

**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, December 17, 2020 at 1:00 P.M. in the conference room of the offices of Woods, Weidenmiller, Michetti, & Rudnick, 9045 Strada Stell Court, 4th floor, Naples, Florida 34109.

**Present and constituting a quorum:**

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

**Also present were:**

James P. Ward	District Manager
Greg Woods	District Counsel
Jessica Tolin	

**Audience:**

Charles Cook  
Ed Staley  
Joe Reis  
Tom Conricose (ph)  
Diane Ford

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 noted new technology was being utilized. He asked speakers to clearly identify themselves prior to speaking and to refrain from talking over others.

**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 at the end of the meeting; however, he would be happy to recognize speakers for brief comments during regular Agenda Items.

District Manager Jim Ward asked if there were any members of the public/audience present who had a question for the Board; there were none. He indicated he saw no individuals participating via telephone.

### **THIRD ORDER OF BUSINESS**

### **Consideration of Minutes**

#### **October 15, 2020 Regular Meeting Minutes**

Chairperson Stamp asked if there were any additions or corrections to the Minutes; hearing none, he called for a motion to approve the November 19, 2020 Regular Meeting Minutes as presented.

<p><b>On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the November 19, 2020 Regular Meeting Minutes were approved.</b></p>
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### **FOURTH ORDER OF BUSINESS**

### **Consideration of Resolution 2021-2**

**Consideration of Resolution 2021-2, a Resolution of the Board of Supervisors of the Flow Way Community Development District Declaring Special Assessments; Indicating the Location, Nature and estimated cost of those Improvements which cost is to be defrayed in whole or in part by the Special Assessments; Providing the portion of the estimated cost of the improvements to be defrayed in whole or in part by the Special Assessments; Providing the manner in which such Special Assessments shall be made; Providing when such Special Assessments shall be made; Designating lands upon which the Special Assessments shall be levied; Providing for an assessment plat; Adopting a preliminary assessment roll; Providing for a Public Hearing to consider the advisability and propriety of said Assessments and the related improvements; Providing for Notice of said Public Hearing; Providing for publication of this Resolution**

Chairperson Stamp asked if there were a motion for Resolution 2021-2. Mr. Drew Miller moved to approve Resolution 2021-2; there was no second.

*Mr. Ron Miller: Speaking for myself, I have no intention of ever approving this Resolution until such time as Taylor Morrison steps up to the plate and do their legal and moral obligation regarding the preserves. Having said that, I would like to comment on the legal and moral aspects of this. The Board has no legal obligation to approve this. Is there any disagreement?*

*Mr. Andrew Miller: This is a good question. We should ask and know the answer to prior to making a decision because not only did the Board decide to accept the property into the CDD – I'm definitely interested in understanding what the implications are to the CDD with the potential for negative*

*outcomes are if we don't follow through with the rest of what may be an obligation. If we don't understand that, I don't think we are making a decision with all knowledge.*

*Mr. Ron Miller: I will make the same comment as before. I don't think the Board has a legal obligation to approve this.*

*Mr. Greg Woods: I need to take this under advisement. I would be happy to give the Board my opinion after I take a good hard look at it.*

*Mr. Ron Miller: The second aspect of this is the moral aspect. I think we should reflect back on the entire history of Esplanade to this moment. When Taylor Morrison started this development, they put together a CDD and the CDD had existing boundaries and an existing number of units and a plan. As a part of that plan the CDD was the financier of infrastructure and has done so. The CDD concept is well known in the State of Florida. At a later point in time Taylor Morrison came in and added the Dillillo property. At the time, they still had a five-member board of control, and they expanded the CDD boundaries and passed the funding so they could take advantage of that. The residents have had a nonresident Board throughout. Taylor Morrison took advantage of the opportunity and I would say they had the legal right to take advantage of the opportunity. I don't think they had the moral right, but they had the legal right. Now we come up to the Hatcher property, which is similar, but a different situation, because we have a non-Taylor Board representation, but Taylor Morrison has once again added more property to the development. I believe that property has been approved by Collier County, so those houses are going to be built. The question comes in with respect to the CDD and the CDD has previously expanded its boundaries to include that property and so forth with funding. I don't think the CDD Board Members have any moral duty or any moral sense of obligation to cooperate with Taylor Morrison whatsoever. This is all about Taylor Morrison. It is not about the residents or about our community. It's actually adding more people to the resident's amenities. What it amounts to – think about the big picture – is that Taylor Morrison, and this is just business, Taylor Morrison is going to charge the market price they can get for those houses with or without this funding. They will charge every dollar that they can, so if this funding comes across, this is simply going to go to Taylor Morrison's bottom line. It's as simple as that. Taylor Morrison is wanting us to once again be their bottom line play toy in giving them \$1 million dollars and bringing this into our community and at the same time they simultaneously they are disgracefully dishonoring their permits and the funding of the preserves. The final aspect from a moral perspective, stand in the shoes of the 34 people who are eventually going to buy those homes. Are they harmed? I don't think so. They've been helped because they are going to pay the market price with or without this funding and they are going to step into a situation where they do not have the CDD payment. They are going to be in a better position than all of us, the rest of the residents, so we would actually be doing them a favor and not harming them whatsoever. I just wanted to share those thoughts with the Board.*

*Mr. Drew Miller: Greg, would you please give us the context to what we would be able to vote as a CDD Board Member? Obviously, there are personal agendas here as well and I just want to understand, not only do we have a legal obligation, but as a sitting Board Member, what is the decision that we have to make as a Board Member, not necessarily as a resident?*

*Chairperson Stamp: Drew, you mentioned at the last meeting that there was an agreement between Taylor Morrison and the CDD on this property. Jim, do we have a copy of that agreement?*

*Mr. Ward: I could not find in the District's records that there is a specific agreement between the District and Taylor Morrison to annex the property. This property was contemplated to be annexed within the constraints of the last series of bonds that were done. There are provisions in those bond documents essentially indicating if and when the land is annexed to the District, it was contemplated they would be subject to assessment if the District went through that legal process that Ron just asked the question about of whether or not the Board has the legal obligation to do that.*

*Chairperson Stamp: But the CDD Board, then controlled by Taylor Morrison, did not enter into any kind of an agreement with Taylor Morrison saying if you do this, we will do that?*

*Mr. Ward: I could not find any specific agreement to that.*

Discussion continued regarding CDD and Taylor Morrison not entering into an agreement regarding annexing the Hatcher property.

