

**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, September 16, 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  |

**Audience:**

Ed Staley  
Bart Bhatla

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.

**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.

**THIRD ORDER OF BUSINESS**

**Consideration of Minutes**

**July 15, 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. Ron Miller, and with all in favor, the July 15, 2021, Regular Meeting Minutes were approved.**

**FOURTH ORDER OF BUSINESS**

**Consideration of Replacement**

**Consideration of Replacement Member for Seat 1**

**I. Oath of Office**

**II. Form 1 – Statement of Financial Interest**

**III. Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees**

*Mr. Ward: You are filling Mr. Miller's Seat. The requirement is that the individual has to be a citizen of the United States and a resident of the State of Florida. There is no requirement at this point that the individual be a qualified elector residing within the District itself. At the next election, which will be in 2022, then the individual will need to be a qualified elector. The way this procedure works, you will discuss the matter, and by simple motion, second, and an affirmative vote, you can appoint someone to fill the unexpired term. If they are not here, I cannot swear them in today, but I can swear them in after today's meeting and they will be able to sit and vote at your next Board Meeting. They would have to be here in person for me to swear them in physically.*

*Mr. Martinn Winters: I am recommending Bart Bhatla. Bart is on the call remotely and he has an extensive background in environmental engineering and land planning and so forth. He has helped me go through some of these issues and has demonstrated a willingness to serve on the Board. I think we are well-served to have somebody with his credentials on the Board going through the issues that we are going through. He fills a gap in our experience and knowledge. I recommend Bart to be a Board Member.*

*Mr. Tom Kleck: Bart, are you a resident of Esplanade?*

*Mr. Bart Bhatla: Yes. I am at Montelanico Loop. I have been here about a year and a half.*

Mr. Winters asked Mr. Bhatla to introduce himself.

*Mr. Bhatla: I have been in the consulting engineering business for about 40 years. I started with a company and retired with the same company, but at the time I joined the company we were only about 16 employees, and we grew to about 5,000. Fairly eminent company in the county. Roy*

*Weston, Inc. I started as a lab director there and I basically served in many positions from Project Manager to Project Director to VP, etc. I was in Italy about 5 years, in Milan. I started a consulting company for the company. Then I was in Cleveland for about 4 years and ran a consulting engineering company there. It was basically a civil engineering company, and I was the president of the company for about 4 years. Basically, I am a problem solver. Have been and enjoy it. Have been through all aspects of doing and managing and overseeing businesses. As for the educational background, I am undergraduate in civil engineering, master's in public health and I have a PhD in environmental engineering from Oklahoma State University. I kind of started in environmental business as it was starting to take hold in the U.S.*

*Mr. Winters: You understand the nature of the permits that we are operating under and so forth? Have you had an opportunity to look at any of those permits?*

*Mr. Bhatla: I have leafed through those as a part of the HOA engineering team. I haven't studied them in detail, but I am fairly familiar with them, and I understand the issues on the table, particularly the issue of transition and the deficits in the permitting requirement, etc.*

*Mr. Winters: Bart and I met, Bart was on the HOA transition committee, the engineering group, and I was working with the CDD group and so that's how Bart and I first got together. I felt it was a good collaboration.*

*Mr. Ron Miller: Based upon Bart's background, and his willingness to serve, based upon my expertise, this would raise the elevation of our expertise.*

Mr. Ward asked Mr. Bhatla if he was a United States Citizen, and a resident of the State of Florida. Mr. Bhatla responded in the affirmative.

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Tom Kleck, and with all in favor, Mr. Bart Bhatla was appointed to fill the unexpired term of Seat 1.**

The Board welcomed Mr. Bhatla. Mr. Ward explained his office would forward Mr. Bhatla an Oath of Office to be signed and notarized and returned to himself. He noted he would send Mr. Bhatla a Guide to the Sunshine Law and Code of Ethics for Public Employees. He encouraged Mr. Bhatla to review these. He explained as a public official Mr. Bhatla was required to abide by a number of laws, but the Sunshine Law was the most prevalent. He stated the Sunshine Law prohibited communication between Board Members outside of publicly noticed meetings regarding anything which could possibly be Board related CDD business. He discussed ethics violations and indicated Mr. Bhatla was welcome to reach out to himself (Mr. Ward) or Mr. Woods with any questions.

