

**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, May 18, 2023, at 1:00 P.M. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.

**Present and constituting a quorum:**

Zack Stamp	Chairperson
Ron Miller	Vice Chairperson
Tom Kleck	Assistant Secretary
Bart Bhatla	Assistant Secretary

**Absent:**

Martinn Winters	Assistant Secretary
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**Also present were:**

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

**Audience:**

Lynn Hyduk	HOA
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All residents' 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, with the exception of Supervisor Winters, constituting a quorum.

**SECOND ORDER OF BUSINESS**

**Public Comments**

**Public Comments for non-agenda items (Limited to three (3) minutes). Individuals are permitted to speak on items on the agenda during that item and will be announced by the Chairperson.**

Chairperson Stamp reviewed public comment protocols. He indicated there would be no shade session today.

**THIRD ORDER OF BUSINESS****Consideration of Minutes****April 20, 2023 – Regular Meeting [Page 7]**

Chairperson Stamp asked if there were any corrections or deletions; hearing none, he called for a motion.

**On MOTION made by Tom Kleck, seconded by Bart Bhatla, and with all in favor, the April 20, 2023 Regular Meeting Minutes were approved.**

**FOURTH ORDER OF BUSINESS****Fiscal Year 2024 Budget****Fiscal Year 2024 Budget Plan along with the Capital and Asset Evaluations [Page 17]**

- I. Consideration of Resolution 2023-5, a resolution of the Board of Supervisors of the Flow Way Community Development District approving the Proposed Budget for Fiscal Year 2024**
  - a. Consideration of Board Member Amendments**

Chairperson Stamp indicated the Fiscal Year 2024 Budget would be discussed later in the meeting. Please see discussion below.

**FIFTH ORDER OF BUSINESS****Staff Items****I. District General Counsel - Billing, Cochran, Lyles, Mauro & Ramsey, P.A.**

*Mr. Michael Pawelczyk: In conjunction with Jimmy, we are working to figure out some things in terms of conveyances, whether they be easements or other items that need to be cleaned up, that involve the HOA. I've reached out a couple of times to the HOA attorney, have not heard back. I sent him another email today. So, hopefully I will hear from him soon and we can get moving on those items, particularly the one involving the irrigation permit. At the last meeting also, there was some discussion of the preserve fence that I was asked about. I've looked into that a little bit and actually Jimmy has done a lot of work on that as well and what we've found is that from a liability standpoint I don't think you increase or decrease your liability whether the fence is there or not, but you do limit the risk of someone going in there and getting hurt. I know the property is posted. I think that's what we need to do is make sure that it is posted, and that the signage is maintained, but from a liability standpoint, if there is no dangerous condition, I don't necessarily think you have to fence the entire property. I think there was some discussion, particularly at the management level as to fencing certain portions to keep people out of there, because when they do go in there, they could damage some of the preserve materials that are located within the property. The other item that is a conveyance issue item discussion is the fact that the permit for some reason was issued to the HOA and the HOA has responsibility under that permit to maintain the area, but the District is the underlying owner of the parcel. So, just because the permit says the HOA is also responsible, doesn't*

*mean that the District is absolved from all responsibility. That's something we may want to try to work through with the HOA over the next several months, to try to figure all that out and get the permits in the right hands, but I'll leave that to the Board to decide for future discussion.*

## **II. Litigation Attorney – Woods, Weidenmiller, Michetti, & Rudnick**

### **a. Status Report and Appeal**

### **b. Status Report on Corps of Engineers/SFWMD**

*Ms. Jessica Tolin: As an update on the appeal, the initial brief was filed on Friday of last week. I believe that is now on the CDD website. There was also a motion for fees that was filed in the appeal by the Taylor Morrison defendants, so the response to their fee motion was also filed on Friday last week. At this point, the next step in the appeal is that the Taylor Morrison defendants would file their answer brief. They've got some time for that. I would anticipate they would get an extension as well. It's not uncommon, and we had asked for a couple of extensions on the initial brief, so it may be a couple months until we see an answer brief. We will send that along once we have it. Other than that, and this is an update for Michael as well, we actually have a call, Greg and I, with the HOA's counsel next week. If you'd like to be on that call, I'm happy to circulate the information to you so that we can all get on the same page with some of the issues you were discussing as well. With that in mind, and I may be skipping ahead here, we are going to want to set a shade session at the June 29 meeting so that we can further discuss the settlement negotiations with Taylor Morrison.*

Ms. Tolin formally requested the shade session, attending would be the Board, either herself or Greg Woods, and Jim Ward.

Mr. Ward stated the executive attorney client session would discuss the settlement proposal with respect to Flow Way CDD file number 20CA4147 and the related appeal. He stated the specific attendees would be Zack Stamp, Ron Miller, Tom Kleck, Martinn Winters, Bart Bhatla, litigation attorney Greg Woods and Jessica Tolin, himself as District Manager and a court reporter. He called for a motion.

**On MOTION made by Tom Kleck, seconded by Bart Bhatla, and with all in favor, the Executive Session was set for June 29, 2023.**

Mr. Tom Kleck asked if the appeal would go before the same judge who made the other rulings.

