

**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, August 22, 2019 at 3:00 p.m. at the Esplanade Golf and Country Club Naples, 8918 Torre Vista Lane, Naples, Florida 34119.

Present and constituting a quorum:

Drew Miller	Chairperson
John Wollard	Vice Chairperson
Tim Martin	Assistant Secretary
Ronald Miller (phone)	Assistant Secretary
Tom Kleck	Assistant Secretary

Also present were:

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

Audience:

Ed Staley
Martin Winters
David Mahaney
David Boguslawski (ph)

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

FIRST ORDER OF BUSINESS

Call to Order

District Manager James P. Ward called the meeting to order at approximately 3:00 p.m. and all members of the Board were present at roll call.

SECOND ORDER OF BUSINESS

Consideration of Minutes

a) July 18, 2019 Regular Meeting Minutes

Mr. Ward asked if there were any additions, corrections or deletions for the July 18, 2019 Regular Meeting Minutes. Mr. Ronald Miller reported he felt there were some corrections required regarding motions he made during the meeting. Discussion ensued regarding the motions which were made and seconded; no corrections were required.

On MOTION made by Mr. John Wollard, seconded by Mr. Tim Martin, and with all in favor, the July 18, 2019 Regular Meeting Minutes were approved.

b) July 25, 2019 Regular Meeting Minutes

Mr. Ward asked if there were any additions, corrections or deletions for the July 25, 2019 Regular Meeting Minutes. Hearing none, he called for a motion.

On MOTION made by Mr. John Wollard, seconded by Mr. Tim Martin, and with all in favor, the July 25, 2019 Regular Meeting Minutes were approved.

THIRD ORDER OF BUSINESS

Public Hearing

Mr. Ward stated the primary purpose of today's meeting was to hold two Public Hearings, the first related to the FY-2020 Budget and the second related to assessments.

a) FISCAL YEAR 2020 BUDGET

I. Public Comment and Testimony.

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

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

Mr. Ward stated he had received no written or oral communications with respect to consideration of adoption of the FY-2020 Budget. He asked if there were any public comments or questions regarding the FY-2020 Budget.

Mr. Ronald Miller noted it would be good to request the names of any audience members who might have called into the Meeting. Mr. Ward asked if any audience members had called in; there were none. Mr. Ward asked if there were any public comments or questions from those present.

Mr. Martin Winters noted it was very difficult to hear Mr. Ronald Miller. Mr. Ward agreed. He stated unfortunately the room had poor acoustics. He invited Mr. Winters to move closer. Discussion ensued regarding possible solutions to the poor acoustics in the future.

Mr. Ward asked if there any questions regarding the Budget; hearing none, he called for a motion to close the Public Hearing.

On MOTION made by Mr. John Wollard, seconded by Mr. Tim Martin, and with all in favor, the Public Hearing was closed.

II. Board Comment and Consideration.

Mr. Ward asked if there were any Board comments or questions regarding the FY 2020 Budget.

Mr. Ronald Miller stated he was opposed to having anything in the Budget related to preserve maintenance expenses.

III. Consideration of Resolution 2019-22 adopting the annual appropriation and Budget for Fiscal Year 2020.

Mr. Ward called for a motion to approve Resolution 2019-22 which adopted the proposed Budget for Fiscal Year 2020.

On MOTION made by Mr. John Wollard, seconded by Mr. Drew Miller, and with three in favor and two opposed, Resolution 2019-22 was adopted and the Chair was authorized to sign.

Mr. John Wollard, Mr. Drew Miller and Mr. Tim Martin voted in favor of the motion; Mr. Ronald Miller and Mr. Tom Kleck opposed the motion. The motion carried.

b) FISCAL YEAR 2020 IMPOSING SPECIAL ASSESSMENTS; ADOPTING AN ASSESSMENT ROLL, AND APPROVING THE GENERAL FUND SPECIAL ASSESSMENT METHODOLOGY

Mr. Ward noted the second Public Hearing was related to the imposition of assessments, adoption of the assessment role and approved the methodology for levying the assessments for the General Fund.

I. Public Comment and Testimony

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

On MOTION made by Mr. John Wollard, seconded by Mr. Tim Martin, and with all in favor, the Public Hearing was opened.

Mr. Ward stated he had received no written or oral communications with respect to imposition of the assessments, adoption of the assessment roll, and approval of methodology. He asked if there was any public comment; hearing none, he called for a motion to close the Public Hearing.

