

**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, March 18, 2021 at 1:00 P.M. in the conference room of the offices of Woods, Weidenmiller, Michetti, & Rudnick, 9045 Strada Stell Court, 4th floor, Naples, Florida 34109.

**Present and constituting a quorum:**

Zack Stamp	Chairperson
Ron Miller	Vice Chairperson
Tom Kleck	Assistant Secretary
Martinn Winters	Assistant Secretary
Andrew Miller	(Mr. Miller left the meeting during the Engineering Presentations.)

**Also present were:**

James P. Ward	District Manager
Greg Woods	District Counsel
Jessica Tolin	District Counsel
Tony Grau	Grau and Associates
David Caplivski	Grau and Associates

**Audience:**

David Boguslawski	
Steven Murray	
Jonathan Oriole	
Jenna Martinetti	Calvin, Giordano & Associates
James Messick	Calvin, Giordano & Associates
Dave Underhill	Bank's Engineering
David Schmidt	Hole, Montes and Associates
Charlie Krebs	Hole, Montes and Associates
Andrew Tilton	Johnson Engineering
Jordan Varble	Johnson Engineering
Adrian Robaina	Connect Engineering
Daniel Greenberg	Connect Engineering
Rodney Devera	Connect Engineering

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

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

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

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

**SECOND ORDER OF BUSINESS**

**Public Comments for NON-Agenda items**

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

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

*Mr. Drew Miller: I had potential exposure, but everything was okay.*

Chairperson Stamp welcomed the HOA elect Board Members present for today's Meeting.

**THIRD ORDER OF BUSINESS**

**Consideration of Minutes**

**January 21, 2021 Regular Meeting Minutes**

Chairperson Stamp asked if there were any additions or corrections to the Minutes; hearing none, he called for a motion to approve the January 21, 2021 Regular Meeting Minutes as presented.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the January 21, 2021 Regular Meeting Minutes were approved.**

*Chairperson Stamp: Drew at the last Meeting you said you were voting against some of this stuff because the community was not supporting what we are doing here. Could you explain to us what the basis of that statement is?*

*Mr. Drew Miller: I don't believe that the entire community supports the lawsuit and the dollars that are going to be spent, that's what I meant.*

*Chairperson Stamp: I would agree that's probably a true statement.*

*Mr. Drew Miller: I haven't taken a poll. Have you taken a poll?*

*Chairperson Stamp: Well, let's go around the room, is that what you're hearing Tom?*

*Mr. Tom Kleck: I think everybody is for it.*

*Mr. Ron Miller: People I bump into on the golf course and when I'm out walking my pooch around the community people bump into me, and I don't even know some of them, and they say, "Sure glad you're doing this," and "keep on going."*

*Mr. Martinn Winters: I have heard only positive comments. The only negative comment I heard was "isn't a shame we have to sue Taylor Morrison."*

*Chairperson Stamp: I've heard that too, that it hurts the community to have to do this, but they didn't say don't do it. I was just curious when you made that statement if you had any polling or research or how much time you spent in the community talking about it.*

#### **FOURTH ORDER OF BUSINESS**

#### **Consideration of Ranking of Engineering Proposals**

#### **Consideration of ranking of engineering proposals to serve as District Engineer and agreement with the Number 1 ranked firm**

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

*Mr. Jim Ward: As you are aware, we go through a process called the Consultants Competitive Negotiations Act. It's the Engineer's full employment act, or the auditor's full employment act, where we go through a process where we accept proposals for whatever services we are looking for on a non-priced basis. They submit those proposals to you. They are qualification based. The Board has to review them. You may use whatever form you decide in terms of ranking. You can use the format I put in your Agenda. You may just discuss it and rank them as you deem appropriate. To the extent that you receive more than one proposal, you have to rank at least the top three. Beyond that there is no ranking required. The process here that I am suggesting to you is all of the engineers be given 10 minutes or so in order to provide a short presentation to you. Then they will be in a position to answer questions that you have with respect to their proposals and then we will go on to the next proposal. In normal circumstances, in pre COVID days, we generally asked those firms who were not presenting to step out of the room. That is a voluntary thing that they can do or not do, but with the use of the video call-in, all of the participants will hear each other's presentations. I want the Board to be aware of that as you hear each of the presentations. I put them in order on your Agenda, in alphabetical order. You may listen to them in the order that I identified or in any other order the Chair deems appropriate.*

*Chairperson Stamp: That's fine.*

#### **I. Presentation by Engineers**

- a. Bank's Engineering**
- b. Calvin, Giordano & Associates**
- c. Connect Engineering**
- d. Hole, Montes and Associates**
- e. Johnson Engineering**

*Mr. Ward: The first Engineer is Banks Engineering. Mr. Dave Underhill is on the phone with us today representing that firm. He asked Mr. Underhill to take no more than 10 minutes to make his presentation and then answer questions.*

*Mr. Greg Woods: Mr. Chair, do you mind if the District Attorney adjourns during the interview process?*

*Chairperson Stamp: You are free to leave.*

*Mr. Woods: Let us know when the Meeting resumes.*

Mr. Dave Underhill introduced Bank's Engineering: 80 employees, offices in Ft. Myers and Port Charlotte, with a specialty in private land development. Mr. Underhill indicated he had been with Bank's Engineering for 25 years and had completed numerous projects similar to Esplanade Golf Course Community. He indicated he had been involved with more than 20 CDDs through the formation and funding of the Districts, writing Engineer's Reports. He noted Bank's Engineering remained as the District Engineer for many CDDs. He noted once projects were completed Bank's Engineering served more as an on-call entity to respond to maintenance items such as lake bank erosion, traffic calming, etc. He stated he had known Jim Ward for several decades, had worked with Mr. Ward in several Districts and enjoyed working with Mr. Ward. He noted he lived locally in Long Shore Lake. He stated he was familiar with the Esplanade project. He indicated he had been involved with the Parklands development which was now Riverstone which had suffered the same environmental litigation as did Mirasol. He noted the site plans may be a little different, but the main points were the same: wetland preserves, bypass canal, etc. He stated he was familiar with this project. He noted Bank's was used to working with large residential communities, golf course communities, and would be happy to work with Flow Way CDD as a District Engineer. He asked if there were any questions.

*Mr. Ron Miller: Are you currently working with any communities like ours in the area at the moment?*

*Mr. Underhill: We are in Collier County. We work for Cedar Hammock. That's a District I designed back in the late 1990s and we have stayed on with them. Just to the north of you in Bonita I am involved with a number of Districts: Parklands, Parklands West, and several others out at the east end of Bonita Beach Road.*

*Mr. Kleck: What specifically would you have in mind for our preserves and our lakes? Have you done any review yet? Have you looked at our facilities?*

*Mr. Underhill: I have not gone through the project or reviewed it or walked the lakes or anything like that. Collier usually has a higher standard since all the lakes end up being surveyed and at the time the excavation permits are completed the lakes are usually in pretty good shape, but again, lakes always need maintenance. There is always some erosion, bank erosion. We are doing projects where we are going back in and retrofitting some yard drains and installing drains and things like that to help stop the erosion, installing some geofabrics or different things like that if you have problems. But no, I haven't gone through the project to see what kind of condition everything is in.*

*Mr. Kleck: Can you tell me what's involved with the County accepting the lakes to turnover by Taylor Morrison to the CDD? What does that involve? Does the County have specifications they are looking at before they will allow Taylor Morrison to turn that over to the CDD?*

*Mr. Underhill: I think that you are really describing two separate processes. The County excavation permit with Collier requires surveys to be completed and inspections to be performed for the County to close out the permits. That would have happened immediately following construction, so if the lakes have not been turned over to the CDD a quick look at the property appraiser site indicated that the*

*District did not own the lakes, so I don't know if they have formally accepted them or not, but really the District would control the process for the acceptance of them. It wouldn't be unreasonable for the District to prepare their own inspections and then want to accept lakes that are in good shape, but again that would be a separate issue.*

*Mr. Kleck: Basically, you are saying it is up to us at this point whether we accept them or not?*

*Mr. Underhill: I don't think it is quite that simple, but I think you control the process and if you haven't accepted them, again, I think you may have funded them, you may have easement rights over them. I don't think you can just say no you won't take them, but it's not unreasonable to have them be in good shape and for you to inspect them and want repairs to be done before you accept them if you have not already done that.*

*Mr. Winters: How much experience do you have dealing with the Army Corps of Engineers and what experience do you have in seeing how escrow funds are calculated for eternal maintenance funding?*

