

**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 20, 2020 at 1:00 p.m. at the Esplanade Golf and Country Club Naples, 8918 Torre Vista Lane, Naples, Florida 34119.

Present and constituting a quorum:

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

Also present were:

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

Audience:

| | |
|-------------------|-----------------|
| Charles Cook | Taylor Morrison |
| Ed Staley | |
| Martin Winters | |
| David Boguslawski | |
| Tom Coffey | |
| Zack Stany | |

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

FIRST ORDER OF BUSINESS

Call to Order

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

SECOND ORDER OF BUSINESS

Public Comments

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

Mr. Ward stated a number of months ago the rules for participation were amended to include a Public Comment section to enable residents to ask questions and make comments on an item not on the Agenda. He noted the Board had no obligation to respond to the comments or to answer the questions asked but could choose to address questions or comments. He noted public questions or comments regarding Agenda Items could be made after Board discussion of, and prior to the vote for, said Item. He asked for comments to be limited to three minutes per person.

Mr. Ward asked if there were any Public Comments regarding Items not on today's Agenda. He asked those speaking to state their name for the record.

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

Mr. Ed Staley: Pretty simple question. I would have thought with the passage of time that we haven't had a meeting that Tim Hall might be at this meeting to give us an update on the status of kind of where we are on various mitigation, monitoring, all those kinds of things, like where we are on the timeline and those kinds of ideas with the passage of time. Is that not appropriate or --?

Mr. Ward: He is not normally asked to be at our Board Meetings. Our District Engineer is. Tim is really just a consultant on the environmental side, but our District Engineer is usually at all the meetings. If the Board would like Mr. Hall at a future meeting it doesn't bother me one way or another. We certainly could ask him to do that if you would like.

Mr. Ed Staley: I just assumed he was part of the meeting process, but I am obviously wrong on that. Okay.

An Audience Member: Will there be an opportunity later in the meeting for public comment and questions or is this the only opportunity?

An Audience Member: Just to clarify, we can do comments this way. Technically our resolution is public comment on things on the Agenda and then if we were to add anything we would add additional public comment periods, but we certainly can do it the way you have structured on the Agenda, but the initial period is, we usually do it for Agenda Items, but we can definitely do it the way you have it structured today. It's fine.

Mr. Ward: Okay. So, to answer his question, are we going to do it twice: at the beginning of the meeting and the end of the meeting?

An Audience Member: I don't think you have another period for that.

Mr. Ward: I didn't because I put it at the beginning of the meeting.

An Board Member: Then I would do it now for anything that's not on the Agenda if there is a public comment reasonably related to our business. I would do it now.

An Audience Member: Well, I don't know if this is on the Agenda, but I just want to make a comment about Director Indemnification. My understanding of Director Indemnification, and we have lawyers in the room who can correct me if I'm wrong, is that Director Indemnification applies when the

Directors are behaving in a fiduciary capacity and in my view this Board has acted in a fashion that is not representing the fiduciary interests of the residents of Esplanade, that Taylor Morrison is not in compliance with it's court order or the settlement agreement, that premature transfer was alluded to in the outside legal opinion that was obtained, that the success criteria has not been met, that 90% turnover hasn't been met. The Army Corp of Engineers states that Taylor Morrison is not in compliance with the success criteria that the outside reserves were supposed to be transferred to a land management agency like CREW with perpetual escrow fund, and the responsibilities of Taylor Morrison have been transferred to the CDD and the Esplanade homeowners with complicity of the CDD Board acting in Taylor Morrison's interest and not in the homeowners interest; thus, I believe this Board is not acting in a fiduciary capacity and the case can be made that Director Indemnity does not apply and there is personal liability amongst these Directors.

Mr. Ward: Any other questions or comments from the audience? Okay, we will move on to the next Item.

THIRD ORDER OF BUSINESS

Acceptance of Resignation

Acceptance of Resignation of Tim Martin from Seat 3 and consideration of Replacement Member for Seat 3.

I. Acceptance of Resignation of Mr. Martin.

Mr. Ward indicated Mr. Tim Martin resigned from his position as a member of the Board of Supervisors. He called for a motion to accept the resignation for inclusion in the record. He noted the resignation became a matter of law as of the date of resignation which was January 29, 2020.

On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, the Resignation of Mr. Tim Martin was accepted for purposes of inclusion in the record.

II. Consideration of Replacement Member for Seat 3

Mr. Ward reported Statute indicated the Board had the ability to appoint an individual to fill the unexpired term for Seat 3 (Mr. Martin's vacated seat) by a simple motion and second. He stated the term for Seat 3 would expire in November 2020. He stated Supervisors were required to be a Citizen of the United States, a resident of the State of Florida and not a convicted felon who had their civil rights removed.

Mr. Ron Miller nominated Mr. Martin Winters to fill Seat 3. He indicated he believed Mr. Winters fulfilled the necessary criteria.