On MOTION made by Mr. Tim Martin, seconded by Mr. John Wollard, and with all in favor, the Public Hearing was closed.

II. Board Comment and Consideration

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

Mr. Ronald Miller stated he objected to the CDD paying any preserve expenses whatsoever.

III. Consideration of Resolution 2019-23 imposing special assessments, adopting an assessment roll and approving the general fund special assessment methodology

Mr. Ward explained Resolution 2019-23 imposed the special assessments, certified the assessment roll and approved the general fund special assessment methodology for the District for FY-2020.

On MOTION made by Mr. John Wollard, seconded by Mr. Tim Martin, and with three in favor and two opposed, Resolution 2019-23 was adopted and the Chair was authorized to sign.

Mr. John Wollard, Mr. Drew Miller and Mr. Tim Martin voted in favor of the motion; Mr. Ronald Miller and Mr. Tom Kleck opposed the motion. The motion carried.

FOURTH ORDER OF BUSINESS**Consideration of Resolution 2019-24****Consideration of Resolution 2019-24 designating the dates, time and location for the Regular Meetings of the Board of Supervisors for Fiscal Year 2020**

Mr. Ward reported Statute indicated, if the Board adopted a regular board meeting date, time and location, it be done through Resolution. He explained he would advertise the dates, times and location of the meetings once prior to the beginning of the Fiscal Year and post the dates on the website. He stated the adoption of Resolution 2019-24 did not bind the Board to the dates, times and locations; these may be changed as the Board deemed appropriate. Mr. Ward stated he spoke with the Esplanade Golf and Country Club facility; however, the facility could not confirm a specific date, time and room for CDD Meetings for the entire fiscal year. He asked the Board for its thoughts. Discussion ensued regarding holding meetings at the offices of Coleman, Yovanovich & Koester on the third Thursday of every month at 1:00 p.m. Mr. Ronald Miller stated he felt holding the meetings at the offices of Coleman, Yovanovich & Koester discouraged residents from participating in meetings. He stated he felt it would be better to meet at the local facility in an effort to encourage residents to attend. He stated he was disappointed the Esplanade facility manager could not accommodate the CDD. Discussion ensued regarding the location of board meetings; it was decided to hold meetings at the offices of Coleman, Yovanovich & Koester on the third Thursday of every month at 1:00 p.m.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Tim Martin, and with four in favor and one opposed, Resolution 2019-24 was adopted and the Chair was authorized to sign.

Mr. Tom Kleck, Mr. Tim Martin, Mr. Drew Miller, and Mr. John Wollard voted in favor of the motion; Mr. Ronald Miller voted in opposition of the motion. The motion carried.

FIFTH ORDER OF BUSINESS**Consideration of Proposals****Consideration of proposals for providing Audit Services to the District for the Fiscal Years 2019-2023**

Mr. Ward reported State Statute required the District to have its books and records audited annually by a CPA firm. He stated he typically arranged five year contracts with auditors to enable consistency in the audits. He reported he prepared an RFP (request for proposal) which was advertised and the CDD received two proposals, one from Grau and Associates for \$22,500 dollars and one from Berger Toombs for \$20,695 dollars. He stated the process required the CDD to rank the auditing firms. He reported his accountant recommended ranking Grau as number one and Berger Toombs as number two. He stated both firms were eminently qualified to perform the audit and both had performed audits for him over the years. He noted Grau was a bit easier to work with than the Berger firm; however, either firm was an acceptable choice.

On MOTION made by Mr. Tim Martin, seconded by Mr. Drew Miller, and with all in favor, Grau & Associates was ranked number one.

SIXTH ORDER OF BUSINESS**Staff Reports****Staff Reports****a) District Attorney**

District Attorney Greg Urbancic stated if and when the CDD met at the Esplanade Golf and Country Club the guard gate should be made aware of the necessity of granting access to the facility for those who wish to attend the CDD meeting. He stated he did not wish for FEMA to claim the CDD was not meeting on public property and as such not grant funds when needed to the CDD. Mr. Ward concurred and noted it was important for all who wished to attend meetings to have access. Discussion ensued regarding the hesitancy of the gate guard to allow entrance to the CDD Board Members.

b) District Engineer

There was no Report from the District Engineer.

c) District Manager**I. Financial Statements July 31, 2019 (Unaudited)**

Mr. Ward stated he had no report unless there were questions; there were none.

