

**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, July 15, 2021, at 1:00 P.M. in the conference room of the offices of Woods, Weidenmiller, Michetti, & Rudnick, 9045 Strada Stell Court, Suite 400, Naples, Florida 34109.

**Present and constituting a quorum:**

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

**Also present were:**

James P. Ward	District Manager
Greg Woods	District Counsel
James Messick	District Engineer
Jessica Tolin	District Counsel
Mike Conner	Calvin, Giordano & Associates

**Audience:**

Dave Boguslawski	HOA
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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.

Chairperson Stamp noted Mr. Drew Miller resigned from the Board.

**NEW BUSINESS**

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**THIRD ORDER OF BUSINESS**

**Consideration of Minutes**

**June 17, 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 June 17, 2021, Regular Meeting Minutes were approved.**

**FOURTH ORDER OF BUSINESS**

**PUBLIC HEARING**

Mr. Ward explained the public hearing process including public comment, Board discussion and vote.

**a. PUBLIC HEARING – FISCAL YEAR 2022 BUDGET**

**I. Public Comment and Testimony**

Mr. Ward called for a motion to open the Public Hearing.

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Tom Kleck, and with all in favor, the Public Hearing was opened.**

Mr. Ward asked if there were any members of the public present by audio or video with any comments or questions respecting the Fiscal Year 2022 Budget; there were none. He noted there were no members of the public present in person. He called for a motion to close the public hearing.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the Public Hearing was closed.**

**II. Board Comment**

Mr. Ward asked if there were any Board comments or questions.

*Chairperson Stamp: Next year we are going to have to raise the budget. The assessments are going to go up unless we wrap up the lawsuit in a very favorable way. We are going to hear reports today on the fencing, border fencing, the lakes, and some stuff that needs to get done right away. Even if Taylor Morrison ends up paying all or a substantial portion of this, it's going to be way down the road, and next year's budget is going to have to go up. I don't see any way around it with the expenses that Taylor Morrison is frankly dumping on us of things that were left undone. Obviously, the lawsuit could change that. If we could somehow access the performance bonds, that could change that. I just want to be on the record that we are looking at an increase next year.*

Mr. Ward asked if there were any other questions; there were none.

### **III. Consideration of Resolution 2021-5 adopting the annual appropriation and Budget for Fiscal Year 2022**

Mr. Ward called for a motion for Resolution 2021-5.

**On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2021-5 was adopted, and the Chair was authorized to sign.**

### **b. FISCAL YEAR 2022 IMPOSING SPECIAL ASSESSMENTS; ADOPTING AN ASSESSMENT ROLL AND APPROVING THE GENERAL FUND SPECIAL ASSESSMENT METHODOLOGY**

Mr. Ward indicated this public hearing was related to the imposition of the special assessments for the general fund, adoption of an assessment roll, and approval of the special assessment methodology for the District.

#### **I. Public Comment and Testimony**

Mr. Ward called for a motion to open the Public Hearing.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the Public Hearing was opened.**

Mr. Ward asked if there were any members of the public present by audio or video with any comments or questions; there were none. He noted there were no members of the public present in person. He called for a motion to close the public hearing.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the Public Hearing was closed.**

#### **II. Board Comment**

Mr. Ward asked if there were any questions; there were none.

*Mr. Kleck: Do we have an idea of how much individual homeowners will pay?*

*Mr. Ward: \$525.04 per unit; the same as the current year. He asked if there were any other questions; there were none.*

**III. Consideration of Resolution 2021-6 Imposing Special Assessments, adopting an Assessment Roll, and approving the General Fund Special Assessment Methodology**

Mr. Ward called for a motion.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, Resolution 2021-6 was adopted, and the Chair was authorized to sign.**

**FIFTH ORDER OF BUSINESS**

**Consideration of Resolution 2021-7**

**Consideration of Resolution 2021-7 designating dates, time, and location for regular meeting of the Board of Supervisor's for Fiscal Year 2022**

Chairperson Stamp indicated there was some discussion regarding moving the meeting location.

*Mr. Kleck: When I talked to Dave Kuptis, he indicated that 1:00 p.m. may interfere once in a while with something scheduled for that room. He's not so much concerned about the golfers or the restaurant, but the room that we are going to be using is the wine tasting room, and right now they are using it once a week, but it's only on Monday night, or Tuesday, so the Thursday date was good for him and as far as, I think Cori may have talked to Dave about setting up a firm date or firm meeting, and they mentioned that the time could change. I'm open to any time really. I think whatever Dave says.*

*Mr. Ward: Cori is my assistant, for the record. What I had asked was we set up a firm schedule simply because if for whatever reason, they change, we can't meet there, the date's wrong or they have an event and they cancel, we have to have notice at least 15 days ahead of the Board meeting date in order for me to readvertise it for a new date, time and location, so what we were going to do is put all of these dates on their schedule, and he said that was fine. He would do that, and they would not change it on us on a going forward basis, but if they have a wine party, I'm sure that might change things.*

Discussion ensued regarding meeting times and location; advertising the meeting for the clubhouse but not room specific to allow a meeting room shift if necessary. It was agreed to hold meetings at 1:00 p.m. at the clubhouse the third Thursday of the month.