*Mr. Drew Miller: My concern, or question, is not necessarily a written agreement, but what we've asked Greg to look at through the bond sale and through bringing them into the CDD, if there was any kind of legal action that we might be opening ourselves up to, because I do believe there is an implicit agreement, that when we brought in the – as a CDD Board Member who voted to bring it in, I would have expected, the following thing to happen would be to levy assessments and follow through with the original intent of the bond sale.*

*Chairperson Stamp: My other question is, you also implied with, because Martinn and I have taken an Oath of Office. I don't see where it says in there that I have to vote for Taylor Morrison's resolutions.*

*Mr. Greg Woods: If there is no agreement you don't have to vote for it.*

*Chairperson Stamp: As there is still no second, I will move on to Resolution 2021-3.*

**FIFTH ORDER OF BUSINESS**

**Consideration of Resolution 2021-3**

**Consideration of Resolution 2021-3, a Resolution of the Board of Supervisors of the Flow Way Community Development District setting a Public Hearing to be held on January 21, 2021 at 1:00 P.M. and held at a Location to be determined during this meeting, for the purpose of hearing public comment on Imposing Special Assessments on certain property within the District generally described as the Flow Way Community Development District in accordance with Chapters 170, 190 and 197, Florida Statutes**

Mr. Ward explained Resolution 2021-3 could not be considered as Resolution 2021-2 was not approved.

**SIXTH ORDER OF BUSINESS**

**Staff Reports**

**Staff Reports**

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

*Mr. Woods: We filed the petition with the South Florida Water Management District per the Board's instructions. They said we were overly broad, so we went back and narrowed it to the specific things that were modified by Taylor Morrison in the last 9 months or so, so we have now filed a modified petition with the South Florida Water Management District. It is my personal opinion, I think we have a shot with the South Florida Water Management District, but we are kind of late to the game. I think our stronger position is probably with the Army Corp of Engineers, but I think we have a decent shot with the South Florida Water Management District. With regard to the draft complaint against Taylor Morrison, you will note that the HOA is listed as a defendant. The HOA is a nominal defendant. They are just in there because they currently own some of the internal preserves and lakes and since their rights can be tangentially affected, they have to be listed. The CDD is not suing the HOA. If and when litigation commences, it is important that you watch your communications with me. Emails to me are potentially discoverable, so be cognizant of that fact. We are a public body, so that kind of information becomes potentially available to the public.*

*Chairperson Stamp: If anyone has questions, we will come back to this during Old Business.*

## **II. District Engineer**

Chairperson Stamp asked Mr. Ward to explain why this Item was included in the Agenda.

*Mr. Ward: In a broad sense, the Board has three consultants, the attorney, engineer and myself as District Manager. Generally speaking, these items are on the Agenda if we have a matter that needs to appear before you that will be actioned on, or alternatively we know is going to be a pending action in the near future. Often the Engineer doesn't have anything to report, especially in a District that doesn't have much in operations. I rarely do anything under my report because I make sure it gets on the Agenda as an item. The only time I will say something to you under my report is if it ends up on my radar between the time of publication of the Agenda and the Board meeting date. So, unless I ask the Engineer to be here, or we have some sort of report, we generally do not have an Engineer with us.*

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

### **a) Financial Statements ending November 30, 2020 (Unaudited)**

*Mr. Ward: I do keep your financials on the Agenda on a monthly basis in case you have any questions. In the interim, you are always welcome to ask me questions on financials outside of an open public board meeting. I have nothing for you today.*

*Chairperson Stamp: The front page of the CDD web page is nothing more than an advertisement for Taylor Morrison. That's been taken down. In preparing for this meeting and interacting with community members it would be handy if we could develop some quick links of some kind on the front page where you could just go on and click the Agenda, the minutes of the last meeting, or now the litigation. Those are the things people are wading through the 190 or so pages and having trouble finding.*

*Mr. Ward: We will try to work through the technical and financial impacts of that to get it on the website as you want it put there.*

**SEVENTH ORDER OF BUSINESS****Old Business**

- I. Agreement with Master Homeowner's Association and District**
- II. Discussion of Future Funding of Preserve Mitigation and Maintenance**
- III. Discussion of Audit of Preserves Expenditures**

*Chairperson Stamp: We have had some discussion back and forth about whether we ought to continue this (Agreement with Master HOA) or terminate it. Is there any discussion?*

*Mr. Ron Miller: We have seen emails going around about some requirements Taylor Morrison were still attending to in order to get Collier County to sign off on the lakes and whatever. I am generalizing here. That's going on in the background. From a layman's perspective, when I play golf and go around the lakes and ponds, I see a lot of stuff about 3 feet high, growing out of 2 or 3 feet of water. I am assuming these are called littorals. (Mr. Ward confirmed these were called littorals.) And with what's going on with getting the counties permission as remedy, what is really happening? Are we trying to remove those littorals? Are we trying to add some where it is deficient?*

*Mr. Martinn Winters: Generally, Taylor Morrison is required to plant the banks with materials that survive in high water and in low water so that the banks do not erode, and because so many of the banks are naked and don't have any plantings at all, Taylor Morrison is required to go back and plant in order to get the inspections done to get their performance bonds released. By and large the plan is to go back and plant them effectively to have something that will hold the banks from eroding. Now we have a new pond with the Hatcher property that they have to take care of, so we are some months away I think from the point of signing with Taylor Morrison as the littorals are properly planted.*

Discussion ensued regarding Taylor Morrison's plantings of the littorals.

