

**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, February 17, 2022, at 1:00 P.M. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.

Present and constituting a quorum:

Zack Stamp	Chairperson
Ron Miller	Vice Chairperson
Martinn Winters	Assistant Secretary
Bart Bhatla	Assistant Secretary

Absent:

Tom Kleck	Assistant Secretary
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Also present were:

James P. Ward	District Manager
James Messick	District Engineer
Jessica Tolin	District Counsel

Audience:

Dave Boguslawski
Ed Staley

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, with the exception of Supervisor Tom Kleck, constituting a quorum.

SECOND ORDER OF BUSINESS

Public Comments

Public Comments for non-agenda items (Limited to three (3) minutes). Individuals are permitted to speak on items on the agenda during that item and will be announced by the Chairperson.

Chairperson Stamp reviewed public comment protocols.

THIRD ORDER OF BUSINESS**Consideration of Minutes****January 20, 2022 – Regular Meeting**

Chairperson Stamp noted corrections had been made to the minutes by Mr. Ward. He asked if there were any additional corrections to the Minutes; hearing none, he called for a motion.

On MOTION made by Mr. Bart Bhatla, seconded by Mr. Ron Miller, and with all in favor, the January 20, 2022, Meeting Minutes were approved as amended.

FOURTH ORDER OF BUSINESS**Consideration of Resolution 2022-1**

Consideration of Resolution 2022-1, a resolution of the Board of Supervisors of the Flow Way Community Development District amending the District's Fiscal Year 2022 General Fund Budget to account for the addition of the maintenance responsibilities of the District's assets from the Esplanade Lake and County Club, Inc (Master HOA)

Mr. Ward: The purpose of the Amendment is to align our existing adopted fiscal year 2022 budget to the programs that the District is now operating and maintaining that we essentially took over the responsibility for maintenance as of approximately January 1 of this year. The line items that are now in your budget are consistent with what I've shown you in the past in terms of what we are doing, and they take reductions out of your budget to the extent of your preserve maintenance in order to be able to fund the full budget. At the end of the day, it still anticipates a \$243,000 dollar decrease in our fund balance by the end of this fiscal year assuming all of these projections are correct and would leave us with about \$92,000 dollars in cash going into fiscal year 2023. That is the purpose of the Amendment. The reductions are essentially the removal of all of the work related to the 1,000 acres preserve maintenance outside of the boundaries of the CDD; this is where all of it is coming from.

Mr. Bhatla: Jim, you said that we took over the preserves starting this year?

Mr. Ward: No, we took over the maintenance previously being done by the homeowner's association. That includes the stormwater system, littoral shelf maintenance, landscaping at the entrance buffers, irrigation pump station, those kinds of things.

Chairperson Stamp: Jessica, it is my understanding from talking to you and Greg that you would prefer that we at least leave something in there, even if it is \$10,000 dollars, for maintenance. Is that a fair statement?

Ms. Jessica Tolin: Yes.

Chairperson Stamp: I will make a motion in a minute to move \$10,000 dollars from somewhere to at least have a minimum \$10,000 dollars for maintenance of the external preserves. I want to preface that by saying our law firm has deposed Barbara Kininmonth from Taylor Morrison on the issues which she agreed to be deposed on and there will be another corporate deposition on the other issues. In the course of that deposition she said, under oath, that Taylor Morrison was spending hundreds of thousands of dollars on areas 4 and 5 of the preserves, which was totally unknown to us, and saying they

were doing so with permission from someone they couldn't identify. She also indicated that areas 1 and 3 were totally done, so keep in mind, based on their representation, under oath, there will still be several hundred thousand dollars spent on the preserves. Now, you've got to believe them, so we are not totally shutting off funding for the preserves. It was an interesting side note that she indicated that 1, 2 and 3 were completed, but she didn't know who told her and when they told her. With that as background I'd like to make an amendment to this to move the \$10,000 dollars we've allocated for the South Florida Water Management District litigation, which I'm assured by counsel was over and there shouldn't be any expenditures and move that over to some line contingencies for the preserve.

Mr. Ward: We will just put it in contingencies.

Mr. Bhatla: Where is that \$10,000 dollars coming from?

Chairperson Stamp: We've got \$10,000 dollars budgeted for legal for the South Florida Water Management District, but that action is essentially over. We didn't know at the time whether we would need it at some point. It's pretty obvious we are not going to.

<p>On MOTION made by Mr. Zack Stamp, seconded by Mr. Ron Miller, and with all in favor, Resolution 2022-1 was adopted as amended, and the Chair was authorized to sign.</p>
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FIFTH ORDER OF BUSINESS

Discussion

Discussion of Proposal from Truist Bank (formerly SunTrust) to provide a one (1) year Revenue Note financing anticipated operating expenses for the remainder of Fiscal Year 2022

Mr. Ward: As you recall a couple of months ago, when we took over the maintenance responsibilities of the District, we knew that obviously there would not be enough cash to fund this through the end of the fiscal year. We did have some discussion about whether there are any short term financings available to us. I was not particularly thinking at the time that we would have any banks that might be available to this. Truist, who is essentially the new version of SunTrust Bank, is the bank that we use for our general operating account. I did reach out to them, and they indicated that since we are an existing customer, they would be willing to do a short term, what we call a revenue note, for this particular District. The amount I gave them was an amount not to exceed \$400,000 dollars. It would be due 12 months from the date that we sign the deal. It would be due exactly in one year. All principal and interest would be due at maturity. Interest rate on it is 1.25%. It is a relatively standard letter from the bank that obviously this District would be able to meet. The one thing I want to talk about with you all is the actual need to do this kind of a financing. The first and most important thing is that if you decide to borrow the \$400,000 dollars, on our part, the cost of actually borrowing the money would require us to pay basically two legal fees to go with this. One is a general counsel fee and the second is a bond counsel fee. The general counsel fee gives the opinion to the bank that would be required that the District is a legally established entity, that it has the right to borrow this money on a short-term basis, and whatever documents that need to be prepared in relation to the issuance of the note, which in our world is a little bit substantive. And a bond counsel opinion would be required related to the tax status of the note, whether it is tax exempt or even it's taxable. Those two opinions are going to cost anywhere between \$40,000 and \$50,000 dollars while the interest on this is relatively minor. It's \$5,000 or \$6,000 dollars. The one thing it really does do, beyond the fact of the cost of issuance of this note, is that it's due date is