## **FIFTH ORDER OF BUSINESS**

### **Consideration of Resolution 2021-8**

**Consideration of Resolution 2021-8, a Resolution of Board of Supervisors of the District Re-Designating the Officers of the District**

Chairperson Stamp noted Mr. Bhatla could be added as an Assistant Secretary and the remaining Board Members could keep their current officer's positions. The Board agreed.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Ron Miller, and with all in favor, Resolution 2021-8 was adopted, 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 –There are two letters, one for the MRI report item and one for the lake banks/littoral shelves**
- b. **Arbitration Hearing: January 18, 2022, at 9:30 a.m.**

*Ms. Jessica Tolin: Where we are in the litigation currently is the discovery process. We had a deposition of Tim Hall. There is a second deposition day in the works of being scheduled, a couple discovery requests that we're responding to, and currently there is consideration of a potential amendment to address certain issues with the lakes.*

Chairperson Stamp asked about the Arbitration Hearing.

*Ms. Tolin: There is a nonbinding arbitration that a representative of the Board would need to attend. It is just a one-day event. Generally. I don't anticipate it being longer than one day for this one. All sides would essentially present their case before the arbitrator. The arbitrator would in turn award, the award would be sealed. It would not be presented to the court until it needed to be and there are some legal implications from the award that we could get into. Everyone should just be aware that there is an arbitration that is occurring.*

Chairperson Stamp asked about the two letters.

*Ms. Tolin: There were letters that were sent to Taylor Morrison's attorneys previously on the lakes as well as enclosing a copy of the Forge Report on those conditions.*

*Chairperson Stamp: That's the one that went some time ago.*

*Ms. Tolin: Correct. To date there has not been a substantive response from Taylor Morrison to address those issues.*

*Mr. Miller: This arbitration hearing, the judge is not aware of what comes out of it?*

*Ms. Tolin: Correct. The judge would not see the award unless there was need.*

*Mr. Miller: And with respect to letters that have gone to Taylor Morrison about the drainage system and so forth, they have not responded to our letters.*

*Ms. Tolin: There was a response that essentially said they were looking into it, but there has not been any response indicating that there would be repairs or any sort of remedial action taken to substantively address the issues.*

*Mr. Miller: Before we spend a dime on anything, should we send Taylor Morrison one further letter that essentially says your nonresponse is compelling us to take actions?*

*Ms. Tolin: There is another type of letter that will be sent pertaining to particularly default items. That is a direct that we can work with Zack on.*

*Chairperson Stamp: And we have already spent a considerable amount of money trying to cure some of these things because we are concerned about the rainy season and the impact that not fixing them would have.*

*Mr. Miller: I just want to be certain we have Taylor Morrison on notice that they put us in a corner and are compelling us to spend money.*

*Chairperson Stamp: That would be a 558 letter?*

*Ms. Tolin: That would be the notice letter with respect to anything considered a construction defect at this point.*

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

### **a. Preserve Tree Removal Process**

### **b. Stormwater System Repairs**

#### **(i) Broad Crested Weir**

#### **(ii) Sediment and Debris Removal**

*Mr. James Messick: I put together the report for this meeting. It is pretty brief, but I will go through it. There are two items I want to discuss. The first is the preserve tree removal. Our landscaping architect and arborist Mike Connor (ph) who you met a couple months ago has completed his initial investigation, has walked around the site, identified, and logged all of the trees that he feels could potentially fall into and affect any public use areas, such as sidewalk, golfcart paths, and perimeter walking/biking trails. He is preparing a full report for the Board, and I will include it in my Engineer's Report for next month and if you would like we can have him come and discuss with you and go through it with you. I think we can coordinate that and then he will be able to prepare and submit to South Florida Water Management District for approval to go through with removal or felling of dead trees.*