Mr. Drew Miller asked if all nominations should be made now or if the current nomination needed to be voted upon prior to an additional nomination being made. Mr. Ward responded all nominations could be made now. Mr. Drew Miller nominated Charles Cook to fill Seat 3. He reported Mr. Cook was assisting with the permitting, was knowledgeable about the upcoming Hatcher annexation and would be a good fit for the Board.

On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, with two in favor (Ron Miller, Tom Kleck) and two opposed (Drew Miller, John Wollard), the nomination of Mr. Martin Winters to fill Seat 3 on the Board of Supervisors failed.

On MOTION made by Mr. Drew Miller, seconded by Mr. John Wollard, with two in favor (Drew Miller, John Wollard) and two opposed (Ron Miller, Tom Kleck), the nomination of Mr. Charles Cook to fill Seat 3 on the Board of Supervisors failed.

Mr. Ward noted the Board could continue to nominate candidates or could choose to move on to the next Agenda Item. The Board decided to move on to the next Agenda Item for today.

III. Oath of Office (to be administered during the meeting)

- a. **Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees**
- b. **Form 1 – Statement of Financial Interest**

FOURTH ORDER OF BUSINESS

Consideration of Minutes

August 22, 2019 Regular Meeting Minutes

Mr. Ward asked if there were any additions, corrections or deletions for the August 22, 2019 Regular Meeting Minutes. Hearing none, he called for a motion.

On MOTION made by Mr. Drew Miller, seconded by Mr. John Wollard, and with all in favor, the August 22, 2019 Regular Meeting Minutes were approved.

FIFTH ORDER OF BUSINESS

Consideration of Resolution 2020-1

Consideration of Resolution 2020-1 of The Board Of Supervisors Of Flow Way Community Development District Authorizing The Filing Of A Petition With The Board Of County Commissioners Of Collier County For A Modification Of The District’s Boundaries And The Jurisdiction Of The District Through Expansion; Providing For Certain Requirements Implementing Section 190.046(1) in agreement with Taylor Morrison Esplanade, LLC to fund the expansion (commonly known as the Hatcher expansion)

I. Boundary Amendment Funding Agreement

Mr. Ward reported Resolution 2020-1 authorized the filing of a petition to modify the District’s boundaries to include what was commonly known as the Hatcher piece. He stated when the District issued its last series of bonds in 2019 there were funds put into a construction account, just over \$1 million dollars, to build the infrastructure required for the Hatcher piece pending annexation of the land into the CDD and completion of land assessment for the bond issue. He explained Section 190.46(1) labeled the Board of Supervisors as the petitioner for the amendment to the boundaries of

the CDD; therefore, resolution by the Board was required. He stated the CDD had an agreement with the property owner to pay the cost of the annexation through Collier County. He noted processing of the annexation through Collier County could cost \$25,000 dollars to over \$30,000 dollars.

An Audience Member: Does the CDD currently hold \$1 million dollars cash?

Mr. Ward: Yes, we hold it in what we call a reserve construction account, or a sub-construction account I think it might be termed.

An Audience Member: And that money would ultimately be used for --?

Mr. Ward: Infrastructure, construction in the Hatcher area; utilities –

An Audience Member: Well, I didn't know the CDD actually did construction.

Mr. Ward: Well, or acquisition from Taylor Morrison, whichever the case may be.

An Audience Member _ : And who provided the million?

Mr. Ward: The bond series, when we issue bonds, the District obviously borrowed that money, large investors buy that, whoever that may be. They are generally large mutual funds that you see around the country.

An Audience Member: Just help me understand. How did this motion or this Agenda Item actually arrive in today's meeting? Who put it there and how did it get --?

Mr. Ward: It came to my attention actually when I was doing the audit this year and remembered that we had this Item out there and that money expires on a certain date. January of 2021 sticks in my head. After which it then reverts to a bondholder. It goes to redeem bonds I should say is the way the process works. The process to get through a petition and go through a special assessment process is at least 6 months or so, so in order to meet that deadline date I just basically had it to clear in my file to include it on an Agenda for you in case we could proceed forward.

An Audience Member: Okay. Thank you for that. I've got a distinct thought on this. This is perhaps jumping ahead to some things I wish to get into which I think is at the end of the Agenda, but I think that one thing the Board Members here can agree on is that we have some pretty big disagreements over the preserves and Taylor Morrison's obligations. I think we would agree that we disagree on that. To me those are some huge issues out there and those issues at this point are no where near resolution. To do anything further with the CDD at this point I think would only exacerbate those issues. I think this whole thing should be tabled until such time as the bigger issues are resolved because this will exacerbate it. So, I would suggest that this thing be tabled or if somebody wants to have a motion on it, I would just tell you I'm going to vote no. I do not wish to expand the boundaries of the CDD.