one year which means in our fiscal year 2023 budget we would need to fund the full value of that note to be able to make the repayment, and that would be a requirement of the obligation that is issued for this note. The \$400,000 dollars is automatically going to raise your assessments I think around \$400 dollars or so, roughly \$400 dollars a unit a year, which is almost what we levied in the current year for the total assessments. My initial thought is that we probably don't need to do this in the current year. We can budget appropriately and use cash and then fund that over a few years process and basically replenish our cash going forward, but it does give us the opportunity, if we do this, to do it. The downside is really you're borrowing money to fund operations which is, in many worlds, especially government, not probably something thought of as a good thing in the market. Those are basically the upsides and downsides of this kind of a financing. As I said in my memo, my recommendation is to continue going as we have done over the last few months, without the note proceeds, but waiting and let's see where we are with our 2023 budget. I don't think this financing is needed at this point.

Mr. Ron Miller: \$40,000 thousand dollars in legal fees to obtain \$400,000 dollars in financing for one year is a non-starter for me.

Chairperson Stamp: Jim and I discussed it and I don't think it's the right way to go either. But I've had some people in the community ask why we could not just borrow, so I asked Jim to run that down and see what borrowing would look like.

Mr. Winters: This is for remediation of the lakes that Taylor Morrison was supposed to do?

Mr. Ward: We had not discussed a particular use of the funds, but generally the answer to that specific question would be no. It would be used to fund existing operating costs so our cash would not be depleted through the end of the fiscal year. We are running short on cash simply because the cost of taking over the operations was more than what we really had within the context of our existing budget.

Mr. Winters: Are we are running short on cash because of (Indecipherable)?

Mr. Ward: We are running short on cash simply because the cost of taking on the operations was more than what we really had within the context of our existing budget.

Chairperson Stamp: It only does in the sense that if they would have left us with pipes in good shape, we would not have had to use \$90,000 dollars on – so, there is totally something. This wouldn't be earmarked. This would go into our general fund, and we could then budget it out.

Mr. Winters: Has the study been completed as far as what needs to be done around the front entrance?

Mr. Ward: Jimmy and his team are working on those reports right now. They should be finished and ready – I'm scheduled to hopefully have them for you probably at your April meeting at the latest, March if I can get it done. It will include all of your assets and all of the work that needs to be done on a long term basis.

Mr. Winters: I'm still not clear about – I understand the pavers on the bridge coming in are our responsibility and it looks like there are a number of them that need to be replaced or reconfigured. The flowering plants coming into the front entrance look nice now, but at some point, they are going to need to be replaced. The fountains need to be repaired and my understanding is the HOA used to perform

those responsibilities and now they are ours, so does that mean we are only going to be paying a little bit at a time as we go to try to cure those things or are we going to try to fix those all at once at some point?

Mr. Ward: We are strategically trying to prioritize those elements that I think are the most critical for you, whether it's a lake bank restoration, littoral shelf issues, some of the items that you mentioned, they will be strategically planned out as to what's most needed in your 2023 budget with a more longer term plan of what to do over 2024, 2025, and 2026. You will see that as we have this budget come out to you.

Mr. Winters: So, we are going to prioritize the expenditure money based on what we believe the highest need is, but at some point, we are going to run out of funds and then at that point we do what?

Mr. Ward: You're going to run out of funds this year. That's the easy part. So, the 2023 budget that you see will have a plan in it that tells you what you need to do from 2023 on in order to correctly fund this District.

Chairperson Stamp: And it will require an increase in assessments depending on how much you want to do in year 1, 2, 3 –

Mr. Winters: Are we going to be able to get through the end of this fiscal year, getting some of this work done with the amount of money we have now?

Mr. Ward: We can only get done the basic work at the moment. So, for example, you mentioned the pavers. That is not going to be done this year. We have broken flow meters for the irrigation system, that's \$6,000 dollars. That's not going to be done this year. Cleaning up the littoral shelves, no lake bank restoration is going to be done. Just the basics for the balance of this fiscal year. The 2023 budget is when you will begin to see strategically how best to stronger manage those assets and repair those things that need to be repaired. For example, I think you also mentioned the pumps in the fountain. They need to be replaced. So, at the moment they are being repaired and we are going to be able to continue to do that through the balance of this year, but next year we are going to have to probably fund something like that. That will come out as part of your larger plan in another month or so.

Mr. Winters: I think at the moment, most of the residents think that it's the HOA's responsibility to do these things, and so it's going to make the HOA look bad if we are not maintaining this. I was just wondering if we should have some communication out to the public so that you, Dave (Boguslawski), are not getting all the complaints and the public understands what the issue is.

Mr. Ward: Before Dave says anything, I will say that I don't see a degradation in the service through September 30 of this year. I would say to you clearly, if we can't keep this level of service and fund it correctly into 2023, you will see a degradation of service, but I think we will be able to get through this year. If something pops up, I mean, a flow meter not working is a regulatory issue. The pumps go out at the fountain, I'm probably going to make a phone call to Dave and say we have a problem at this point. But so far, I think we are okay right now.