Ms. Tolin indicated the appeal was with the 6<sup>th</sup> District Court of Appeals, a new District Court in Florida, in which the appeal was argued in front of a panel of District Court Judges.

*Mr. Ron Miller: Did I hear you say Taylor Morrison has now filed for their fees?*

*Ms. Tolin: They have filed motions for fees within the underlying lawsuit, but now that we're on appeal, they've also filed a motion for fees relative to the appeal, so we have filed a response to their motion for fees also on Friday last week.*

*Mr. Miller: I think that we have not taken any action on collecting our \$471,000 dollars because we didn't want to stimulate them to take this action, but if they've now taken this action, shouldn't we go after six guns blazing to get our \$471,000 dollars.*

*Ms. Tolin: Not necessarily. There are a few issues in the appeal that I think we want to have addressed or continue with the settlement discussions which will be part of what we talk about in the shade session as well.*

*Mr. Miller: But as a separate matter they owe us the \$471,000 dollars. That is not on appeal.*

*Ms. Tolin: That is not on appeal, but their request for fees includes a number over \$800,000 dollars which would potentially offset the amount that the CDD was awarded. It's all a part of what's on appeal.*

*Mr. Miller: But since they have now overtly taken that action, why would we not want our cash right now? I don't understand why we don't get our money. If they were to win this later, we would just have to pay them back. What keeps us from demanding our cash now.*

*Ms. Tolin: Part of the consideration would be if you are moving forward to enforce the award for that amount, presumably they then move forward with their fee motions as well. And we are currently in settlement discussions with them.*

*Chairperson Stamp: All they have done is file a motion. They haven't taken any steps to get into our pocketbook. It's just a procedural step they have taken, and what we are trying to avoid as we continue discussions with them is them getting a court order forcing us to pay it. That was what Greg alluded to last time, if we start on ours, they will start on theirs and we will end up hiring another lawyer as a fee expert and we will have a lot of court time going back and forth on that, so until we've decided that the road ends, it was his advice, and I concur, is to let this ride. All they've done is file a motion, that's all.*

*Mr. Miller: It seems odd, but okay.*

*Chairperson Stamp: I know there is no update on the other Item, the Corps and Southwest Florida.*

*Mr. Pawelczyk: I will sit in on that call if it's okay with the Board, with the HOA, if you think it will be helpful.*

*Mr. Ward: Please do.*

### **III. District Engineer – Calvin, Giordano & Associates**

- a. Engineer's Report [page 55]**
  - 1. Strategic Operational Plan**
  - 2. Prior Board Inquiries**
  - 3. External Perimeter Fence**
  - 4. Water Quality Report**

*Mr. Jimmy Messick: My Engineer's Report includes four items to discuss, the first, Strategic Operational Plan, kind of generally discussing the assets and what we've been working on over*

*the last month. The lake maintenance, we've gone through as requested and removed the white PVC poles from around the lake. The last one was removed today. Then we've addressed some algae blooms that have come up in lake 1. I think there is some Chara algae which is a plant that starts to grow. It's actually great for the ecosystem, but it can be overwhelming and really chokehold the system after a while, so we are trying to address that in Lake #1, but we've also addressed some lily pads next to holes 8 and 9. The sooner we hear about it, the less time it takes us to address it, so we are trying to stay on top of those things and continue to treat the patches of algae weeds and perimeter weeds as necessary.*

*Chairperson Stamp: Do we have a vendor that goes out periodically and checks them?*

*Mr. Messick: Yeah. He goes out weekly and sprays and checks to see which lakes he's going to do the following week. We also received our quarterly water sampling report from GHD. It's included in appendix E, and I will also review briefly in item #4. For the landscaping, we have been working on the front in the median, installing new plantings from the bridge all the way up to the gate. We've also been installing landscaping in bare spots, so it has a more lush and elegant feel to it. We are hoping you have noticed that when you come in and out of the front entrance. The CIP projects we were hoping to finish up by this time. When I put together the report, there are some updated dates, both the 18/19 and 20/21 still need to grade and sod and looks like it's going to be pushed to the end of May before that work can be completed, but we are nearing the end for those CIP projects. We have also removed some graffiti that was on the southern weir, and it has been taken care of this morning. When I last spoke with my staff, they were out there painting over the graffiti. The last thing, there was a note of ATVs in the open access. We did an inspection of the external preserves and noted, and that's another item I am going to talk about, but we noted a pedestrian gate was open. We added a padlock to that and they were able to force the gate back open and I believe the lock was cut or pushed open, but we have since gone out and spoken with authorities. Jim, I believe you've spoken with someone, and they are agreeing not to use that, but we still want to remove that pedestrian gate. Is that correct?*