Mr. Drew Miller: I would like to just let you guys know that will exacerbate the issue for sure because timing wise if Taylor Morrison is not able to sell the infrastructure to the CDD all of the other initiatives that we talked about, everything that was discussed as far as going in when we decided to bring the Hatcher piece into the property, all those conversations will come back up. The other side of this is, if Hatcher doesn't get annexed and we don't move forward with this, the existing costs and every it of

cost will just sit on the existing homeowners and those homeowners will have every benefit of Esplanade but without being a part of the CDD because those homes are going to come in and whether they are part of the CDD or not, especially if we have to make up additional funds, so I think we can continue having the conversation of the CDD and the preserves, but I don't think kind like poking TM in the eye so to speak is probably the right move on this particular issue. And I don't think it serves you guys the best interest in the long run either. At the end of the day there is additional 34 homes that are going to share whatever costs because there are costs associated with the CDD and associated with maintaining this community that you are going to not bring them in. They are not going to have to share that cost.

Mr. _____ 14:31: I think you are confusing the HOA with the CDD and this is the CDD Board. It is not an HOA Board. If Taylor Morrison brings those homes into the community, if they can do that with Collier County, that's one issue. And how they will share in the cost of the HOA which is not the business of this Board, is that issue.

Mr. Drew Miller: But you pay a CDD fee now, both the ONM and the debt so the ONM will only be shared by the homeowners in the existing community. They will not be shared with these 34 homeowners.

An Audience Member: The CDD residents pay their share distinctly for the bonds that have been issued for their debt portion and the operating and maintenance expenses on the overall CDD, the difference between 1,184 homes and 1,150 is totally insignificant as compared to the major issue that we have which can be – we can throw out numbers of 5, 10, 12 million with respect to the preserves. Totally insignificant. I do not think it is in the interest of the CDD to exacerbate that issue by expanding the boundaries and bringing in other people and other homes into it. I'm standing on, sitting on it I guess, that this item should be tabled until the bigger issues get resolved or if we wish to have a motion on it, I'll just tell you I'm voting no.

An Audience Member: I've also got concerns about the compounding of the problem like Mr. Winters brought up, is who is going to be responsible for this when CREW originally was offering to take over that expense and now we are kind of sloughing it off onto the homeowners and the HOA and the CDD combined. So, I don't think we need to compound it any further.

Mr. Drew Miller: So, CREW has voted unanimously not to accept the preserves just so you know. Both their board –

An Audience Member: May I ask a question? You may not know the answer to this because this is a CDD meeting. It's not a Taylor Morrison meeting. Has Taylor Morrison made an offer?

Mr. Drew Miller: It was presented and voted that they don't want it. They are trying to get rid of existing properties.

An Audience Member: I was at that meeting when they had a presentation. There was no offer made by Taylor Morrison.

Mr. Drew Miller: Okay. But anyway, the – I believe it's my opinion, and it will be proven that the Army Corp does see us in compliance and that we have been fiduciarily responsible. The CDD Board had the opportunity to sell additional bond to finance any of this stuff. There are many ways that it could have

financed this. The CDD is in place to do so. Again, I'll just reiterate that I still feel like it's to the best benefit of the community that the preserves stay within the control of the community. I would like to end with a motion to approve resolution 2020-1.

Mr. John Wollard: Wollard, second.

Mr. Ward: All those in favor?

Mr. Greg Urbancic: Public comment?

Mr. Ward: Okay, any public comment on this particular item? Sorry about that. Could you put your name on record?

Mr. Tom Coffey: I disagree it's in the best interest to keep the preserves in the community. The economic issue relative to perpetual maintenance is one issue which, and due respect to Ron, we don't know what that number is. Usually it's in the number of 7, 8, 12 million. I have no idea what that number could be. Tim Hall has a report that says long term maintenance plan is to do periodic burns and that's the way you control all these in the future. We don't know what the controlled burn will be, how much Collier County will assist in that, the Army Corp will assist in that, Fish and Wildlife will assist in that, could be very expensive. I bet you they don't let 1,000 acres burn at one time. That would be an ongoing thing and we just don't know what that cost is. We have no professional guidance yet. We would like to see that professional guidance. Over and above the economic aspect of it there is a significant liability aspect of it in my opinion. Because right now we have two separate legal entities. There is the CDD and the HOA. They have different, under different statutes of the Florida code, so they have different requirements. Right now, the way Taylor Morrison has it there is a contract that the HOA is responsible for everything on that CDD property. Compliance, maintenance, everything else, so they assume that liability. I mean somebody might argue it is the alter ego of the CDD now. And because of that I believe there is significant liability that goes along with that piece of property. We already heard several meetings ago people entering that property from the other end on 4 wheelers, kids and everything else, and having a couple of them go in and get severely injured or something even worse like death occurs. What happens if there is a forest fire in there that burns down some structures on adjoining community or even our own community? Our HOA could be held significantly liability. The HOA I think is only liable for up to \$200,000 dollars because it's a government entity, so it sort of skirts that liability. I'm not sure about that.