*Chairperson Stamp: Do you anticipate we will have the report before our meeting? If we have it before we can determine if we need to have him present. I don't want to waste his time.*

*Mr. Messick: I will reach out to him. I know we try to get this Engineer's Report in Jim's hand a couple weeks in advanced. I will find out from him by the end of this week if that is possible. If so, I will have it included in the report and you can let me know if you would like him to be in attendance.*

*Mr. Miller: Do we think at this point what we are talking about is extensive or just minor?*

*Mr. Messick: He said it was more extensive than what he thought. It took him more than what he thought, but he was able to finish his first walkthrough and he said there were more trees. He said it was obvious this hasn't been done before and this first time around will be pretty extensive. He said we can certainly go through and address this in phases, get the more critical areas first, and then work from there. He will be prepared to talk about that.*

*Mr. Kleck: Is his report going to cover just the preserves or the trails as well?*

*Mr. Messick: Both.*

*Mr. Kleck: I'd like to get an update on what needs to be done to put the trails back in A1 condition.*

*Mr. Messick: Okay. In regard to the dead trees that are near them?*

*Mr. Kleck: In regard to the trees that are blocking and coming in, the grass that is growing over the trails. My wife drives those trails everyday on her bike and she says they look like crap. So, my question would be are they going to be responsible for those as well?*

*Mr. Ward: Are you talking about the trails inside the preserve?*

*Mr. Kleck: Yes.*

*Mr. Ward: His initial report is only for tree removals. We are not addressing the trails within the preserve areas.*

*Mr. Kleck: Okay.*

Chairperson Stamp asked about the stormwater system repairs.

*Mr. Messick: We were able to get quotes for both phase 1 and 2. Those were the immediate items of importance that we wanted to address ASAP. The broad crested weir to the south and the sediment and debris removal. We were able to start construction/restoration and debris removal earlier this month on September 8. They anticipate the length of construction to take a month to a month and half. They started on the control structures of lake 1, 2 and 5A. They are moving along a little slower than we would like. I think they are going to get a second team in to finish in the time frame they estimated. I will be coordinating with them to make sure that happens. The phase 1 broad crested weir was also contracted to MRI and that was a little bit behind the sediment and debris removal portion, but they are going to start on the 27<sup>th</sup> now. They think it is only going to take a couple days in the field, so once they get started, they will have their specialized equipment on site. They will be able to bring the rock and rip rap to the site and get it staged and set up and finalized by the end of this month.*

*Mr. Winters: How much of this is considered remedial and how much is considered routine maintenance. Is this all remedial work that should have been done?*

*Mr. Messick: I would have liked to see the original design have some of this incorporated into it, so I can't say this is maintenance. We let it slip a little bit to the point where it got to be a little bit more erosion than what we would like. I couldn't tell you if that happened in one rainy season or if it happened over years of erosion. I think once we get this addressed the continual maintenance will be much easier and little to none actually once we get the rip rap installed.*

*Mr. Winters: I guess what I'm getting at is, we have got an MRI condition report which showed the status of the lakes and drainage systems at turnover, which showed a lot of this work needing to be done which wasn't done, and I am questioning whether we should be keeping tabs on how much we are spending on all of this to include in our claim.*

*Mr. Ward: We are going to keep tabs on all of it and that will be provided to Jessica and Greg, and they will be the two who can decide on what to do with it at that point.*

*Chairperson Stamp: Part of it will be routine maintenance and part of it will be deferred maintenance that they should be liable for. Jessica, do you have everything you need for the bridge/railing?*

*Ms. Tolin: Those were also included in the prior (indecipherable).*

*Mr. Messick: The only other thing in my report that changed from the last time is I did include the pass-through weir detail that they used. It shows the rip rap both in plan view and detail view and outlines what they will be constructing in case you had any questions about that.*

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

- a. Financial Statements for period ending July 31, 2021 (unaudited)**
- b. Financial Statements for period ending August 31, 2021 (unaudited)**