*Mr. Ward: That is correct.*

*Mr. Messick: So, in our proposal, we will remove that pedestrian gate. There is no use for it. It just happened to be behind a single family home that had some teenagers and they wanted to take their dirt bikes out on the path, and they've built a fort and stuff like that. So, we are in the process of shoring that up and removing some of the stuff that they've built in our preserves. The second item is just going over prior board meeting inquiries. There were two last week that I want to close a loop on. The first was a couple from 1976 Montelanico Loop; they were on the back of lake 21 and I performed a field visit to look at the lake bank restoration they were referring to, on the day of the Board Meeting, April 20, and what we noted was the channelization from roof gutters. Not erosion due to fluctuating water levels and winds and high/low water levels that we are addressing in the lake bank restoration. This is due to roof gutters of their multifamily being discharged to the surface and not being routed underground. For that reason, we would ask that the HOA provide that undergrounding to the lake bank and that would prevent the erosion that those residents were noting at the last meeting. They also asked if we could install littoral plantings outside their patio, but when I went to take a look, their part of the lake was not a littoral shelf. It doesn't have the established constant depth that a littoral shelf needs to thrive and for that reason we are unable to increase the littoral plantings*

*for that lake to include their back patio. The other item from the Board Meeting last week was Julia Wright and she had noted some of the chain link fence damage along the east property line adjacent to the nature trail. We had previously discussed that we were meeting with the fence vendor on the following day. We didn't meet with them. We have a proposal. Included in that proposal is to fix the fence and replace the pedestrian gate on the west property line with fabric so that we remove the open access to the single family residential. I believe we are moving forward and authorized Carter Fence to go out there and they should be establishing a schedule here this week to start working. Hopefully by the time we meet again all of those improvements, the gate and fence, will be removed and fixed. The third item on my Engineer's Report is the external preserve perimeter fence. As mentioned before, we conducted a reinspection in the southwest corner of the CDD property due to offroad vehicles that had been heard. Appendix D was the perimeter fencing investigation map completed in May of this year. Jim has the posterboard with him and you can see. This was previously prepared when I inspected the entire perimeter with the District and the southwest portion for the most part was marked as inaccessible due to the path that runs along the western property line terminating at picture 62/63. What was realized when we did our inspection was that the fence does not follow the CDD property line and abut the residential, it takes a jagged step in towards the canal system following what may have been previous field fence lines, and that's where the barbed wire field fence currently is which is not in good condition. Like the other fence in the rest of the inspection it was not useful, was damaged, was on the ground, sometimes we only saw posts, but we did see signs of where the fence used to be. He indicated he did a "blow-up" of the southwest corner of the preserve fencing to better show the perimeter in this area. He stated the chain link fence turned into a field fence. He explained it did not go around the bird sanctuary, but excluded the bird sanctuary, and then went north and tied back into the left. We have recommendations based on what CIP we prepared last year, which already includes the budgeted \$25,000, \$16,000, \$115,000 dollars to make improvements to make improvements to the perimeter fence in years 1, which is this year, 2 which is 2023/2024 and 3 which is 2024/2025. The first year, my recommendation is that we shore up all the metal gates and we add all no trespassing signs per state statutes. I did reach out to Collier County Police Department and asked them if there was specific language we needed to include and I've added that to your FYI at the bottom there, including state statutes and what the language needs to be on every sign. Every 500 feet at the corner and entryways, there needs to be a sign with "no trespassing" with 2 inches in height (letters) that states the name of the owner, which was currently what the signs say. We have signs that are in place, but I do not believe we have signs every 500 feet. So, part of budget year 1 would be to have more signs made and then have them installed every 500 feet. Then my recommendation is to replace the field fence. If it was originally there at one time, there is a liability of keeping people out, whether we are to the letter of the law or whether we take additional steps to protect ourselves from that liability is really what, and I'd like to hear your opinion, but mine is recommending to replace the fence.*

Mr. Messick shared his screen which showed the where the fence was located, where the year 1, year 2, and year 3 recommendations were located. He further discussed his recommendations and indicated his recommendations were open for discussion.

*Mr. Bart Bhatla: I think we should consider posting as opposed to fencing because of liability considerations.*

*Chairperson Stamp: Well, we are certainly going to post. I assume everyone agrees we would rather do the posting, put up the signs. How many signs are we going to have to have?*

*Mr. Messick: 28 signs estimated. I think it's like \$160 dollars per sign and then \$150 dollars to install the sign. It takes approximately \$5,000 dollars of our \$25,000 dollar budget. I didn't put the cost in the report, but the 5 gates, the 30 signs and then 2,000 field fence came out to be approximately \$25,000 dollars.*

*Mr. Bhatla: How much was in the budget for this year?*

*Mr. Kleck: Are signs needed in all areas or just in a limited area?*

*Mr. Messick: They are needed in all areas adjacent to external property.*

*Mr. Kleck: Where are we having most of the violations at?*

*Mr. Messick: Currently, in the southwest corner adjacent to Rose Blvd and Nursery Lane. Obviously, there is an open pedestrian fence and someone with an ATV and the horse that was noted last year when I did my original inspection, but there is also access and a path right off of public right-of-way. I would consider that, now that we are shoring up to remove the open access perimeter gate adjacent to Rose Blvd, I would assume that the Collier Blvd entrance is the most immediate threat from the public.*

*Mr. Kleck: Could we limit the number of signs if we just did those areas?*

*Mr. Messick: Well, then we wouldn't be meeting state statute for what's considered enclosed and posted.*