Mr. Drew Miller indicated littorals had more to do with water quality than bank erosion. *It's not necessarily if you don't see one it means that spot needs one, there is just a threshold of a certain percentage of littoral shelves need to be planted.*

*Mr. Ron Miller: Considering what's going on I have reread the HOA contract and it specifically says the HOA is to provide all services. It seems to me that the HOA contract includes mitigation and maintenance of the preserves. That has never happened. The mitigation and maintenance that has occurred prior to transmitting this into the CDD, Taylor Morrison paid some of those expenses in the past, but the lion share of it has been paid for by the CDD. I find it odd that the CDD has been paying for those expenses whereas the contract requires the HOA to pay for these expenses. This may seem circular, but it seems to me the CDD would have some cause of action with the HOA and say we want our money back. That's a bit circular because it's the same residents whether it's the CDD or the HOA. But then I would raise the question, is it really the same? The way the budget comes together through the HOA is subsidized or funded by Taylor Morrison as it should be. You can't go back and redo a five-year-old budget, so if the CDD were to ask for it's money back where would that money come from? It couldn't come out of the current year's budget, so that then falls back on Taylor Morrison to reimburse the HOA who then can reimburse the CDD for all those past expenses. I think that's something we have got to get on the table. I think Taylor Morrison can very well be held accountable for those expenses through that medium.*

*Mr. Drew Miller: The internal preserves and a lot of the preserves that have the initial mitigation done were being paid and maintained through the HOA prior to the final mitigation efforts on the external preserves. Once the initial mitigation was complete for the external preserves and we went into maintaining and the property was accepted by the CDD, we started maintaining all of the preserves including the internal and the external, so there was a point in time when some of the cost was inside of the HOA budget. I think the differences between the CDD budget and the HOA budget, at least in context of what you are saying, are very similar, because the HOA budget is deficit funded, but if you put the dollar value into the budget it raises fees, similar to the CDD. If the cost is \$200,000 dollars to maintain the preserves, and it's in the HOA, it is spread across the number of units and Taylor Morrison deficit funds it. Similarly, in the CDD, it is spread across all the landowners and Taylor Morrison funds its proportionate share as well. I don't know about back history or what that would mean, but if either entity was maintaining it, for each resident it is very similar.*

*Chairperson Stamp: You said mitigation was completed. Is that your opinion, that mitigation has been completed on the external preserves?*

*Mr. Drew Miller: Yes. It went into maintenance. You may be trying to catch me on whether it's a permit or it has to be maintained. There was an initial mitigation that was done. Remove all of the nuisance exotics. Complete. Prior to the CDD accepting it, millions of dollars were spent to mitigate. Similarly speaking, on the wood storks and those kinds of things, yes, there was a lot of money spent to create the area, mitigate the area, and then there is an ongoing perpetual maintenance scenario that has to be done. So, the time frame, and whether you are talking did we get signoff for that maintenance during that time period – I don't want to split hairs – it was being maintained or is being maintained right now in a maintenance state.*

*Chairperson Stamp: My recollection is Tim Hall stating we are still mitigating some of this property. We are not okay to go to the next step. There could be some overlap, but there is mitigation and there is maintenance.*

*Mr. Drew Miller: I don't know if that matters that much or if I'm misspeaking a little bit. But it's in a maintenance contract, what I would consider the initial mitigation orders to be.*

*Mr. Ron Miller: I hear what you are saying. I understand what you are saying, but factually speaking, the CDD has spent a considerable amount of money every year on whatever you want to call it, mitigation, or maintenance or both. Factually speaking there has been a budget spent every year by the CDD on the external preserves. There has been money spent and the HOA contract specifically says that the HOA has to pay for that. The HOA did not pay for it, the CDD did. So, why shouldn't the CDD explore the option of going to the HOA and saying we want our money back. You didn't fulfill your contract.*

*Mr. Winters: At the last meeting we asked for the accounting firm to go backwards and look at all those expenses and accumulate up through this year of what those expenses are, so maybe Jim, you can tell us what you think the timeframe is for having those expenses on the table, so we will know the magnitude of dollars we are talking about that we would need to roll into the claim or bill back to the HOA or however we want to handle that.*

*Mr. Ward: I am in the process of gathering the information the auditor needs. I have some questions for the engineer, but I would say within six weeks we will have this.*

*Mr. Winters: At that point in time, we will have something to put on the table and the Board can decide what we want to do about what that number is. I have another point, disassembling the HOA contract from the CDD, and that is, we have turnover coming in the HOA soon. My understanding is December is when they hit 90% in closing, which means 90 days later turnover occurs, which would be March 31<sup>st</sup>. If that's the case, we have to come to terms with what the CDD is maintaining, do we cancel that contract, what is the HOA maintaining, and what is left for Taylor Morrison to mitigate that doesn't become the expense of either the CDD or the HOA. I think we need a schedule of duties as to who is responsible for what and take the next 60 days to try to figure out how we disassemble that contract and assign the duties to the respective departments.*