Mr. Winters: Except that the pavers continue to get worse. You can see them getting worse.

Mr. Ward: Correct. As I've been advised, so far, the pavers will be fine until we get into the 2023 budget year.

Mr. Bhatla: What is the downside on stopping the maintenance of the preserves? We are not informing the Corps. We do this on our own. What is the downside? Are we exposed to a fine or any other action? Has our engineer advised us on those things?

Mr. Ward: I have asked Jimmy to speak with our environmental consultant that does that. My layman's understanding of what that permit says is that to the extent that we don't do the maintenance and you have more exotics growing in those preserves between now and the time that we do it, what it's really doing is extending the time and cost obviously to reach the success criteria that's outlined in that permit. The cost is going to happen, it's just going to be on the backside of it versus the inside. I don't think we are going to be subjected to fines at this point over exotic removals.

Chairperson Stamp: It is an open question. But again, Taylor Morrison claims they are spending hundreds of thousands of dollars to do that now, so I guess we will take them at their word.

Mr. Bhatla: My question also is, we have the ownership, but we don't have the permit, so we are doing all these actions on behalf of Taylor Morrison. Could we invoice them saying "we will maintain, here's the invoice?"

Chairperson Stamp: That's certainly the basis of the lawsuit for past historic performance. Jessica, do you have thoughts on that?

Ms. Tolin: That's part of the damages that we are claiming through the lawsuit, is essentially to be reimbursed for any of the maintenance costs that have been incurred because we are claiming we shouldn't have been responsible for those.

Mr. Bhatla: In my interpretation yes, we have it, you have the permit, and we will maintain it, and we will send you the bill. The lawsuit is eventually resolving of all this. I'm just thinking, and it's an open question.

Chairperson Stamp: I can't imagine they are going to pay the invoice and acknowledge that they owe the money. It might be a novel thing to do, but I can't imagine it would be a productive thing to do since they say it's our responsibility. In the lawsuit, clearly, they view that they have no responsibility.

Mr. Winters: Should we do it just as a record keeping matter though to keep track of how much we are spending?

Ms. Tolin: My opinion is that it wouldn't be necessary given the claims in the lawsuit. That is the demand essentially and the position of the CDD with respect to those costs that have been incurred and ongoing costs for the maintenance.

Chairperson Stamp: And they have that information through discovery.

Mr. Boguslawski: I know that Taylor Morrison has, upon turnover of the community to its members, put to us a number of things, and I'm just wondering if some of those things were permits or permit requirements. Whenever you turn over control of anything, you transfer with it lots of responsibilities, everything from bank accounts to member records to, on and on. I know that there were series of documents associated with surety bonds that I've been signing along the way. I've been working with

lawyers, both HOA and CDD as well, before I sign anything. I'm sitting here wondering about, before you conclude that Taylor Morrison still holds all the permits, we have to verify that.

Chairperson Stamp: I think Jimmy has been putting together an inventory of all the permits and who's got them, and who's name they are in.

Mr. Miller: The lawsuit that we have filed is all about the preserves and the transfer of the ownership, so we do have ownership whether we like it or not, and as such we become a successor in interest to those permits whether we like it or not. So, our name may not be on it as the permittee, but because they transferred title –

Chairperson Stamp: It was interesting at the deposition, Barbara Kininmonth referred to the CDD at least twice, if not three times, as the perpetual maintenance entity for the preserves. So, she may be wanting to throw it to you.

Ms. Tolin: With respect to Tim Hall's deposition, one of the things that he had stated with respect to the preserves is that the CDD was initially going to be that interim holder of the preserves, but then it became the perpetual owner. Or they are wanting it to be the perpetual owner after the success criteria.

Chairperson Stamp: Yeah, there is a difference between what he said and what she said. I agree. The bottom line is, we will listen to counsel, but I don't see a need to send them an invoice. They are not going to pay it. They've got the demand for the lawsuit, and we are certainly keeping track of all the expenses. It's not like they don't know.

Mr. Bhatla: As far as ownership is concerned, it is very interesting. We talked to South Florida Water Management District, and we said that we wanted to transfer the water use permit over, and their question was "what do you own? You have to have proof of ownership of something that we can award you the permit. Unless you show us a document that you own something," so essentially, they just need to see, and I think Jim is going to be working on the ownership issue of all our assets. What do we own? We own only the pumps and the monitoring wells and the piping. We don't own the real estate. I don't know. All those issues have to be answered before we can have a permit transfer, and that was their take. So, it's very interesting. The other thing is, Taylor Morrison had approached the Corps to transfer the permit. The Corps said, "no, you still have five years to show the success, you will hold the permit." That was their take. On our side, our take is we have gotten the ownership, so we are assuming we have to do all those things, so I think all that has to be resolved through our counsel. What does the ownership in this case mean while the agency is indicating we don't want to transfer the permit to anybody else at this point in time, except Taylor Morrison.

Chairperson Stamp: We have effectively, with the last amendment to the budget, defunded the preserves, except for the \$10,000 dollars. That's what the amendment did. So, we will see.

Mr. Miller: With respect to ownership of assets, apart from the external preserves, the legitimate assets the CDD has, as the community progresses and the CDD issues bonds and buys assets and reimburses Taylor Morrison for infrastructure and they transfer the ownership of the infrastructure to the CDD, and the CDD now owns it, there has to be some documentation at the time these are transferred over to us.