*Mr. Underhill: I have been involved a little bit through projects that are typically donated properties to Crew where Crew had their escrow amount that they set per acre. Other than that, I don't know of any others where there is any set process. I am familiar with the Corps, but normally in projects that we are involved with, the environmental consultants would take the lead on permitting things with the Corps or handling those processes. Typically, those funds are associated with the long-term maintenance of the exotic removal and funding that ongoing maintenance. Typically, those costs are what the environmental consults do; they take the lead more so than I would.*

*Chairperson Stamp: I assume you are going to handle us out of the Ft. Myers office?*

*Mr. Underhill: Yes.*

*Chairperson Stamp: Have you, or are you now, doing any work for Taylor Morrison?*

*Mr. Underhill: We have probably done some work for Taylor Morrison. We generally work for most of the national builders, but I will say I don't recall doing a project for Taylor Morrison and I don't have any ongoing work right now with Taylor Morrison.*

*Chairperson Stamp: Minority business. The scoring sheet Jim gave us has a column for that. You have any certification or people you employ or contract with that allows you to claim to be certified in minority business?*

*Mr. Underhill: Our firm is not a minority business. As far as working with other firms, we work with all the environmental firms around the region. We are flexible to use who the District wants to use.*

*Chairperson Stamp: Do you have any experience working with Troon, our new incoming manager?*

*Mr. Underhill: No. Is that the maintenance company? Who is that?*

*Tom Kleck: They are a management company who is going to be responsible for all our management of the Esplanade Golf and Country Club, everything inclusive.*

*Mr. Underhill: So, they are going to run the golf course and take care of the wetlands and the grounds and all of that? I am not familiar with them.*

*Mr. Kleck: They are taking the place of Pope Golf.*

*Chairman Stamp: Okay, last question. In looking at all these proposals, I think everybody could do the job. Why should we pick you? Everybody has the same certifications, and the narration is pretty much the same all the way through. What makes you stand out from the others?*

*Mr. Underhill: I don't know that anything that stands us out. Us engineers, I would look at it as being pretty boring. Your community is pretty similar to the developments throughout the region. I think the other engineers that you have – you have Johnson Engineering and Hole Montes that I recognize – those are two of the most well-established firms in the region. I think it's really going to come down to the fit with your community and the manager and who you think you guys like the best and who fits. I'm sure that those other firms are qualified as well.*

Mr. Ward asked Mr. Jim Messick to make his presentation.

Mr. Jim Messick thanked the CDD for the opportunity to possibly provide District Engineering Services for Flow Way. He indicated he would be the project manager and main contact responsible for overseeing any Professional District Engineering Services. He introduced Calvin, Giordano & Associates, a small interdisciplinary firm able to provide many inhouse services (engineering, planning, environmental engineering, landscape architecture, survey, construction management and inspection, traffic engineering, utility and community maintenance services). He indicated there were others available to answer questions. He reviewed the CGA submittal noting each discipline needed for a CDD were located in the CGA office. He listed the communities for which he and CGA served as District Engineers including Wentworth CDD, Miromar Lakes CDD, Aqua Isles CDD, Bonaventure Development District, and Indian Trace Development District. He discussed the work and responsibilities of CGA in these communities. He stated he believed the services expected by Flow Way CDD were in line with the services and experience CGA previously provided. He stated the multi-disciplinary services provided by CGA would fit seamlessly with Flow Way CDD. He indicated he would serve as District Engineer, would always be available in a timely manner, and he would be happy to serve Flow Way CDD.

Mr. Winters asked how much experience Mr. Messick had in dealing with the Army Corps of Engineers and how much experience Mr. Messick had in the calculation and establishment of escrow funds.

Mr. Messick responded he had several projects where he was the Engineer of Record which had wetland impacts. He noted CGA had environmental staff and similar to Bank's he would be overseeing the environmental staff and assisting in the permitting process. He indicated he was familiar with the permitting process. He indicated he was the client liaison for the Florida Department of Environmental Protection. He stated prior to moving to the east coast he worked at a small engineering firm in Ft. Myers and was very familiar with the Water Management District and the permitting requirements in Naples, Collier and Lee County.

Mr. Winters asked if Mr. Messick had any experience in establishing escrow funds.

*Mr. Messick: We have helped put together costs that would be used by the Board to establish future replacement costs should anything come up. We have worked alongside, but haven't directly worked, to put those reports together.*

*Mr. Winters: Are you familiar with any land management agencies that might be willing to take over our external preserve with accompanying escrow fund?*

*Mr. Messick: No, but I would be hitting the ground running trying to do that for you if you select us to be your District Engineer. That is something that would be right up our alley of services to provide.*

*Ms. Jenna Martinetti (CGA): Mr. Bruce Bernard who is working over there doing a lot of the field maintenance for some of the other CDDs, he is familiar with those types of companies and that would also be something easy to get going on immediately.*

*Mr. Kleck: What experience have you had doing a transition, where a CDD is new like we are, and the Board Members are all fairly new, and we are all going through a changeover or transition from a developer to us with a lot of surprises, and wanted to check and make sure you guys have the experience to handle those and direct us as well?*

*Mr. Messick: We actually were with Jim Ward at the Wentworth Estates CDD where we helped turnover and combine all of the District permits for all of the various communities within that District, alongside the Asset Manager to turn over the cost associated with, and the responsibilities for maintenance, for all of the assets in addition to the lakes. So, I am somewhat familiar with that process and we have provided that for a previous CDD.*

*Chairperson Stamp: Are you on the east coast?*

*Mr. Messick: Right now, I am located in Ft. Lauderdale in our corporate office. We have offices in Estero which I can work out of if we need a morning meeting. I can make sure I am available at any time. I have two kids on the west coast, and I go pick them up on Fridays and we are able to usually to work out those travel times on my own time because I am over there a lot for them. I used to be in Ft. Meyers before I moved over to Broward County, but I am over there a lot with work, and I don't see it being a problem.*

*Chairperson Stamp: Work for Taylor Morrison? Past relationship?*

*Mr. Messick: No. I do not have a relationship with Taylor Morrison.*

*Chairperson Stamp: Do you have any knowledge of Esplanade, where we are at and what challenges we are facing?*

*Mr. Messick: Not very detailed information. I have looked at an aerial and looked over the layout briefly, but again if you were to select us, we would start digging in a lot more detail in permits and any other documentation you might have that we need to familiarize ourselves with.*

*Chairperson Stamp: Minority business?*

*Mr. Messick: We probably would not qualify for that.*

*Chairperson Stamp: Any experience working with our new management company?*

*Mr. Messick: Yes, we have worked with Jim Ward before.*

*Chairperson Stamp: Have you worked with Troon?*

*Mr. Messick: Not myself, but I'm not sure from an asset side if we have worked with them. I would have to get back to you to give you a full answer on that.*

Mr. Ward indicated the next presenter was Connect Engineering, Adrian Robaina.

Mr. Adrian Robaina with Connect Engineering stated he would be the project manager for the District. He stated Rodney Devera and Daniel Greenberg were also present. He stated Connect Engineering was a small minority firm. He discussed his qualifications and the qualifications of Connect Engineering. He stated Connect Engineering was a civil engineering company with experience with FDOT, municipalities and the private sector. He stated Connect Engineering had grown in the homeowner's association and condominium community sector which made Connect Engineering uniquely qualified to work with public communities. He discussed the growth of Connect Engineering over the years. He indicated Connect Engineering was on call 24 hours a day. He stated he understood how a community worked and how to work with the Board Members. He indicated Connect Engineering had experience with permits, inspections, contract management, change orders, special assessments, consultants, etc.

Mr. Rodney Devera introduced himself. He noted he would serve as a Deputy Project Manager; however, the Board's point of contact would remain Mr. Robaina. He discussed his various qualifications. He noted Connect Engineering had a full understanding of client services and could take a Board's vision and bring it to fruition. He noted Connect conducted its due diligence and would bring value to Flow Way. He noted Connect was familiar with public involvement, understanding how to explain projects in laymen's terms. He thanked the CDD for the opportunity.

Mr. Robaina stated Connect Engineering won contracts with the Village of Estero for continuing engineering services, and the Town of Ft. Myers Beach. He indicated Connect Engineering would be very involved with the community.