Mr. Ward called for a motion to adopt the Resolution as presented.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, Resolution 2021-7 was adopted as presented, and the Chair was authorized to sign.**

**SIXTH ORDER OF BUSINESS****Staff Items****I. District Attorney – Woods, Weidenmiller, Michetti, & Rudnick****a) Notice to TM on Forge Report.**

*Mr. Woods: The first item, we have the Forge Engineering Report on the stormwater drain, etc. They requested 30 days, but 30 days is about up. We are going to send a followup letter to them and it is our intent to probably put the County on notice of our issue. Maybe copy the County with my prior letter of our issues with what Taylor Morrison has done just so the County is aware as well and we will copy it to the South Florida Water Management District. They represented that they are undertaking efforts to clean it up, but we do not know the extent or what their efforts are going to include at this point. Any questions?*

*Mr. Martinn Winters: Have they had any communication with you besides this initial letter saying we will get back to you in 30 days?*

*Mr. Woods: No.*

*Mr. Winters: So, we don't know if they are planning to undertake cleaning out the pipes or anything?*

*Mr. Woods: The implication was they were planning on cleaning out some pipes, but we don't know the nature or extent or if they are going to comply with everything that we would like done.*

*Mr. Winters: This Board has to make a decision about whether we are going to spend resident money to clean the pipes out to make sure they are functioning. Before we do that, it would be nice to know if they plan to do anything, and if so, when. Do you anticipate any meaningful communication from them?*

*Mr. Woods: I will know more after my followup correspondence in response to that. I would say I will probably have something in a couple weeks.*

**b) Summary of Third Amended Complaint and Responses.**

*Mr. Woods: We prevailed on their motions to dismiss. We'll get our allegation or wherefor clause about damages in the declaratory judgment action asking the court to interpret contracts, documents, etc., so, we inadvertently had a damages thing that we removed. No big deal. We have got our amended pleading and the defense are all answering. The association has filed a motion to amend their pleadings, and basically, they are going to go from a nominal defendant to basically adopting our positions in their complaint against the other defendants. It is a two-step process for them, but they will ultimately be aligned with us in terms of the lawsuit. The Taylor Morrison Board Members filed an answer in affirmative defense, and they are trying to make a claim that the CDD should reimburse them for their attorney's fees in defending themselves against our actions. We have found case law, etc., and the statute stated as they exceeded the scope of their authority, they don't get the benefit of being reimbursed by the CDD, so we will*

*resist that on all counts. We hopefully will not have to reimburse them for attorney's fees. That will be set for a hearing somewhere up the road.*

*Mr. Ron Miller: Will we know something definitive about that before the process is finished so we are not surprised at the end?*

*Mr. Woods: Yes. I would probably like to have a deposition of one of the Board Members before that gets heard because I believe that some of the documents of things might be very helpful in regard to our position with the hearing. It's not something that has to wait until the end. We can get it teed up earlier.*

*Mr. Kleck: Is there any precedent for lawsuits by homeowner's associations against the builder?*

*Mr. Woods: Plenty. If the Associate gets its pleadings in line with us, obviously they will be suing Taylor Morrison as well. This could potentially add additional claims as things are discovered.*

*Mr. Kleck: Do they know when that suit is going to happen, the HOA?*

*Mr. Woods: They are in the lawsuit. It is a matter of when the court has a hearing and grants their leave to amend. That is yet to be set for a hearing. It is hard getting a hearing time. Unfortunately, litigation moves slowly. If you ask for a hearing now, it might be 6 or 8 weeks from now. I will followup with HOA counsel.*

*Mr. Winters: So, the HOA has decided to align with us in the lawsuit?*

*Mr. Woods: That is my understanding, yes.*

*Mr. Winters: Does that require a Board vote for the HOA to do that?*

*Mr. Woods: They are a party to the lawsuit. I don't think it would require a Board vote. I'm not going to tread into their operations, but I don't think it would.*

**c) Arbitration Hearing – January 18, 2022.**

*Mr. Woods: The arbitration lawsuit has been set for January 18, 2022. It's not in binding. Most of the bigger cases in Collier County get ordered in nonbinding arbitration. It's something the judges do. It kind of makes litigation more expensive. It reminds the parties they have to set aside a time for the lawsuit, and it's the judge's way of helping encourage cases to settle. Whatever the arbitrator, the one-day deal, it's fairly informal. You don't even have to put on witnesses. The attorneys are allowed to proffer what the positions are, what they think the evidence will show, etc. Basically, the whole process will take four or five hours. The arbitrator has ten days to issue a ruling. Either side has the ability to appeal or file for trial de novo from the arbitrator's ruling typically when one side or the other is unhappy and the case just moves on. The judge doesn't know what happened in arbitration, you just move on theoretically through the trial. One thing about not nonbinding arbitration is if you do worse at trial by 25% then for what the arbitrator's award was, then that party could potentially be liable for the other side's attorney fees. It usually puts the last few months attorneys' fees in play.*

*Mr. Miller: So, there's a required arbitration hearing, but it's nonbinding, but we could agree at that point if we wanted to.*

*Mr. Woods: Yes. I serve as an arbitrator and have done several arbitrations. I did one where I awarded one side several hundred thousand dollars and neither side appealed. They both agreed it was the correct ruling. In my experience that only happens about 10% of the time.*

*Chairperson Stamp: January 18, and then 10 days for that, and then we will have a meeting to discuss the arbitrator's ruling.*

*Mr. Winters: Is there any discovery going on between now and then?*

*Mr. Woods: It's discovered already. We have received several thousands of documents. Ms. Tolin and I are just beginning to review these. Taylor Morrison has a rolling production, and we get new documents once a week. Discovery is ongoing. We want to have all the documents, get through them, and then we will start on depositions.*

*Chairperson Stamp: I have been working with Jim on the website for Flow Way and we are going to start trying to get all the legal pleadings up there so we can see what pleadings have been filed, not the answers necessarily or thousands of pages.*

Discussion continued regarding the discovery documents.

*Mr. Miller: I believe you have sent the Corp an information letter to let them know the lawsuit is in process. Have we heard anything back from the Corp?*

*Mr. Woods: The Corp has not responded. We may try another followup.*

*Chairperson Stamp: Part of this, too, will be how they respond on the pipes and everything else. That would be a good excuse to update them.*

Mr. Woods agreed.