Mr. Ward: The HOA?

Mr. Tom Coffey: No, the CDD. So, if the CDD is separate and we don't have any linkage. I'm afraid there is a linkage. To me, when it's just with an outside agency, completely a land conservation agency, and their entire purpose in the world is to do these types of things, it protects the homeowners. So, with all due respect, I disagree with your statement.

Mr. Ward: Any other public comment? Mr. Ward asked those present to please state their names for the record.

Mr. Martin Winters: As a homeowner I view this not as an amenity. I don't view it as a good thing, I view it as a liability and I think there are many, many homeowners who agree with that. Taylor

Morrison has dumped its liability on the homeowners of Esplanade through this CDD Board with the complicity of this CDD Board.

Mr. Ward asked if there were any other comments; hearing none he called for a vote. He noted the motion was to approve Resolution 2020-1 which authorized the petition to annex the Hatcher piece.

On MOTION made by Mr. Drew Miller, seconded by Mr. John Wollard, and with two in favor (Drew Miller, John Wollard) and two opposed (Ron Miller, Tom Kleck), to approve Resolution 2020-1 failed.

SIXTH ORDER OF BUSINESS

Staff Reports

Staff Reports

a) District Attorney

No report.

b) District Engineer

Mr. Ward indicated a couple of months ago he was asked to put together maps of the District's assets and preserves. He stated a very preliminary map of the assets of the District was prepared by Jeremy Fireline. He asked Mr. Fireline to review the map.

District Engineer Jeremy Fireline displayed and discussed the preliminary map of the District's assets which included preserve areas owned by the District, preserve areas to be transferred to the District, drainage access easements, future drainage easements and open space. He noted the preserve areas owned by the District were in yellow.

Discussion ensued regarding where Collier Blvd. was located on the map, where the back entrance was located, the access easement, and who owned the properties along the boundaries to the CDD's property.

Mr. Dave Boguslawski: A couple of meetings ago there was a neighbor to the north that came to this body and tried to get approval of supporting something to eliminate access because it was bothering them. Was that that open block up there?

Discussion ensued regarding the location of the property in question on the map.

Mr. Dave Boguslawski: What I heard in that meeting was a discussion around the width of various easements that sort of cut through to these holes if you will, or these other properties, and some of them were very narrow easements and some of them were incredibly wide easements. So, there are also some easements that run through here. Are they marked on the map?

Mr. Fireline: No.

Mr. Ward: They are on another map that Tim Hall is preparing for us.

Mr. Tom Coffey: If we could get the ownership so we know in case something happens. When somebody comes and complains to the CDD because you all won't be here too much – maybe – we need to at least know that I think. Is this just me?

Mr. Fireline: The survey would have that.

Mr. Tom Coffey: A pictorial would help. The map is good on the boundaries, but I'm confused also because of that – so, under that contract in 2014, the HOA is responsible to maintain all the assets, but there is no list of assets, so what is it exactly – for instance, this is the whole footprint. Some of this is owned by the HOA, some is technically owned by the CDD, but the HOA has assumed that liability to maintain. I would like two separate lists as to what are those specific things that the HOA is responsible for and under that contract responsible for making sure we stay in compliance with it. What are the things in the HOA budget? We are responsible for our own assets. I'm not trying to complicate things, and I don't need it right now, but at some point in time we need to have that clarity, I think.

Mr. Ward: That's on the list of things to do.

Mr. David Boguslawski: Were there any other lands that are not shown on this map, be it another county, another part of Collier County, that will become the obligation of either this CDD or this HOA as a result of this entire transaction?

Mr. Ward: I can't answer for an HOA, but the CDD, this is it.

Mr. David Boguslawski: So, there is no other preserves, like 25 acres 200 miles away that we need to pay for?

Mr. Ward: No. I'm not aware of any.

Mr. Fireline summarized: The Board wished to know the easements, widths, and beneficial parties of each. Mr. Ward stated Mr. Tim Hall had started the process of mapping these out. He recommended Mr. Fireline collaborate with Mr. Hall. Mr. Fireline noted the Board also wished to learn who owned the adjoining properties with a map of the property lines. He noted this information was readily available on the Property Appraiser's website; however, he would be happy to collect this information for the Board.

Mr. Boguslawski: If we could have something, either on this document or another document, that said that. I've been to several seminars recently about turnovers and there is a lot of homeowner's associations and CDDs that have been burned by remote properties without knowing, so an early representation of that would be helpful.