SEVENTH ORDER OF BUSINESS**Supervisor's Requests and Audience Comments**

Mr. Drew Miller reported it was Taylor Morrison's intent to transfer the preserves to the CDD in perpetuity and protect the Community and CDD from any outside acquisition. He stated Taylor Morrison was working to modify the language within the permits to clearly identify the CDD as the responsible party for the preserves in perpetuity. He stated as such he needed to be appointed as Chairperson of the CDD to work with Taylor Morrison and sign any necessary documents or permits. He stated the CDD was required to be co-applicant on the permit modification application.

Mr. Tom Kleck stated Mr. Robert Kirby indicated in an email "it is not appropriate for the HOA or the CDD to maintain in perpetuity the preserves." He asked, if Mr. Robert Kirby was against the CDD maintaining the preserves, why the CDD was proceeding along this path. Mr. Drew Miller responded Mr. Kirby was one person with one opinion and there were others who disagreed. He explained when the permitting was being obtained for this community CDDs were not well understood; however, the Districts have come to understand what types of services a CDD could provide. He noted previously it was felt the only method for preserve maintenance was through an entity such as CREW; however, as time progressed this changed and CDDs were considered acceptable entities to handle preserve maintenance. Mr. Tom Kleck stated Mr. Robert Kirby was in the Regulatory Division of the US Corp of Army Engineers and should be considered a reliable source. He stated he worried about not heeding Mr. Kirby's advice.

Mr. Drew Miller stated Taylor Morrison would assume all permit costs, fees, attorney fees, and any costs associated with modification of the permits; however, the CDD was required to be a co-applicant for both the ongoing perpetual maintenance and the permit modification.

Mr. Ronald Miller reminded Mr. Drew Miller he had a fiduciary obligation to work in the best interests of the CDD, not in the best interests of Taylor Morrison. He asked why Mr. Drew Miller felt it was in the best interests of the CDD to pay for the perpetual maintenance of the reserves rather than Taylor Morrison.

Mr. Drew Miller responded he believed keeping the preserves under control of the CDD was the right decision. Mr. Ronald Miller stated currently Taylor Morrison was obligated to pay for the expenses of the preserve maintenance. He asked how the CDD taking on a financial burden which belonged to Taylor Morrison could be in the best interests of the CDD. Mr. Drew Miller explained he was working to shift the perpetual ownership and maintenance of the preserves from a third party entity to the Community which lived in the preserves and would best maintain the preserves. He stated morally and financially he believed it was in the best interests of the CDD to own and maintain the preserves. He stated he believed the CDD was better suited to maintain the preserves than any third party entity.

Mr. Tom Kleck stated Mr. Robert Kirby's memo stated "the Corp of Engineers reiterates that we expect the permittee will transfer the property as proposed to CREW or another appropriate entity such as National Fish and Wildlife Foundation." Mr. Kleck stated these third party entities were trained to deal with these types of environments and were better equipped than the CDD to handle preserve maintenance. He asked why the CDD should take on the risk of preserve maintenance when the CDD was not equipped to handle, and did not have the funds to handle the care of the preserves, especially when an entity such as Fish and Wildlife was commissioned to do so.

Mr. Drew Miller stated the Fish and Wildlife Foundation was not necessarily better equipped to handle preserve maintenance. He stated it was clear the CDD had the authority and the ability to maintain the preserves, as the CDD had been maintaining the preserves successfully thus far. He indicated he had full confidence in the ability of the CDD to maintain the preserves. He stated he believed the residents would be better served to have the CDD own and maintain the preserves.

Mr. Ward asked if there were any public comments or questions. Mr. Martin Winters stated he read the Legal Opinion and he noted the CDD's Counsel indicated the transfer of the preserves to the CDD was premature and was done without the Army Corp of Engineer's approval. He stated he believed this would end up in litigation.

Mr. Ed Staley stated the eventual goal was perpetual care of the preserves once the success criteria were met. He discussed the intermediate goals and asked at what stage the preserves were in regarding intermediate goals. He indicated until the preserves had met the success criteria, the preserves could not be transferred to the CDD legally.

Mr. Drew Miller responded each preserve area was at a different point and on a different timeline regarding the intermediate goals. He noted Mr. Tim Hall had provided a memo with this information. He stated he did not agree the ownership of the preserves could not be transferred until success criteria had been met.