Mr. Ward: Correct. From my perspective, it's clear what we own, or purchased, as a part of the bond process. The entrance is a perfect example because everybody sees that. The underlying fee title to land

along the entranceway happens to be in the name of the CDD. The CDD acquired the landscaping for what I call the berm, the area from the bridge west along that way, but we own the underlying fee title to the rest of the area, but we weren't given a bill of sale for that, probably because we never bought it, but we own the underlying land. At the moment, I've said, don't worry about it. Let's leave it in the CDD, the bridge, the pavers, all that kind of stuff, because we own the underlying fee title of the land and it's not smart to split that baby right now, and we will do that, but at some point, we need to go back and clean some stuff up and recognize between the HOA and the CDD who is going to maintain it and do a document to that. That's a good example, but a majority of everything else, the lake, the water management system, the littoral shelves, the drainage pipes, the big assets, are easy to figure out. The pump station is a little more difficult because the land is in the HOA's name, the lake is in the HOA's name, but the District bought the asset, we paid for the pump station. So, it's a little convoluted in some instances, but it's not overly complicated to fix. It just isn't something that has to be done this second. We have other things on the plate. I'm getting to it. It will be 3 or 4 months when we get past the budget, and we will clean who does what to who over time.

Chairperson Stamp: I asked Jim to start working on that list, and Dave Boguslawski and I have had conversations about it. At some point, several months down the road, we may have to trade some easements back and forth to clean up who owns what, who's going to take care of what, but we need to get through the budget first and then we can start cleaning stuff up.

Mr. Bhatla: Another interesting thought is the Hatcher property and the permit. What do we own in the CDD? Only the pump station; everything else is owned by the HOA. We are only providing the water because we don't do the distribution of the irrigation water to homes. In that case, the interesting thing was, that permit, it goes until 2035 or 2039. Under the requirements, the amount of water to be pumped, it is below the reporting threshold, so the agency indicated don't change anything on that one. The question is who would want to hold the permit, HOA or CDD? We will have to clean that up too.

Mr. Ward: All of that has to be cleaned up, yes sir.

SIXTH ORDER OF BUSINESS

Staff Items

I. District Attorney – Woods, Weidenmiller, Michetti, & Rudnick

a. Status Report on Litigation

b. Non-Binding Arbitration Hearing - February 28, 2022

Ms. Jessica Tolin: An update on where we are at with the depositions. The deposition of Barbara Kininmonth was taken about a week ago. She was the corporate representative of Taylor Morrison of Florida and Taylor Morrison Esplanade. Her deposition was fairly short, primarily because she was designated only for a limited number of topics, including things like the maintenance work or mitigation work being performed in the preserves and the discovery requests in the lawsuit. All of the main issues that are really the center of the lawsuit in the claims, those are topics that the other corporate representative, which is the attorney Michelle Diffenderfer, will address for Taylor Morrison of Florida and Taylor Morrison Esplanade. Her deposition is March 1. Her depo will be taken the day after the non-binding arbitration which is still set for February 28. The only other thing I wanted to mention is, we sent out some additional discovery recently to Taylor Morrison, both the Taylor Morrison entities, primarily concerning what type of work they are doing in the preserves, who is doing that scope of work, and how much has been expended on that.

Chairperson Stamp: To that last point, the law firm did send out a letter to Taylor Morrison asking for all of that information as well and informing them that they have not notified us, they are trespassing, and they should coordinate with Jim what they are doing, when they are doing it, so we are aware. Again, she claimed that they had some permission from somebody to be out there but didn't know who.

Ms. Tolin: If you are contacted Jim, just let us know as well.

Mr. Bhatla: Is there anybody involved in the deposition from Taylor Morrison from the corporate office? This is the Florida Corporation that they had. My intent in asking that question is, is the corporate office aware that we have this lawsuit?

Ms. Tolin: I don't know the answer to that because that would be someone within Taylor Morrison and I don't know who they report to or who has to be involved on their end once litigation is brought against them, but the two entities that we are suing in the lawsuit, those are the ones that are, for purposes of a representative being present at a deposition, they are present on behalf of Taylor Morrison of Florida, Inc. and Taylor Morrison Esplanade.

Mr. Bhatla: So, really there is no attorney involved from Arizona?

Ms. Tolin: I don't believe any of the attorneys are involved from Arizona. They have Florida attorneys representing them in the case. Now whether they have some in-house counsel somewhere, I'm not sure. But it's Florida attorneys in the case.

Mr. Bhatla: Okay, because as a side issue, the corporate Taylor Morrison, they have embraced the ESG policy (Environmental Sustainability and Governance), and they have a very big deal about it because the investment community really depends on that investing in Taylor Morrison. That's at the corporate office, and I'm just wondering if the news has ever gotten to the top. That was my interest.

Ms. Tolin: It wouldn't have come from our office if it did. My assumption would be it came internally from within Taylor Morrison, if at all. I'm just not sure.

Chairperson Stamp: From an ethical standpoint, I don't think we could communicate over their head, or shouldn't communicate over their head.

Mr. Bhatla: True.

Mr. Miller: Apart from the lawsuit which we have already filed with respect to the preserves, we have been discussing an additional lawsuit with respect to these maintenance issues, which we were discussing earlier. Where are we with putting together that lawsuit.

Ms. Tolin: With that lawsuit, we are working with the HOA's attorneys as well because if we are going to bring a suit on construction items and maintenance items, as I understand it, the association is also in the process of a 558 notice of claim as well. So, it makes sense if both entities are going to have claims relative to defects and maintenance of property within Esplanade, that those claims be brought together in a suit.