*Mr. Drew Miller: I agree. If you look at the Waldrop Landscape Maintenance exhibit, there is actually property, the front entrance, and the road. I think that should be a consideration when you guys are looking. You are probably going to want some form of agreement between the CDD and the HOA, and so I think getting the duties ironed out, including who maintains this green and pink area, is something you probably want to do before you wholesale get rid of the agreement.*

*Chairperson Stamp: Martinn do you have any more about the audits? Have you put a team together?*

*Mr. Winter: I have not put a team together. I have been waiting to hear what the timeframe is for our existing accounting firm to come up with what the past expenses are, so we have an initial set of numbers to look at. I will be interviewing some people to assist with overlooking that, and at our next meeting I will have some names to recommend.*

*Mr. Ward: If you want to bring people together to do whatever it is you want, that is not a problem, but if the Board goes through some process of looking at that and saying yes to it, then it becomes a committee subject to the Sunshine Law. Maybe you just want to do your thing and be done with it.*

*Chairperson Stamp: Informally ad hoc committee.*

#### **IV. Litigation Matters**

##### **a) Petition for Administrative Hearing SFWMD Permit Modification transferring operations to the Flow Way CDD.**

*Chairperson Stamp: Anything else to add on the South Florida Water Management District? Just to be clear, I would accept a motion giving me the authority if we have to file any motions, additions, corrections, etc. that I might have to file.*

**On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with four in favor and one opposed, Chairperson Zack Stamp was given the authority to file any motions, additions, corrections, etc., regarding the SFWMD permit modification as needed.**

Mr. Drew Miller was opposed; the remaining Board Members were in favor; the motion passed.



**b) Memorandum/Complaint regarding Ownership and Maintenance responsibilities for the Main Preserve located within the boundaries of Flow Way CDD.**

*Chairperson Stamp: The litigation with Taylor Morrison is in your packet. You have had a chance to look at it. Hopefully, there is a memorandum to accompany that. We have counsel here to answer any questions.*

*Mr. Ron Miller: There has been discussion in the past about what is the amount of money which would be the proper amount of money for the permanent escrow funding of the external preserves. There has never been a come together on that subject. Lots of people have lots of opinions, but it seems to be something we ultimately have to come together on. I think we have had some discussion on hiring a Tim Hall type replacement to give us their view on what that would be. At this point I would like to bring our attention to the fact that Taylor Morrison has their opinion on this matter already. We all recently received an email from Taylor Morrison where they specifically told us it is \$242 dollar per resident. I have no idea how they computed that number, but Greg I'm sure can get that in discovery. That's \$286,528 dollars a year and at the Corp of Engineer's 2% cap rate, that's \$14,326,400 dollars. I would suggest the Board would consider that as an offer from Taylor Morrison. With whatever actions Greg is taking, going forward, I think Greg, at least as a number that we can discuss, that Taylor Morrison has given to us.*

*Chairperson Stamp: Under Florida law there is a way that has to be handled.*

*Mr. Ward: Actually, the number is the District's number. I was actually asked that question and I took the budget, divided it by the number of units, and gave it to – actually it was Mr. Cook who asked me the question, so that's where the number came from.*

*Chairperson Stamp: If there is a settlement offer, they have to come and tell me that they want to offer us something. Putting it in a newsletter is not a settlement offer. I wish it were that easy.*

*Mr. Ron Miller: I understand that, but I think counsel now has something to look at.*

*Mr. Woods: It's a number obviously. It's a number used by the District and perhaps Taylor Morrison, which is a good starting ground, but obviously in a lawsuit we would have to prove the number and it's not an offer until they send us something in writing offering it to us, which I have not seen.*

*Mr. Ron Miller: As I read through there, I think I picked up the named defendants are five Taylor Morrison Board Members from the past. Are they named defendants?*

*Mr. Woods: If the Board approves the filing, they would be named defendants. They were on the Board at the time that we contend the CDD prematurely agreed to take the property.*

*Mr. Ron Miller: Is there some reason why subsequent Taylor Morrison Board Members such as John Wollard, Drew Miller, and the first one who resigned that I can't remember, why have they been excluded from that?*

*Mr. Woods: Drew Miller was not on the Board at the time that the properties were accepted, and that's the biggest, in our opinion, biggest breach of fiduciary duties when they prematurely took those properties, so he would not be responsible for that.*

*Mr. Ron Miller: I agree with that. I think that is factually correct, but subsequent to that, and this came up at a majority of the Board Meetings since I have been sitting on the Board, we've talked about fiduciary obligations each and every time, and Taylor Morrison's representatives continue to vote against the Board on every motion that had to do with our pocketbook, the CDD's pocketbook with the mitigation and maintenance subsequent to that transfer. While I understand and concur with what you are saying, what about the subsequent violations.*

*Mr. Woods: Just to clarify, under the CDD statutes, the developer is allowed to have it's appointed Board Members on the Board. That's not a conflict of interest. It is a matter of degree and a matter of level, agreeing to the property was potentially problematic. The approving of budgets and things favorable to Taylor Morrison could be. There is an argument that yes, that could potentially be a breach. It's a finer line, and it's up to the Board, but as your litigation counsel I would like to go forward with what I believe to be the strongest arguments. That's how we have targeted this as have. That's just my opinion. If you want me to look at the potentiality of the other Board Members, I can look at it. I just think it detracts from some of our stronger stuff.*

*Mr. Ron Miller: I would also point out, and this was mentioned in a Board Meeting to Taylor Morrison Directors at that time. We talked frequently about the fiduciary obligation, but it was also pointed out that Florida has a Code of Ethics Statute, and I am going to site Section 112.3143 which specifically says that they are to abstain from voting any time any benefit would inure to their employer, and they voted each and every time on those motions against the CDD. I don't see any reason to exclude them from this.*