## **II. District Engineer - Calvin, Giordano & Associates**

### **a. Engineering Report**

#### **i. SFWMD Monitoring Well program and locations**

*Mr. James Messick: South Florida Water Management District reached out to Flow Way in hopes that they could access the external preserves in attempts to install a surface water and ground monitoring system so that they could collect data from their overall basin for monitoring and modeling efforts. We met with them on the 12<sup>th</sup> and came up with potential onsite location on the east preserve line, and another offsite which has nothing to do with Flow Way, and they identified that the proposed monitoring well would be a 10 foot by 10-foot square area powered by solar panels and they wouldn't need to damage any trees or make any impacts to the wetlands. They would need to access it quarterly and if we were to agree they would provide us with a standard agreement form to review. They don't anticipate starting construction for*

*another year or two and there would be no financial or maintenance requirements from the CDD. It is a good opportunity to reach out and make friends and the Water Management District has a great reputation for doing hydrological work for south Florida and we recommend working with them on the monitoring well. With your approval I will continue working with them.*

*Mr. Miller: What are we monitoring?*

*Mr. Messick: We are monitoring nothing. SFWMD wants to monitor the surface water, ground water levels, just so they have an idea of different times of the year what the water level is at.*

*Mr. Ward: Are these more regional in nature or local to Flow Way?*

*Mr. Messick: Very regional. South Florida Water Management District covers all of south Florida and has a monitoring system and they are trying to get more and more monitoring wells so they can be more accurate with their model. From my understanding this is the first in this portion of Collier County, but it is a critical portion for their hydraulics.*

*Chairperson Stamp: When do you anticipate getting the contract from them?*

*Mr. Messick: I'm not sure. Hopefully in the next couple of months they will have their decision on which location and as soon as I get it, I will forward it to the CDD for review.*

*Mr. Boguslawski: Will the well or solar panels be visible to homeowners?*

*Mr. Messick: No. While we were walking around, they inquired whether or not there would be potential to have one on the west property line and I shut it down saying that the homeowners would be able to see that location, so they have honed-in on the eastern edge of the preserves and it is far enough out that no one will be able to see it unless actively looking in the preserves for it.*

## **ii. Pedestrian Bridge over CDD lake and Golf Cart Path**

*Mr. Messick: There was concern that the golf cart path had an abrupt turn prior to the lake bank slope and there were concerns of golfers raining down into the lake. It was originally permitted and certified and completed, and since the construction the developer has moved the path of the cart path more centrally located. It does meet requirements for placement adjacent to a lake, but I would recommend that we require physical and visual barriers to be put up for curbs typical in a golf cart path. The second is a pedestrian bridge outside of the walkway of the community. It was originally permitted in 2016 and they have modified the permits in 2021 and built a relocated pedestrian bridge over a lake and there does not appear to be apparent certification for that permit. In my opinion it does not meet the Florida Building Code. It does say in the report for handrails, but I need to make a correction, that's guards or guard rails, and that's the Florida Building Code, Section 1015, but there is a drop condition into a waterway, so we need to protect pedestrians.*

Discussion ensued regarding the dangerous nature of the pedestrian bridge; and the needed guard rails being 30 inches in height.



*Chairperson Stamp: You may want to work with Greg regarding the letter we will send, the notice we will put them on. Did you have a chance to look at the golf cart bridge, between 15 and 16.*

*Mr. Messick: I did look at that. It's the same bridge and I believe that when they modified the permit, it referred to that bridge and that's why it was built with the condition without –*

*Mr. Kleck: It's the same thing. Only the one in the golf cart, between 15 and 16, is only for golfers. It's not for bicycle riders or walkers or anything else.*

*Mr. Messick: I understand the uses are different, but in my opinion, you're right between residences that could easily cross it, whether they are supposed to or not, and we are here to protect those residents.*

*Mr. Kleck: Is it too late to go back and get a guard rail for that one between 15 and 16?*

*Mr. Messick: No.*

*Mr. Kleck: Then I would do that as well.*

*Mr. Messick: I think the "kick plate" for the golf carts is sufficient to build a handrail on top of. It's substantial in nature and we can get a structural engineer to come up with a design.*

*Mr. Miller: How would we request it and to whom? To Taylor Morrison?*

*Mr. Woods: Yes, our request would be to Taylor Morrison, especially if they are not permit compliant.*

Discussion ensued regarding Taylor Morrison installing the bridges originally and needing to meet permit requirements.

*Mr. Dave Boguslawski: We have sent Taylor Morrison basically an email about the bridge and the need for guard rails. They owe us a response on that. We are trying to get it addressed informally. Regarding the condo, the one with the picture with the golf cart path, I would hate to see a guard rail go there. I think that is entirely unnecessary, but we should do something, bushes, or something to have a visual barrier.*

*Mr. Messick: The guard rail is not required. There is no fall hazard adjacent to the lake. My recommendation a physical barrier, such as a curb, and not a guard rail.*

### **iii. Preserve Tree Removal**

Mr. Messick asked Mike Conner, landscape architect for CGA, to speak.