Mr. Miller: What comes to mind is that it's only since January 1 of this year that the CDD has taken the ownership responsibility of maintaining these assets. Prior to January 1, it was the HOA's responsibility. With that in mind, is it really the HOA that should be suing Taylor Morrison and we are joining them? If you just follow the contracts, isn't our beef with the HOA, and the HOA has a counter beef with Taylor Morrison?

Ms. Tolin: So, the reason the HOA would be involved is because of the ownership of the various items that are alleged to be defective. Some of the items are HOA items, common property, that should be brought by the HOA, the party withstanding, to bring those claims. For those that are CDD owned property items, or potentially that are a maintenance responsibility item, those could be brought by the CDD, but it is a lawsuit I think you would want to bring in conjunction with the HOA.

Mr. Miller: I really like the cooperation aspect of it, but since we had a contract with the HOA, do we have standing to go after Taylor Morrison for the HOA's failure?

Mr. Bhatla: I think it is a good question. Would the counsel advise us to take a defective property and take ownership because it's coming basically secondhand to us? The HOA has issues with Taylor Morrison and are we being advised to step in and assume ownership of the property which in my mind is a defective property.

Chairperson Stamp: Let me jump in for a second. We had an audience member here a couple of months ago that made it sound like we had an option. This came to us by operation of law. We didn't have an option to negotiate with them on whether we wanted it or not. It was basically a here-catch. Even though we had a nominal fictitious contract with the HOA, of course we had \$10 a year which we never even paid them, to do all this maintenance when it was Taylor Morrison, that's still our property, and just because we hired the wrong vendor to take care of it, still we were the ones damaged and I think we still have a cause of action. I understand your point, but we hired a bum contractor to take care of it and they obviously didn't.

Mr. Miller: That's my concern. Do we chase the bum contractor or we do we chase Taylor Morrison? Do we have a standing to go after Taylor Morrison?

Chairperson Stamp: It was still our property which was damaged. I understand your point.

Ms. Tolin: That goes back to the owner of the property. Depending on which property you are referring to it may be the CDD that's better suited to bring that claim, or it may be the HOA that's better to bring that claim, just depending on what particular item it is.

Mr. Miller: Lake bank maintenance. The HOA contracted to do that and didn't, so who's our beef with?

Ms. Tolin: Well, at the time, Taylor Morrison was also in charge of the HOA, so that's where – I think our initial thought with a lot of these items was that it's the developer that the claim would be against, which is why the 558 notice was sent out.

Mr. Miller: We can look through the HOA because of the developer board members and go after the developer?

Ms. Tolin: From a practical standpoint you would want to think about suing and the effects of what a lawsuit against the HOA would look like. Because you both have the same constituents. I think that if there are particular items that you are contemplating bringing suit against Taylor Morrison for, that involve the HOA, I would say to give Greg or I a call so that we can discuss, and we would likely want to bring in the HOA's attorneys as well to discuss with them what the best way to proceed is on those.

Mr. Miller: I think that would be a good idea, getting together and deciding. I'd hate to get this thing up to the court and the court just throws it out because we are chasing the wrong person.

Ms. Tolin: There are no construction defects as part of this current lawsuit that you have against Taylor Morrison. We attempted to bring a claim for that, and the court basically said no, you can't do that, it needs to be brought as a separate suit as it's based on a separate set of underlying facts. That's where the HOA was also sending out a 558 notice to Taylor Morrison for their particular items, and as I understand it, they are still in that process.

Chairperson Stamp: We have been having talks about this. This has been an ongoing discussion. Keep in mind that if we sued the HOA and won, the HOA would have to assess the members to pay us, so that's why we are cutting through the corporate veil to go to Taylor Morrison.

Mr. Boguslawski: The HOA board can meet in confidence with the attorneys. We don't have to have public meetings and then go into executive session, which is the preferred way to do this. There is coordination going on between the attorneys and to the extent you all have ideas in public session here, your attorney is taking them all in, which then can feed into a process attorney to attorney and evaluate them. We as the HOA are going through the experts, making rounds, golf course, the audit and the audit is coming, we are then going to package it all up and see what we've got and then we would go through the process with Taylor Morrison per the law. There are regular conversations going on behind the scenes. We have HOA counsel. We have litigation counsel.

Mr. Bhatla: It seems to be, at least, that the lead in the lawsuit should be HOA. We are essentially supporting them. The impression I got from the counsel last time, we are the lead agency, and the HOA also has issues to resolve. It appears to me that the HOA was the owner, so they have all the issues. They have the primary, and we got it because we had no choice, so we would be the secondary. It's an issue of who is taking the lead.

Chairperson Stamp: I understand your point and don't disagree. I think what Greg was referring to the last time was the underlying suit; we are definitely the lead on that, and we actually named the HOA as a defendant. They will be switching, I assume, sides to join us. We only sued them because we thought that they were an indispensable party that had rights that might need to be litigated. On the 558 action I think we are at least equal partners, and you may be right on who we call the lead on that because definitely the damages that I assume the HOA will be seeking are probably a lot bigger than the damages we will be seeking, so you may be right on that, but the judge wouldn't let us put them together, so there are going to be two different lawsuits at least out there.

Mr. Bhatla: I had also gotten the impression that the HOA was more deliberate and slower in this action, and it was a concern. That's another piece of input.

Chairperson Stamp: Their turnover was several months after our turnover. We turned over in November; the residents took control and didn't take control until May 31 of the HOA. So, they are definitely behind and catching up in putting things together. The ETF, the Esplanade Transition Fund, was helpful for both us and for the HOA, but if it had been 3 or 4 times bigger it might have helped a lot too. They are in the process of catching up, but they haven't had the time like we've had.