*Mr. Winters: Do you have experience working with the Corps and establishing escrow funds for perpetual maintenance? Are you familiar with any land management agencies that might be willing to take our 1,000 acres preserves?*

*Mr. Robaina: No, we do not have any experience but from what I understand this is one of the things that we will need to do early on.*

*Mr. Devera: With respect to experience, we do have experience with respect to the Army Corps of Engineers where we have done wetland mitigation on several projects, however, when it comes to the land management and who would be taking over the district, no we do not. But again, we have the capability of assisting and doing the research to assist when it moves in that direction.*

*Chairperson Stamp: Are you going to handle this out of the Ft. Lauderdale office?*



*Mr. Robaina: No, we are currently located in Miami Dade County, 30 to 40 minutes away.*

*Chairperson Stamp: Have you done any work for Taylor Morrison?*

*Mr. Devera: No, we have not.*

*Chairperson Stamp: Do you have any knowledge of Esplanade?*

*Mr. Ward: Our connection is weak, and they are not hearing us very well. I see I'm not even on screen at the moment. The Chairman is asking if you have seen the project or done any behind the scenes work regarding what this District is about.*

*Mr. Danny Greenberg (Connect Engineering): We have done our research. We have not been to the community physically, but we have done our due diligence. We have looked into the issue with the preserve. That's something we are ready to start working with the District as soon as hopefully we are selected. That's something that I think can be handled through a project handoff meeting, doing a maintenance overview, but we have experience with similar communities just like your own. Our office is not too far. We understand the needs of the community. We understand what you are going through as far as development and the new construction, so as far as doing our due diligence, we have done that.*

*Mr. Devera: We do understand there are two primary purposes of the District and one of the first things of course is the finance and also the infrastructure which is going to be required for the golf and country club community and at the same time is also to provide secondly with the infrastructure that's going to be needed to support this type of facility. And eventually to provide the operation and ultimately the maintenance of the community. We know that overall, that is the purpose that Flow Way is looking to accomplish.*

Mr. Ward indicated Mr. David Schmidt was next to present.

Mr. David Schmidt with Hole, Montes and Associates stated he has been with Hole, Montes for over 10 years and in south Florida for over 30 years. He indicated he was very familiar with the area. He noted he was a civil engineer but was multidisciplined in the civil engineering field. He discussed his experience. He noted Charlie Krebs was present as well. He reviewed a brief history of Hole, Montes and Associates (HMA), one of the leading firms in southwest Florida. He stated HMA offered civil engineering services, land development, utility work, transportation work, surveying and landscape architecture. He noted HMA would bring in specialized consultants when needed for services such as electrical. He indicated HMA was currently serving approximately 16 CDDs. He listed some of the CDDs HMA provided services for including Fiddler's Creek, Lakeland Community Development, and others. He asked Mr. Krebs to speak.

Mr. Charlie Krebs stated he was a civil engineer who worked out of the Hole, Montes and Associates Ft. Meyers office. He stated he worked with several districts in Lake County. He stated he worked with Mr. Ward for several years in multiple communities. He stated the first CDD he ever worked with was in Estero, Pelican Sound, in 1996. He noted he was still working with Pelican Sound (River Ridge CDD). He stated Hole, Montes and Associates had longevity with the communities it served. He noted he had experience providing the services needed whether it be engineering, landscaping or assistance finding contractors to do wetland preserve work or help with water quality. He stated Hole, Montes and Associates knew the resources available in the community and knew how to draw said resources in to

provide services to the CDD. He stated he had been with Hole, Montes and Associates for 27 years. He indicated HMA had grown and continued to grow.

*Mr. Winters: How much experience do you have with establishing escrow funds and do you know any land management agencies which might be willing to take over the external preserves with the proper funds?*

*Mr. Schmidt: I have not been involved with establishing escrow funds for environmental needs. I have been involved with helping municipalities in establishing a capital improvement program budget which would look into the immediate needs and also into the future a little bit, so they can be setting aside some of their monies as time goes on that they are able to complete some larger scale type improvements without having to get bonds necessarily. One of the districts has water and wastewater facilities, so they do have some specialized needs as far as making sure they do have funds for regular plan improvements and so forth.*

*Mr. Krebs: As the others have said we have worked with environmentalists to come up with those escrow accounts, determining the dollar amounts, but they are usually the lead. As for finding an agency who would be willing to take over the management, I know we have discussed it before in other communities but are yet to have somebody come forward and say they would take over wetland areas and relieve the CDD of that burden. So, I can't say we have been successful anywhere.*

*Mr. Kleck: If you guys have had a lot of experience with SW Florida, you know what some of the builders do in developing a community. Some of the challenges I think that we are going to have here is, in addition to the preserves, will be the lakes and the waterways that right now I think are critically mismanaged or taken care of to the point that they are becoming swamps again. I want to know if you have any experience, or what your approach would be to alleviate those issues in our community.*

*Mr. Schmidt: We've dealt with that in some other CDDs, especially some of the older ones who are having the lake erosion occur. We get in there and we look at different ways that we could mitigate that and also repair the banks and bring them back to what they had been before. There is also the need to make sure you are eradicating the exotics and so forth and making sure the littoral plantings are maintained.*

*Mr. Kleck: A lot of the issue as I see it are the lake banks are a minor part of our problem. The lakes when we moved here in 2016, the condition, the clarity and the amount of open water, was a lot more significant than what it is today. I think there has been a lack of maintenance on the lakes that we are going to have to play catch up to take care of. Is that something that needs an ongoing crew or something that can be alleviated with regular maintenance?*

*Mr. Krebs: As far as water management, we work closely with Solitude and other lake and wetland providers to help with water quality, to help with maintaining algae and littoral plants and improve the clarity of the water. As the District Engineer that would be one of the goals, to work with whoever the lake and wetland maintenance company is to resolve any shore erosion, to resolve any water quality issues, that are in the water management system.*

*Mr. Kleck: You would be able to direct us to those management companies that would be able to take care of that issue? Is that correct?*

*Mr. Krebs: Correct. We have worked with several over the years, and we can provide contact information and start a dialog with them.*

*Chairperson Stamp: Which office would be handling our project?*

*Mr. Schmidt: We would primarily be handling it out of the Naples office. We are ten to fifteen minutes away from you at this office. Of course, we have Charlie and many other resources in Naples and also in Ft. Myers. Even the Ft. Myers office is probably less than a half hour away so if we need to bring some resources from there, we do have them available.*

*Chairperson Stamp: Have you ever, or are you now currently doing work for Taylor Morrison?*

*Mr. Schmidt: I am not aware of us doing any work for Taylor Morrison. I am not even sure we have done work in the past for Taylor Morrison.*

*Chairperson Stamp: What is your knowledge of our development. Is there anything you can advise us on? Next steps or problems you can see?*

*Mr. Schmidt: One of the first things we will definitely get up to speed on is the pending litigation and so forth. Getting familiar with your community itself. That's the key thing, getting familiar and helping you guys out wherever you do have the needs. In any community one of the important things is making sure that regular inspections are done of the facilities to make sure they are being maintained, being proactive if there is any kind of maintenance that needs to be planned for. That the budgets are there. That you've got the money available to do those maintenance items.*

*Chairperson Stamp: Any experience with Troon the management company?*

*Mr. Schmidt: I do not have any experience with them.*

Mr. Ward indicated the final presenter was Johnson Engineering, Mr. Andrew Tilton.

Mr. Andrew Tilton with Johnson Engineering gave a brief history of Johnson Engineering noting he had worked for Johnson Engineering since 1986. He stated Jordan Varble was also present. He stated Johnson Engineering had extensive experience working with governmental entities in the State of Florida including being the City Engineer for the City of Clewiston. He discussed his personal experience which spanned four decades in south Florida. He noted Johnson Engineering was a broad-spectrum service company with experience in water, sewer, stormwater, roads, groundwater, landscape architecture, electrical engineering, environmental experts, permitting, and water quality improvement. He indicated Johnson worked for over two dozen CDDs currently. He noted Johnson Engineering had a number of specialists on staff, including a panther specialist.

Mr. Jordan Varble with Johnson Engineering stated he and Mr. Tilton had expertise in surface water permitting and design. He discussed a local regional watershed planning study he and Mr. Tilton had worked on together. He noted Johnson Engineering's utility groups were working with Collier County regarding the lift stations in Collier County including the lift station in Esplanade.

Mr. Tilton indicated he understood Flow Way had ongoing litigation; Johnson Engineering were not litigation experts but had done expert testing for bond validations for Chapter 120 hearings and had

served as expert witnesses in a small number of project court cases relating to past work or problems which have been encountered in past work. He stated Johnson Engineering had a lot of experience with Community Development Districts in south Florida, as well as the Tampa area. He explained Johnson Engineering was a multidisciplinary firm who would provide the CDD with a single point of contact and would bring the expertise needed for every project. He stated Johnson Engineering was established in 1946. He indicated the offices which would handle the Flow Way CDD were in Ft. Myers and Naples.

