming two of the three, why not all three?

Mr. Zack Stamp: Correct me if I'm wrong then, but the thought was (indecipherable) bring in the property was the thing that triggers the liability (indecipherable) or other things putting a time period (indecipherable). Whatever our damages are, are our damages. I think we (indecipherable). Adding more defendants doesn't increase the number of the people that are liable.

Ms. Tolin: The facts that we are focusing on are the transfer of the preserves which going off of that September 2018 Meeting Minutes and who was on the Board, that's where we got the named individual defendants from.

Chairperson Stamp: I have the authority to sign off on the amendment if you want us to go back and look, but I don't think that naming him as a defendant adds anything to the suit. (Indecipherable 43:01.)

Mr. Drew Miller: I sent Jim a letter, and if I (indecipherable). I don't have to read the whole thing, do I? Do I have to read it if I want to get it into the minutes? I want to make something clear anyway.

Mr. Ward: I don't have it yet.

Mr. Drew Miller: Does it need to be read, or will it become part of the minutes from me sending it to you?

Chairperson Stamp: Can we come back to this?

Mr. Drew Miller: Essentially, I think, as a Board Member, I think I have the right to participate despite the pending lawsuit. I have the right to participate even in the shade sessions and some of the privileged information; however, I don't think there is a conflict, but as far as any shade sessions or any behind the scenes is probably a better word for that. Litigation material, I am going to abstain from that. Don't send it to me. I asked Jim not to send it to me. I'm not going to not vote, because I think I have an obligation to the CDD. I have an obligation to I believe the majority of the residents in the CDD that don't necessarily agree with the direction that this Board is headed. That said, I am going to abstain from any shade sessions or anything like that to avoid any impropriety. I wanted to make sure that was on the record.

Chairperson Stamp: regarding the letters received? (Indecipherable 46:20.)

Mr. Ward: I have it. I will make it a part of the record.

II. District Manager

a. Audit of Preserves Expenditures – In Process, Preliminary schedule - for February 18, 2021 Agenda

Mr. Ward: I just finished the scope of services with the auditors. The auditors are a little bit myopic sometimes, but we've got to pass the myopic view. They are going to start that, I think next week, and hopefully it will only take a couple weeks to get it finished and I'll have it ready for you at the next meeting.

Mr. Martinn Winters: Is that the same with regard to the CDD maintenance expenses for the preserves?

Mr. Ward: All expenses, yes. Any fund related to the preserves.

Mr. Ron Miller: Have we asked the auditor to opine on whether or not the escrow fund, since we don't have it, is that an item required to be put on the books?

Mr. Ward: That audit is in draft form. I have asked that question, but I think the partner is mulling that over. I suspect it will be a footnote to the audit versus something that is in the balance sheet.

TWELVTH ORDER OF BUSINESS**Board Items****I. Board Member – Martinn Winters – Preserves**

- a) Calvin, Giordano & Associates**
- b) Ecological Services Associates**

Mr. Martinn Winters: We have a proposal for the preserves. We had four or five people that were contacted and interviewed for the purpose of submitting a proposal for maintaining the preserves, and it came down to two finalists. There is one that we feel is more qualified based on past experience, expert witness testimony, contacts with agencies and so forth, and we are making a recommendation for one of the two.

Mr. Ward: I as I have indicated before, because of the COVID situation here in this particular office, the two firms, they would just be available by video. I see Calvin, Giordano is with us today. I do know Ecological Services Associates; he is in federal court depositions today and is not available to meet. If you would like to hear from Calvin, Giordano, and Associates, they have made themselves available to do so. If not, then we can move on. It will be up to you. We have Mike Conner and Bruce Bernard here from Calvin, Giordano, and Associates.

Chairperson Stamp: Go ahead and keep the presentation relatively brief.

Mr. Ward: Please give your name prior to speaking and keep your presentation to no longer than five minutes between the two of you. Thank you.

*Mr. Michael Conner: Senior Landscape Architect with Calvin, Giordano, and Associates. Good afternoon and Thank you for giving us the opportunity to present our proposal to you. Mr. Conner gave a brief history of Calvin, Giordano, and Associates (CGA), in business for over 70 years, as well as the services provided by CGA which included planning, landscape architecture and environmental services. He indicated CGA had offices in multiple locations throughout the State of Florida and had over 20 years' experience in overseeing preserve/conservation/wetland mitigation areas for the City of Weston, FL and bringing these types of land to the end of the Army Corp of Engineers' acceptance and permit requirements followed by taking over perpetual maintenance of these types of properties. He reported CGA was prepared to offer these services to the Flow Way CDD. He stated he understood the conservation area consisted of approximately 1,100 acres and there were contracts in place with a maintenance company for the physical actual maintenance activities but the CDD was looking for a company to provide oversight of this activity. He stated CGA's proposal was to provide project coordination, assist in the administration and oversight of the maintenance contracts and contractor activities, review payment applications to ensure the contractor was fulfilling responsibilities, provide recommendations of approval to CDD Staff, and act as a project liaison as requested if needed to coordinate with contractors, regulatory agencies, and any residents who might have questions. He stated he understood the developer was still engaged with the firm Terrell, Hall and Associates who were finishing up the Army Corp of Engineers activities and had divided the preserve areas into four or five areas. He noted a couple of the areas had already been accepted, but a couple of the areas had not been accepted and might even require additional enhancements or plantings. He explained CGA would coordinate with Terrell, Hall, and Associates (THA) to ensure CGA was not in conflict with what THA was doing. Mr. Conner continued: *We would provide this by inspecting the areas once a year, probably not all at one visit. We would probably do it in a couple different visits. We would take**