Mr. Ron Miller: If somebody would allow me, I would like to build on what Mr. Coffey just said because it actually was on my mind as well, my Agenda, this contract that we have with the HOA later on today if I'm allowed to. I forgot to ask you to put that on the Agenda today, but it's on my notes to cover today. But one of the things, and Jim you might look at me and say, "Well, you should know." But I really don't. I would like to get a specific list of the CDD assets, so that as a Board

Member I know what my responsibilities are for. I have generalities. I know we got the preserves, this, that, the lakes, ponds, whatever, but I don't know specifically what is ours, where we have governance and management responsibilities for. So, if we can just put that on kind of an agenda to followup in the future?

Mr. Ward: We will get that too. I know what he wants, so just add that to your list.

Mr. Fireline: Okay.

Mr. Tom Coffey: Let me give you a couple examples, because I think Jim and I talked a little with email. I know there are somethings in the documents that say something about the landscape area on the front of the development is part of the CDD, but I don't know where that boundaries end. Are the walls it or the guard house? And there was something in there, and I think Jim was surprised by it too, something about the homeowner's irrigation system. Does the HOA own that or the CDD? Because in one place it says it's the CDD and another place I think you thought it was HOA. I think it's going to matter in the future. We just need to know who owns what even for insurance purposes.

c) District Manager

I. Financial Statements December 31, 2019 (Unaudited)

Mr. Ward stated he had no report. He asked if there were questions regarding the financial statements. He noted the audits were approximately 98% finished and would be included on one of the next Agendas for acceptance.

SEVENTH ORDER OF BUSINESS

Supervisor's Requests and Audience Comments

Mr. Ward indicated Mr. Ron Miller had a list of discussion items.

Supervisor Ron Miller:

- a) FY 2020 – Meeting Schedule**
- b) Preserve – Permit Obligations**
- c) Army Corps – Permit Modification for Preserves**
- d) District Expenses for Mitigation Maintenance**
- e) Request of Board to Approve request for Counsel to draft letter regarding various preserve items.**

Mr. Ron Miller indicated he had many items to discuss and this would take some time.

Mr. Drew Miller indicated his family had left for vacation and he was short on time. He noted he would gladly make himself available for in-depth discussion at a future date but asked for Mr. Ron Miller to be respectful of his time.

Mr. Ron Miller reported a great deal had happened since the last Board Meeting in August 2019. He stated there was a long history with respect to the preserves. He reviewed the history of the preserves beginning with the court case: *That court case succinctly talks about the CREW and turning the land over and the fund to go along with it; that's sunk into the court case. The reason I want to start there*

as a history lesson is even if the Corp would have modified the permit at the request of Taylor Morrison, that still would not have changed that court case. There would still have been a huge issue for Taylor Morrison to deal with. Moving right along, in addition to that court case, there are, to my knowledge three significant permits out there: The Corp, US Fish and Wildlife, and South Florida Water Management District. All of which have this requirement in there. Biological things that we meet success criteria, about turning it over to CREW or some other land conservation agency, and there's timelines and all that. We know all that. But up to last August when we had those kinds of discussions. Essentially it was kind of a future tense, what's going to happen? We don't know what's going to happen. We heard I think in two separate board meetings Taylor Morrison intended to modify the permit language so that the CDD would become the permanent owner without funding. Now, a number of things have happened and maybe start with that because these now are factual past tense events which have not occurred at the last. Taylor Morrison did in fact apply for permit modification with the Corp and the Corp rejected it in totality and even their rejection letter specified sections that pertain to the success criteria and also to the funding. So, that's been rejected. That's a subsequent event. But in the lead up to that there were some interesting things as well because prior to that modification request being final, Mr. Kirby (ph) enforcement office of the Corp, had asked Tim Hall some questions and in Tim Hall's responses to those questions Tim Hall acknowledged that success criteria had not been met. That was an acknowledgement by Taylor Morrison's representative. Then in the actual application for the modification request, Tim Hall again acknowledged that the success criteria had not been made. Then further that, and if I need to Mr. Ed Staley is present here behind me, the two of us were given the opportunity to make a presentation to the Executive Committee of CREW in December. I made that presentation which was, I will categorize it as they understood that this was not a Board presentation by the CDD it was my presentation, but I will kind of summarize it by saying my presentation was an encouragement for them to consider taking ownership of the preserves with the fund at such time as Taylor Morrison could make that offer. There was significant discussion that went on for a while, and in that discussion process Tim Hall represented Taylor Morrison at that meeting, and Tim Hall also made a presentation. His was just an oral presentation. He had nothing to share, but in discussion questions came from the Executive Committee Members of CREW. Among them "Well, tell us about the success criteria" and some things like that, and Tim Hall mentioned in 2018 a portion of the preserves had met the success criteria, but it was a small portion, (I'm paraphrasing now), but the vast majority of the preserves have not yet met success criteria (this would be December of 2019, just a few months ago). When he made that statement, I asked him what has met the success criteria. What area? How much? I didn't really get a good answer to that. I didn't get an answer that may be fully understood. Maybe it was a good one and maybe I didn't understand it well, but I came away with a takeaway that the preserves which have met the success criteria in 2018 is a smaller wooded area over in this area here. That's my belief. I wouldn't take an oath on that because it is confusing, but if that's the case – we did not get into it at that meeting, but I would like to share it with Board Members – if that's the case, that particular section of the preserves was conveyed to the CDD in 2015 with a substantial \$400,000 dollar plus mitigation bill, and we have been paying maintenance on it ever since. And Mr. Hall stated that with the balance of the majority of the preserves, as of December, they still have not met the success criteria, yet those preserves were conveyed to the CDD in 2018 when Taylor Morrison had all five seats on the Board. These are factual subsequent events which have occurred. Another question that came out from one of the Executive Committee Member was "What do you think this fund would be? How much do you think it would be?" and Mr. Hall replied "Oh, I think it would be in the area of \$3 to \$4 million dollars." That came as kind of a surprise that Taylor Morrison would go in there and even acknowledge that there was a funding requirement of any amount. But many of that, with a further few questions of that \$3 to \$4 million dollar arena that he presented, he said was based upon his view of the future annual

