

**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, April 15, 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	

Also present were:

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

Audience:

Ed Staley

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

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

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Chairperson Zack Stamp called the meeting to order at approximately 1:00 p.m. Roll call was conducted and all Members of the Board were present 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.

NEW BUSINESS

THIRD ORDER OF BUSINESS

Consideration of Minutes

March 18, 2021 Regular Meeting Minutes

Chairperson Stamp asked if there were any additions or corrections to the Minutes; hearing none, he called for a motion.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the March 18, 2021 Regular Meeting Minutes were approved.

FOURTH ORDER OF BUSINESS

Staff Reports

Staff Reports

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

No report.

II. District Engineer - Calvin, Giordano & Associates

Mr. James Messick introduced himself as a professional licensed engineer in the State of Florida working for Calvin, Giordano & Associates.

Chairperson Stamp indicated he and Mr. Messick were going to inspect the sidewalks, cart path and bridge following the meeting.

Mr. Ron Miller asked what was being done with the sidewalks and cart path.

Chairperson Stamp explained the cart path had been moved away from the lake hopefully into a location where it was permitted to be placed. He indicated he and Mr. Messick were going to check the placement of the cart path today.

Mr. Ron Miller discussed the construction of the path cart and the grading in the area.

Chairperson Stamp discussed the construction the cart path, and other construction in the area.

III. District Manager – JPWard & Associates, LLC

a) Financial Statements ending March 31, 2021 (Unaudited)

No report.

OLD BUSINESS

FIFTH 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.

SIXTH ORDER OF BUSINESS

Discussion of Preserves

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

This Item was continued.

SEVENTH 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/Golf cart Pathway**
 - 1. 1st Notice of Trespass to Taylor Morrison – March 9, 2021**
 - 2. Response to 1st Notice of Trespass – March 18, 2021**
 - 3. 2nd Notice of Trespass to Taylor Morrison – March 22, 2021**
 - 4. Response to 2nd Notice of Trespass – March 31, 2021**

Ms. Jessica Tolin indicated a motion to dismiss was again filed by Taylor Morrison. She noted the arguments were approximately the same as previously raised and responses to the motion were being prepared. She indicated a motion to dismiss was also filed by the HOA again with similar arguments as well. She stated the hearing for this motion was May 20, 2021.

Mr. Ron Miller asked if Chairperson Stamp had contacted the Army Corps of Engineers. Chairperson Stamp responded in the negative; District Counsel wanted to wait for a bit before contacting the Army Corps of Engineers.

Chairperson Stamp asked if there was an update on the relocation of the bridges, cart path, and walkways.

Ms. Tolin responded in the negative; there was no update.

Mr. Martinn Winters asked about the Hatcher pond. He noted the Hatcher pond was not a CDD property but could be a CDD property. He stated the pond was in terrible condition. He stated Taylor Morrison was turning the pond into a “mud pit.”

Mr. Tom Kleck stated Taylor Morrison was not informing the CDD of the changes being made and he wondered why no notification was given when these types of changes were being made.

Mr. Winters indicated the situation was being investigated, but there were no answers yet. *At one time there was water in the pond, and then they were digging a hole and putting a pipe under the street, and then there was no water in the pond, which leads me to believe they poked a hole in the pond somehow, then rather than fix it, they decided to turn it into a mud pit, and they got the county to approve changing the plans from a pond to a mud pit. That’s what I understand.*

Mr. Ron Miller: I spent some time on the phone with some Collier County personnel and the original plans called for this area to be a pond and to be fully extended with a depth of 9 feet during wet season and 6 feet during dry season. I saw those plans and they weren't being followed. The initial person I was speaking with expressed concern about this. This was an inspector enforcement guy. That kind of led from one thing to another to where I was then told the plans have been changed as they are now. While we are on the subject, I think I agree with your statement that the CDD does not own that infrastructure. I would further go on to say that I would vote against taking ownership of that. I don't know where that leaves us about the property. I suppose it has to be up to Taylor Morrison to be looking into putting that with the HOA. I don't know whether the HOA is looking into that or not.

Mr. Tom Kleck: Has the HOA been involved at all in this Hatcher property? Do they know what's going on there?

Mr. Winters: I do not have any interaction with the HOA, so I don't know. I have recommended that our attorneys step up and say whatever they do during this questionable period before actual turnover occurs, and whatever decisions they make from March 8 to May 30 be held in abeyance and we might have a claim based on the actions that they are taking now. I don't know where the HOA counsel has acted on that. I don't have any direct knowledge since Taylor Morrison doesn't act with any transparency and we don't know what they are up to and they don't tell anyone what they are doing, you'd have to catch them at their game after they do it. After the damage is done. We do have Drew Miller on the phone who might enlighten us as to what Taylor Morrison is doing and plans to do. Drew, do you have any comments to make on the Hatcher pond?