*Chairperson Stamp: And then we run into problems with the Sherriff's office or somebody else because we haven't posted it properly, so they could say, we're not going to arrest anybody, or we are not going to prosecute anybody, because you haven't.*

*Mr. Bhatla: I think we need to be consistent and put up the signs everywhere as per requirements.*

*Mr. Miller: The CDD does own the property, so I think we should post the signs. But that's where I end. Taylor Morrison is still obligated to take care of that stuff, not the CDD, that's still up in the air and they haven't come through and we have now met with the Corps, and they are aware that Taylor Morrison hasn't met its obligations. We don't know where that's going to go, but consistently, up to this point in time, we have not been doing any maintenance out there, and that's my continuing position. We do not want to do any maintenance because it's not our obligation. That's even taken to a higher level because Taylor Morrison in the dark of night pulled of this permit transfer to the HOA, so that if it is ultimately held by the Corps, that maintenance has to be done, that's the HOA's responsibility, it's not the CDD's responsibility. So, I don't think we should be paying for the HOA's, if it ultimately comes to that, and I certainly hope it does not, but if it comes to that then it's the HOA that has to do that. I would be sending these recommendations over to the HOA to put it on their attention board. And when we get to the budget, I once again am going to recommend that the maintenance budget be moved to*

*contingency money in the budget next year so we can pay down some of that \$500,000 dollars. Having said all that, when I hear Jimmy talk about a gate they are breaking the locks on, I don't want to go to the extreme where we are endangering a resident. I don't want to be debating who is responsible for what if we are putting somebody in danger, but apart from that, I wouldn't even do anything. I'd just put another padlock on it unless we are endangering somebody.*

*Mr. Messick: Just to clarify, the padlock that we installed, I don't think it was cut, I think the pedestrian gate malfunctioned and it just opens with a heavy push, so we can't stop them from coming in without replacing the gate with fabric.*

*Chairperson Stamp: Yes, they forced it. They forced the mechanism, so the lock is still there. I went out and looked. Whether they loosened the bolts and did it, or just hammered on it or something, until it finally gave way, they defeated the lock. It's still there.*

*Mr. Miller: We can't just wrap some chain through it and chain it closed?*

*Chairperson Stamp: We talked about doing that.*

Discussion ensued regarding contacting the Sherriff's office; the property not being properly posted at this time and the Sherriff not being able to take action without proper posting; the cost being \$2,300 dollars to remove the gate and replace with fabric.

*Mr. Bhatla: It seems to me, we own the property, we should post it. Apart from that, if there is a complaint, we should file a complaint with the Sherriff.*

*Chairperson Stamp: You are not going to keep somebody out if they want in. You can still climb a fence if you want to.*

Discussion ensued regarding the ease of cutting and climbing a 5 strand barbed wire fence; fence not being effective if someone wanted to get in the preserves; chaining the gate closed; and the possibility of cutting through the chain to get in the gate.

Mr. Kleck recommended closing off the gates which were accessible as step one.

Mr. Bhatla argued consistency was needed and the property should be posted with signs.

Mr. Kleck asked if the fence should have been Taylor Morrison's obligation.

*Chairperson Stamp responded in the affirmative; of course, it was Taylor Morrison's obligation. We believe that those people cut that fence to put that gate in themselves at some point in time, and Taylor Morrison didn't do anything about it. It's there. I guess where I'm at right now, and it's consistent in that we are closing every gate that we've got. But as for the other farm field gates, I think that's a reasonable step to take with this year's budget and we can hold off on the fencing and the whole fencing issue going forward, but I would feel better if we had at least the gates up and everything posted.*

Mr. Bhatla asked about costs.



Mr. Messick responded the metal field fence was \$500 dollars each, \$13.13 per foot of the 5 strand barbed wire fence.

*Mr. Ward: Of the \$25,000 approximately how much was the field fence piece of that?*

*Mr. Messick: \$2,500. The field gate is \$2,500 dollars. The signs are approximately \$9,000 dollars for signs and installation.*

Discussion ensued regarding the need to replace and block off the gates.

Mr. Messick explained the field gates would cost \$500 dollars apiece, and 5 field gates was \$2,500 dollars; the signs would cost \$150 to manufacture and \$150 to install, with an estimated 30 signs it would cost \$9,000 dollars; fixing the fabric that broke during the last hurricane and removing the gate from the resident's back yard would cost \$2,300 dollars. He explained "fabric" referred to the chain link "fabric" used in fencing. He stated there was \$25,000 dollars in this year's budget for fencing.

Mr. Miller indicated he thought there were no funds remaining for the preserves.