maintenance cost and a 5% interest rate. Let me tell you 30-year treasury bills are at 2% and so even if his cost estimate is correct it is 2.5 times more than what he is suggesting based upon interest rates. So, we're talking about large sums of money here. But again, those are subsequent actual events that have occurred that are on the table with all this. Another matter, this will be somewhat repetitive, the permits require Taylor Morrison to receive approval for the transfer of ownership of the preserves. Whether it be to the CDD or CREW approval is required and transfer of them to the CDD has not had an approval. That was part of – I think that had discussion characteristics in the modification request.

So, when we think about the past, and then we think about these factual events that have occurred since we've last met, and the evidence is so clear that these things exist, and the Corp of Engineers has totally rejected the modification request, which incidentally brings a thought which I left out, is that if there was actually no problem with respect to these preserves and the funding of the preserves, why did Taylor Morrison even need a modification request. Why didn't Taylor Morrison simply say, "No. There's no obligation here." I think the fact that they even requested the modification is an acknowledgement that there is an issue. Having gone through all of that, I would like to repeat some motions I have made in the past based upon this new factual evidence. I take note of what Mr. Winters had said earlier that Board Members do have an obligation to vote fiducially in the best interests of the CDD. It has nothing to do with Taylor Morrison. That's something that maybe has some sympathy for because of the awkward position that the Taylor Morrison employees are in because the paycheck comes from Taylor Morrison, but they have a fiduciary obligation to vote in the best interests of the CDD which is not in the best interests of Taylor Morrison. It's an awful position to be in. I recognize that, but I didn't create it and I do think the Taylor Morrison folks here should think about that because their – get the time to look at some statutes. You might want to take a look at 190.007 and 112.311 in the Florida Statutes. That's pretty much on point. It's interesting in fact that the 190 Statute which deals specifically with CDDs has a section which addresses conflict of interest. The Statute is saying that there is a conflict of interest for a developer employee to be on the Board. We recognize that there is a conflict of interest, so therefore, in order for the CDD to operate, we are granting a waiver of conflict of interest. Otherwise, Taylor Morrison employees couldn't be on the Board to begin with. However, if you go to the Code of Ethics section, a totally non-CDD section, that does not forgive a Taylor Morrison employee from following the Florida Code of Ethics on conflicts of interest. It only allows you to be the Board where otherwise you couldn't be. So, having said all that, I am making a motion for the Board to seek reimbursement from Taylor Morrison for all past mitigation and maintenance expenses incurred by the CDD to date.

Mr. Ward: Any comments from the public?

Mr. Tom Coffey: I tend to agree with the comments that the CDD has a responsibility to evaluate all assets that are acquired or transferred to it. And in that they have to do their appropriate due diligence. Understand that. That goes along with any organization, corporate organization or otherwise. I would think that professional consultants and counsel should advise when they see something that is maybe not in accordance with proper business form, and in this case it was very specific that the mitigation wasn't completed, and that it didn't meet the success criteria. This should have been questioned by the Board and documented by the Board, why in their judgment they thought it was appropriate to acquire these preserves or accept transfer of the preserves. Secondly, the provision where it was mathematics were – I think it was around \$8 million dollars in that proposal when it was transferred over, and that was the fair value of the property, and that was supposed to be a consideration. That's bogus. I mean the whole property had to be acquired for Taylor Morrison to make a profit. They acquired that property knowing it was a liability. That was just the cost of

doing business. That was factored into their profitability model when they decided how many homes they were going to build. That land is a liability. It is not an asset to anybody other than the conservation groups and the general population of Collier County protected preserves. It is not an asset to anybody that is associated with that property. It is a liability. So, for somebody to put that mathematics on that piece of paper is to me, inappropriate, and it doesn't meet appropriate valuation methodologies. That's the end of my comments.

Mr. Ward: Are there any other comments?