*Mr. Mike Conner: In addition to being a landscape architect, I am also an ISA certified arborist as well. At the request of Mr. Ward, we put together services for your consideration. It is an estimated hourly, not to exceed, kind of cost for the implementation of this plan.*

*Mr. Ward: The Board is not aware of the preserve tree removal process, so let's go through and explain what we are doing.*

*Mr. Conner: There is concern that at the edges of the preserve area, adjacent to where people's homes back onto it, or along the roadway or sidewalk, people are walking next to the preserve, some of the trees might pose a hazard or an unsafe condition. We are proposing to do an assessment of all of those areas and identify any dead or unsafe trees that really pose a risk to falling and injuring someone or damaging property. That's what the plan is about. We would go in and identify those trees, develop a report, present it to the CDD Board and then present that to the South Florida Water Management District to get permission to fell those trees or remove them completely, whichever is easiest. A lot of times you just let them fall down and not physically remove them all. Sometimes they can be completely removed, but the pretty much want the reserve areas to be kept untouched, so this has to be a situation where the tree is dead and unsafe, and there is a target or fall area where it is impacting either CDD property or public use, a walkway, those kinds of things. We would then approach the Water Management District and get permission to go onto the preserve area and take care of those trees through a local tree vendor. We would do this initially, the first year, and after that we would plan an annual visit to see if there are additional trees posing a similar hazard. We will also have a process to come out in between annual visits, maybe after storm events, or if a resident had a specific concern about a specific tree.*

*Mr. Winters: We periodically get asked by residents to remove dead trees and the question is, what if a tree does not present a hazard, but it is dead, and/or the tree has already fallen, and it is just an eyesore. Is there any opportunity to remove dead trees within a visible range of the homes?*

*Mr. Conner: Our preliminary discussions with SFWMD is no. It has to be unsafe, or it has to be dead and close enough to a target that we could reach it. Our in the middle of the preserve area, or if it is adjacent a lake where there is no walkway, then really the policy is not to. Now, I think in the first go-round, when we approach them and go through the first assessment, we could ask them that question and probe a little bit further into what they would allow or not allow. But, generally speaking, policy is to leave everything the way it is.*

*Mr. Winters: Is there an argument to be made that it helps exacerbate a fire hazard by leaving dead trees around?*

*Mr. Conner: The idea is that a dead tree in the middle of the preserve is a snag in which a bird will nest. It becomes habitat, decays, increases the biodiversity of the area.*

Discussion ensued regarding dead trees; how to determine if a dead tree posed a threat; whether a dead tree was a fire hazard if located near a home.

*Mr. Conner: For the most part I think there is a good enough distance for most of the houses; the dead trees are not right up against them. I don't know what that buffer width would be.*

*Mr. Kleck: My former neighborhood we had a bunch of coach homes that abutted a small preserve and there was a lot of dry wood in there. They called the fire department, and the fire department came out and ruled against the fact that they were not cleaning it up. They required*

*the association or the CDD to clean up that area because there was a concern, but it took the fire department and fire chief to get it done.*

*Mr. Conner: I'm not aware of that. Thank you for bringing that to my attention. We were thinking more in the terms of storms and falling trees causing damage. That would be a different kind of situation. It is definitely valid. I haven't really done my full first assessment. If you move forward with this, I will be able to assess the whole entire area and see how much of that kind of kindling or underbrush is there and whether it poses a threat or not.*

Discussion ensued regarding dead trees potentially being a fire hazard; and getting the fire department involved in the evaluation process to see if dead trees were a fire hazard.

*Mr. Conner: What we put together was more for dead trees falling and storm damage so perimeters closest to the public areas or private backyards were safe if a storm came.*

*Mr. Winters: Have you assessed what risk we have at the moment or is this prospective?*

*Mr. Conner: I did a brief visit already and I did see some trees which would qualify in my opinion without doing a full assessment. So, parts of the walking trail and parts of the golf course area and that sort of thing.*

*Mr. Miller: With respect to the fire hazard, if there are some trees which are really close to condos or houses and presented a fire hazard, I think it would make sense, but I would also suggest, be careful of what you ask for in engaging the fire department because they could give us a \$1 million- or \$2 million-dollar problem.*

*Mr. Ward: I'm with Ron on that one.*

Discussion ensued regarding the possibility of a controlled burn.

Mr. Ward indicated a motion was needed.

*Mr. Ward: Just based on what Mike said, in order to do this, the initial scope to prepare the initial plan is \$5,500 dollars. An annual basis after that would be \$2,100 dollars a year. If, as he mentioned, if anyone needs it done on an individual basis, it would be a \$490 dollar charge for that. It's a good price. It's reasonable in terms of what I've seen. This does not include the work; this is for the report only.*

*Mr. Conner: It would also help you to establish for your budgeting how much you want to spend each year.*

*Mr. Ward: Conceptually, the idea was to put a plan in place, so we would have available to the community when we would do this on a regular basis and if we needed to do it on an individual basis we could authorize it, but here's how it would be done. Then we could publish that for the community so everybody knew what we were going to do on a regular basis.*

*Mr. Kleck: Is that something we need to do every year? At the other community we did it every three years.*

*Mr. Conner: We are doing it for another community now and we are doing it once a year. I think with nature and storm events and that sort of thing, it only takes one storm, and we are going to have more unsafe trees. You may only have four or five trees in the next year, but at least you are checking it and you have a system in place to look at it regularly.*

*Mr. Messick: And you may be able to stay on top of the dead trees before they fall and help prevent fire kindling.*

*Mr. Conner: Since some of the preserve areas were not yet released by the District, they wanted to see our plan and see a process.*

*Mr. Winters: So, the \$5,000 dollars includes the initial assessment of what the clean-up would be?*

*Mr. Conner: It includes preparing a report based on that assessment, presenting that to the drainage district, getting their approval, soliciting some prices from at least 3 different contractors, and then having them do the work. The cost of the actual work would be from the contractor.*

*Mr. Ward called for a motion.*

*Mr. Miller: I hope Counsel has his ears open because that's just another matter in the need for preserve funding in the lawsuits.*

*Mr. Woods: Understood.*

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Tom Kleck, and with all in favor, the Preserve Tree Removal proposal was approved.**