Mr. Drew Miller: I don't. I didn't know there was an issue with it, but I am happy to look into it and find out.

Chairperson Stamp: We would appreciate that.

Mr. Ron Miller: Does anyone know if we have a legal requirement to take the Hatcher property?

Ms. Tolin: Greg, Jim and I have talked about this and we don't think there is a legal obligation to accept it. Not accepting it, it would likely shift to the HOA, would be my assumption, at which point it could end up being an issue for the CDD anyway.

Mr. Tom Kleck: Does that include the existing lakes in the Flow Way area? The County has not allowed them to turn that over yet because they have not fulfilled their finish work. If we elect not to accept the ponds and the lakes, will they in fact go to the HOA?

Mr. Ward: The existing lakes are a different story. They are already in easements dedicated to the CDD, so they already have that responsibility.

Mr. Winters: I second what Ron Miller said. I would not be in favor of the CDD taking ownership of the Hatcher pond.

Chairperson Stamp: But you know what's going to happen. While they are still in control of the HOA, they will magnanimously agree to take it over.

Mr. Ron Miller: If I were on the legit HOA Board, I might have a meeting to reject ownership in advance of the illegitimate Board conveying that to the HOA.

II. District Manager

Mr. Ward: I have no old business.

EIGHTH ORDER OF BUSINESS

Board Items

Chairperson Stamp: Jim and I have been talking about revamping the Agenda and the whole presentation packet and how to make it more manageable. Any suggestions anybody has along those lines please get them to us. The other thing is I want to start using the Board Item as a time where we can talk, since we can't talk outside of meetings. This will be the time when we can talk about things like Hatcher or others and start making that a permanent part where everyone understands we are going to get that discussion with the caveat that it will be recorded as part of the meeting and you may want to temper some of your adverbs and adjectives. There is a lot of stuff going on. For example, if somebody drives off of that new bridge who is responsible? The HOA, the CDD, Taylor Morrison? Because I saw a kid just about go over it the other day. A little kid was just about to go over, and his parents caught him just before he went over the one-foot railing. If somebody on a bicycle hits that they could easily bounce over.

Mr. Ron Miller: Since you are bringing that up, we probably ought to discuss the other bridge which has been there for some time on the back nine which also has a small railing.

Discussion ensued regarding the bridge for the golf cart path; less risk on the golf cart path bridge; the new bridge along the trail posing a liability; both bridges having 1-foot railings; and all other bridges having 3-foot railings.

Mr. Ron Miller: Jim Ward and I have been bouncing some emails back and forth; what happens to non-payments, or defaults, on CDD assessments? We are going to have 1,181 units and with that number of units there are bound to be a few people along the way who just don't pay. Jim was attempting to put me into the picture as to the process of how we don't have an issue with that, and he lost me along the way. Jim, how does all that work?

Mr. Ward: In Florida, because we are a governmental agency, we use what's called the uniform method of collection for assessments. That simply means that we can put our assessments on the tax bills that you receive in November of each year. You know that when you pay your tax bill you have to pay your entire tax bill subject to discounts that you pay in November or December, etc. If you do not pay your tax bill by the end of March it goes into a delinquent stage. In Florida, the process is that the tax collector creates what's called a tax certificate for your property which means that you did not pay your tax bill and that is sold in the summer to anyone who wants to bid on that certificate. The bidder bids on an interest rate. The higher the interest rate that someone bids on the certificate, the more likely they are to take title to that certificate itself. Once they own the certificate, that requires them to pay the tax amount, all of the taxes on that tax bill, and what happens then is that money is then remitted to whatever government is on there, including the CDD. So, we become whole at that point. Some taxpayers, during the year, if you're over 65 and you have certain conditions, you can go on the payment plan, etc. That is out there, but you still at the end of the day are whole when they make those payments. The only time those certificates are not sold, I have found in all the years I've done this, is for

generally undeveloped land where the lean devalue ratio, the amount of the tax bill versus the value of your property and your home that's on it, is upside down. When that occurs the certificate won't sell, but if you have a tax bill \$5,000 dollars or \$10,000 dollars on a home that's \$500,000 dollars, the certificate is going to sell. Then that's it, you're done. The District is out of the process. There is another process for the certificate holders if they keep hold of that certificate, they can actually take title to that property in 3 years, I believe State Law says, but we are basically out of it. At the end of the day, we are always whole on all of the assessments that come through subject to that certificate process.

Mr. Tom Kleck: That assessment is then paid through our tax bill? The homeowner does not get a separate bill for the CDD assessment each year.

Mr. Ward: Correct.