*Chairperson Stamp: I would like you to walk us through this fiscal year which is about over and the next fiscal year. We're getting a lot of expenses that were unanticipated, so just give us a general overview.*

*Mr. Ward: Our budget is in essence \$680,000 dollars in the current year, both revenue and expenditures. We will either meet or slightly exceed that amount of expenditures in the current fiscal year. If you recall, a part of the revenue stream we are using is \$100,000 dollars of our cash balance from last year, so our cash balances will drop down into the \$210,000/\$220,000 dollars range before we go into our 2022 year. Obviously, the big expenditures are the legal fees, the cleanout for the drainage system and the weir structure. The issue going into 2022 we will have to consider is we will no longer have cash available that we can use to fund our budgets for 2023, so we already will have a large deficit. You have \$400,000 dollars plus maintenance on these littoral shelves and lake banks. If that is not repaired, it will need to be dealt with. Plus, we will need to get whatever our operating costs are and any legal fees going into the 2022/2023 year. We will have a very difficult budget process in 2023. It will be a different 2022 trying to keep expenditures in line with the same budget that we have in the current year knowing the cash position is starting to get low.*

*Mr. Kleck: The reason for this is the amount of work that Taylor Morrison has left for us to do?*

*Mr. Ward: It is twofold. One, it's obviously the legal fees associated with all of this. We are at \$110,000 dollars in legal fees as of the end of July and we are running \$10,000 to \$15,000 dollars per month at this point on legal fees and court reporters and stuff like that. We had almost \$100,000 dollars we are spending this month alone on cleaning out the drainage pipes and the weir structure repairs. Those are very big budget expenditures in a very short period of time.*

*Mr. Kleck: What is the projected time frame where we could possibly see some kind of a settlement if it comes to that.*

*Ms. Tolin: Right now, we are on the settlement front. It's hard to say.*

*Chairperson Stamp: What's our likely trial date?*

*Ms. Tolin: Off the top of my head, I don't recall exactly when we are set for trial, or at least the trial docket that we are on. Generally speaking, it takes 2 years from the date of filing, so it would be likely next year.*

*Mr. Ward: For some reason I remember Greg saying it would be the fall of next year.*

*Ms. Tolin: There would eventually be a mediation that would happen, and so there is an opportunity there depending on negotiations.*

*Mr. Kleck: That was one of the big issues. They've left us no kind of escrow money to work on.*

*Mr. Ward: You are correct. From a monetary sense. Going into the next year we are going to have a very big financial increase in our budgets in order to meet the operating requirements of the District on a going forward basis for what we need to do, just under general operations. And I can already tell based upon what we had budgeted for operations, even though we didn't do it, it is woefully inadequate to operate this District on a going forward basis. I had mentioned to Zack I think we are going to start the budget process earlier than we normally do and have to work our way through this process next year.*

*Chairperson Stamp: Part of that will be phasing in the fencing and pipes and other things. Even if we settle with Taylor Morrison, that's going to be a year or more down the road, so we are going to have to get two budget cycles with the assumption there is not going to be penny. And if there is then it's good, but we cannot assume that.*

*Mr. Ward: Maintenance of the lake banks, the littoral shelves, once we spend the \$400,000 dollars, assuming that's the right number, we are going to have to take over the maintenance of that at that point. We can't let that kind of investment go without being maintained in a proper manner. The preserves, obviously whatever we decide to do, the tree removal, the fencing issues, as you call them the trailways within the preserves, nothing is being maintained and I am realizing now, the more we get into this, we have a very big nut to crack.*

*Mr. Winters: On a routine maintenance basis, how much would you say we were short? Do you have an estimate?*

*Mr. Ward: I have no idea. I am going to tell you it is going to take Jimmy and I probably two months to put something together that is even reasonable on this kind of a District. Now that I think we are all really understanding the level of maintenance that's even needed on this project. It is not in the HOA's budget either, so we are going to have to just take this on.*