*Chairperson Stamp: As someone who used to play being a lawyer, it's my opinion that it might be good to do that for a lot of reasons, but any damages recovered for say Drew voting for the budgets, are going to get some subset of the larger picture. We are not going to get a recovery for every member that voted. If the damages are \$14 million plus whatever past they should have paid, we are not going to get it doubled or tripled by four or five Board Members. I guess I am agreeing with counsel that it's not worth the candle for the wax. As far as the ethics violation, that would not be included in the lawsuit anyway. I don't think that would be actionable. You would have to file an ethics complaint ([indecipherable 43:07](#)).*

*Mr. Winters: What would be involved with filing an ethics complaint?*

*Mr. Woods: There is a form online for the DBPR. I believe the agency DBPR has a form that you can actually fill out online and get the process rolling. Any member of the public is free to do this. With the conflict of interest, you are going to have to show – they are going to want specifics. You have to look at the specific vote and the specific action.*

*Mr. Ron Miller: But unless action were brought more forcefully, let's just theorize. Let's say that Florida would agree that they violated that Code of Ethics Statute. End of story?*

*Mr. Woods: There's fines. There's criminal penalties. There can be a third-degree felony. Certainly, a misdemeanor, and there are monetary penalties.*

*Mr. Ron Miller: I think it's a shame that Taylor Morrison put its employees in this very awkward position. Nevertheless, they were in that position and they voted for Taylor Morrison each and every time. They broke fiduciary responsibilities, they broke the Statute on voting when they should abstain from voting and I think actions have consequences. I'm not going to do anything here today or make a motion to do that.*

*Chairperson Stamp: Would you want to ask counsel to look into that before the next Board Meeting with the form and what we need to have.*

*Mr. Ron Miller: And ask counsel to think about putting them as named defendants in the lawsuit.*

*Chairperson Stamp: I can certainly ask that. If you give me permission to sign off, I will probably sign off without them in there and they can always be added later, because I truly believe there is no – because you are not going to get any more – if we find all the subsequent directors to them to be guilty, unless you tell me different, it is not going to increase the amount of the award. You are still going to get a finite sum of money. It's not like it gets us anything.*

*Mr. Ron Miller: I agree but that gets people's attention.*

*Chairperson Stamp: Well, that it does. I mean these eight Taylor Morrison Board Members collectively, hopefully they've got \$14 million dollars.*

*Mr. Winters: Could we approve this litigation as it is currently crafted with a request for you to come back to us at a second meeting with some suggestions about filing an ethics complaint at the next Board meeting?*

*Chairperson Stamp: Yeah. Why don't we finish the discussion on the litigation, and I will take a motion on that?*

*Mr. Drew Miller: I have a couple questions if I could. I guess on the ethics, if you are going to bring anything on that, if you wouldn't mind articulating what would be different for a Taylor Morrison employee voting on the Board versus a resident voting on the Board. It seems to me there would be similar conflicts of interest potentially.*

*Mr. Woods: Could an individual resident have a conflict of interest? They could, but the thing about Taylor Morrison is because you are the developer there is an inherent conflict of interest.*

*Mr. Drew Miller: But permitted.*

*Mr. Woods: Permitted to a certain level on certain items.*

*Mr. Drew Miller: So, there is no conflict of interest because – I think I understand.*

*Mr. Ron Miller: We are not employed by the resident. We do not receive any paychecks.*

*Mr. Drew Miller: No, but you have obviously benefit from it. How long do you think this litigation would take?*

*Mr. Woods: There is no telling. Average litigation in Collier County is anywhere from 18 months to 24 months. Now, most cases settle somewhere along the way.*

*Mr. Drew Miller: How much is that potentially going to cost the CDD to litigate?*

*Mr. Woods: That absolutely depends on Taylor Morrison and how much they fight. Best guess initially would be about \$200,000 dollars to \$250,000 dollars.*

*Mr. Drew Miller: What do you think the likelihood of success is?*

*Mr. Woods: I think pretty good. There are no guarantees with litigation.*

*Mr. Drew Miller: Are the past and present CDD Board Members covered by the DNO liability insurance that the CDD pays for?*

*Mr. Woods: They should be.*

*Mr. Jim Ward: No, they are not. If an entity pursues either an existing or past board members it is considered to be suing itself and there is no DNO protection for any member who is sued in that individual capacity.*

*Mr. Drew Miller: If you are sued by yourself you don't have coverage.*

*Chairperson Stamp: I think for the record, if it did become a criminal case it might – there is no DNO no so a criminal wouldn't negate that.*

*Mr. Ron Miller: If I go back in time, a year, or 18 months ago, just out of my own Board Member curiosity, I contacted a number of agencies, like land conservation agencies (*indecipherable 50:17*) because Taylor Morrison was supposed to pass the preserves on to a conservation agency and had not done that. I went out and talked to some agencies to see if there would be any interest in them having them. Not that I or the Board had the authority to do anything at the time, but just testing the appetite of the agencies. I found a couple. (He named a couple of agencies and indicated he lost touch with said agencies.) Recently the executive director of the Audubon has come back to ask about the status. They continue to have interest in these external preserves. I took into consideration where we are and told them yes, the Board might have some interest in donating the land to the Audubon, but frankly we do not have any funding to give them. I will go back and talk to them again, just on my own, but they have interest. I just wanted to make the Board aware that there are possibilities out there. I would like Taylor Morrison's ears to hear that there are possibilities out there, that perhaps there is a possibility with the Audubon or others where this thing could all come together. I don't think the Audubon is going to take it without any money, nor would anyone else take it without any money. Maybe there is something out there for Taylor Morrison to explore and come back to us with.*