*Mr. Winters: How much experience do you have dealing with the Corps and/or establishing escrow funds, and can you help us find a land management agency to take over the preserves if we get an escrow fund established?*

*Mr. Tilton: Our environmental people have a lot of experience with the Corps. Sometimes, it takes a long time to deal with the Corps. I just finished up a project that took all of about 14 months to get the water management permit and about 42 months to get the Corps permit, but eventually we get there because we keep wearing them down. As far as helping to find an agency to take over. We've done that a couple of times. It is not as common as some people would like it to be, so I am not going to tell you that's a slam dunk or an easy process. We can help work with that. The Conservancy or somebody else may be interested in it to go with something else that they are doing.*

*Mr. Winters: Do you have any experience in calculating escrow funds or helping to get them established?*

*Mr. Tilton: We have had experience working on bond projects and establishing the cost and evaluation that goes into that from the engineering side. A lot of those things also have a major financial component as you well know, so there have been others that have been part of that process.*

*Chairperson Stamp: Have you worked for Taylor Morrison?*

*Mr. Tilton: Our company, I haven't personally worked with them, but our company has in the past. I've talked more recently to our development group which has dealt with them and one, we are not working for them now, and their position at the moment is, if they don't have to work them in the future, they are going to be very happy.*

*Chairperson Stamp: In your packet, it says you worked for Flow Way CDD. Could you tell me what you did for them and when you did it?*

*Mr. Tilton: I think that was probably a misprint. But as Jordan mentioned, long before it was Flow Way CDD, we did do the modeling in the area. I believe we intended to put Cypress CDD there, and not Flow Way.*

*Chairperson Stamp: Any experience with Troon management company?*

*Mr. Tilton: The Crew organization, we have worked with them. One of the things we did with Water Management District in the early 2000s was when they were expanding Crew into the area on the east side of Bonita Springs, just north of your community. We had done the initial South Lee County Watershed Plan, and as an outgrowth of that, the Water Management District was acquiring properties, some of which had to go through a property taking and we worked with Crew and South Florida to help them through that legal process of acquiring those parcels.*

Mr. Ward indicated this concluded the presentations; this portion of the hearing should be closed to continue with deliberations.

Chairperson Stamp asked the engineering companies to leave the call to allow the CDD Board to deliberate.

Mr. Ron Miller thanked the engineering companies for the presentations.

## ***II. Board Discussion and Ranking of Engineering Proposals***

*Mr. Ron Miller: I have my own ranking. I would ask Jim's advice as he has worked with these people in the past and they were all strangers to me.*

*Mr. Ward: Other than Connect Engineering, because I am old these days, I have now worked with all of these firms. Usually the older members of the firms. The firms that I am most familiar with currently are Calvin, Giordano and Hole, Montes. CGA, that firm and I, transitioned what is now the City of Weston, from a CDD to a City. That's my familiarity with them; it goes back more than 20 years. Banks Engineering, Hole, Montes and Johnson, Andy Tilton I have known since he was 20 something years old as Johnson Engineering did work for some of the Districts that I managed at that time. Hole, Montes more recently, and obviously Banks to a lesser extent on some of their projects. I hate to provide recommendations to you because it is really your decision. I will work with any of them that you want. I think for you all, I will go out on a limb and tell you I think CGA is a very good firm. Johnson Engineering is a very good firm. They are two of the ones that I particularly think are the better ones. I don't know anything about Connect, so I can't tell you if they are good, bad or indifferent. Their resume is impressive. I can tell you what they submitted is a very impressive resume. Banks and Hole, Montes, are also good firms, but to a lesser extent. Based upon what I know you need for this project I think one of the other firms would suit you better.*

*Chairperson Stamp: Down on the Agenda we are going to hire Calvin, Giordano as the field manager. Is there any economy or reason why that should give them a leg up to coordinate?*

*Mr. Ward: I don't want to tell you it gives them a leg up. It does provide some significant help to me on an admin business in terms of coordination of the day-to-day activities of an entity. Now, CGA does field management and engineering services for my CDDs. CGA also works with Hole, Montes on one of the CDDs that I have where they are the Asset Manager and Hole, Montes is the District Engineer. I do find it much easier to have one person to call versus 2 or 3, and it also is better coordination within the firm itself if they are doing both sides of the equation. Hole, Montes does not do the asset management or field management side of the work. CGA does. So, the next item on the Agenda, as your Chair had mentioned, is the firm that I recommended the field management or asset management side of that, so there are some symbiotic relationships I get when having them in both seats.*

*Mr. Kleck: Does the location of their offices matter?*

*Mr. Ward: No. Their field management offices are here on the west coast. They are based in Estero, if my memory serves me. The actual individual here lives in Naples that does all of that. And as Mr. Messick had pointed out to you, I never have a problem with them if I need them on this coast at any time from an engineering perspective.*

*Mr. Winters: From my perspective you could pick any one of these firms and they would all do a good job. They are all qualified. The way that they distinguish themselves, in my opinion, and I have based on my questions, a bias in favor of firms who have had past experience with Army Corps of Engineers, and/or establishing reserves, and/or looking for land management agencies. The two that stand out to me are CGA and Johnson Engineering, with maybe a slight edge to Calvin, Giordano because (indecipherable) Bruce Bernard, even though he wasn't on the call, was recognized by one of the speakers as having had that past experience in dealing with other land management agencies that might be willing to take over our preserves. For that reason, I guess I would put Calvin, Giordano in a 1 position and Johnson Engineering in the second position. Also, for the reasons that Jim stated, as Calvin, Giordano would give him some efficiency in the way things operate.*

*Mr. Ron Miller: I have H&M and Johnson tied at #1, and Banks at #3. By the way. I know I didn't ask questions, but I did go through all five of the presentations and kind of came to the same conclusion that Martinn came to. They all appear to be well qualified and somewhat homogenous and that led me to asking Jim as he had worked with these guys.*

*Mr. Kleck: My first choice would be H&M, my second choice would be Calvin, and my third choice would be Banks.*

*Chairperson Stamp: The way I would do it would be Calvin 1, Hole, Montes 2, and Johnson 3.*

Discussion continued regarding the ranking of the Engineering Firms. It was decided the ranking would be as follows: 1. Calvin, Giordano and Associates; 2. Hole, Montes and Associates; 3. Johnson Engineering.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Zack Stamp, and with all in favor, the engineering firms were ranked as follows: 1. Calvin, Giordano and Associates; 2. Hole, Montes and Associates; 3. Johnson Engineering.**

### **III. Consideration of Form of Agreement**

*Mr. Ward: There are two ways to do this. The Statute normally says that I would go back and negotiate with the #1 ranked firm and bring an agreement back to you for the April Meeting. If you would like to circumvent that because these are not things that have never been written before, I did put in your Agenda Package a form of standard agreement that I use, and most other firms use, with engineers and CDDs around the State. If you would like to approve this in substantially the form that's in your package and then allow me, and to the extent that I need Mr. Woods, the opportunity to make any changes to it, you may do that and I can finalize this before the next meeting, which is what I would recommend to you.*

*Mr. Winters: We didn't talk about economics with these proposals. Is there a material difference in the numbers between the financial aspect of the cost of these?*

*Mr. Ward: No. These firms all have a standard schedule of fees for whatever their engineers – there is probably a list of 20 of them on all of their fee schedules. They are all generally the same.*

*Mr. Winters: I would propose we authorize Jim Ward to negotiate the contract based on what was provided in the Agenda.*

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Tom Kleck, and with all in favor, the District Manager was authorized to negotiate a contract based on the Form of Agreement provided in the Agenda.**

## **FIFTH ORDER OF BUSINESS**

### **Consideration of Agreement**

#### **Consideration of Agreement with Calvin Giordano & Associates to provide field management services**

*Mr. Ward: In order to transition the District's assets from the homeowner's association to the CDD, this is the form of agreement used to retain that firm in order to do that. If you choose to do that, I would suggest that we do that subject to any further discussions with the homeowner's association which I know is in transition between the Board that was formally Taylor Morrison individuals, that are now represented by individuals (indecipherable 1:22:20). It will give you a step up to have that in place in case you decide to do that.*