Discussion ensued regarding the intermediate goals, Tim Hall's memo and Tim Hall's statement "long term maintenance cannot occur until the preserves meet success criteria and are signed off on by State and Federal regulatory agencies. It is premature to offer them now." Mr. Drew Miller stated this meant it was premature to offer the preserves to CREW or other third party entity, but it did not preclude transfer of the preserves to the CDD. Mr. Staley stated he strongly disagreed.

Mr. Ronald Miller stated the documents specifically discussed mitigation activities as being the responsibility of the permittee and applicant, which was Taylor Morrison. He stated there was specific language in the definition of success criteria which indicated a minimum of 80% coverage of native vegetation, with less than 4% exotic and nuisance vegetation, for a period of three consecutive years was required for success criteria to be met. He stated during the mitigation period, until the success criteria was met, the CDD should not incur any expense. He stated during the monitoring and maintenance period there was a possibility of turning the preserves over to the CDD; however, technically this turnover could not happen until the development project was turned over to the residents, which had not yet happened. He explained this meant nothing could be turned over until Taylor Morrison reached the 90% level, and yet the preserves had been turned over to the CDD. He stated documents indicated if Taylor Morrison reached 90% and the preserves had not yet met the success criteria, the preserves could temporarily transferred to the CDD until such time as the success criteria was met and the preserves could be offered to CREW or other like entity. He stated the outside Legal Opinion concurred. He discussed Mr. Tim Hall's and Mr. Robert Kirby's memos. He noted Mr. Hall indicated the preserve success criteria had not yet been met. He asked for Mr. Greg Urbancic's opinion.

Mr. Greg Urbancic stated Clay Brooker opined the transfer of the preserves to the CDD may have been premature, but then Mr. Brooker stated he was unsure if the transfer was premature and was unsure if it made a difference. He noted Mr. Brooker used language which indicated it would be the responsibility of the CDD or the HOA to maintain the preserves. He stated he believed clarification from the Corp would be a good idea and this clarification could be made through the permit modification.

Discussion ensued regarding the Legal Opinion by Clay Brooker and the language in the Legal Opinion. Mr. Urbancic noted often clubhouse features, amenity features, etc., were transitioned to resident control or HOA ownership prior to the time of development turnover to residents. He stated the original declaration indicated the preserves would ultimately be owned by the CDD or the HOA and was disclosed

as an expense. He recommended trying to find language clarification regarding ultimate responsibility. Discussion ensued regarding obtaining clarification from the Army Corp of Engineers regarding this language, Taylor Morrison turnover, success criteria, and Mr. Kirby's email.

Mr. David Boguslawski stated he was a member of the HOA. He stated he wondered why District Counsel did not have a clear opinion regarding this matter. He asked about District Counsel's role in the CDD. Mr. Drew Miller explained a third party attorney was hired to form an opinion regarding this matter to prevent any residents from feeling there was a conflict of interest. He stated Mr. Boguslawski was welcome to read this Legal Opinion. Mr. Boguslawski stated he was not attempting to badger the CDD attorney; however, he believed when there were complicated matters on the table at some point the Board needed to be able to lean on the advice of CDD Counsel. Mr. Drew Miller indicated many legal opinions had been gathered and given regarding this issue and he felt it was time to vote regarding his motion in an effort to move forward with this matter.

Mr. Ed Staley discussed turnover and success criteria and noted he agreed with Mr. Ron Miller's statements.

On MOTION made by Mr. Drew Miller, seconded by Mr. John Wollard, with three in favor and two opposed, Mr. Drew Miller was nominated as CDD Chairperson to cooperate with Taylor Morrison and sign any documents or permits with regard to amending the Army Corp or South Florida Water Management District permits.

Mr. John Wollard, Mr. Drew Miller and Mr. Tim Martin voted in favor of the motion; Mr. Ronald Miller and Mr. Tom Kleck opposed the motion. The motion carried.

Mr. Ward asked if there were any other comments. Mr. Drew Miller stated public comments would be limited to three minutes per person.

Mr. Ronald Miller discussed the motions made at the previous Board Meeting as he felt there was some confusion. He discussed comments made by himself and Drew Miller at the previous Board Meeting. He discussed the HOA Declaration, and the definition of both golf property and club property. He stated he believed the CDD should recuperate preserve maintenance costs from Taylor Morrison. Discussion ensued regarding recuperation of funds from Taylor Morrison and Taylor Morrison's intent that the CDD or the HOA take ownership of the preserves.