Mr. Drew Miller: I wanted to respond to yours because you pointed out the fact that we went into amend this points to something, but I want to remind you the reason we went in was because you initially asked it and brought it up in the meeting and at that time we actually agreed –

Mr. Ron Miller: I did? I don't think so.

Mr. Drew Miller: You asked about, at that time, what it was and the risk. And I had described that we had done all of the initial – Taylor Morrison at that time had done all of the initial exotic removal, and that your concern at that time was if CREW or somebody else were to come and take the property from you guys and then ask for the money would you be liable for it. So, I agreed at that time that we would amend the permit so that it was 100% clear. So that is what triggered this. At that time Taylor Morrison believed, and still believes, that the CDD was the intended long term maintenance entity for this and that the reason we did was because we wanted to be perfectly clear when we left we left you guys in a good spot to where you felt comfortable with it. That was why we went to it. We disclosed it in the sales contract. We disclosed it when we had the meeting and the CDD took over the maintenance. I did a presentation at one of the meetings with all of the – like all the neighborhood meetings. There wasn't a big uprising at that point. It wasn't until you guys got on the Board, started looking at the permits, and had made some decisions along the way that you've kind of changed your mind. Even the attorney that the CDD hired – I mean, I voted for – to have the CDD give the opinion to the CDD Board of what the liability was on these permits, to make it sound like we are not following our fiduciary responsibility or we're not being transparent or working with you, I'm kind of offended by that. We hired the CDD attorney. They came back and said that it wasn't – forgive me – the attorney at that time stated that he did not see an issue. There wasn't an issue with that. I wanted to note that Tim Hall, and we can have him back at the next meeting, he also states that the CDD, and believes that the CDD, that the permit allows the CDD to own the property, or the property be transferred to the CDD prior to meeting success criteria, that the permit specifically states that. That's his belief. We can ask him certainly at the next meeting.

An Audience Member: Is he a lawyer?

Mr. Drew Miller: No, but he's not a financial guy either, a capitalist. So, you are going to rely on him to make the point that he should know how much money should be in an escrow fund. What he is, is the permitting entity. He is the environmentalist that did this, that knows this. So, if there were two things that he should be asked about, this would be the one thing. Not how much money in an escrow account would fund something. Now, he would be the guy to say how much money is it going to cost us every year to maintain. That's probably in his world of expertise, but not the financial and all that to it. I think that's kind of the thing. That's pretty much what it is. The asset and the liability comment. I agree if you're a CPA it's a liability, but if you're in the community most things – everything that you're benefiting from in that community is a liability. Most of what we enjoy is technically a liability, so I

still believe it's the right thing for the community to maintain and own this property. This was a big win with the environmentalist and with what it is I think it makes a big statement about this community and keeping that in the community says a lot about the people that live there and about the community itself. I think to that end, it's an asset.

An Audience Member: Can I ask a question? What is the reasoning, or the downfall, for CREW to do what we're doing? Why couldn't CREW do what we're doing?

Mr. Drew Miller: They don't have the same funding abilities as a CDD for one. They don't have the same – it's the same reason why I don't think, in my personal opinion, any of these entities are the right ones. I believe that in the long term, mark this, in the long-term maintenance entities, any of these nonprofits only survive if they have funding, and the CDD has a taxable benefit. If this preserve is truly something worth saving, which I feel like was should agree, a CDD is probably the best way, in my opinion the best way, to ensure that it does remain native preserve in perpetuity. It's the only one. Otherwise, you're trusting Wall Street, some finance guys, to figure it out, and a group of people that may not be interested in the long run in actually preserving that. What the CDD does it makes sure that preserve – it's the biggest thing that the CDD is going to manage. It ensures that will be maintained in perpetuity what is was intended to be.

Mr. Ron Miller: Lets get back to the basics. CDD gets it and wants the CDD to pay for it instead of Taylor Morrison paying for it. That's the basics. Are we ready to vote?

Mr. Ward asked if there were any additional comments; hearing none he called for a vote

The MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, with two in favor (Ron Miller, Tom Kleck) and two opposed (Drew Miller, John Wollard), for the Board to seek reimbursement from Taylor Morrison for all past mitigation and maintenance expenses incurred by the CDD to date failed.

Mr. Ron Miller: Move to have the CDD discontinue future funding of the preserves.

Mr. Ward asked if there were any questions or comments; hearing none, he called for a vote.

The MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, with two in favor (Ron Miller, Tom Kleck) and two opposed (Drew Miller, John Wollard), for the Board to discontinue future funding of the preserves failed.

Mr. Ron Miller: Third motion: That the Board take whatever action is necessary to return preserve ownership to Taylor Morrison.

Mr. Ward: That one I'll tell you you can't do. There is no legal authority for us to transfer this asset back to a private corporation. No government can do that. Correct?

An Audience Member: I mean to unwind it – it would be difficult to do and I'm not even sure that would be in compliance with the permit.