Discussion ensued regarding assessments and the tax bill; the purchase of delinquent tax certificates at 18% to 20%; the homeowner being responsible to pay for the delinquent taxes and the 18% to 20% interest rate; the homeowner having three years to redeem the certificate plus interest, following which, if unpaid, the certificate holder would foreclose on the property.

Mr. Ward: It is not actually a foreclosure as you understand it. They apply for what we call a tax deed in Florida. If they make the application and the certificate is out there, it does go before a judge, but at the end of the day, they always issue the tax deed on the property and it is recorded at that point. It is not that long of a foreclosure process.

Discussion continued regarding purchasing of tax certificates, potential profits, and the length of time it takes to make said profit.

Mr. Ron Miller: I'm wanting to get a detailed list of the assets which are on the books of the CDD. We do have a monthly statement, but we also have an annual audited financial statement, and if referring to the audited statement, there is a discrete number of assets that we own and there is depreciation on those assets, but I have no idea what assets we own. That information should be available somewhere.

Mr. Winters: There must be a fixed asset depreciation schedule that the accounting firm has.

Mr. Ward: I just got it. I'm going to email that to you tomorrow. The list is helpful; it tells you the phase the asset is in, what it is, whether it's water, sanitary or irrigation, environmental, so it's pretty detailed.

Mr. Ron Miller: I am going north in May, so I won't be able to physically come to these meetings until October or November. That puts the quorum down to four. I hope three of the four can continue to come.

Mr. Tom Kleck: I am going to be gone in May as well, but I am not sure if it's going to be during – it's only for a couple of weeks. I don't know the date, but it will be before the next Board Meeting. I'm going to be gone from the 16th through probably the 28th.

Mr. Ward: Okay, so we lose the quorum unless Drew is coming down. Drew, can you make the May 20th meeting?

Mr. Drew Miller: I believe I am planning to be there.

Mr. Ward noted any who were not local could still call in to the Meeting; at least three individuals were required to be present in person to make quorum.

Mr. Ron Miller: I'm hoping that for the 2022 budget we will not need to increase any fees, we can keep it the same. For the 2021 I think we agreed the budget, which was \$37 dollar increase per person, and going into the next years budget, part of the 2021 budget was we approved monies to take over the HOA contract and maybe a few other things, and of course we didn't take that over, so we haven't spent that money, and I'm hoping we have enough buffer that we can avoid an increase for the next year. Part of the reason I say that is there have been numerous occasions where people were upset, they know I'm on the Board, and they were upset because of their horrendous increase in their CDD fees for this year. Of course, after the second occasion I started carrying my two previous tax receipts in my pocket so I could show people, "look, you didn't have a horrendous increase, it was \$37 dollars." People were really upset, but the increase was with respect to the HOA. If we can have a year without an increase, I think that will be a plus.

Mr. Winters: We are going to consider whether or not we continue funding maintenance on the external preserves, and in the event that we let the authorities know that we don't see that as our responsibility and we stop funding them, there very well could be a decrease.

Mr. Ron Miller: I wish to discuss the Environmental Report and specifically the lakes and the lake banks, what Tim Hall is responsible for. What goes through my mind is I don't understand any of it, but we have the lakes out there. We all know Taylor Morrison has yet to fulfill some responsibilities before the County will sign off so they can be turned over. I have no idea what those remaining responsibilities are, but I would like to. Then would be post-Taylor Morrison responsibilities which are upon us. Some people think the ponds look okay, others think it's awful. Tom calls it swamp grass, I know he doesn't like it, but I don't know whether the swamp grass we have out there is proper grass; do we have too much, not enough, this whole thing is a mystery to me. I'm hoping we get some information soon.

Mr. Tom Kleck: Jimmy, Is there a direction or an ability by you to give us that information as what normally should be there in the lakes and the ponds or is it the way it is supposed to be?

Mr. Messick: I can go back and look at the premises and see if there are specific species of littoral plantings or if there is any direction given in the permits that would hold you responsible to that.

Mr. Winters: That's one think we have asked Forge to include in their scope of work, is to evaluate, not only the drainage systems, but the condition of the ponds and littorals versus what the County is going to require and the performance bonds before they release them. I have the same questions Ron does, I don't understand what is supposed to be there.

Discussion ensued regarding the ponds; the ponds being pristine years ago; whether the plantings were overgrown; what were the proper plantings; the CDD not wanting to shirk responsibilities, but not wanting to take over Taylor Morrison's responsibilities; and whether the County would force Taylor Morrison to fulfill its responsibilities.

Mr. Ward: Wait till we get the Forge Report. If we need to supplement that with Jimmy's work then we can do that at that point in time, but I think the Forge will give you a good handle on where it is right now in relation to the existing permit requirements.