#### **iv. Stormwater System Maintenance**

*Mr. Messick: I had a chance to listen to the Forge Report presentation last month at the Board Meeting. The purpose of the Forge Report was to document existing conditions and identify that there is outstanding maintenance and improvements required. After review of his report, the plethora of pictures, and I did obtain some field notes from their office to give a little more insight of how they put that together, I'm in agreement about the condition of the existing system as being considered poor. Having said that, I did go through their recommendations and outlined a schedule for the restoration of the stormwater management system. I did that in four phases. The first two being items that should be addressed immediately and those being the broad crested weir on the south side; both ends are starting to erode. Their estimate of \$8,000 dollars is in line with what it should cost. The second being the sediment and debris removal for the structures that have over 25% blockage. Following those immediate items that I would recommend adjusting is phases III and IV which could be done in consecutive years. I broke those into both lake bank restoration and littoral shelf aquatic plant restoration of the same lakes, so you could do one during the dry season and one during the wet season. I haven't in detail*

*identified which one would line up exactly with half of the costs here and half the costs there, but based on their field notes they did note minimal, moderate, and extensive erosion for the lake bank maintenance and I've kind of developed a map that we can get into more detail if we are approved to do this work, but it is pretty much in line with the year one, year two schedule which I have prepared. Again, the exotics will need to be removed by a qualified environmental specialist and the littoral shelves restored prior to the next dry season. It's typical that the stormwater management system is evaluated at least every 5 years. Because the immediate action of removing the sediment and debris in the stormwater management system structures and pipes of just the structures that have more than 25% debris, we may want to push that 5-year reevaluation up to 3 years just to make sure that we are not getting worse on the remaining structures that aren't cleaned immediately. This is my review of the Forge Report and my schedule recommendation.*

*Mr. Miller: All these ponds are interconnected, and I think the development has a retention pond with a berm that goes around it. I'm thinking that when it rains hard, that the system is designed so that the ponds fill up, overflow into the golf course, and then water comes up on the streets, but before it floods the houses it goes over some dams designed for that and goes out into the flow way and the canal. Is that kind of the way this thing is designed?*

*Mr. Messick: Yes, your surface water management permit, environmental resource permit, through the District, establishes a finished floor based on a 100-year storm event, and you are correct, it would discharge assuming the tailwater conditions don't restrict that discharge, but that would have nothing to do with the sediment in your stormwater management system, it would have to do with the tailwater conditions outside of your development.*

*Mr. Miller: If the stormwater system is clogged, would that create the possibility of a flood because it could not drain out?*

*Mr. Messick: Yes. There is definitely potential of what's called subbasin or specific lake areas that if they are not draining and connected with adequate drainage because of sediment buildup, those specific areas would have a delay in allowing release of the stormwater rainfall from the high intensity event. It is critical to have your stormwater system functioning properly as it was originally designed and that's where Forge stepped in and did a report to identify those items that need to be addressed.*

*Mr. Miller: My concern is we do need to get these things functioning, so we don't flood some of our neighbors in a hurricane.*

*Chairperson Stamp: Would you recommend we start at the 90% and work down?*

*Mr. Messick: You could ask the contractor to start in that manner, but it may be more of his needs and methods for how to tackle it to get it done in a timely manner and let him get in and address what needs to be finished and letting him take care of how he is going to set up and go through the whole system. It is probably better to let him decide than us.*

*Chairperson Stamp: How do they clean them?*

*Mr. Messick: Usually a vac truck. They pull the grate, stick the vac truck down in the structure and clean it until the water is clear. If they realize that sediment is all the way down in the pipe, they will take a jet and pull it through the pipe and bring the sediment onto the structure and suck it again from that structure.*

*Mr. Kleck: Are there any cracked or broken pipes?*

*Mr. Messick: That hasn't been determined, but you would notice sediment buildup quicker in those areas.*

*Mr. Kleck: Would that be something we would add to our Taylor Morrison want list?*

*Mr. Woods: I thought our team that went through the pipes would have noted something like that.*

*Mr. Winters: My understanding is that the pipes were so clogged up that they couldn't do an evaluation of the condition of the pipes. That will take place after the pipes are cleaned out. Could we look at them while we are doing the cleanout as one process?*

*Mr. Messick: They would have to come back out and look at them when there is room for a camera.*

*Mr. Winters: I would propose we take another look once we get them cleaned up and see if they are built right, look right, and holding up properly. Another question: Does the sediment get physically removed when they pull it out of the pipe? Does it get dumped into the ponds?*

*Mr. Messick: Removed. They do not dump back into the ponds.*

*Chairperson Stamp: The weir, are they just going to put rip rap on both sides?*

*Mr. Messick: There are several options that we could look at, one being a structural wing wall to prevent erosion, or you could have a revetment or rip rap. It's very expensive, with design costs and construction costs if you are going to increase the structure from a weir to more of a control structure; \$8,000 is in line with rip rap and I think both are fine from an erosion standpoint.*

*Chairperson Stamp: When you talked about the littoral plantings and you said restore, does that mean plant and remove both or does that mean just do more plantings?*

*Mr. Conner: It generally would be removing exotics and planting new littorals.*

Discussion ensued regarding littoral restoration with removal of exotics and planting new littorals; and the plant shelf preventing wave action during high winds.