*Mr. Drew Miller: On that note, are we even able to move the property or give the property away? Right now, it is collateral for bonds potentially? It may be something to look into if you are asking that question. I don't know if we are even able to, as a CDD Board, to transfer the property.*

*Mr. Ward: That doesn't matter. It is like transferring a utility. Transferring the preserves would be like transferring a utility.*

*Chairperson Stamp: If there is no further discussion, I will take a motion authorizing Woods to finalize this litigation and authorize it's filing, the target being before the end of the year.*

*Mr. Drew Miller: I think there is very little chance that this is a success and I think we are wasting the District's money and I cannot in good conscious vote yes, so no.*

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Tom Kleck, and with four in favor and one against, Woods, Weidenmiller, Michetti, & Rudnick was authorized to move forward with litigation against Taylor Morrison as presently styled and Chairperson Zack Stamp was given the authority to make modifications as deemed necessary.**

Mr. Drew Miller voted against; the remaining Board Members voted in favor; the motion passed.

*Chairperson Stamp: I will take a motion regarding counsel exploring ethics violations and come back to us next month with more detail on how, why, and when.*

*Mr. Drew Miller: Am I conflicted here? How do I vote legally? Am I permitted to abstain?*

*Mr. Woods: It is just investigating, so I think you can vote.*

*Mr. Drew Miller: If I vote no am I in conflict of interest?*

*Mr. Woods: No, you are fine.*

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Ron Miller, and with four in favor and one against, Woods, Weidenmiller, Michetti, & Rudnick was asked to look into the mechanics of filing ethics violations against the Taylor Morrison Directors and report to CDD Board at the next meeting.**

Mr. Drew Miller voted against; the remaining Board Members voted in favor; the motion passed.

**V. Environmental Consultant Services – Preserves**  
**VI. Civil Engineer for Evaluation of Water Management System**  
**a) Consideration of Forge Engineering Proposal**

*Mr. Winters: We have a proposal for Forge Engineering to do an evaluation of the lakes and littorals, the internal waterways, all the water management systems within Esplanade and he has made a proposal which is contained within the Agenda for today. It is probably best to let Tom speak for himself as to what the scope of services is and how he views this assignment. The idea behind this is to evaluate these assets before all the performance bonds are released to make sure all the water control systems were designed, built, and operating functionally correct before Taylor*

*Morrison is relieved of any responsibility for it and that we get a time where we report back to the Board in a manner that allows us to interact with the County with regard to those permits and the inspections and so forth. I believe the fee for doing so is somewhere in the ballpark of \$10,000 dollars.*

*Mr. Tom Conricose (ph): I am with Forge Engineering. We originally were asked to respond to an RP which was put out by the Master Association. Later that work was split into two pieces, one for the CDD and one for the Master Association. This scope of work is focused on the littoral zones and the water management system across the entirety of the District and it is in response to the District, not to the association. The scope of work is to go back and look at the history of the permitting of the entire development, with the Water Management District and the Army Corp of Engineers and find out what all the obligations were of that permitting process and what the requirements were and then do an evaluation on site of how it was constructed and we would provide a report back to the CDD Board and make recommendations for work related to Flow Way and anything else related to the Water Management District.*

*Mr. Winters: Forge was asked to make this presentation because the resident advisory group is contemplating hiring Forge to do the buildings, roads, bridges and so forth so that one firm would be able to handle the entire assignment for all of the infrastructure, but we bifurcated the proposal so that part of it goes to the CDD and the other part goes to the HOA and I don't believe your firm has been engaged yet on the HOA side. Is that right?*

*Mr. Conricose: We have not been engaged, but we have conducted multiple interviews with the transition team on the HOA side.*

*Mr. Tom Kleck: I have had several questions from homeowners. I understand the responsibility of taking care of the lakes and the ponds now falls on Taylor Morrison. Is that correct?*

*Mr. Ward: Yes.*

*Mr. Kleck: When are they going to start taking care of it? A lot of the neighbors think that the littorals are turning into a swamp and we have our lakes that are almost overtaken in a lot of cases by these weeds (I call them weeds). Littorals to me are a flowering plant usually put on the banks of the lakes and ponds. So right now, it doesn't seem we are getting any kind of cleanup or maintenance if you will on these lakes or ponds. I've noticed that Collier County has a guy in a boat out front on the Flow Way, or whatever that's called, killing off the lily pads and the weeds and the tall grasses that are growing inside the water and I think the neighbors need to have somebody taking care of it before it's turned over.*

*Mr. Conricose: Our scope of work, which we have not started yet would be to take a look at what was permitted, the amount of area, the littorals, the types of littorals, all of that would be part of the permit review. Then, we would go out and actually take measurements in the field to determine how they are performing and whether they have died off.*

*Mr. Kleck: My questions may be for Taylor Morrison. Why isn't that being done now?*

*Mr. Drew Miller: It is being done.*

*Mr. Charles Cook (Taylor Morrison): Taylor Morrison is monitoring the lakes and maintaining them.*

*Mr. Kleck: Are they doing anything about it? Monitoring is one thing but taking the product and taking care of it is another.*

*Mr. Cook: Sure. Part of the review with Collier County is reviewing the littoral shelves, the slopes, the ground cover, and we are in the process of going through all of those and giving basically an audit of the storm water system.*

*Mr. Kleck: Who is responsible for the swamps, the lakes, that are filling up with lily pads and grasses?*