*Mr. Ron Miller: We have talked about this at least a couple of times. Where I am on this, I think we would be best served to continue to continue the OHA/CDD contract at least until we get through the transition which we now hear won't occur until May 31, and perhaps even extending until sometime after that. My thought on this is that this has gone on for many years and to me it's kind of making (indecipherable) election. Once you make the election it's irrevocable and you can't go back on it. I don't see any downside in continuing that for a short period into the future. We don't know whether or not a surprise or two may arise in this transition period where the HOA still has the vendor responsibility to do maintenance on everything and their connected to Taylor Morrison who has done all of the past budgets in this regard. So, this is not at the moment a situation of the CDD versus the HOA. This is a bigger picture situation of the best situation for the residents of the community. We are they. I don't see any upside in canceling it now and just letting this play out a while longer.*

*Chairperson Stamp: Greg, do you think this has any impact on the lawsuit?*

*Mr. Greg Woods: No, I don't think so. We can certainly wait until the homeowners are in charge of the HOA and evaluate it at that time.*

*Mr. Winters: To me the pro and the con of it is, if the CDD takes control of it we might get better service. The con is that if we take it over, we might be inheriting some of the maintenance that hasn't been done that should be done and shouldn't be our expense but should be Taylor Morrison's expense.*

*Mr. Kleck: I agree with that and I think that our attorney should perhaps make that decision for us.*

*Mr. Woods: I don't make any decisions. It is your decision, but your attorney would recommend that we wait until the new HOA Board is in place.*

*Mr. Ron Miller: At the time we want to move forward on this (indecipherable 1:26:29). We are they. We should not make a unilateral decision. We should work together with the HOA Board.*

This Item was removed from the Agenda.

## **SIXTH ORDER OF BUSINESS**

### **Consideration of Audited Financial Statements**

#### **Consideration of Audited Financial Statements for Fiscal Year 2020, which ended September 30, 2020**

Mr. Ward indicated Mr. Tony Grau with Grau and Associates was present via telephone to review the Audited Financial Statements. He stated these were final Statements that should be accepted for purposes of inclusion in the record only.

Mr. Tony Grau with Grau and Associates reviewed the Audited Financial Statements Fiscal Year 2020 ended September 30, 2020. He reported the audited opinion was on page 1 and 2 and reflected a clean opinion with respect to the financial statements and disclosures of the CDD. He stated management discussion analysis was a recap of the financial activity during the Fiscal Year. He indicated page 4 reflected a summarized statement of position which showed the assets and liabilities and net position including capital assets and debt. He indicated page 5 showed the changes in net position and comparative amounts between the two years; the change in net position went from a loss of \$190,000 dollars to a loss of \$93,000 dollars for Fiscal Year 2020. He reported the government-wide statements were on page 7 and 8. This was the same information as in the management discussion and analysis, just in more detail. He stated page 9 showed the governmental funds, assets (cash and investments), and fund balances, with \$3.2 million dollars in the debt service fund, the capital project fund had \$1.1 million dollars and the general fund had approximately \$366,000 dollars. He reported page 11 showed the income statement and showed the special assessments, revenues, expenditures, general fund, and debt service. He stated page 13 began the notes to the financial statements. He indicated the notes were similar to the prior year. He stated there were no new accounting standards which required any major changes to the notes. He indicated on page 19 was the summary of the capital assets; \$23 million dollars in infrastructure, with \$2.8 million dollars in appreciation, and a balance of \$20.4 million dollars. He stated page 19 reflected a description of the different bonds issued throughout the years. He stated page 20 reflected the changes in the debt for the principal paid during the fiscal year. He noted the District owed approximately \$31.5 million dollars as of September 30, 2020. He reported on page 21 the amortization schedule showed how much debt would be paid off per year for the first five years and summarized in five-year increments. He noted there was a disclosure on the litigation. He stated on page 22 was the budget to actual. He indicated the remainder of the report contained the various reports required under government auditing standards. He noted there were no findings and clean opinions. He asked if there were any questions.

*Mr. Winters: Your footnote on litigation says that the nonwasting escrow fund cannot be determined at this time. Should we be booking a contingent liability for that nonwasting escrow fund?*

*Mr. Grau: No. The way it works with a contingency is, it's recorded, and this is subjective because obviously if we knew exactly what it was, and if it was a liability it would be recorded, so there are two criteria. 1) It is probable that the event has occurred and 2) it could be reasonably estimated what the amount is. At this point it is not probable and to estimate the amount, it is too broad right now to accurately estimate it, but the first criteria basically, as long as the land is not turned over, then you*



*don't have to establish the escrow. At this point it hasn't been determined whether that will happen or not. The other thing that would have to be negotiated; you would have to come up with the amount. Let's say that in a year from now it actually does happen, and we negotiate, and we know the amount even after the year is over, then we would book it. Does that help? Can you hear me?*

There were technical difficulties with no audio for approximately 1 minute.

*Mr. Winters: But if we were to donate/transfer the land to a proper land management agency there would be an escrow fund required for them to accept the transfer.*

*Chairperson Stamp: Unless they would take it without one.*

*Mr. Ron Miller: In my view there is a liability hanging out there to maintain the preserves in perpetuity subject to any change that comes out of litigation. The CDD will be hammered with that in the future. Even if there is I think there will be significant damages, those damages would come over to the CDD to fund that liability, but the liability is real. It is more of a situation due to accounting rules that require you to recognize that liability and put it on the books or put it in the financial statements as a foot note or do nothing. What I'm hearing is because it is still vague enough that there is no reason to do anything at this time, but that may change by the time we get to this point next year. The only solution to that long term, should we not get the damages we seek that are justifiable, is that this Board would then have to face the reality of do we start assessing the residents for something we think is not a CDD responsibility. That's kind of a touchy point there.*

*Chairman Stamp: We are already doing that. We are assessing them for something that we think is not a CDD responsibility.*

*Mr. Ron Miller: But we are contemplating discontinuing.*

*Chairman Stamp: I just don't see where it is any different than any government body that knows it going to have to maintain – Naples is going to have to maintain the streets out there forever. They have the ability to tax, so they don't have to work with the liability of maintaining the streets in perpetuity and put that on their books as a debt.*

*Mr. Ron Miller: But you are jumping to the conclusion that the Board would approve a motion to tax the residents in the future for something that some Board Members might not approve of.*

Discussion ensued regarding how maintaining the preserves compared to city street maintenance, and liability versus non liability. (Some of this conversation was indecipherable.)

*Mr. Winters: I think Supervisor Miller's question is, what are the accounting rules regarding booking a potential liability, and I hear that it is too vague to figure out what the mechanics are of estimating the amount, and I actually think the mechanics of estimating the amount are fairly straightforward. It's the annual cost divided by investment rate of return, which the Army Corps of Engineers has historically always used 2%. So, that's the denominator and the numerator is our annual costs, so we could in fact recognize a number, even if it is a range of numbers. I guess what I'm hearing is that the only reason not to do it is that the eventuality of this is too vague from an accounting standpoint to recognize it as yet. Is that correct?*

*Mr. Grau: Yes. At this point, without the event occurring that would trigger that, the liability has not been incurred. You don't record a liability until it is incurred. The trigger is when the land is transferred.*

*Mr. Ron Miller: It already has happened. The land has been transferred.*

*Mr. Ward: Away from us.*

*Mr. Grau: So, if you are just maintaining it like you maintain the common area, that's something you do every year, then the expenditure is recorded every year because it has not been incurred yet. That's just the way it works. With this situation, there are two variables. The event has not occurred yet that would trigger it and to determine the amount you have to come up with the annual maintenance cost that has to be agreed upon and the discount rate. Now, you said that they used 2%. From reading the permit it did not say 2%, it just said that it had to be determined. If it is 2% then it is an enormous amount of money compared to – it is a lot of money, but the lower the discount rate, then the higher the amount.*

*Mr. Winters: That's just in a conversation with Army Corps of Engineers. That's what I was told by one of their representatives. They default 2% because nobody can really agree on what the rate is and the rate fluctuates. Right now, the rate would be 0.5% or 1%, so the Corps defaults to 2%.*

*Mr. Grau: Yeah, but I think that could be negotiated or argued, because if you are funding something long term, like a pension plan, then you are looking more at like the 6% to 7%. But again, it depends on what gets agreed to because it didn't say in there what it is.*

*Mr. Ron Miller: I would quickly comment that 6% or 7% is not even possible because I have taken a look at it, and we are restricted basically to treasury notes.*

*Mr. Grau: It is not what you could invest it in, it is what they could invest it in.*

*Mr. Ward: Ron, I think your analogy is fine. They are basically the same at this point. They act in similar fashion that we do, so their investments may be a little bigger, but basically the rates are the same.*

*Mr. Ron Miller: Nevertheless, Florida government agencies are restricted by Statute as to what they can invest in, and that's basically treasury notes. I think you can probably the CDD's or money market funds, but basically treasury security.*

*Chairperson Stamp: If we were transferring it to somebody else, they might not be under those restrictions.*

*Mr. Ward: Correct.*

*Mr. Ron Miller: If our accountant is opining that we need neither a booking liability, nor even a footnote, if those are the accounting rules, I am good with that. I simply wanted to make sure that our accountant was aware of our situation, so there would not be an oversight of this.*

*Mr. Grau: We based the disclosure from what the attorneys had in their letters and updates. There was no amount provided, so that's what's disclosed, because it is unknown.*

*Mr. Ward: If you are fine with that, I will ask for a motion to accept them for inclusion in the record. I will finalize them and then file them with the appropriate regulatory agencies.*

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and all in favor, the Audited Financial Statements for Fiscal Year 2020, ended September 30, 2020 were accepted for inclusion in the record.**

**SEVENTH ORDER OF BUSINESS**

**Staff Reports**

**Staff Reports**

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

No report.