*Chairperson Stamp: Earth Balance, I don't know if this is Taylor Morrison or not, it isn't us, was in there two days ago moving some plants, but they also looked like they were getting ready to plant more somewhere. The guy was out there selectively taking out plants, so they are doing something. That may be Taylor Morrison's response by saying, oh yeah, we are out there actively working.*

*Mr. Winters: This phase III AB, phase IV AB, is there a list of lakes to go along with these phases?*

*Mr. Messick: I do include one in my report. I was looking at their field notes and drafted which would be included in III and which would be included in IV.*

*Mr. Winters: So, is this something we want to budget in for succeeding periods and deal with over a period of time?*

*Chairperson Stamp: I think we definitely have to deal with this over a period of time.*

*Mr. Ward: We should do the phase I and phase II in the current year, now, and then when we get into 2022, although we just adopted that budget, we will phase in phase III A, and phase IV A and B in 2023 and 2024 depending upon what we decide at that point. That will be a future year's item, as will be MRI coming in and looking at the storm drainage system on a yearly basis.*

*Mr. Winters: I see these permits on the next page, and I may be jumping the gun here, but we have some performance bonds that go with some of these permits. Is there any opportunity to use some of that money rather than waiting for 2022/2023 and spending the residents' money?*

*Chairperson Stamp: Greg and I have been talking about that, if there is some way we can trigger those because if you remember, Taylor Morrison claimed they transferred the bonds to the homeowner's associations. Maybe the homeowner's associations are the owners of the bonds. I am not sure they legally could do what they did.*

*Mr. Woods: I think we are going to want to put the bond companies on notice; whether or not they will step up to the plate is another issue.*

*Mr. Winters: Is that something the County can help us with?*

*Mr. Woods: The County's determination would be helpful to us yes. (Indecipherable) basically somebody has got to repair them.*

*Mr. Ward: It would not help you in the phase I/phase II process. It is a separate matter.*

Discussion ensued regarding the necessary motion.

Mr. Miller asked about Phase I and Phase II timeframes.

*Mr. Ward: I believe that was in the letter that was sent to Taylor Morrison almost a month ago at this point with a response which basically said we are on it and will get back to you in 30 days. This will continue to wait until such time as Taylor Morrison responds to that letter.*

*Chairperson Stamp: We can authorize it today and wait until we get the response on the letter which should be in the next ten days. I don't know that you could even get started in ten days.*

*Mr. Winters: I question whether we should just table it until next month. I think next month we should have a pretty good feel.*

*Chairperson Stamp: The problem with that, at least with the weir is, are we in danger? If that starts washing out, we go from an \$8,000 dollar problem to a huge problem.*

Discussion ensued regarding the weir; it was decided the weir was too urgent a problem to wait.

*Mr. Boguslawski: I don't want to undervalue cleaning out the silt, the pipes, and the stormwater management system. We escaped a disaster with the tropical storm, and you get a big storm with a lot of rain, and you are going to have localized flooding on the streets. With that said, yes, let's give Taylor Morrison a chance to respond, but please don't put it off until the next board meeting.*

*Chairperson Stamp: There may be a special board meeting in a couple weeks. We can take it up at that point because we will hopefully have a response by then.*

*Mr. Ward: Authorize it, and I will just put it on hold for two or three weeks. We will get started, we will do the weir, we can authorize the 25%, I will just put it on hold as the manager until we are ready to get started on that.*

*Mr. Miller: I agree we need to take some action soon but give Taylor Morrison an opportunity to respond and then have Greg do something, if we don't like their response, to at least let them know that this compels us to take at least this minimal action in order to prevent the flooding so that we don't get out there too far without Taylor Morrison's involvement or responsibility.*

*Mr. Woods: Correct Ron; that would be the strategy.*

*Chairperson Stamp: If that is acceptable, I will take a motion with that understanding for the Phase I and Phase II.*

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the Phase I/Phase II work as identified by Calvin, Giordano & Associates was authorized.**

**b. Preserve Perimeter Investigation**

*Mr. Messick: Preserve Perimeter Investigation was done to determine what improvements are necessary to protect the external preserves from trespassers. There have been a few noted trespassers that were not supposed to be back there; specifically, fencing and access gates. We completed a review on the same day that we met with the SFWMD about the monitoring wells, and walked the entire perimeter, or rode a buggy around the entire perimeter, and prepared this report. The fencing is in disrepair or in bad condition and needs to be replaced. There are several areas where there is open access where anybody can drive back to the external preserves and there are several gates, metal gates, which have been broken and are just on the ground being run over by whoever is driving back there or walking back there. The proposed improvements I have identified in my report which would bring the external preserves to a satisfactory level with regard to the perimeter, ingress, egress, and points of access, and security for keeping out trespassers. I have prepared an exhibit that identifies the existing conditions, and in my summary, I go through*



*the four different locations, being the northern limits in which there is one point of access from Logan Blvd, there was no gate at that locations. I recommend installing a metal gate at this location. The Parklands preserve gate would prevent anyone from driving off Logan Blvd directly into our preserves, but anybody who can get into Parklands can also get into Flow Way. Other notes: to the northern property limits there are other residential neighborhoods; however, there is existing fence on their property and there are existing stormwater management systems which would prevent them from just walking into our preserves, so I did not include those areas in my recommendation for improvements for fencing. The next area was Collier Blvd access; at the end of the paved road, you can go right down the dirt path and continue on in and have access right into the middle of the preserves. While can't put a gate up at the end of Collier Blvd, we could propose two gates just west and north of that four-point intersection which would prevent people from entering the preserves from Collier Blvd. Along with those two gates I would recommend reinstalling and replacing the existing field fence. The next area is the southern entrance and outparcels. The existing fence, existing security and guardhouse are doing their jobs and I don't have any concerns with trespassers from Immokalee Road. The last section would be the western property limits where the existing fence is in bad condition and proposed to be replaced and the two gates that connect an access from Logan, more centrally located between Parkland and Terafina, those two gates are broken, and I would recommend replacing them. The cost of metal gates is only \$500 dollars. The total cost would be \$186,320 dollars.*