Mr. Ron Miller: I haven't yet given up on this Code of Ethics violation. To my surprise last month Supervisor Winters seemed to jump on that as well. The two of us may be inclined to pursue that matter. I don't understand why the Board is reticent or Counsel is reticent in pursuing this. We have litigation against Taylor Morrison, and it would seem to me that a Code of Ethics violation would bolster our position in front of a judge saying that the State of Florida even agrees the Board Members violated the Code of Ethics in their actions in doing something detrimental to the CDD in helping their employer avoid the responsibility of paying for the preserves as it should. If a legal analysis of it were to say it is a rather iffy thing to get that Code of Ethics accomplished with the State of Florida, then I don't think the Board should go down that road, but if a legal analysis shows there might be closer to 75% to 80% likelihood it would be approved by the State of Florida, I think it would bolster our legal case. I'm still on Board in pursuing this.

Chairperson Stamp: Jessica, correct me if I am wrong, but I don't think it would be admissible.

Ms. Jessica Tolin: To jump in, it is confidential the proceedings of the Code of Ethics violation, unless the respondent were to agree to waive confidentiality which I doubt would be the case.

Mr. Kleck: I got that opinion when our counsel talked about that at one of our last meetings. We are chasing a rabbit down a rabbit hole at this point. It is not going to get us anywhere. In fact, it might work against us in the bigger picture, so I'm willing to go along with what Counsel says and their recommendations.

Mr. Winters: I have a different take on that, and that is as witness what they are doing with the Hatcher pond, Taylor Morrison continues to act with impunity. No matter what we do, they don't act with transparency. They don't vet anything they are doing with us. They don't ask for permission. They don't ask for coordination. They just do what they do and then it's our job to catch up with them and try to fix the damage that they do. My view is that the Code of Ethics complaint might get the attention of other Taylor Morrison employees at headquarters that we are serious about pursuing Taylor Morrison to fix the damage that they are causing to our community that they continue to do even as we are sitting here speaking. And this is one way to reach out to them and get their attention in headquarters.

Mr. Tom Kleck: Could you make that information know to our Counsel?

Ms. Tolin: I can speak with Greg.

Discussion ensued regarding the Code of Ethics violation; the fine going to the County for the Code of Ethics; spending thousands of dollars with no fiscal return for the Code violation; whether the CDD had the right to file an ethics complaint.

Ms. Tolin: If it is going to be filed it should be from an individual standpoint as opposed to on behalf of the CDD Board, one due to those concerns, and two due to the fact that if there was a finding of no violation then there is the potential, they could basically tax attorney's fees against the Board.

Chairman Stamp: And if they did win, I would assume they would waive confidentiality and try to get it in.

Mr. Ron Miller: So, you are saying the Code of Ethics is irrelevant in the State of Florida. You can do as you wish without consequences. What's the point of having the Code of Ethics?

Discussion continued regarding the Code of Ethics; individuals being able to file a Code of Ethics violation complaint; a Code of Ethics violation complaint being a private matter unless both parties agreed to waive confidentiality; and there being no public record of Code of Ethics violations unless confidentiality was waived.

Chairperson Stamp: I think if you really want to do something on this, when we get into discovery, we are going to find that Taylor Morrison sat around in a room or circulated emails in violation of the Sunshine Laws to script these meetings. They are not doing what we do which is not talk to each other. In that you might have some meat on the bone then. That's a whole different thing.

Mr. Winters: They all rode down here in a car and voted the same way without talking to each other?

Chairperson Stamp: I am sure somebody had these property acquisitions on the Agenda and said these are properties the district should accept. I think there would be some better use of our resources than wasting time on an ethics complaint.

Mr. Winters: I agree with Supervisor Miller. It's a shame to have this law in the books and have it be a complete waste of time and unenforceable.

FINAL BOARD ITEMS

NINTH ORDER OF BUSINESS

Audience Comments

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

TENTH ORDER OF BUSINESS

Announcement of Next Meeting

May 20, 2021

ELEVENTH ORDER OF BUSINESS

Adjournment

Chairperson Stamp adjourned the meeting at approximately 1:52 p.m.

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

Flow Way Community Development District

James P. Ward

James P. Ward, Secretary

Zack

Zack Stamp, Chairperson

Signature: Zack Stamp
Zack Stamp (Jun 4, 2021 15:57 EDT)
Email: zackstamp@gmail.com

Signature: *James P. Ward*
Email: jimward@jpwardassociates.com









FW - Minutes 04 15 2021 to be signed

Final Audit Report

2021-06-07

Created:	2021-06-04
By:	Cori Dissinger (coridissinger@jpwardassociates.com)
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