Mr. Ward: Governments in Florida generally can't just give back something to somebody, or transfer it to a private –

Mr. Ron Miller: Let me try to state this differently. Since Taylor Morrison has conveyed ownership prematurely and has no legal right to do that, it is in error, I make a motion that we take whatever action is necessary to correct that error and to return ownership to Taylor Morrison.

Mr. Drew Miller: We have been told by every profession that we have asked that question to that we were – the premature side, I don't believe is what anybody has indicated is the case, so Nay.

Mr. Ron Miller: Let me clarify that to taking legal action to void the transaction so that the transaction doesn't exist essentially. Whatever action is necessary to do so.

The MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, with two in favor (Ron Miller, Tom Kleck) and two opposed (Drew Miller, John Wollard), for the Board to take whatever action is necessary to void the transaction with Taylor Morrison regarding ownership of the preserves failed.

Mr. Ron Miller: I have one more item, and we have already pretty much beat it up for today, so I'll just get it on the table and maybe Jim can work on this. Just get back to the contract that the CDD has with the HOA. It does seem to be an odd contract. My concern, which I expressed some time ago, probably a year ago now, and really shame on me for not having followed up on it. It's an operational thing. In some respects, for the CDD to engage the HOA to do this maintenance makes some sense because maybe the HOA can get some economies of scale and it might be cheaper overall for the Esplanade residents. I'm not trying to draw a conclusion on that. I'm just tossing that out, but it seems to have some other issues surrounding it because as I mentioned a year ago or so, that just having this contract in place doesn't forgive the CDD from its governance. The CDD does have responsibility for the maintenance; it's just using the HOA as a subcontractor is all. And as I sit here on the CDD Board, I'm just going to be perfectly honest, I have no idea what maintenance is necessary. Personally speaking, I don't have any expertise to know what maintenance is necessary, and even if I did, I don't know what maintenance is actually being done. So that bothers me. We need to get to the bottom of it. The assets that the CDD owns and the maintenance that should be done, and the maintenance which is being done. We need to get into that. And so, I'm going to follow up on that in the following meeting, but just to put that on the table for now so that we know that's coming. And I guess that I would end that by saying that, and this is just getting feedback from people in the community, various feedback, I don't think that some people, particularly if you're on the other side of this, the HOA, the HOA people, are particularly happy with this contract and it would take Board approval on both ends probably in order to cancel the contract. So, just toss that out there, I think –

Mr. Drew Miller: If there is a way we can clarify a contract with the HOA, I don't hear anything that you guys have said about trying to make sure that we know where the lines are, and the contracts are in order. I think that's something, if it's reasonable, that the Board would be –

Mr. Ward: That's fine. The District does have the ability to unilaterally cancel that if it wants to. Actually, it would do that roughly in the next couple months because we have to do – actually I'm going to start budgets next month or April, so we would need to take action on that.

Mr. Drew Miller: I would say maybe if you guys don't mind working with Nathan a little bit, and Jim, and Waldrop can really help with that too as far as trying to identify maybe what should stay with the CDD and what maintenance items need to be held up, so that we can kind of firm that up and make it make sense to you guys going forward. So, if we are going to take the time to do it, lets just go ahead and take the time to do it right and get the agreements in place that the Board and HOA want.

An Audience Member: If I could see a list, and Ron could see a list, of things that we are responsible for.

An Audience Member: Yeah, we'll start that and work with Nathan to provide some of those things as well on the HOA end. And your input will be important for that.

Mr. Dave Boguslawski: I am on the HOA Board and it is unclear to me what value added there is putting somebody else in the middle of somebody's obligation. So, a discussion when this is all had later around this issue would be very helpful. I also am sitting here just confused to death as to why the HOA would ever want to be in the middle of this. We don't need an answer now, but it's a disaster waiting to happen and it seems to me that a separation of the CDD Board responsibilities including the oversight from the HOA responsibilities including their oversight should be based on the assets that each one holds at the time. That would be cleaner. It would be easier to manage. But with that said, I'm open to listening to whenever you all discuss it. But it does seem to be twisted all around and a backwards way of managing things.

Mr. Drew Miller: One point. I wasn't there, and I don't now where the lines are specifically on the – like on the landscape at the front entry – that's just one item that like if we start to put into a list might make more sense just to keep in the HOA, or have an agreement to maintain the entry landscaping just because you are already maintaining the rest of the community. There might be some of those things that you kind of look at, but I'm open to helping facilitate that, however you guys work through it. We will start with the list that we were all kind of staring at it. And then I think working with Nathan on the rest of that too would be helpful on how you guys want to go forward.

EIGHTH ORDER OF BUSINESS

Adjournment

Mr. Ward adjourned the meeting at approximately 2:02 p.m.

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

Attest:

Flow Way Community Development District


James P. Ward, Secretary


Drew Miller, Chairperson