Mr. Winters: Is the solution just to name the HOA as a named party, just like we named the Army Corps of Engineers.

Chairperson Stamp: They are not a named party in the lawsuit, the Corps is not. We could not name them as a defendant and then be co-plaintiffs with them. Our intention is, at this point, that we will join them in the 558 lawsuit, both of us together. I understand they will be at the table at this point with us. Now, Taylor Morrison might file a cross claim saying no, it's those guys sitting next to you who ought to be paying. That could happen, but I don't think we would initiate it.

Ms. Tolin: Yes, we would be filing the lawsuit together.

Mr. Miller: Do we have a forecasted date for that?

Ms. Tolin: Not at this time. I believe we are waiting to hear more from the HOA.

Chairperson Stamp: I think we pretty much have our 558 claims T'd out, but again they haven't been able to put things in motion as quickly as we could.

Mr. Boguslawski: Our deadline is 3 years from now for our claims. We are going to beat that by a mile. We are in the stage – Taylor Morrison's financial audit through May 31 is still not done. The auditor is still telling us to make entries we don't agree with for our books. So, we are asking for clarification of that. Until that happens, and there's lots of back and forth on that now, until that happens, our auditor can't get going. That's going to be the trailing issue. The other issues are proceeding along. This is not an issue about rushing into it. This is an issue of entering the fray when you are ready to enter the fray. Make sure your witnesses have done their homework and make sure you put together the best case you can. There is enormous coordination going on and you need the agreed party being the lead. That's part of the reason why we've got the attorneys we've got collectively working on this thing. A lot of the coordination is between them. At the right time, fortunately it is a public process in your setting, and at the right time there's going to be talking to do. In the meantime, what I would advise is you keep raising your questions because you have Jessica soaking things up like a sponge and that's a good thing. Let's allow them to be the lawyers and us be the businesspeople.

Mr. Winters: Are we able to move forward with our construction defects claim before the HOA is ready or are we supposed to wait until the HOA is ready?

Chairperson Stamp: We could, but it's the advice of counsel that we would be better off with more leverage, going in together. We could file ours today, in essence. But then again, keep in mind, that would also entail us hiring a bunch of experts with money that we don't have, to get ready for that lawsuit once we get started down that road. So, it could be a while.

Mr. Boguslawski: One more thing. You've filed your 558 with Taylor Morrison which caused us, the HOA, to take a part of our 558 and file it early.

Mr. Miller: What's a 558?

Ms. Tolin: 558 is a chapter in the Florida Statutes and it particularly pertains to construction defects where you have to give the contractor, in this case the developer, notice of what the defects are, and it's a prerequisite that you have to do before you can file a suit against them. There's a particular time frame that has to be met, and so when we say our claims are ready to be filed if we wanted to, it means the deadlines under that process have since passed for us. So, we could theoretically file a claim early, but for all the reasons we have been discussing, it would be our advice to wait so we can coordinate further with the HOA.

Mr. Miller: I'm hearing the joint lawsuit seems to be in the distant future, but I say, let's do it now.

Mr. Bhatla: We had better be prepared to beef up the fees in the budget and the assessments because we won't see any money coming in soon. I think be prepared for increase of fees.

Chairperson Stamp: Best case scenario for the one lawsuit that has been filed, we go to trial in June, which I don't think will go in June.

Ms. Tolin: It could be July or August.

Chairperson Stamp: Then nothing prohibits Taylor Morrison from appealing any adverse decision, so we could be several months before we see anything, even if we are successful at every stage. You are right, this is not going to be quick cash. And Ron, part of the 558 is you give them a period to cure in case they say "hey, you're right, we did miss that." That's why there is a time period built into it.

Mr. Miller: Has that period expired for us?

Chairperson Stamp: For the 558 claims we have made, it has expired.

Discussion ensued regarding whether to move to file the 558 lawsuit immediately.

Ms. Tolin: I would advise against that.

Mr. Miller: I will withdraw the motion.

II. District Engineer - Calvin, Giordano & Associates

- a. Preserve Tree Removal**
- b. Strategic Operational Plan**

- c. **SFWMD Water Use Permit Transfer**
- d. **Preserve Area Fire**
- e. **20-year Stormwater Needs Analysis**

Mr. James Messick: I have put together an engineer's report for February. It's got four items on it. Three are just updates with one new one at the end. The first item is a little update on the preserve tree removal. As you know, we met with the District last month. They agreed about half of the trees were acceptable. We went ahead and resubmitted our plan and since I've prepared this engineer's report, I've found out that the District approved our plan to remove about half of the originally proposed 30 trees. We've sent out plan approval to a contractor just to confirm prices and we will start addressing these items in the future when we have the budget for it. The second item is just a Strategic Operational Plan update. Basically, we have investigated all of the CDD assets. We've completed our investigations. We are now in the process of wrapping up our reports which I'm day to day working with Jim to get these drafts completed. We are really close on a lot of them. We just finished investigations on the littoral plantings, so now we can finalize different segments of different portions of each report. I hope to have those done in the next couple of weeks. The asset vendors list was updated so the Everglades Pine Straw mulching p.o. is scheduled for the next fiscal year. They won't have to do anything this year. The third item is the SFWMD water use permit transfer. Supervisor Bhatla and myself attended a preapplication meeting on February 9th with the Water Management District where we spoke with a gentleman who went over the process with us. We had several questions for him. I think it went pretty well. We learned a little bit about the overall consumptive use individual permit that's part of the District, but we also learned a little bit about the general permit that's on the Hatcher parcel and as Supervisor Bhatla mentioned, we could modify the permit to bring both permits together, but if we do that then there's a reporting requirement that gets added onto the current individual permit reporting, so there is additional cost that's really not necessary since it's a small amount for the Hatcher property. There's a transfer. It typically takes 1 to 2 months to do that transfer. We did have a question about what the recorded copy of documents effectuates in transfer of ownership would be allowed, and we've reached out to another Staff member at the District to try to inquire about that and we are waiting to hear back from them.