MOTION made by Mr. Ronald Miller, seconded by Mr. Tom Kleck, for the Board to take whatever action necessary to obtain reimbursement of CDD expenses related to the preserves, both external and internal, failed to pass by a vote of 2 in favor and 3 opposed.

Mr. Ronald Miller and Mr. Tom Kleck voted in favor of the motion; Mr. John Wollard, Mr. Drew Miller and Mr. Tim Martin opposed the motion. The motion failed.

MOTION made by Mr. Ronald Miller, seconded by Mr. Tom Kleck, for the Board to immediately discontinue to pay any future reserve expenses, failed to pass by a vote of 2 in favor and 3 opposed.

Mr. Ronald Miller and Mr. Tom Kleck voted in favor of the motion; Mr. John Wollard, Mr. Drew Miller and Mr. Tim Martin opposed the motion. The motion failed.

Mr. Ronald Miller stated (indecipherable 1:10:00). He discussed the preserves, Taylor Morrison, the preserve conveyance of western preserve B in 2015, and \$414,000 dollars being reimbursed to Taylor Morrison for mitigation expenses. He noted he could not find any CDD Board resolution approving acquisition of this preserve property in 2015. He asked Mr. Ward and Mr. Urbancic to look into this matter.

Mr. Drew Miller stated when going through a bond requisition process, one of the documents approved in connection with bond financing was an acquisition agreement. He explained the acquisition agreement defined the terms between the developer and the District in terms of how assets were acquired. He stated assets and improvements were acquired, or purchased, through the acquisition agreement. He further explained the function of the acquisition agreement.

Mr. Ronald Miller stated he would like to see the Board resolution which indicated the Board accepted ownership of western preserve B. Mr. Ward stated there was no specific Board motion to accept transfer of ownership of western preserve B. Mr. Ronald Miller stated he did not believe western preserve B could be transferred via a form of requisition, but only by Board acceptance. Mr. Drew Miller stated the Board authorized and approved the acquisition agreement; the acquisition agreement contemplated transfer of western preserve B. Mr. Ronald Miller stated he questioned the validity of the transfer of western preserve B to the CDD. Mr. Drew Miller stated if the validity of the preserve transfer was questioned, then so also would the transfer of the lakes and other such assets which were transferred through the acquisition agreement. He noted an acquisition agreement was considered typical process. Mr. Ronald Miller stated all lakes and other such assets transferred through the acquisition agreement were within the boundaries of the CDD; however, the western preserves were external to the CDD boundaries. Discussion ensued regarding whether the Board actually owned the western preserves.

Mr. Ward stated he would find the resolution which approved the acquisition agreement which contemplated the facilities being acquired by requisition; however, the acquisition agreement would not specifically list the western preserves or any specific assets. Mr. Ronald Miller asked if Mr. Urbancic felt there was a possibility the Board did not actually own the western preserves as the Board never approved transfer of ownership. Mr. Urbancic responded in the negative. He stated transfer of ownership of the western reserves was approved through the requisition process.

Mr. Ronald Miller stated Mr. Tim Hall (under contract with the CDD) had worked with Taylor Morrison's attorney to amend the permit and he felt this was a conflict of interest. He asked for Mr. Hall's contract with the CDD to be terminated immediately.

Mr. Drew Miller stated a motion was just approved which enabled the CDD to work in conjunction with Taylor Morrison to amend the permit; therefore, he did not feel there was a conflict of interest.

MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, for the Board to immediately terminate the contract with Mr. Tim Hall due to a conflict of interest, failed to pass by a vote of 2 in favor and 3 opposed.

Mr. Ronald Miller and Mr. Tom Kleck voted in favor of the motion; Mr. John Wollard, Mr. Drew Miller and Mr. Tim Martin opposed the motion. The motion failed.

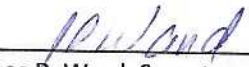
EIGHTH ORDER OF BUSINESS

Adjournment

Mr. Ward adjourned the meeting at approximately 4:25 p.m.

**On MOTION made by Mr. Tim Martin, seconded by Mr. John Wollard,
and with all in favor, the Meeting was adjourned.**

Flow Way Community Development District


James P. Ward, Secretary


Drew Miller, Chairperson