*Mr. Cook: I haven't seen lily pads. The grasses are native grasses. I've seen some pictures, but I would be happy to take a look at whatever you might have as far as specifics I might not be aware of.*

*Mr. Kleck: I have photos of most of the lakes and waterways that are being encroached by a lot of grasses and weeds and lily pads. I just took the pictures this last week. It appears it is not being maintained as we expect.*

*Mr. Ron Miller: Tom, help me with this, because I continue to be confused. We have this stuff that is growing in the lakes. I would call them weeds. Those are littorals?*

*Mr. Kleck: No. I beg to disagree with people who call that littorals. I was on the CDD in Bonita Springs for 3 years and we had the same issues up there, and we as a CDD organization had to physically pay for it. We spent a lot of money, thousands of dollars to keep those lakes cleaned up. We never had to send somebody in with a boat to regulate. Either cut them out, as low as they could get. We had people go in and manually cut this stuff out, so it didn't encroach on the rest of the lake and we also spent a lot of money on littorals that were strictly to keep the banks from eroding, which by the way, were not effective at all. We'd plant them and they would float after the waters came up.*

*Chairperson Stamp: We are having a debate here. We are talking about engaging an expert who can come back and settle this debate, so let's go back to that.*

*Mr. Ron Miller: What we are seeing out there at the moment is not what we want?*

*Mr. Kleck: No, absolutely not. It wasn't there when we moved here.*

*Mr. Martin: I would like to clarify if certain items are within your proposed services. We have some existing known issues in the community. Namely the golf courses don't drain properly. There are several of the greens that are just soggy and wet. The drain lines are full, they don't drain. Will you, as part of your assignment be able to look at where those drainpipes go into the lakes and ponds and give us at least a preliminary assessment as to what you think is going on with those drainage systems?*

*Mr. Conricose: In a limited way because our scope was modeled to be fairly limited and then identify problems that we could explore further if we needed to. There are a lot of technologies*

*available to go in and explore those pipes further. If there is sedimentation of catch basins in the pipes, broken reinforced concrete pipes, or any of those types of issues, we aren't going to define those. We may define a problem, but then require further investigation. We would report to you that we think you have catch basins that are full; we can do that fairly easily, but if there is failure of a pipe between one catch basin and another, we aren't going to be able to do that unless we bring in somebody to video the pipes and identify where we have root intrusions, failed pipes, any of those sorts of errors in the stormwater management system.*

*Mr. Ward: Within the context of the drainage system, these pipes going from the golf course to a lake, or from the street to a lake, or things of that nature, are generally not in CDD ownership. I do not think they are in the ownership of the CDD in this particular District. I do need to check that. So, that portion of the scope, if we are going to do that, I need to check that for you and see if that is really within the CDD scope of services, or if that should be in the HOA scope of services, or whoever owns those pipes at this point.*

*Mr. Winters: But he is looking at the lakes and the lake is the recipient of one of these pipes. Can he not at least look into the pipe to see if it's –*

*Mr. Ward: That piece of it is fine, but they do usually stick a camera in the pipe to see if there is any buildup of material in it, and over a period of time that does happen. I do not know whether that pipe length is in CDD ownership, or Taylor Morrison, or the HOA. I do not think they are CDD owned at this point.*

*Mr. Winters: What if the water levels, when the lakes are full, are too high versus where the bottom of the pipe is? What if it was engineered improperly and built improperly?*

*Mr. Conricose: We would be able to see that by comparing permit documents with site conditions when we are out there investigating.*

*Mr. Winters: Second item is groundwater monitoring wells. Will you be looking at those?*

*Mr. Conricose: We did not include that in the scope because that is not something we would normally scope as far as the turnover, but we could look at that, particularly once we get into the permit documents, and find out how they were permitted.*

*Mr. Winters: Is that considered CDD property?*

*Mr. Ward: I don't think so, but I can look at it. I don't think it's a bad idea to do it, so I think we will try to figure out how to solve that problem.*

*Mr. Winters: What about the lift station? We are getting complaints about the odors coming from the lift station. People can smell sewage.*

*Mr. Conricose: Currently, the proposal we have before the CDD does not include anything on the water or wastewater system. As part of the proposals to the association, we would normally include a look at water and sewer infrastructure throughout the development and in that we would identify this problem and look further into it and see if it's an upsizing issue, if it's in need of a biocide or some other treatment and then make a recommendation back to the association.*



*Mr. Winters: So, are water systems and sewage systems not part of the CDD?*

*Mr. Ward: The water and sewer system were originally acquired by the CDD, but they have all been turned over to Collier County for ownership, operation, and maintenance at this point. They are not owned by either the HOA or the CDD. They are owned by Collier County.*

*Mr. Winters: Is it outside the authority of the CDD to evaluate what the problem is?*

*Mr. Ward: I would agree with taking a look at it for whatever the design perspectives are but doing something about it after the fact would fall to the County.*

*Mr. Winters: If they were improperly designed, would that go back to the developer?*

*Mr. Ward: I'm not going to answer the legal question. I can only tell you they are owned by Collier County to take care of.*

*Mr. Winters: I'm trying to expedite taking a look at this because it is a hot button in the community and if we wait until the HOA executes their engineering agreement, we may be several months down the road before they actually –*

*Mr. Ward: I clearly would not have a problem. It's a governmental asset, so I don't have a problem with the CDD putting it into its scope if that's what you want to do, but other than being in the scope and identifying it, we would then have to kick it over to the County to deal with.*