*Mr. Kleck: Isn't it usually a developer's problem to protect the development?*

*Mr. Wood: That's one of those fringe ones, that could be a Taylor Morrison responsibility. It doesn't have to be in pristine shape, probably not. What you look at more is, ordinary wear and tear is okay, but maybe they have let it go so dilapidated, or it has been so long it should have been replaced. Could you tell how old the fencing was?*

*Mr. Ward: Some of this is original fencing from the 50s.*

*Mr. Messick: Some of it is very old. I would expect that that fencing, if there were any remnants of it, I do not note it as being an existing fence. It was the new fence from this development that I have noted in my investigations.*

*Mr. Winters: By virtue of the fact that Taylor Morrison dumped this responsibility on the CDD and the CDD now finds it mandatory to secure the fence, it becomes our responsibility because Taylor Morrison dumped it on us. I would say from that standpoint, it's a Taylor Morrison claim. Regardless of the condition of the fence, we have got security issues, and we have an obligation to maintain the preserves to make sure people aren't using them for rodeos and four-wheel events, and that sort of thing. I would say it's part of the claim personally.*

*Mr. Miller: This exacerbates my frustration about the preserves in total, and Taylor Morrison's obligation to do the funding. I think the Army Corps of Engineers permit even specifies fencing. We ultimately have to do something about this, I can accept that, but this is just another facet of the lawsuit.*

*Chairperson Stamp: Short term, we are going to have to do this stuff, and it may come out of our pocket, and we may ultimately recover some, all, or none of this.*

*Mr. Wood: My letter is getting longer.*

*Mr. Winters: Is there a fence around what was notated as private property?*

*Mr. Messick: I don't know. I did note this was a non-accessible area. I did not notice fence on the immediate adjacent paths. Whether it picks back up behind the private property is not known.*

*Mr. Winters: So, where these red hash marks are, around the private property, and then going back up north to where it says open access, and then back around, we don't know if there is fence there now?*

*Mr. Messick: Between the private property and where it says open access to the north, that is noted as barbed wire fence. But all barbed wire fence shown in this exhibit is not in good condition.*

Discussion continued regarding the fencing and access points.

*Mr. Messick: My evaluation does not include fencing around the entire perimeter. It is more focused on the access points and the fencing to restrict those from the main areas from being able to access the preserve.*

*Mr. Winters: So, we could have another bill later on, right?*

*Chairperson Stamp: There could be a maintenance bill as fences do need to be maintained.*

*Mr. Messick: there are some portions where the wire had just unstapled from the wood post, and they said they could come out and reattach it and there will be some savings if they can salvage the existing posts and attach to that.*

*Mr. Winters: Anyone who wants in there bad enough is going to take some wire cutters and get through it anyway, but we can at least not make it easier for them.*

*Mr. Messick: I did note in my report observing an existing trailer that was just outside of our limits, but they had to have gone through our preserve to get to that location. The horses were riding along the western property lines. It felt ironic I was going out there to investigate the perimeter for trespassers and there were trespassers in the preserves.*

*Mr. Winters: This is marked as a non-accessible area, and yet you were able to determine there was a trailer there?*

*Mr. Messick: On the northern property line, from Logan Blvd, you can access all the way to the very western limits, but the portion where there is an "x" fence along the panhandle portion, that's where it is inaccessible. The trailer was up on the northern property line.*

Discussion ensued regarding how the trailer accessed the preserves; the locations of the other gates; trespassers accessing the preserves via the Immokalee gate to fish in the canal; and the possibility of increasing the security of the Immokalee area to prevent trespassers.

*Mr. Messick: We can include increased Immokalee security. I will note that, but I wouldn't expect that to substantially increase the cost of the project.*

Discussion ensued regarding defensive landscaping such as cacti.

*Mr. Miller: If we are compelled to take some action with some fencing, then so be it, but I think this goes more down the line that Greg should put Taylor Morrison on notice that we are compelled to do something on the preserves that the CDD is not in the business to do. The CDD is not in the business of an environmental agency, nor security for property which lies outside of the CDD boundaries and make sure Taylor Morrison is aware and the arbitrator becomes keenly aware that we are being compelled to take action due to Taylor Morrison's failure.*

*Mr. Woods: Thank you Ron.*

*Chairperson Stamp: You said it was the 5-strand barbed wire. Can we go to the 3-strand and save a little money?*

*Mr. Messick: We can.*

*Mr. Winters: Are we being asked to fund \$187,000 dollars today or is this something we would phase in?*

*Mr. Ward: We are going to have to phase this in. Obviously prioritize it in some way. We wanted to get this report to see what needed to be done. Obviously in the next couple of months I will ask Jimmy to phase this in and come up with a plan to do the work.*

*Chairperson Stamp: We need to take a look at our budget and see what we can carry. At a subsequent meeting we can do this.*

*Mr. Winters: Do we have any contingency funds or reserve funds that we can tap?*

*Mr. Ward: No.*

*Mr. Winters: Sounds like we should, going forward.*

*Chairperson Stamp: Next year the assessment is going to have to go up.*

*Mr. Winters: Could it be a one-time special assessment?*

*Chairperson Stamp: Depends on how the lawsuit comes out, where we are with Taylor Morrison, etc.*

*Mr. Ward: We've got time. We are just starting 2022. All of this work is great for us to get done now because we will be able to plan what little bit we can do in 2022 and then moving on to 2023 what our budget is going to be.*

*Chairperson Stamp: Do we need a motion today?*

*Mr. Ward: No. This will be an ongoing item. We will add it to a planned list of things we need to do.*

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

**a. Financial Statements for period ending June 30, 2021 (unaudited)**

No report.