photographs, make recommendations, comments, to pass on to the contractor and provide a report as well that we would present to the Board each year. As far as staff goes, in addition to myself, we have an environmental specialist who heads our environmental division, Sandra Lee. She would be overseeing the environmental ecological aspects of the inspections. She has a field inspector through Lindeman who goes all over the State looking at and providing these inspections for these environmental areas, as well as myself, registered landscape architect and certified arborist, would be helping with those and assisting with preparing the reports, exhibits, and math, and so forth as needed with the staff I have here in the main office in Ft. Lauderdale. Then, in our construction administration services department we have Bruce Bernard who is also available on this call to answer questions, but he is physically in the Naples area and is readily available to provide any services that we need at any time for the Community. Our total price for providing this is \$25,660 dollars for one year, and if that is agreeable to both parties, we could extend it for another two years at that same price. The other item Mr. Winters had asked us was to calculate the future cost to maintain the preserves and calculate the amount of perpetual escrow needed to pay for this maintenance. You would be looking at yearly maintenance costs from your maintenance contractor, which we understand may be in the neighborhood of \$180,000 dollars perhaps, with the addition of our fee of \$25,000 dollars, that would be what you would be looking at in terms of a yearly cost perhaps. We also think it is possible that after the other two areas are accepted by the Army Corp of Engineers and through that permitting process, then the routine maintenance in perpetuity that the CDD is responsible for may actually reduce the amount of the contracts, mainly for the maintenance contractor who may just not have as much to do because the requirements are not as stringent as they are when you still have the permit ongoing. He asked if there were any questions and asked if Bruce Bernard had anything to add.

Chairperson Stamp asked if there were any questions; there were none. He thanked Mr. Conner for the presentation.

Mr. Ward indicated the Board would deliberate at this time. Mr. Conner and Mr. Bernard left the Meeting.

Mr. Martinn Winters: The second proposal, I haven't had the discussions with Jim, and he's got some information on that proposal. If we are going to make a recommendation, should we at least give the Board some information on?

Mr. Ward: As Martinn alluded to, we had two proposals, one from CGA and one from Ecological Services Associates (ESA). It is a high-level view. I am familiar with the firm of CGA. They have done work for many of my CDDs for more than 20 years now. From my perspective they are geared towards just looking at the operations part of this. They are more than qualified to actually look at this particular vendor and give us the reports that we want and need for the fee they are outlining. The second firm that we have, ESA was a recommendation from one of the vendors that I know Martinn had spoken to and I had spoken to who had decided not to bid on this project. I am unfamiliar with the firm. I am familiar with his credentials by just reading about him online and seeing what he is able to do. They are by far superior to CGA in terms of what they can do. His level of expertise is federal level work, so he is extremely well qualified to do this kind of a project and assist us in additional areas of those preserves if we get into, or have some kind of issue with, how that is maintained. He is clearly qualified in depositions. He is clearly qualified as an expert in state courts and federal courts to be deposed on these matters. His fee is \$52,900 dollars a year, but if you look at just the monitoring part, and bench it against the CGA, it is about the same

number. It's \$25,000 or maybe \$30,000 dollars a year, so they are in the same ballpark. His additional services that he outlined in here went beyond what we were asking for. He was late to the game in terms of asking for a proposal from him, so I haven't had the ability to flush it out. He is a good firm. My gut reaction is to recommend him to you and say let's try this. I think he is a good vendor for us. I think Martinn agrees with that. My recommendation would be to use ESA.

Mr. Winters: This vendor came highly recommended to us by someone who came highly recommended from Greg Woods' law firm. In the chain of command, I think he comes well qualified and creditable, and I do think if we are going to get into a fire fight, we probably need the most qualified vendor possible to represent us through expert witness testimony, or just his ability to gather facts and make sure we are protected. From my standpoint, the extra \$20,000 dollars is well spent, but it is up to the Board whether or not they want to go with the cheaper proposal as he is also well qualified, he just doesn't have the same credentials as the second.

Mr. Kleck: I wondered about these contracts that we signed with these folks. Are they binding for 30 days, 60 days cancellation type contracts?

Mr. Ward: They are usually for 1 year or 2 years, whatever we need them for, but I always put a 30- or 60-day cancellation clause at our sole discretion in all these contracts.

Chairperson Stamp: Is it your expectation Jim that you will exclude the services that raise it to \$50,000 dollars and in the it will be more like \$30,000 dollars?