*Mr. Winters: I understand, but at least take a look at the lift station to give us some preliminary assessment without solving the problem, at least giving us your opinion as to what you think the issue is with the lift stations. I think it would be very helpful. You may decide to hand this off to the other side of the evaluation once they get engaged, but at least start a preliminary look at the lift station.*

*Mr. Conricose: What we would do is take a look at the County Utility Ordinance which would describe the proper design of that lift station. We would compare that to the plans, and if the plans coincide with what's called for in the County Utility Ordinance, and we talk to the County Utility and say would you come out and evaluate this because of issue A, B and C.*

*Mr. Winters: My understanding is that Collier County is unhappy about this also. Hopefully, we will get good partnership with them. What about the mainline irrigation system?*

*Mr. Conricose: We do not have the mainline irrigation system in that proposal either. We could certainly take a look at the design related to what's constructed and give you an opinion of anything we find.*

*Mr. Winters: Can you include that in your proposal?*

*Mr. Conricose: We can.*

*Mr. Winters: And the entrance landscaping? That is a CDD asset.*

*Mr. Conricose: When we bifurcated the proposal, we left all the landscaping in the HOA piece of the proposal.*

*Mr. Ward: It is a CDD asset, so I think Forge should go ahead and do the work as it relates to CDD assets which includes landscaping, irrigation, all of that stuff, and if there is any hardscape out there.*

*Mr. Winters: Okay. Include that also then. You may need to modify your proposal to include these additional scope items.*

Mr. Ron Miller asked if the weeds, which he previously thought were littorals, would need to be eradicated.

*Mr. Kleck: If people bought lakefront property to look at that, I think they are getting something they didn't pay for. I guess in every other community I have been involved with, there are crews that go in with a boat, with rakes and saws and weed killer to eliminate this eyesore, because it is not littorals in my eyes. Somebody has got to be responsible for taking care of them.*

*Mr. Ron Miller: I remember seeing, in other communities, people in boats, people in hip waders going out and manually pulling these weeds.*

*Chairperson Stamp: It sounds like we are getting where we need to go. Since he is going to be modifying his proposal, do we need a motion to allow you to finalize it?*

*Mr. Ward: Yes. It would just be a motion to accept the Forge proposal subject to modifications as deemed appropriate by the Manager.*

*Mr. (Greg Woods)1:14:11: Tom, when you are doing your work, you will be documenting what you see and taking photos of what you see and that sort of thing?*

*Mr. Conricose: Yes, sir.*

**On MOTION made by Mr. Martinn Winters, seconded by Mr. Tom Kleck, and with all in favor, Forge Engineering was retained to do an evaluation of the lakes, littorals, ponds, waterways, and water systems identified in this Meeting subject to Jim Ward's ability to modify the agreement.**

## **EIGHTH ORDER OF BUSINESS**

### **Supervisor's Requests**

*Chairperson Stamp: Are there any other comments?*

*Mr. Winters: At next month's meeting we will have three proposals from environmental engineers to do the maintenance of the external preserves. I am in the process of getting those proposals in. They have all agreed to come answer questions and make presentations.*

Chairperson Stamp asked how long each presentation would be. Mr. Winters responded he expected each presentation to take approximately 10 minutes.

*Mr. Winters: We have just gotten our second propaganda piece from Taylor Morrison on what an amenity the external preserves are. The first said we can have equestrian events out there. We had our prior counsel look into it and Jim Ward looked into it and could not find any legal authority for having equestrian events out in the external preserves. Now we have this propaganda piece which proports to treat this as it is a fait accompli that the preserves have been transferred to the CDD and just be happy with this wonderful amenity you have. I'm wondering if there is something we can put out to rebut this propaganda that Taylor Morrison is putting out to the community? In light of the litigation that we are going to engage in, does that speak for itself or is it advisable for us as a Board or a resident advisory group to put out a counter PR piece to the community saying don't believe a word of this.*

*Mr. Woods: When we are a public body, I think that would come better from a homeowner group personally.*

*Mr. Winters: Is there any conflict with what you are doing that we should be careful about what we say and how we say it?*

*Mr. Woods: No. Just be aware you guys are under the Sunshine Laws and all emails and such come into play. You can become involved in something like that, particularly individually it's fine, but anything we have discussed so far is public record. I would just say keep it in generalities. Once we file the lawsuit, you can reference things in the lawsuit because it is of record, but generally we don't want things of strategy or where we are headed to necessarily go out to the public.*

*Mr. Winters: Since we can't talk offline here, do I have any guidance from the Chair?*

*Chairperson Stamp: My thought was is that we can get a quick link established on the web page with the lawsuit and we can start referencing. I would like to see our committee back in Esplanade come back with some kind of rebuttal saying this is not a done deal and they are not doing us a favor. I would be in favor of that. It has to be fact heavy, factual and not confrontational. I would encourage them to do that.*

## **NINTH ORDER OF BUSINESS**

## **Audience Comments**

Chairperson Stamp asked if there were any public comments.

Mr. Ward asked if there were any members of the public on audio or video who had questions for the Board; there were none. He asked if there were any questions from the audience members who were present.

*Mr. Ed Staley: When we were discussing the litigation, it was mentioned that the HOA was a nominal defendant. Did I understand correctly that one of the reasons for pulling them in had to do with the internal preserves and that the HOA owned the internal preserves? I wasn't aware that the HOA owned the internal preserves. It was my understanding that all of the preserves, internal and external, were owned by the CDD.*

*Mr. Woods: I may have meant the lakes. You are correct.*

**TENTH ORDER OF BUSINESS**

**Adjournment**

Chairperson Stamp adjourned the meeting at approximately 2:21 p.m.

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

Flow Way Community Development District

  
James P. Ward, Secretary

  
Zack Stamp, Chairperson