**OLD BUSINESS**

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**SEVENTH ORDER OF BUSINESS**

**Continued Item**

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

*Chairperson Stamp: Dave Boguslawski and I have talked and the HOA’s feeling is they want to leave it in place at this point.*

**EIGHTH ORDER OF BUSINESS**

**Continued Item**

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

*Chairperson Stamp: We have talked a lot about this and whether we can trigger those bonds, and otherwise we are pretty much waiting on the lawsuit to see what happens.*

**NINTH ORDER OF BUSINESS**

**Staff Items**

**I. District Attorney**

No report.

**II. District Manager**

No report.

**TENTH ORDER OF BUSINESS**

**Board Items**

*Chairperson Stamp: Andrew Miller has resigned, so we are down to four members. I want to have a general discussion about how people want to proceed. Do we want to advertise this, take resumes, do interviews, fill the seat today? How do the Members want to proceed with this? Let me also say, we are looking to try to have another meeting late in the first week of August because we are going to be in a situation where I will be in Europe, Ron will be in the Ozarks, and you two will be down to two members, so there won’t be three people here to have a meeting. We probably want to move expeditiously, but maybe not. If we don’t need a meeting in August, maybe we say this becomes a September issue.*

Discussion ensued regarding the possibility of an extra meeting the first week in August to discuss a Board Member; the possibility of hearing from Taylor Morrison before the August meeting; when to hold the next meeting; whether to continue with an unfilled seat for the remainder of the term or appoint someone to fill the seat for the remainder of the term; and waiting until September for the next meeting.

Mr. Ward indicated he would keep abreast of the Taylor Morrison situation and if the Board needed to meet to discuss a response from Taylor Morrison, he would call a meeting.

Discussion ensued regarding the selection of an individual to fill the seat; how to select an individual; and interviewing individuals as a Board.

*Chairperson Stamp: The only reason we would need a fifth meeting, other than filling this seat, would be if we need some kind of response for Taylor Morrison. I think with the authority the Board has given me, I can respond accordingly, and we can just cancel the August meeting as there are only two members who could physically be here.*

*Mr. Woods: If Taylor Morrison were to tell us to go pound sand regarding the sand in the pipes, is Jim authorized to have them begin on the pipe cleaning?*

*Chairperson Stamp: Yes.*

*Mr. Ward: Yes.*

*Chairperson Stamp: That brings us back to how do you want to proceed?*

*Mr. Kleck: What's Jim's experience in replacing Board Members?*

*Mr. Ward: My experience has been that the Board would come up with one or two or three people and talk about it. The interview process, not so much. And come to a consensus in a public meeting on what you want to do. You bring your experiences to the table, and you make a decision as a group and be done with it and then a motion and a second and an affirmative vote on one of those people. I would not recommend the interview process.*

*Mr. Winters: Could we go into a closed session and have a discussion?*

*Mr. Ward: No, you have to do this in open session.*

*Mr. Winters: Could each of us bring a name to the next meeting as a recommendation and then discuss?*

*Mr. Ward: The bad part about this is, it is a public and open process, so just whoever you think is a good candidate, just use your best judgment, bring them here. There is no disparaging anybody's reputation, it's just this is someone I think would be a good fit and you have a simple easy discussion about it and make a decision.*

Discussion ensued regarding choosing an individual with good qualifications and someone not a snowbird.

*Mr. Miller: I have taken the liberty of contacting Van Mancuso who is a fulltime resident, and in my opinion, would make an excellent Board Member. He has not given me a yes. He wants to think about it for a few days. In my conversation with him I made it clear there would be other names that are going to be presented, so he shouldn't feel sensitive or have any hurt feelings in the event that he says yes, and he is not selected. I don't think that's a problem.*

*Mr. Boguslawski: I am going to be dropping off [the call] and I think your last minute or two of discussion is where you ought to head. Don't go for names, go for qualifications as a first step.*

*Chairperson Stamp: Agreed. By all means, if you know somebody who stands out, please communicate with me or one of the other Members.*

*Mr. Winters: I have had discussions with Manmohan "Bart" Bhatla who was on the transition committee who is an environmental engineer with 30 years' experience. He has done environmental work for major corporations around the world, and he has expressed an interest.*

*Mr. Kleck: While we are throwing out names, John Coles (ph). I think John brings a lot to the table as well.*

*Chairperson Stamp: So, is the consensus at this point, that we will delay this decision until September?*

Discussion ensued regarding a meeting in August or September. It was decided to hold the next meeting in September.

*Mr. Ward: If something comes up, and we don't have that meeting and we need it for some reason, I will get in touch with you individually and set something up.*

## **FINAL BOARD ITEMS**

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### **ELEVENTH ORDER OF BUSINESS**

### **Audience Comments**

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

*Mr. Winters: I had one last thing. On lake 11, we have the elevation survey, and the elevation survey that our surveyor came up with differs from that provided by Waldrop by one to two feet.*

*Chairperson Stamp: Lake level you mean?*

*Mr. Winters: The ground level. What they were supposed to have graded and made available for the final permit is different from that which Waldrop provided, and he was going to do an inspection with the County inspector to ask him does this comply or not, because apparently it doesn't. And, he has not been able to get a meeting set up in the last two weeks.*

*Chairperson Stamp: Were you aware of that?*

*Mr. Messick: I was, but Tom said he was going to have some grading shots.*

*Mr. Winters: I will have more information about this later.*

**TWELFTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

No meeting in August unless necessary; next meeting September 16, 2021.


**THIRTEENTH ORDER OF BUSINESS**

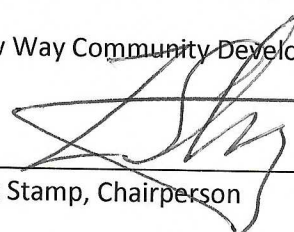
**Adjournment**

Chairperson Stamp adjourned the meeting at approximately 2:45 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

  
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Zack Stamp, Chairperson