Mr. Ward: I think I will split them. So, we will have a scope of services that authorize specific elements that we do, and the rest of the elements will be there, but he will have to take specific direction from the CDD to implement those additional services.

Mr. Ron Miller: I thought the services between the two are the same but that ESA is like \$20,000 dollars more, so I was confused on that, but the services are the same?

Mr. Ward: The ESA proposal, he went beyond what the original scope was intended to be, so that's how you get the \$50,000 dollars. If you do an apples-to-apples comparison of just looking at this vendor and benching against CGA, you are not far off the same numbers. He may be \$20,000 he may be \$30,000. They are in the same ballpark, but his credentials are just, I think, above and beyond in this. As Martinn indicated, he came from a vendor that was recommended by Greg Woods to start with, so his credentials are extremely good.

Chairperson Stamp: Do we need a motion?

Mr. Ward: Let's just do a motion to rank ESA as #1 and CGA as #2, then authorize the manager to negotiate with the #1 recommended.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, Ecological Services Associates were ranked #1, and Calvin, Giordano and Associates were ranked #2, and the District Manager was authorized to negotiate with the #1 ranked firm.

THIRTEENTH ORDER OF BUSINESS**Audience Comments**

Chairperson Stamp asked if there were any audience comments.

Mr. Ward asked if there was anyone on the phone with questions or comments for the staff or Board. He asked speakers to state their names prior to speaking.

Mr. Dave Boguslawski: I just wanted to pass along one piece of information. It involves the maintenance contract between the HOA and the CDD. To the extent that the HOA has maintenance duties on CDD assets, Pope Golf is the one who would be managing that, and Pope Golf has given termination notice to the homeowner's association effective March 31. We have been going through a record gathering process with Pope Golf and Taylor Morrison and they have been helpful, but we now have a shorter timeline, so if you have maintenance records needs, it is important to get your oar in the water pretty soon. That's just an FYI. That's all.

Mr. Kleck: I have spoken with a couple of the homeowners about advertising that Taylor Morrison is doing for the Hatcher Homes. One of the things that came is they are saying that there are no CDD fees associated with those locations. I would like to get some clarification on what exactly that means. Are they not part of Esplanade? Are they not paying any fees?

Mr. Ron Miller: What I saw said CDD (indecipherable 1:07:04).

Mr. Drew Miller: That's the Hatcher parcel (indecipherable). That's the debt. We are not putting the debt on those houses, so they don't have debt on those houses. I felt the best thing for the CDD would be to make it equal and have them –

Mr. Ward: The answer to your question directly is, Hatcher is in the District. There are two types of assessments we levy: one is a debt assessment. The Board did not adopt the two resolutions necessary to proceed forward with that (indecipherable 1:07:55) subject to operations going forward.

Mr. Kleck: So, the maintenance is one of the things we get on a yearly basis with our tax bill. Is that not included in the Hatcher properties?

Mr. Ward: Hatcher will be on the tax bill for operations if the CDD Board chooses to put them in the General Fund Assessment, or your operating assessment, this summer.

Mr. Kleck: Those who I've talked to are concerned about it.

Chairperson Stamp: They are going to pay operations and maintenance.

Mr. Kleck: Which is how much per year?

Mr. _____ 1:08:38: \$517 dollars.

Mr. Kleck: But they do not have to pay the debt that we are all paying for the structure that was set up?

Mr. Ward: There is no infrastructure that was paid for by the CDD in Hatcher that would warrant us the ability to levy an assessment.

Mr. Kleck: So, they've paid for that in some other way?

Mr. Ward: Obviously, yes.

Mr. Ed Staley: Clarification, with respect to the lakes, it came up before, ownership, maintenance easement, water management system, just for clarification, it is my understanding that presently the lakes continue to be owned by Taylor Morrison, that there is a maintenance easement that runs in favor of the CDD because the lakes are part of the water management system, pursuant to the contract between the CDD and Developer at this present time, that water management system responsibility which includes the lakes resides with the HOA. Is that accurate?

Mr. Ward: The ultimately responsibility lies with the CDD. The CDD has chosen a maintenance vendor which happens to be the HOA, but the responsibility is always the CDD as it owns that asset.

Mr. Staley: So, you've got the three entities involved, the ownership entity, the easement of running and the contract.

Mr. Ward: The land happens to be in the name of Taylor Morrison, but our easement allows us to operate and maintain whatever we have over that property in perpetuity. At some point I'm sure Taylor Morrison will obviously want to get rid of that land somewhere.

Chairperson Stamp asked if there were any additional questions or comments. There were none.

FOURTEENTH ORDER OF BUSINESS

Announcement of Next Meeting

February 18, 2021

Chairperson Stamp: Our next meeting will be February 18, 2021.

FIFTEENTH ORDER OF BUSINESS

Adjournment

Chairperson Stamp adjourned the meeting at approximately 2:12 p.m.

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

ATTEST:

Flow Way Community Development District



James P. Ward, Secretary



Zack Stamp, Chairperson