Mr. Bhatla: Jimmy, it was a very good meeting. I think you did extensive preparation, and we got a great deal of very good input and I think the most significant thing we learned was we were not using the well water. That set alarms because it's the only source of water we have. The lakes have been going down very much and we need to pump the amount of water we have allocated so that we have enough water. In addition, if we don't pump, the wells could get silted and it costs a lot of money to develop them and in extreme cases to drill new wells. We don't want to be in that position. As I understand, I talked to Jim, and he took the action to start pumping the wells. I think it is a good thing for HOA and us. We had a good meeting and they expressly indicated that they were glad we came in. He says it is a very useful thing to do, so that the application process is smooth and also, they can clarify any doubts and so forth.

Mr. Messick: It was a good meeting. You bring up a good point. I did speak with my Staff and the District believes we are not using the recharge pumping at all to balance out the lakes, and that that's natural flow from the water table into the lakes, it's not necessarily true. Apparently, the flow meters on those pumps are just not being read and working, so that's something we've addressed and will have to replace in the future, but they are not exceeding any kind of permit allowance for the recharge pumping requirements.

Mr. Bhatla: But the concern is the water.

Mr. Messick: We are exceeding the annual allocation over several months in 2021 and that's something we will have to address with the HOA and sit down and talk to them. My understanding is, based on Mr. Bhatla's description to me, is that each homeowner has a controller, but the HOA has access to those controllers, so if we can look at the numbers of what we are exceeding and what we're allowed, especially at final buildout once these carriage homes are completed, then we will have to make sure we don't overirrigate based on this permit. If we are going to transfer it to our name, then obviously they can come to us and request we meet permit conditions. The last item is a new item, Golf and Country Club Staff was retrieving golf balls from the southeastern corner of the aqua lake driving range when their golf cart caught on fire in the path that separates the preserve from the lake. No one was hurt and the fire department was called out to extinguish the fire. I did include some pictures that were provided and an email chain between the Board and the District Manager. No remedial efforts are necessary. The tarnished area should be overgrown with new ground cover in the next several months. You can see in appendix C the pictures of the golf cart on fire, and some of the aftermath, and cleanup that had to be done in that area. The fire did create a line of communication on what may be able to be done in the future and I reached out to the District about what would be allowed. Similarly, to the tree removal, there is debris cleaning in the preserve areas, and we can certainly request from the District any type of removal of downed trees or debris. We can put together a report for you and submit that for approval, and with the certain amount of money which would have to be allocated, which I am not sure we have anything in our budget for, we can start cleaning up debris and trees in the preserves. It is something we can do should you want us to pursue that.

Mr. Bhatla: Jimmy, our concern is all our assets are properly insured to the extent that we want to have risk mitigation.

Chairperson Stamp: Jim is going to cover that with the District Manager's report.

Mr. Martinn Winters: When do you think you will have your report on the assessment of all the work that needs to be done on the front entrance HOA property?

Mr. Messick: I'm planning to have my draft reports to the District Manager for his review by the end of this month. Maybe the first week of the next month. I'm really trying to get those done next week and the week after. When you all will be able to see it, Jim can answer that.

Mr. Ward: Contextually, Jimmy's reports are going to feed into the preparation of the 2023 budget, so once I have his initial draft of the documents, he and I will review them. To the extent there are any changes that we need before it comes to you, we will go through that. I will then take that information and include it in your 2023 budget and your longer term capital plan, and the entire thing will come to you at the next meeting. At the very latest it will be your April meeting. There is a short window between the time he will give it to me and the time I will have to produce an agenda for you, so with luck it will be in March, but more likely it will be your April meeting.

Mr. Boguslawski: I'm under the impression that we went through the process of smashing everything together and handing it to you in part to help sort things out. What it is that the CDD

should maintain, should own, should have the permits for, and what should be HOA owned, maintained, etc. Ideally there would be a nice separation. I'm under the impression we are going through that process before both of our 2023 budgets happen so that you can budget for the right things, we can budget for the right things, and at least I'm hearing a couple of things in this meeting that cause me to think you are putting budgets ahead of the separation.

Mr. Ward: Our budget process is way ahead of your HOA process. We have to get a budget adopted basically and approved by the Board probably in April or May in order to go through and do a public hearing in June or July. At the very end of the day, the Board has to adopt a budget at the latest at their July Board meeting in order to hit the November tax rolls. My assumption, and I understand what you're saying, is that the delineation of the assets, who does what to who, in my head I'm relatively clear on what we are doing right now. If we decide to put it back in the HOA, we do it in 2023 or 2024, it doesn't really matter, but they are pretty clear at the moment that it doesn't matter if we keep all of the stuff that we've already taken over to me. It's a very clear delineation of the assets themselves. If for some reason you want it back, you can have it, but at the moment I don't think it's a problem moving forward the way I'm moving forward unless you decide you want to change it somehow.

Mr. Boguslawski: I'm not trying to force anything, I'm just hearing about the pressure you're going to have, and we know that there is going to be some ongoing movement followed by changing who owns things, like the bridge and the pumps and I just think the sooner we can get to straightening all that out, and having a planning basis together, I think that's going to be a good thing. If that is not doable before your April timeframe, I would hope we could be at the final budget that you all have so that maybe you could knock some parts out and we could put some parts in.