*Mr. Bhatla: Have we taken the ownership of the lakes?*

*Mr. Ward: Some of the lakes are owned by the CDD. Some of them have fee title ownership to the HOA, but the District has an easement to all of the water management system.*

*Mr. Bhatla: The lakes are still under a provisional permit. In other words, they are not approved by the County as to be in a state to be issued a permit. If we don't have the ownership of the lakes, anything we are spending is in anticipation. I think that's the responsibility of Taylor Morrison. I just wondered why we are starting to maintain them and not the owner of the property so to say.*

*Mr. Ward: Within the context of the regulatory environment, there are construction permits from the regulatory agencies, whether that is South Florida Water Management District or Collier County. Obviously there have been significant issues about whether the County or South Florida will or has already accepted those permits to be in compliance with those construction permits. There are now also operating permits from South Florida Water Management District, none are required from Collier County. Those operating permits have been transferred into the name of both the CDD and I believe the HOA is also a co-permitee on those operating permits. Now, both the CDD and the HOA have the responsibility for the maintenance of the system itself. Separate and apart from whether there are any deficiencies in the system itself is a separate legal matter that is being dealt with, but we do have a requirement, whether it is the CDD or the HOA, but the community as a whole, both of us combined, have a responsibility to maintain that system.*

*Mr. Bhatla: Have you talked to the County relative to the bonds that they have?*

*Mr. Ward: Yes, that was not a particularly fruitful discussion. The County has basically indicated at this point that they don't want to get in the middle of a discussion between this District and Taylor Morrison as far as they were concerned, and they have basically said they are acceptable to us as the County from a construction perspective.*

*Mr. Winters: A letter was sent to the County showing them the engineering reports that were done and the work that was not done by our law firm, asking the County to weigh in on why these performance bonds were being released. And that was the response that we basically got back was that as far as they are concerned, they met all the requirements.*

*Mr. Bhatla: My understanding was about 6 months ago I was informed by Taylor Morrison that they had an engineer engaged who was looking into all the deficiencies pointed out by the County, and they were going to prepare a report which would indicate that everything has been completed. I don't know if that report was ever issued to the County in order to obtain the permit, because everything was on a provisional basis. It seems like that event has occurred. Has anybody seen that report?*

*Mr. Ward: I can tell you from my office, no, we have not seen it.*

*Ms. Tolin: I don't believe I have seen that report either. I will say though, in the discovery process, in the litigation, we received numerous documents from Taylor Morrison. It is possible it is in that production set, and I have not gotten to it yet. We may have it. In any event, with a 558 notice you can also request documents including any sort of reports, so that is something we can also request and try to get from them if not.*

*Mr. Bhatla: Is arbitration the way to go? Is that the requirement in the contract?*

*Ms. Tolin: The arbitration that we would be participating in for this case was ordered by the judge for us to attend.*

*Mr. Bhatla: It is a boatload of money we are spending which is the responsibility of Taylor Morrison. So, we did have a meeting with the County face to face and that's how it came out?*

*Ms. Tolin: There was a letter sent from our firm on behalf of the CDD to the County. Basically, as Martinn was explaining, including the Survey, comparing that with the Waldrop Engineering Survey, and the County responded.*

*Mr. Bhatla: I'm not very comfortable that everything has been done, because it's an awesome responsibility for us to assume all the expense because the regulatory agency is in the middle of it. They can't walk away from it. It seems to be that way.*

*Chairperson Stamp: Bureaucrats can always come up with reasons not to do things. Having been one I can tell you that. It's always easy to figure out a reason not to do something.*

*Mr. Bhatla: I kind of feel like we need a meeting with the County face to face and invite also Taylor Morrison if they want to come. It won't be a legal meeting. It will be a technical meeting. We want to understand what their complete decision-making process is because I think the legal avenue is fine, but that is very costly and the results will be achieved in I don't know how long, and I am kind of hoping that we might have a short cut here. At least we need to explore it. We should not take on all the responsibility and the expenditure. True we will have a legal fight, but before that, if we can do something, and we can agree on an escrow with Taylor Morrison and we can have an engineering consultant acceptable to both parties we could do the work on that basis. At least I feel like we need to explore this. It is not very costly to meet with the County and have that discussion, and also have them on record that they have followed proper procedures. There are basically three regulatory agencies involved here, including the Corp.*