**II. District Engineer**

No report.

**III. District Manager – JPWard & Associates, LLC**

- a) Financial Statements ending January 31, 2021 (Unaudited)
- b) Financial Statements ending February 28, 2021 (Unaudited)

No report.

**EIGHTH ORDER OF BUSINESS**

**Agreement with MHOA and District**

**Agreement with Master Homeowner’s Association and District *(Continuing Item until Final Decision)***

This Item was continued.

**NINTH ORDER OF BUSINESS**

**Discussion of Preserve Funding**

**Discussion of Future Funding of Preserve Mitigation and Maintenance *(Continuing Item until Final Decision)***

This Item was continued.

**TENTH ORDER OF BUSINESS**

**Staff Items**

**I. District Attorney**

- a. **Complaint regarding Ownership and Maintenance responsibilities for the Main Preserve located within the boundaries of Flow Way CDD**
- b. **Developer relocation of Resident Walkway (companion item to 10 (II) (b))**

*Mr. Woods: The complaint has been filed. Taylor Morrison has filed a motion to dismiss. Fairly standard procedure. He discussed the process and the technical requirements involved. Our general position remains the same; it is just a matter of meeting requirements.*

*Chairperson Stamp: What do we think their chances are?*

*Mr. Woods: None. But the motion to dismiss could be granted with leave to – a judge would not dismiss it in the first or second motion typically. It is cleaning up the pleadings, so to speak. The judge could grant the motion, but it would be a lot of – meaning the judge says “yeah, I think they are right on that technical point.”*

*Chairperson Stamp: Can you bring us up to date on Tim Hall and the HOA?*

*Mr. Woods: I spoke with Tim Hall’s counsel and he will be making an appearance shortly in the lawsuit. Insurance issues with coverage or something like that. Tim Hall is in the lawsuit and they will probably file a motion to dismiss too as that is standard procedure. I would expect that shortly. The HOA, I spoke with Taylor Morrison’s counsel and they had asked for an extension regarding the HOA, till the new HOA Board got involved. I agreed to that extension to whatever date the HOA needs; subsequently, Taylor Morrison decided to retain an attorney for the HOA. An attorney up in Tampa by the name Neil Sivier (ph), he has filed a motion to dismiss the HOA. I have no idea why they did that. I would be surprised if they could even get a hearing on the motion to dismiss. If they got a hearing on the motion to dismiss heard, by the time we had the leave to amend the HOA would be turned over and so they are jumping through –*

*Mr. Ron Miller: Why are they doing that?*

*Mr. Woods: I have had general discussions with the HOA attorney. Just keeping each other informed of issues.*

*Chairperson Stamp: Just so everyone knows, Greg, I and (indecipherable) and Dave Boguslawski have had some joint calls as well. (Indecipherable 1:49:30.) I call it the trespass letter.*

*Mr. Woods: The trespass letter went out. I received a response just a little while ago which I will forward to Jim. The long and the short of it is, their response generally doesn’t follow Florida law, but it essentially says the developer had an internal of the HOA, in the Declarations, they have the ability to move things and that sort of things, but it really does not address the fact that the property is now the CDD’s property and not the HOA’s. That would be a significant flaw in their logic. I will share that with you, and we will draft a stern response.*

*Chairperson Stamp: I was hoping that Drew or Mr. Cook were here because if you look in the packet. I had Jim contact him about the bridge, the bridge is probably a legitimate thing they had to do and ask them what are you doing, and why are you doing it. The response we got back*

*indicated they really didn't go into the preserves; they went into the buffer of the preserves. I looked at the maps and I didn't find any buffer. Did they retain an easement over a buffer?*

*Mr. Woods: If they needed to do this to comply with South Florida Water Management permitting then whatever. The proper procedure would still be to contact Jim Ward, give him the plans, let him know what you are anticipating, give us proof of insurance, all the standard things you do for your neighbor to comply with things. They did nothing. They just said, here we go, here's what we're doing. That in my mind is a trespass. That's kind of where we are at on that issue.*

*Mr. Winters: I have asked Forge Engineering to look at the bridge to see if it creates any – we've already got a maintenance problem with weeds and grass and everything growing in the pond. Does this make our maintenance obligations worse or more expensive that we now have a bridge to maintain? We weren't given any drawing or engineering plan of this thing to review. No approvals were sought. I just think for some reason we haven't gotten their attention yet. I want to resurrect this issue. I would ask your opinion, when they voted to accept these preserves, should the Taylor Morrison employees have recused themselves from the vote based on the Ethics Law that they should not take a vote that benefits their employer financially?*

*Mr. Woods: The statement you just said is true. The question is whether the facts – when did they have knowledge that the bridge had to be done. We don't know all the facts. If South Florida Water Management District came in after the fact and said hey, we've got to have (indecipherable 1:53:15) then when the Board Members voted they were not aware of that. That we do not know at this point.*

*Mr. Winters: There is no direct correlation between the two events. They also, the Taylor Morrison employees took a vote in favor of amending the permit with South Florida Water Management District, which I feel they should have recused themselves from. And I'm wondering whether we should notify the Army Corps of Engineers that they've made this modification to the preserves without involving them as far as a review. This is another example of them acting with impunity and it doesn't seem like we have yet gotten their attention, that they need to act like they are at least a partner in this process while we go through it and get it all figured out.*

*Mr. Woods: I think contacting the Army Corps is a good idea (indecipherable 1:54:15).*

*Chairperson Stamp: Did you check on the county for permits?*

*Mr. Woods: (Indecipherable.) Our real estate people (indecipherable), but yeah, we are checking to make sure we pull the proper county permits. The problem is the legal process takes a long time to get where you want to go. Once you are there you will be happy with the results, but there is not a lot you can do instantaneously.*

*Mr. Winters: I understand. I know where Supervisor Miller stands on the Ethics complaint. I am starting to get more in favor of it. I have not heard Supervisor Kleck state an opinion.*

*Mr. Kleck: I guess, if it's going to get us further down the road, and it's going to get us some satisfaction, I say yes. If it's not going to gain us anything, I think your recommendations were that*

–

*Mr. Woods: It is an independent action. It does not affect what Taylor Morrison is doing or not doing.*

*Mr. Kleck: It's not going to make a difference in our final –*

*Mr. Woods: At the end of the day, if the complaint were successful, you would end up with a fine against the individual Board Member of \$2,500 dollars. It could be more, but it's not typically a huge fine. It's actually a very lengthy process.*

*Mr. Kleck: Slap on the hand.*

*Mr. Woods: Generally speaking, that's what I've seen.*

*Mr. Ron Miller: So, there have been some successful complaints?*

*Mr. Woods: I have been involved in a complaint that was successful against someone which the end result was a reduced fine of \$800 dollars and he agreed not to run for public office in the future. That was the extent of the year long process. Just by way of example. You never know what's going to happen, but that's an example.*

*Mr. Winters: Well, do you feel like the process – it looks to me like this golf cart trail has nowhere to go. In order for them to move the golf cart trail, they have to enlarge the pond or shrink the pond by creating more bank area because they are now in the buffer zone of the pond. So, do you anticipate that their solution is going to be to come up with an Engineer's report to modify the pond in order to allow the gold cart trail to be moved?*

*Mr. Woods: To my estimation, I would not rely on Taylor Morrison to figure that out. I believe that we need to undertake and have an Engineer take a look and see what kind of problems have been created and some solutions.*

*Mr. Winters: And does the Army Corps of Engineers have to weigh in on what happens to a pond that is being modified without their involvement and approval? Do we put a stop work order in place, so we get them to the table to make sure they do this properly, or do we just allow them to continue doing what they are doing and wait for it to be done before we make --? What would you recommend?*