Mr. Ward: That, we can do.

Chairperson Stamp: We are going to leave a lot of things unfunded, so if we are able to pass some costs back to you, we can pick up stuff that we are going to leave on the table right now. Jim has to present to the Board a budget proposal by the 15th of June, so we won't adopt it at that point, but –

Mr. Ward: That's my statutory deadline, but in Collier County, because I have to certify tax rolls in August, and I know we have to do mailed notice this year to all residents of our public hearing, that's a 45 day process to get those mailed notices out. I need 60 days before that in order to at least get the budget and go through at least one workshop board meeting in order to get it approved to go to the public hearing, so we are on a very tight time schedule. July would be an unbreathable time for me to get assessments on the rolls. I really want to get this done before then.

Mr. Miller: One of the things you did on the map, Jimmy, was to show where the littorals are permit required and that's very good, thank you. Does that mean that those are required in each lake? You can have more, but you can't have less than that?

Mr. Messick: Correct.

Mr. Miller: With respect to where the littorals are shown, does the permit require they be in that exact spot, or could we move them?

Mr. Messick: Yes, you can move them around as long as they meet the minimum length of littorals on the lake bank per lake, not overall. You can see on lake 22, there are no required littorals.

Chairperson Stamp: We are hoping to get the maps up on the CDD website soon.

III. District Manager – JPWard & Associates, LLC

- a. **Internal Preserve – Golf Cart Fire (Insurance and Liability)**
- b. **Financial Statements for period ending January 31, 2022 (unaudited)**

Mr. Ward: The only thing I had for you is I wanted to address the insurance issue with respect to the fire that happened. The District is fully insured with liability insurance for the fire that occurred, and we would have been fully protected including any physical damage to property that would have been done as a result of that. I can tell you, irrespective of this, we are going to be updating our insurance going forward to deal with some issues that are coming into our realm this year. For example, the pump station, the bridge, that all needs to be insured, but at the moment, with respect to the entire water management system, you are fully insured, including the preserves from a liability perspective.

Chairperson Stamp: Don't we have a cap on liability for sovereign immunity?

Mr. Ward: We do have sovereign immunity limits. The legislature has loosened those limits to the benefit of other parties, not the governmental agency. We do have some limits with how you sue a District and what that is, but generally speaking our insurance covers any of the sovereign immunity issues that we may experience.

SEVENTH ORDER OF BUSINESS

Audience Comments

Audience Comments: Public comment period is for items NOT listed on the Agenda, comments 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

Chairperson Stamp asked if there were any additional comments or questions from the Board Members or audience members.

A conversation lead by Ed Staley was held regarding the success criteria of the preserves which was largely (indecipherable).

Mr. Staley: -- doing something to determine the status of 1, 2, 3, because if I remember success criteria, it's not precise, but it's not totally imprecise either. A certain percentage of the good stuff and a certain percentage of (indecipherable), so is somebody looking at where we are on the preserves? We were told in an email by Tim Hall that not that long ago only the internal preserves had met success criteria. None of the external preserves had met the success criteria even though they had been there for years.

(Indecipherable). We need to know as precisely as we can where we are on all of the preserves, on that continuing basis. (Indecipherable).

Mr. Miller: With respect to the success criteria, if you have to meet it for three consecutive years, if you were to miss a year it would start over for three years if some part of it failed.

Chairperson Stamp: The answer is, we will be doing it. Like you saw, we just pulled all the money from the preserves, so we are probably not going to get to it until the next fiscal year, but it's certainly going to be: one, part of the lawsuit, and two, part of what we are going to be doing moving forward.

Mr. Staley: (Indecipherable).

Chairperson Stamp: Keep in mind, our damages are what we have spent. If they fund the trust, it will be going forward. It all plays into the damages. Does anyone have anything else? If not, my intentions going forward on the budget is that Jim will present it when it's ready. He called it a workshop, where we will go through the budget line by line, what it is, why it's there, what it does, and then we will vote on the budget or adjust the line items. Ron tried to do that back when it was a Taylor Morrison controlled board and they wouldn't let him. Everybody is going to get that opportunity. Keep in mind that if we add, we are adding to the assessment. The budget that will be presented will have an assessment increase based on what is presented. You will get an idea what it is.

Mr. Bhatla: When are we going to have the workshop?

Chairperson Stamp: When Jim presents it.

Mr. Ward: Based upon when I get this budget out to you, I will put a schedule in there of what it will take in order to get to the public hearing and the timing to do that. Within the context of what that open period is, I planned on recommending a couple of dates to you, but I don't have them as of this moment. I haven't written that part of it, but I do know the general outline. At the very latest we will start the budget process in April. With any luck at all, it will be March, and then April and May we will have time for at least one or two meetings. It will have to be approved either before that, or at the very latest in May, in order to make a public hearing.

Chairperson Stamp: Keep in mind, at the public hearing we can still take the amount down, but not up.

Mr. Ward: I will counsel you, however, to calculate an assessment rate at a public hearing, to change numbers, is virtually impossible for me to do, because we are doing notice to residents. By the time we finish the budget process we should be in a position ready to go, unless something extraordinary happens between the 60 days intervening the notice date and the public hearing date for you. My point is, try to think now versus later in the process.

EIGHTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – March 17, 2022

NINTH ORDER OF BUSINESS

Adjournment

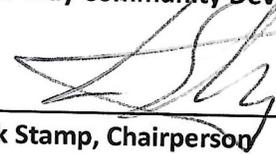
Chairperson Stamp adjourned the meeting at approximately 2:30 p.m.

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

Flow Way Community Development District



James P. Ward, Secretary



Zack Stamp, Chairperson