*Mr. Ward: The total budget for this year for preserves was \$111,820 dollars. It was originally \$211,820. \$100,000 of that was moved to contingency. The remaining \$111,000 was left there for basically internal preserves if we needed to do anything and fencing related to the internal and external preserves. So, Jimmy's number, even the \$25,000 dollars is less than half of what our budget was for the current year.*

*Mr. Miller: I thought the entire preserves budget, except for \$10,000 dollars, was moved to contingency. The overall budget was not reduced. I made that motion, and I thought it was approved to move all the money over to contingency. Be that as it may, we are looking at like \$11,500? As reluctant as I am, I do think since we own the property, and I don't like that either, but since we do, I think posting of the signs does make sense and if the other thing is \$2,500 dollars, that's kind of getting in the nuisance category. I don't think I want to bother the HOA for \$2,500 dollars, but we do need to start getting them involved so they have recognition that that is something they need to start addressing.*

*Mr. Bhatla: If the gates we include get again compromised, we will again go back and improve them again? In other words, we need to ask ourselves if those are essential activities or not.*

*Chairperson Stamp: I would say they are not essential.*

Mr. Bhatla stated he did not think nonessentials should be done.

Chairperson Stamp asked if there was a motion to put up the fabric for the pedestrian gate behind the resident's home and install the 30 no trespassing signs.

**On MOTION made by Tom Kleck, seconded by Bart Bhatla, and with all in favor, removal and replacement of the pedestrian gate with a fabric panel, as well as purchase and installation of thirty No Trespassing signs was approved.**

Mr. Messick asked if the field gates were approved.

Chairperson Stamp responded in the negative; the field gates were not approved.

Mr. Messick indicated the water quality sampling report from the first quarter of the year took three consecutive sampling events, back to 2022, and considered the Flow Way Canal tropic state index as no longer in a fair condition, but was now back to “good” status, so water quality in all sampling locations were at good status. He noted the next sampling report was slated for June 2023.

Mr. Bhatla asked about the water quality report.

Mr. Messick explained the report was attached. He stated generally speaking, it was an effort to document the community lakes’ water quality. He indicated a third party environmental firm was hired to do water quality sampling.

Mr. Bhatla asked if this was a requirement by the agency.

Mr. Messick responded in the affirmative; the water quality was reported to South Florida Water Management District. He noted it was also helpful to have this knowledge for establishing a baseline, for example, if there were emergency piping into the preserves and there was a spiking of water quality level concerns, the cause could be documented to the authorities.

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

- a. Consideration of Use of Remaining Construction Funds in Series 2016, 2017 and 2019 Bond Issues**
- b. Supervisor of Elections Qualified Elector Report dated April 15, 2023 [Page 129]**
- c. Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities (Continuing Item)**
- d. Financial Statements for the period ending April 30, 2023 (unaudited) [Page 130]**
- e. Board Meeting Dates for Balance of Fiscal Year 2023**
  - 1. June Board Meeting – June 29, 2023**
  - 2. Public Hearings: Fiscal Year 2024 Budget Adoption – July 20, 2023, 1:00 P.M.**

*Mr. Ward: Within the constraints of the three existing bond issues we have, there is a minor amount of money remaining in those three issues, between \$19,000 and \$35,000 dollars each. The total is around \$85,000 dollars. That money can be used for infrastructure within the community and what I would like to do with that, since we are in such a tight budget year, is take a portion of the program we are using for the lake bank restoration, which is about \$190,000 dollars that we are spending on that, and pay for \$80,000 dollars of that from our construction funds. That will*

*clean out those construction funds, and we will be able to certify the completion of those projects, and then we can move on with any other things. It will also help, as I mentioned, with respect to what our bottom line will be at the end of this year, since I currently estimate that to be in a negative position and that will substantially help that on a going forward basis.*

*Mr. Bhatla: Is there a call back on that money? Would there ever be a condition that they would need that money back?*

*Mr. Ward: No. the only other thing that we could do with these funds is move it to a redemption account and call bonds with it. But I think for this community, at the point we are in, it is best to try to use it for this construction progress, and that will clear those out and we will continue to be able to move forward on the same basis we have been for the last few years.*

*Mr. Bhatla: Do we need a legal opinion on that?*

*Mr. Ward: Unless Mike wants to give one, no.*

*Mr. Pawelczyk: Just like Jim said, you can use the remaining bond funds for items related to capital improvement that were part of the original project. I'm sure both those bond issues dealt with stormwater and drainage improvements so you can use those funds for that purpose.*

*Mr. Miller: What is the process that created the surplus in the first place?*

*Mr. Ward: There was, probably, some interest income on the bond funds over a period of years, but this much, I suspect it was just we acquired all of this infrastructure from Taylor Morrison, so they probably just didn't either requisition the funds out, there wasn't enough left in the project that they worried about it, whatever. I don't know the exact reason why that happened, but this does happen at the end of project, I've seen, frequently.*

*Mr. Miller: So, this is a one-time shot?*

*Mr. Ward: It is only a one-time shot. This will never happen again.*

*Mr. Bhatla: Is this common in your experience?*

*Mr. Ward: It is common to have a little bit of money leftover in construction funds. This District we've had I think 5 or 6 different bond issues. Some of the bond issues we did not have this in, this project was nearing its end in 2016/2018 in terms of construction, so it does have a little bit leftover for whatever reason. It's not unusual for me to see this. I don't need a motion on this. I just wanted to make sure everyone was on board.*

*Chairperson Stamp: Okay, next item.*

*Mr. Ward: Statute requires the Supervisor of Elections to report the number of qualified electors within the District as of April 15 of each year. There are 1,316 registered voters. There is no action required of you since the Board is totally transitioned to registered voters, but the statute does not stop the reporting on a yearly basis, so I report this to you. With respect to the ongoing discussions with the homeowner's association there really is no additional information to report. That will*