*Mr. Kleck: I think if the County already responded to that letter -- Is that what you're telling us Jessica? That they wouldn't change their ideas or their mind?*

*Mr. Winters: Tom Conricode introduced me to the supervisor of the fellow who responded in the letter. Jeff McGenna (ph). I was supposed to have a call with him and his staff before I went out of town and we were never able to hook up, but he indicated a willingness to talk to me about this issue and before he and I could talk, the letter came back from the head of inspections for Collier County telling us basically he was satisfied with the conditions, and it was our problem. I think we could probably circle back with his supervisor and say we would like to appeal that decision and I would be happy to be a part of it, but we have all of these sunshine rules about how much we can't talk to each other before meetings like that occur, which would mean either one of us shows up at*

*that meeting or all of us shows up at that meeting, so mechanically, logistically, there is difficulty in setting that meeting up and who is going to be at that meeting and who is going to be the spokesperson. I'd be happy to be a representative to the County, but I think Bart is probably a lot more qualified than I am. If there was a way that more than one of us could meet with the County, I would be happy to do it. I just don't know how you would manage it between meetings.*

*Mr. Ward: It's not possible.*

*Mr. Bhatla: I am not completely familiar with the Sunshine Laws, but can we use our engineer to have a conversation between you and me and other Board Members?*

*Mr. Ward: You cannot do that. That is a blatant violation of the Sunshine Law.*

*Mr. Bhatla: How do you protect your interests then if you cannot talk to each other?*

*Chairperson Stamp: You have to do it in an open meeting format like this.*

*Mr. Bhatla: I would like to meet with the County and make sure we have followed all their procedures and we want to go to as high up as we need to go in the county. This is a matter of several million dollars, and we have a responsible party who has the obligation and there is some record of that also. How do we put our heads together on this?*

*Mr. Miller: I'm glad to hear Bart is bringing this up for more discussion. It seems to me there is a possible workaround to meet with the right person in the County if they were willing to help us. We could have a Board Meeting and invite the person in the County we wish to speak with to attend the Board Meeting. With the performance bonds, I have always found this confusing, here is what I think, when standing in the shoes of the insurance company who has issued these bonds, and the insurance company's obligation is to step in and finish completion of uncompleted work by a developer, so if a developer walks away and doesn't complete the project, then the insurance company would be held accountable to do so. If there is work that is uncompleted, the performance bonds would come into play, and we should be filing a claim with the insurance company. On the other hand, if the work has been completed, that doesn't mean it doesn't have deferred maintenance. That's a whole different subject that the project could be technically completed, and the performance bonds could be released, but that still doesn't take off the table the fact that it has been turned over to us with maintenance that has not been done for the last five years, and that should be part of what we are going to have to catch up on, and that's what we would be going after Taylor Morrison for in addition to what we have already gone after them for.*

*Mr. Bhatla: You are right. I was thinking the lakes and littorals were all owned by Taylor Morrison, and they are under a provisional permit. Recently, about a year ago, the County came, and they surveyed every lake and they pointed out the deficiencies. All of those were basically journalized by Taylor Morrison and they had an engineer have everything to be completed and then prepare a report that everything has been completed according to the requirement of the County and that will then serve as a basis for issuing a permit and release of the bond. If that process has not been done and we have assumed the responsibility of what the scheme is then. If the new owner knowingly has assumed the responsibility the regulatory agency will go after the new owner. If the new owner is not willing to do it, they have to go back to Taylor Morrison. I*

*don't know if we have assumed the responsibilities of the lakes for the provisional permit, then knowingly we are agreeing to the expense to bring it to a level where it can be permitted. That is the part of the discussion that I think we need to have with the County. Where is the report which says everything has been completed? The report has to be an independent consultant report, not based on their feeling. There is a very defined process, and we would like to see if the process has been followed or not. How we do this under the Sunshine Law I don't know yet, but I think we will figure out a way.*