*Mr. Woods: In some respects, it is a business decision to be honest kind of would like a fully built nice pathway, you leave it in limbo and (indecipherable 1:59:00).*

*Mr. Ward: I will weigh in on that question. Those lakes were financed with bond funds. This District has to aggressively pursue anybody who tries to modify that water management system in any way, shape or form. So, if Taylor Morrison or anybody, or the homeowner's association, wants to go fill in a part of a lake, that has to be aggressively pursued up front.*

*Mr. Winters: How do you know until they do it? That's the problem.*

*Mr. Ward: Right. If Zack sees it on Sunday and he calls me, then I'm going to say call Greg because we need to get started on some way to stop that work from moving forward. That's a major breach in our fiduciary responsibility if we do not pursue that.*

*Mr. Winters: That puts us in a position to be vigilant about everything that they do because they are not coming to the table proactively to cooperate with us in any way, shape or form.*

*Chairperson Stamp: The HOA elect Board sent a note, I haven't seen it yet, saying you told us you were going to give us all this information and you have given us nothing, so I think after this meeting we should sit down with the HOA Elect Board and decide, and I was going to have Greg walk us through what our options were.*

*Mr. Woods: In terms of the bridge and the pathway.*

*Chairperson Stamp: The pathway more than the bridge.*

*Mr. Ron Miller: That's what's going through my mind: where do we go from here, what are the consequences.*

*Mr. Woods: You can do the stop work and attempt to get the County out there to take action. We would have to prove that it's our property, but I think that's probably easy to prove. You could get the County to stop work and that leaves it in limbo which perhaps we want because at that point maybe we could negotiate.*

*Mr. Winters: Maybe that's a way to get their attention. They just seem to be oblivious to the fact that they have to work with other parties on this at all.*

*Mr. Woods: (Indecipherable 2:01:24) halfway done as it is, but you've got this corner of a building in the cart pass a foot away from it. It's a hazard, so I can't imagine they would just leave it the way it is.*

*Mr. Ron Miller: What I'm thinking of is the consequences. Are we in danger of shooting ourselves in the foot here because they've got somebody telling them that they must do this with no alternative, and now they are hearing from us that they can't do this? Where does that go?*

*Mr. Woods: If we shut them down, they are going to have to negotiate with us, getting out permission to do it. Which is what they should have done from the start. That's the real problem. If they had come to us and had a reasonable explanation, provided a reasonable plan, reasonable protections, we might have said fine, go ahead and do it. But that's not what they did. They just decided they were not going to deal with the CDD and just do what they wanted to do. That's the problem. So, if you guys want to try and get a stop work order, you are going to get their attention.*

*Mr. Ron Miller: They've taken the position to go forward, and if they get caught ask for forgiveness. If we don't forgive them and we shut them down, then we've got a couple of places in our community where the trail just stops and comes to a dead end.*

*Mr. Kleck: Then the golfers can't go through unless they go on the gravel. From a litigation standpoint is it better to stop them doing what they are doing and force them to the table or to let them go as one more example of bad behavior?*

*Mr. Woods: I like it in terms of the overall lawsuit because factually it just shows a developer run amuck. They don't care. They are going to do what they are going to do and put everything else on everyone else. So, from a lawsuit perspective – Just let them keep being idiots.*

*Mr. Kleck: I agree with that. I think they have shown their colors too many times to our organization, to our neighborhood, and I think they are getting themselves deeper and deeper.*

*Mr. Winters: But to your point, you can't just let them go in there and change the pond, right?*

*Mr. Ward: Let's separate the two issues. The boardwalk is something that sits on top of our water management system. When I saw that, Zack and I talked about it, and it was – okay, we understand it needs to get done. It clearly was done absolutely wrong, but it's got to be fixed at some point. The cart path however, moving it into that lake bank is substantively more dangerous for residents. My point was if Taylor Morrison tries to go in there, or anybody tries to go in there, and fill that lake in, because that's where that cart path is now, that's where we have to say the rubber meets the road and we have to stop them from doing that because that impacts a system that was paid for from bond funds and we have a responsibility to maintain the integrity of that system and not let anybody make those kinds of modifications.*

*Mr. Winters: Maybe that's what your next letter needs to say. If you intend to do anything, we are going to put in a stop work order.*

*Mr. Ron Miller: Taking Jim's comments, could Taylor Morrison solve the safety issue by building a very significant boardwalk around there? (Indecipherable 2:05:43.)*

*Mr. Winters: Could you say something like insofar this is clearly CDD property, and we have an obligation based on the bonds, our obligation to maintain the waterways, we insist that you involve us in the planning process?*

*Mr. Woods: I think that's a good letter because if you say "we insist" we are not doing it on the back of an invitation. If Taylor Morrison then ignores us, we can at least proceed with seeking a stop work order, and factually for the lawsuit this proves –*

*Chairperson Stamp: We also have the third issue which is those stakes, and we have no idea what they are; up the east side of the property. There are about 20 stakes.*

*Mr. Winters: Yeah, because the whole boardwalk started out as a series of stakes, so it indicates that something is going to happen.*

*Chairperson Stamp: Are they going to move the fence? Move the sidewalk? So, is the consensus here that we are going to proceed with another letter and then we are going to go for a stop work order? (Indecipherable 2:07:12) contact the Corps.*



*Mr. Ward: Greg, for your information, the lake is going to be permitted through South Florida Water Management District. I doubt it is Corps, but I would probably start with the Corps, Collier County permitting, to at least put them on notice that we have a problem.*

*Mr. Woods: And also, South Florida Water Management District?*

*Mr. Ward: South Florida Water Management District, yes, sir.*

## **II. District Manager**

### **a. Audit of Preserves Expenditures (Grau and Associates)**

### **b. Developer relocation of Resident Walkway**

Chairperson Stamp asked about the expert on lakes and littorals who was hired.

*Mr. Winters: I haven't gotten any feedback other than they are knee deep in the process and they have looked at the trail. We haven't even talked about the nature trail that goes around.*

*Mr. Ward: They have pretty much been issued their field work with respect to all of that with exception of one notable item, and that is the cameras that need to go into the pipework systems for which they will need to work with me because I will need to get a vendor on board to do that. The next phase is to start the drafting of the report. They didn't give a time schedule, but I suspect this is at least another two more months out before we even see a draft of a report and at least a month or six weeks from when they decide who they want to use to do the inspection work. I am guessing it will be June before you see this in front of the entire Board, the full report.*

*Mr. Ron Miller: Do we have any knowledge as to the condition of the littorals on the lake banks? Are they as they should be? Are they overgrown? Are they not enough? Are they the right littorals?*

*Mr. Kleck: I have been reviewing the littoral situation and the lake banks and what I see is, what my experience tells me, there are some littorals on that lake bank. Very few and very slim. I don't see, and have not noticed, that Taylor Morrison has added any more littorals to the lake banks since I've been there. The growth of the wild grasses and the lily pads, in both the flow way, which is the canal so to speak. If you get out and look at the canal along Immokalee, it's clear. It's perfectly clear, but the canal coming down on the west side of our property is full of lily pads and swamp grasses, as are the ponds. I just think that they've ignored our lakes and our ponds completely.*

*Mr. Ron Miller: I assume you are referring to the swamp grasses. They seem to have a limit based upon the depth of the water. They cannot go in 10 or 12 feet of water.*

*Mr. Kleck: They are overtaking the ponds significantly.*

*Mr. Ron Miller: But are those swamp grasses consider appropriate littorals for a pond.*

*Mr. Kleck: As far as I'm concerned, and what I've dealt with in the past, they are not supposed to be there.*

*Mr. Ron Miller: How did they get there?*

*Mr. Kleck: Like every wild weed, if they are not cut back and trimmed on a regular basis, and I have seen no boats of any kind in our ponds or lakes that Taylor Morrison would put in there in the 16 years I've been there. Those years that I've been in that neighborhood I have not see them do anything to the waters of that community. Unlike other communities you will see down on Immokalee. That canal that runs parallel with Immokalee is crystal clear. We need to push them hard on that because I don't want to be in a situation where it's out of control to the point where they walk away from it and we are stuck with it. As I see it right now, they have not done anything.*

*Chairperson Stamp: Let's stay on that.*

*Mr. Winters: I gather the engineer's report will address it. And when we take over the maintenance of it, we can --?*

*Mr. Ward: Once we take over the maintenance, you are absolutely right, we can correct it, but before – the expert report will cover what's wrong with it.*

*Mr. Kleck: And how do we make sure that Taylor Morrison is going to fix it before they give it to us?*

*Mr. Ward: That's his job.*

*Mr. Kleck: When's that expert report supposed to be done?*

*Mr. Ward: I suspect probably your June Meeting you will have the report.*

*Mr. Kleck: When is the turnover?*

Discussion ensued regarding the turnover date being March 8, but officially May 31.