*continue on. There is one additional thing I want to mention to you. There was a law that was recently enacted that does require ethics training for board members this coming year, so all of you on a going forward basis will be required to take 4 hours of ethics training, similar to what you see for County Commissioners or City Commissioners. The law doesn't go into effect until July 1, so it will be for recording for next year for you all, but as we get the information on how you do this, I'm guessing it will all be online. Mike or I will provide that to you on an ongoing basis. Then just remember your June Board Meeting is on a different date this month. It will be June 29<sup>th</sup> at the same time. Keep that in mind and my office will send you out a reminder notice. Then your public hearing on your budget will be July 20, 2023.*

**SIXTH ORDER OF BUSINESS****Executive Session**

There was no Executive Session.

Chairperson Stamp directed discussion back to the Fiscal Year 2024 Budget:

**Fiscal Year 2024 Budget Plan along with the Capital and Asset Evaluations [Page 17]****II. Consideration of Resolution 2023-5, a resolution of the Board of Supervisors of the Flow Way Community Development District approving the Proposed Budget for Fiscal Year 2024****b. Consideration of Board Member Amendments**

*Mr. Ward: As you know, we started this process two months ago, in March, and today you've had March, April, and today's meeting to discuss. You will have to make any final comments you want to your budget. I will ask for a motion to approve the resolution, and then set your public hearing for July 20, 2023. There have not been many changes to it since your last meeting. As we just discussed, your anticipated year end numbers will be better than what I anticipated them to be this year because we now have an additional \$80,000 dollars that will come into this year's budget, but also legal fees will remain what I projected in this particular budget.*

*Mr. Miller: Does the current proposed budget still reflect the maintenance of the preserves internal and external?*

*Mr. Ward: Yes sir. It includes \$131,820 dollars for the year 2 fencing Jimmy referenced in his report and then any additional money that we need for maintenance of the internal preserves going into next year which includes things like if you have a fire in the internal preserves, downed or dead trees that we are requested to remove periodically. The internal preserves do have some, they are very thick with dead brush, so they are more prone to fires, so it would cover those kinds of things. It would not cover any work related to permit monitoring either under the South Florida or the Corps permits. These are simply to keep these internal preserves together with respect to we know items we are requested to handle on a regular basis.*

*Mr. Miller: I'm still of a view that that budget should be reduced to zero and transferred into contingency to help the \$500,000 dollars of debt, and my view is still consistent. It's a two part view. First of all, we still haven't closed it down with Taylor Morrison and whether they should provide the money, and they should provide the money, and we've now moved that to the Corps and made them aware, but the second part of my view is that the HOA has this responsibility so why is it logical for us to be taxing residents and using public funds to do private corporation's responsibility. I don't*

*think we should be doing that, and I think we should be talking with the HOA to lay this out and get a discussion going. But in the meantime, I don't think we should have any budget for something we are not responsible for.*

*Chairperson Stamp: I think counsel, every time they've weighed in, they've made it very clear that we own the internal preserves, and they are our responsibility. Like it or not that's the way it is. We know we need to have some kind of a fund out there for – like I got a complaint a couple of weeks ago about a tree that somebody was afraid was going to fall on the path, and they are probably right. It's pretty low. I don't know if they ended up pushing it over or cutting it, but it was pretty rotten. And Jim laid out some other things we just need to have as a contingency. If we don't spend it, we don't spend it. If you want to move it to a contingency fund, I guess we could always pull it back to do these other things, but understand –*

*Mr. Miller: Why are we responsible?*

*Chairperson Stamp: Our counsels have told us repeatedly we are responsible for the internal preserves.*

*Mr. Miller: Was that before or after the transfer of the permit to the HOA?*

*Chairperson Stamp: After.*

*Mr. Miller: Historically we've always acknowledged our responsibility for the internal, but now there has been a fact change in that the HOA has the permit for that.*

*Chairperson Stamp: Well, Taylor Morrison had it before and we said we were responsible, so if your logic holds, we were paying a for-profit corporation's debts by doing the internal preserves.*

*Mr. Bhatla: Maybe another way of looking at it, we should inform the HOA that they have some responsibility too, but I think the issue simply is, as the budget is concerned, eventually it will go to the HOA and they will pay for it, that's not an issue, but we own the property, and everything related to the property. The essentials we have to do. If there is a fire hazard, we better attend to it. I think in the final analysis there is no jurisdiction of the permit on that as we own the property.*

*Chairperson Stamp: And the same people are paying for it, just what pocket is it coming from. Mike is going to be talking with Jessica and Greg about getting some of this stuff worked out, but it isn't worked out now. We could go two ways. We could leave it the way it is, and if we don't spend it, we don't spend it. If the conclusion is, it's not our obligation then we don't spend it. Or we could move a substantial portion to contingency, and if we have to cut down a tree or put out a fire or something, we can move it back out of contingency. We are moving numbers around here for no real practical purpose. If the Board wants to be informed of any expenditure over \$5,000 dollars, at the next meeting, that's fine, we can sign off on it. But Jim, Jimmy and I have conversations where we have to do little things here and there and I just don't think the Board wants to be put in a position or be bothered by, because I can't call you up and tell you because of the Sunshine Law, so we would have to tell you about it at the next meeting, or put off doing it, so –*