*Chairperson Stamp: You could certainly talk to the County. There is nothing to prohibit you as a resident.*

*Mr. Bhatla: We want to talk to the County and want to get from them that they have followed the process, where is the completion report, etc.*

*Mr. Winters: Could I get Tom Conricode to introduce Bart to the supervisor at the County?*

*Chairperson Stamp: Yes.*

*Mr. Bhatla: I would like to do that. I would like to understand where they are at. At least we could get the background. I don't have the complete background. I was involved from the HOA, and I did talk to Taylor Morrison, and they told me all this, that they have an engineer who is preparing a completion report. And now I understand we already own the lakes and that makes a difference. I think we are also a governmental body. It is not anything that the County can ignore. We have a strong standing there to talk to them on that basis.*

*Chairperson Stamp: I think Martinn has given us the way forward, to introduce you and then you can follow up with the County.*

*Mr. Winters: I think Bart will know better what questions to ask than I would. He has been through this before, so what I propose to do is have Tom Conrico set up an introduction between that supervisor and Bart.*

*Chairperson Stamp: Anybody but another Board Member can go with you to the meeting. Mr. Messick can go with you. You cannot have two Board Members there.*

*Mr. Messick: Collier County Property Appraiser lists the preserves owner as Flow Way CDD. The tracts for the preserves, internal and external, state the owner is Flow Way CDD, but the lakes all say Esplanade Golf and Country Club of Naples. Is that title for the HOA or for the CDD?*

*Mr. Ward: That's the HOA and the District has easements over top of all of that.*

*Mr. Messick: So, the actual land is not owned by the CDD, there is just an easement that we are able to maintain that system.*

*Mr. Ward: We own it, operate it, and maintain it.*

*Mr. Miller: Can the Board Member meet with the County and then come back to a Board Meeting and present the discussions he had with the County?*

*Mr. Ward: Yes, sir.*

**SEVENTH ORDER OF BUSINESS**

**Old Business**

- I. Agreement with Master Homeowner’s Association and District (Continuing Item)**
- II. Discussion of Future Funding of Preserve Mitigation and Maintenance (Continuing Item)**

*Chairperson Stamp: This is on here in case anything has changed, and I don’t think anything has changed with these items.*

**EIGHTH ORDER OF BUSINESS**

**Audience Comments**

**Audience Comments: Public comment period is for items NOT listed on the Agenda, comments are limited to three (3) minutes per person, assignment of speaking time is not permitted, however the Presiding Officer may extend or reduce the time for the public comment period consistent with Section 286.0114, Florida Statutes**

Chairperson Stamp asked if there were any audience comments.

*Mr. Ed Staley: I understand the whole idea of the easement and maintenance system and all that, but I was always under the impression that the fee simple ownership of the lakes continued to be with Taylor Morrison. Am I being told that they have fairly recently, the documentation has been filed, so that ownership has indeed been transferred?*

*Mr. Ward: I have no reason to believe what Mr. Messick said would be untrue or wrong, so apparently, they have transferred the underlying title to the HOA at this point, which I was not aware of either.*

*Mr. Staley: Could you read how it is titled again?*

*Mr. Messick: It is titled Esplanade Golf and Country Club of Naples, tract L21, for this particular tract.*

*Mr. Staley: I believe that’s the legal entity of Taylor Morrison for the development of this subdivision.*

*Mr. Messick: The next one says Esplanade Golf and County Club of Naples Incorporate, 28100 Bonita Grand Drive Ste 201.*

*Ms. Tolin: There is Taylor Morrison Esplanade Naples LLC, I think is the name, and that is one of the developer’s entities of Taylor Morrison and one of the defendants in the lawsuit. The Esplanade Golf and Country Club, Inc., is the HOA’s legal entity.*