*Mr. Ward: The audit of the preserve expenditures that we had talked about some time ago. Tony Grau is still with us today after 2 hours. I applaud him for those efforts today. Tony I will ask you go ahead and do your review of the preserve audit that you did.*

*Mr. Grau: If you could hold on a second, I will have David come in as he is the one who did the work.*

*Mr. David Caplivski: I am an audit partner here at Grau and Associates and we were engaged to perform an agreed upon procedures engagement. Basically, we received two schedules from District Management that represented the cost of the District from October 1, 2013 to September 30, 2020. There were 750 items on those schedules that represented \$30.4 million dollars. The procedure we performed is we inspected the invoices and requisitions that were represented on those schedules for the word preserve. Appendix A, on page 4 of the report, shows the 44 invoices we found that have the word preserve. Appendix B, on page 5, shows the one requisition we found that had the word preserve. Appendix C, starting on page 6 and through the end of the report, is*

*all of the pages from those invoices and requisitions that have the word preserve. It was a pretty straightforward engagement, and I am available for any questions or comments.*

*Mr. Winters: I took your sheets and numbers and looked at every page and reconstructed this in a spread sheet so that it summarizes the totals by year and what it shows is that there were \$258,636 dollars spent in 2015. There was nothing for 2016 or 2017. In 2018 there was \$5,400 dollars spent for maintenance, \$11,500 dollars for legal, \$1,100 other for a total of \$18,000 dollars. In 2019 the amounts spent were \$244,000 dollars for maintenance, \$13,630 for legal, \$1,500 for other, for a total of \$259,540 dollars in 2019 and in 2020 there was \$205,000 for maintenance, \$3,000 for legal, for a total of \$208,975 dollars in 2020, which stops in September, so it does not capture through the calendar year. It stops in the fiscal year. The grand total is \$714,920 dollars. I was the one who requested this retroactive account so we would have a number to include in our claim, and that's what the result was.*

*Mr. Ron Miller: I had a question on the work that was done. I'm sorry I didn't look at this earlier, I just missed it. But using the label of preserve and looking at the expenses, is that too narrow of a search or are there other expenses, invoices or whatever, incurred that don't have that word present in the invoice. That would seem to be maybe a likely scenario. When Tim Hall gives us his bills, just using him as an example, would his invoice say preserve work? Or would it say general billing for services performed? Have we missed a huge amount of money in expenses by narrowing it to the word label?*

*Mr. Ward: The list of the vendors that Grau has on page 1 of their report includes all of the vendors that have been paid by this CDD from October 1, 2013 through September 30, 2020. This is every vendor in the system. Honestly, I can look at these vendors and tell you whether or not, just by eyeing them, whether they have done any work in or for this District that are related to the internal preserves or the external preserves. For example, because I know all these vendors, I was able to point Grau to all of the vendors who I knew were in this District related to any type of preserve work and they all have the word preserve in all of their invoices. He further explained how the vendors were or were not related to the preserves. He noted he was able to look at this audit and point Grau in the right direction related to the vendors who worked on the preserves.*

*Mr. Kleck: You were here during the entire duration?*

*Mr. Ward: Yes, I was.*

*Mr. Kleck: Is that number small that he gave you?*

*Mr. Ward: No. That's the right number; \$750,000 to \$760,000 dollars is the correct number. It grows. This year we will have more expenditures to add to that number now that we are starting up the maintenance on the external preserve again. We replaced Tim Hall.*

*Mr. Ron Miller: When we go back to the 2015 amount of \$258,000 dollars. That has an April 28 date. I am trying to find this because I have seen it once, but my recollection is that the wood stork area was conveyed over sometime in 2015. It was somehow connected to a bond issue and some bond funds. In respect to the payment of (Indecipherable 2:23:12.) were we actually paying for expenses or reimbursing Taylor Morrison for expenses incurred prior to the actual conveyance of the property to the CDD? That being an important feature. (Indecipherable 2:23:46.)*

*Mr. Ward: Mr. Grau and David, we thank you for joining us today.*

Mr. Grau and Mr. Caplivski left the meeting.

**ELEVENTH ORDER OF BUSINESS****Board Items**

There were no Board Items.

**TWELVTH ORDER OF BUSINESS****Audience Comments**

Chairperson Stamp asked if there were any audience comments; there were no audience comments.

*Mr. Ron Miller: I just want to share some information with the Board. Over the past number of weeks, I have had some curiosity. What Taylor Morrison has done through this situation, alleging that they are still in charge of the HOA Board, which is not our business as the CDD, but why would they allege that? It seems to me they are doing this for a reason. What might be in the background? I am curious with the Hatcher Property, that they are needing to do some things. So, I think I know some things, but it may just not be so. Keep that in mind. I tried to do a little homework, and what I think is the case, Taylor Morrison with respect to the Hatcher property, they have sold no lots and that's a fact. Why they have sold no lots is a good question knowing there are people standing in line. Probably they can't. I spent lengthy time on the phone with people in Collier County Planning, Diane Lynn, who gave me two hours of her time. She tells me that Taylor Morrison have yet to come to Collier County with construction plans. The project has been approved, it has been for some time, but no construction plans, and so it hasn't yet entered that stage. It kind of makes me think that maybe they are going to need to do something between now and May 31 to get to this thing. And then, I walk the dog past that thing all the time and I see the mut pit. I have gotten into the details of what was the approved project in back and forth with Collier County. Picture on the north end of that property. There was an existing lake. Small, but existing, and that has now been expanded threefold or fourfold to the south. The original lake has an elevation of 12.2 feet. I asked her if she thinks that the pond was that deep and then the extension of that, this says proposed lake expansion and it has more elevation. It does have a legend on it that shows littorals as opposed to (indecipherable). When you dive down deeper, down through the engineering on that, the Waldrop Engineering Report, shows all sections of that expansion with basically the same elevation of 12 feet deep. Clearly there is not that much. Clearly, they have not dug down. They have raised the property behind it, which makes it appear higher. It makes me wonder if Taylor Morrison is going to go back to Collier County and ask that (indecipherable). Basically, they have completed that project, to come in now it would be a mess. Anyway, it seems to me, what we see is what we get. It seems to me that they are going to put that on the HOA. They can't put it on us without our permission, so they are going to put it on the HOA. Maybe in order to pull that off they need to retain control of the HOA. I think as a community we need to be aware that something is going on. The CDD can insulate itself somewhat, but can the HOA? I just don't see a good ending. If the HOA were to ensure its legality (indecipherable). They can't do something separate from the CDD, but I just think there is something going on there, that even though we may not be able to insulate ourselves from it, but we need to have an awareness.*

*Mr. Winters: I've got pictures of them planting in that area. You can see it and stop and look at it. Some kind of plant. They clearly are planting there.*

Discussion ensued regarding the lake having naturally dried up, the lake refilling in the spring and summer, the lake reverting to mud in the winter, and residents who purchased lots during the summer being disappointed in the winter.

*Mr. Winters: I agree with Ron. The reason they have delayed turnover of the HOA is so they can get whatever done. They have a timeline somewhere on the Board in Taylor Morrison's office, the milestones they have to reach before they allow turnover to the residents.*

*Mr. Kleck: They want to have control as long as they can.*

*Mr. Winters: They don't want to deal with a resident controlled HOA.*

Mr. Ron Miller recommended bringing this up to the HOA Board Elect.

*Mr. Woods: I have recommended to them that they have Urbancic at least send Taylor Morrison a letter saying whatever happens between March 8 and May 31, we are not going to accept responsibility for if it is detrimental to us. We should be in control and we are not –*

*Mr. Ron Miller: I would take that a step further and have the board take (indecipherable 2:35:09).*

**THIRTEENTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**April 15, 2021**

*Chairperson Stamp: Our next meeting will be April 15, 2021.*

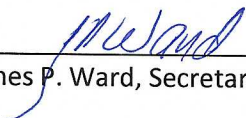
**FOURTEENTH ORDER OF BUSINESS**

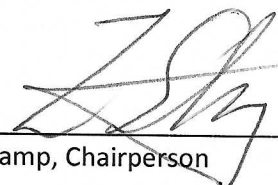
**Adjournment**

Chairperson Stamp adjourned the meeting at approximately 3:40 p.m.

**On MOTION made by Mr. Tom Kleck, 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