*Mr. Miller: I agree with what you are saying, but I still think it would be better to get that budget down to zero and move it to the contingency area and as the year end pulls, if somebody asks to cut*

*down a tree, I think Jim's got plenty of authority to say just go ahead and cut down the tree, as opposed to leaving it in the budget as something we are acknowledging responsibility for.*

*Mr. Ward: I do have the authority to do a lot, and I appreciate that, but to be frank with you, if you're not singing off the song page on what I can do on these preserves, that's a problem. From my perspective, whether you leave it in the preserves or you put it in contingency is less important than knowing that I can take care of downed trees, fire hazards, things that are unrelated to achieving the success criteria, as I will call it, under the permits. If we get a call about downed trees, or I know we need to clean out some of these internal preserves over the next year as they are just too thick with dead brush, things of this nature, simple things. I find no matter where you put it, I still have to charge it to the preserve line item. It's not going to show it as a budget, it's going to show over budget because the contingency thing is a little flaky when you've got it in a budget, but as long as I have authority to do that, I'm fine wherever you want to put the \$131,000 dollars. I will tell you, as a matter of operating policy, if it relates to anything that we would do, that might be considered achieving success criteria under those permits, I won't go there. The only things we have done this year are really maintenance items. We have a fence problem. The trespassing signs. Kids in the preserves. Horses in the preserves. The internal preserves are really downed trees, fires, things of that nature or things I need to have some flexibility on from an operating perspective to do on a regular basis in these preserves. Most specifically the internal preserves.*

*Mr. Pawelczyk: Can we possibly put a note in the proposed budget stating exactly that? Even if you call it preserve area or preserve area maintenance, I think that's semantics, but you could put a note in there that it's for items related to ownership of the preserve, not related to any permit requirements.*

*Chairperson Stamp: You could footnote it or it's certainly in the transcript now. It's going to be in the minutes.*

*Mr. Pawelczyk: A note on that page could help unless the Board just wants to vote it through as is.*

*Mr. Ward: I can change that. It's not a problem.*

*Mr. Bhatla: Ron, I think we all agree that remediation of the preserves and any activity related to remediation is not to be undertaken with this budget. It is only the maintenance as we are stuck with owning the preserves and we have to maintain to the extent that this is not to be remediated for environmental purposes.*

*Mr. Miller: I'm not on the same page with all of you because we haven't been maintaining the preserves throughout the lawsuit period and I don't want to switch from that posture to one where we are maintaining the preserves. To put a maintenance budget in there for that, I'm just troubled with. I'm not troubled with anything that Jim just said, that he's never going to go to anything that would smell of success criteria, and I think he said that well, but he also has the authority that if something pops up to go ahead and no he doesn't need to bother the Board, he can just go ahead and do it. I'm hesitant of putting overtly something into a category that says we have responsibility for the maintenance because I don't think we do. I don't want that responsibility and I don't want to admit to that in a budget that somebody could then hold our feet to the fire.*

*Chairperson Stamp: I don't take that as any kind of confession or admission because it's such a broad word and it encompasses the internal preserves and I'm not afraid of the word. I don't think they are ever going to hold it to you.*

*Mr. Ward: I can do what Mike suggested and that is, in the note, clarify that this doesn't have anything to do with any remediation that might be required. It is simply for, I can put down, trees, clearing brush out, I can add some words that might –*

*Mr. Miller: I'm not against spending some "chump change" money to do something that's rational, but I'm still troubled by that because we don't have maintenance responsibility and now that they've transferred the Corp permit to the HOA, they have the responsibility. It's just not ours. Why are we doing anything to maintain anything, even the internal preserves where the permit specifically says the permit holder has to do that. We still have Taylor Morrison on the hook because they were the permit holder, so we weren't doing anything and now Taylor Morrison in the dark of night has successfully moved that over to the HOA. I mean it's just a horrible thing. It's a shame that the HOA now has that, and we don't. I don't want to spend taxpayer money, public fund money, on doing something we are not required to do.*

*Chairperson Stamp: We still own the property.*

*Mr. Bhatla: We own the property. We lost that case.*

*Mr. Miller: I agree we are the property owner. That's why I agreed to put the signs up, but that has nothing to do with maintenance.*

*Mr. Bhatla: The maintenance is to the extent of safety and those kinds of things. It has nothing to do with environmental permit compliance.*

*Mr. Miller: Maintenance is maintenance. It's everything.*

*Mr. Bhatla: It's just the definition of maintenance that we are talking about, right?*

*Mr. Miller: That's all inclusive. Read the permit, whoever the permit holder is has the maintenance responsibilities. I didn't write the language in the permit. That's what it is. I'm not against prudence. If Jim thinks there's a problem and somebody has to take care of a problem immediately and the HOA might take 6 months of discussions, so I'm not against an emergency situation Jim needing to take some action, but I'm not agreeing to take on the maintenance.*