*Mr. Miller: I’m not happy about this, but I’m not surprised, we went through turnover this year, and at turnover time Taylor Morrison would have deeded over to the HOA everything, including this, as part of the turnover process, correct? I’m hearing that the HOA now owns the lakes, and I’m not surprised because Taylor Morrison’s required to turn over everything.*

*Ms. Tolin: Is that something that (Indecipherable 59:44).*

*Mr. Messick: The date of sale was December 21, 2020, for all the lake parcels.*

*Mr. Staley: With respect to the trails, I thought the trails were outside of the preserve. So, some portions of the trails are within the preserves? I thought there were a tiny number of trails within the preserves, but they were being redirected or something. Do we still have a reasonable length of trails inside the preserves?*

*Mr. Messick: When I'm talking about tree removal, I'm not talking about internal to the preserves. I thought you were talking about the trail walking path external of the whole community. Our report of the dead and fell trees are going to be just on the outside of the preserves near external sidewalks, ride-ways, public areas, not inside the preserves.*

*Mr. Staley: When you were talking about it, Mr. Kleck followed up talking about the condition of the trails themselves, and I just wanted to make clear that those trails, or the work that you're doing, the trails are not within the preserves.*

*Chairperson Stamp: The asphalt trails belong to the HOA.*

*Mr. Miller: That is my belief, that the asphalt trails are external to the preserves.*

*Mr. Kleck: That is why Taylor Morrison moved that trail and the bridge, to get them out of the preserves.*

*Mr. Winters: It is my understanding from the last meeting that the performance bonds have been transferred to the HOA. Should we have a discussion about what that means or table that for another meeting.*

*Chairperson Stamp: I know our legal team is talking about it, and we can't illuminate the subject until they are done talking about it.*

*Mr. Winters: Does that mean that we basically owe the money to ourselves?*

*Ms. Tolin: It means that the HOA is currently the principal on the bonds. So, if you were looking to find any sort of notice of default under the bonds, technically as the principal, the HOA is now the party that would have to address the defaults and so it would not go against Taylor Morrison at this point.*

*Mr. Winters: And the law allows them to do this apparently.*

*Chairperson Stamp: I questioned it at the time, and I still question it.*

*Mr. Miller: I don't understand this discussion. I would find it too hard to believe that performance bonds could be transferred to the ownership of the HOA without the permission of the insurance company who issued the bonds.*

*Chairperson Stamp: I agree. I thought this smelled from the beginning, but I know they were talking about it, and Taylor Morrison agreed to continue to pay the premiums on a policy they no longer own. This all –*

Mr. Miller: *That doesn't make any sense. The insurance company has to agree to that. You can't just do that.*

Chairperson Stamp: *I agree with you.*

Mr. Kleck: *They don't care where the premiums are being paid from, I bet.*

Chairperson Stamp: *Anyway, we know it's an issue.*

**NINTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**October 21, 2021, at the Esplanade Golf and Country Club, 9810 Torre Vista Lane, Naples, Florida 34119**

*Chairperson Stamp: The next meeting will be on campus so to speak, at Esplanade, in the Culinary Center on October 21, 2021, at 1:00 p.m. Just wanted to put people on notice we are changing that location and you might have noticed the Agenda has changed somewhat in format. We have page numbers to refer to documents. If anybody has any further suggestions, please let Jim know. We have added a new item, asking Board Members if they are going to be there on the 21<sup>st</sup>.*

**TENTH ORDER OF BUSINESS**

**Quorum Call**

**Quorum Call for October 21, 2021**

Mr. Ward took a quorum call and all Supervisors plan to be in attendance at the next meeting, save Mr. Martinn Winters.

**ELEVENTH ORDER OF BUSINESS**

**Adjournment**

Chairperson Stamp adjourned the meeting at approximately 2:15 p.m.

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

**ATTEST:**

**Flow Way Community Development District**

  
\_\_\_\_\_  
James P. Ward, Secretary

  
\_\_\_\_\_  
Zack Stamp (Oct 22, 2021 13:12 PDT)  
Zack Stamp, Chairperson

# FW - Minutes 09 16 2021 - To be signed

Final Audit Report

2021-10-22

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