*Chairperson Stamp: Can you come up with a better word for maintenance?*

*Mr. Pawelczyk: Why not just remove it and call it preserve area? And then Jim can put the note on there to indicate the limitations he referenced.*

*Mr. Ward: Sometimes in my myopic world I have to post it in a certain place because the state tells me to, so it ends up as a maintenance line item. I don't know how to get past that number.*

*Mr. Pawelczyk: I'm not saying change the number. I'm saying don't use the word maintenance. Just call it preserve area on the budget.*

*Chairperson Stamp: I think Ron would have more problem with calling it preserve area than he would maintenance.*

*Mr. Ward: I do too. Ron would you be comfortable having in the preserve department, just having a contingency that I could use? A preserve contingency with a dollar amount in it.*

*Mr. Miller: I don't think we have responsibility for maintenance of the preserves. We don't own the permit. I don't know why we keep talking about this. I want to keep pressure on Taylor Morrison for this. I don't want to give them any opportunity to say well, they've been taking care of it.*

*Mr. Bhatla: Is there a problem just moving these funds to contingency.*

*Mr. Ward: There is a split on the Board. I am uncomfortable as a manager using contingency funds that I know there's a split on the Board to say I need to go fix a tree, and then I do it, and then you don't know about it. That's not going to happen in my world. We have to do something in the preserves.*

*Mr. Bhatla: Could we say preserve contingency?*

*Mr. Ward: Ron doesn't like that word. There's got to be a way for me to take down trees, clean out some of the brush, a fence gets broken, whatever it may be, there's got to be some way for us to do that.*

*Mr. Miller: Rather than taking down that tree, why aren't you sending an email over to the HOA advising them that a tree needs to be taken down? And then if that's going to carry on for six months to years, then okay so we will take care of that. But why are we doing it in the first place?*

*Chairperson Stamp: We are the property owner. Let me phrase it this way, assume the HOA now has the maintenance permit. That does not mean that we can't supplement or exceed that. It means that they have certain minimum requirements they have to meet, so we as the property owner, if you were a homeowner renting to a tenant, and the tenant had the responsibility to maintain the home, you would still probably want to make sure it stayed a little bit better condition than your tenant. You might have a different opinion about what maintenance meant. I think that's the minimum threshold. It doesn't mean we can't supplement and do more.*

*Mr. Pawelczyk: The environmental permit does not require you to maintain dead trees. It is more about the environmental actions and the thresholds that they set forth in their permit. Could you call it external properties and just lose the word preserves that way you are talking about properties and not preserves on your budget?*

*Mr. Bhatla: Do we want to create animosity between the HOA and us? I think all our energy should go to resolving something with Taylor Morrison. We are the owner of the property. We are stuck with that part.*

*Mr. Miller: But we are not stuck with the maintenance. We don't have that responsibility. We can talk about this till the cows come home. I'm going to vote against it. You guys can approve it. It will just be 4 to 1 or 3 to 1. It's as simple as that.*



*Chairperson Stamp: Okay, is there a motion to approve the budget as presented?*

*Mr. Miller: I make a motion to amend the budget to eliminate the preserve maintenance budget and to safeguard the overall budget by moving that amount of money to the contingency area of the budget.*

*Chairperson Stamp: Is there a second? There was no second. Motion dies for lack of a second. Is there a motion to approve the budget?*

**On MOTION made by Tom Kleck, seconded by Bart Bhatla, and with three in favor (Bart Bhatla, Tom Kleck, Zack Stamp) and one opposed (Ron Miller), Resolution 2023-5 was adopted, and the Chair was authorized to sign.**

*Chairperson Stamp: Okay, the budget was approved as presented. Any other comments?*

*Mr. Kleck: Jim, the Michael Pelosi incident, cease and desist, what property are we talking about? Is that the private property up in the corner?*

*Mr. Ward: No, it's not that private property up there.*

*Mr. Pawelczyk: It's a portion of that private property.*

*Chairperson Stamp: Not what he's talking about.*

Discussion ensued regarding the property in question and where it was located; the situation was resolved.

**SEVENTH ORDER OF BUSINESS**

**Staff Reports – Additional Items:**

- I. Litigation Attorney – Woods, Weidenmiller, Michetti, & Rudnick**
  - a) Request to call Executive Attorney/client shade session. Discussion of settlement matters pertaining to Taylor Morrison Defendants (File Number: 2020-CA-4147)**

The Executive Session was officially requested earlier in the meeting.

**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 noted there were no audience members present; therefore, there were no audience comments.

**NINTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**Announcement of Next Meeting – Regular Meeting on June 29, 2023**

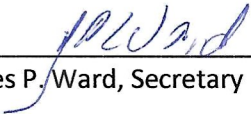
**TENTH ORDER OF BUSINESS**

**Adjournment/Recess**

The meeting was adjourned at approximately 2:30 p.m.

**On MOTION made by Bart Bhatla, seconded by Tom Kleck, and with all in favor, the Meeting was adjourned.**

Flow Way Community Development District

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

  
\_\_\_\_\_  
Zack Stamp, Chairperson