

**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, October 27, 2022, 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
Bart Bhatla	Assistant Secretary
Tom Kleck	Assistant Secretary

Absent:

Martinn Winters	Assistant Secretary
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Also present were:

James P. Ward	District Manager
James Messick	District Engineer
Greg Woods	District Counsel
Skip Miller	Greenspoon Marder

Audience:

Dave Boguslawski
Ed Staley

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, with the exception of Supervisor Miller and Supervisor Winters, constituting a quorum. Supervisor Miller arrived at approximately 1:02 p.m.

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.

THIRD ORDER OF BUSINESS**Consideration of Minutes****July 21, 2022 – Public Hearing**

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

On MOTION made by Mr. Tom Kleck, seconded by Mr. Bart Bhatla, and with all in favor, the July 21, 2022 Public Hearing Minutes were approved.

FOURTH ORDER OF BUSINESS**Consideration of Resolution 2023-1**

Consideration of Resolution 2023-1, a resolution of the Board of Supervisors of the Flow Way Community Development District authorizing the Issuance of its taxable revenue note, Series 2022, in the principal amount not to exceed \$500,000 to provide funds for the operation and maintenance of the District; providing that such note shall be payable from operation and maintenance special assessments upon benefitted properties in the District as provided herein; awarding the note to Truist Bank by negotiated sale; authorizing the District to enter into a loan agreement with Truist Bank; authorizing the District to enter into a wire transfer agreement with Truist Bank providing for the rights, security and remedies for the owner of such note; providing for the creation of certain funds; making certain covenants and agreements in connection therewith; providing a severability clause; providing for conflict and providing an effective date

Chairperson Stamp: How did we get in this situation? We as a Board dramatically increased the CDD assessment for FY-2023 from \$525 dollars to \$1,400 dollars, so why are we borrowing money? It is a matter of cash flow. When we assumed control from the developer, we were faced with many unbudgeted costs due mainly to their lack of maintenance. Most significant were cleaning the pipes that connected the lakes at a cost of about \$80,000 dollars and repairing the south weir at a cost of about \$15,000 dollars.

Ron Miller entered the meeting.

Chairperson Stamp: Had we not undertaken these repairs and many others which were relatively small by themselves, but significant in the aggregate, we would have ended the year with a positive balance, but the impact from Hurricane Ian demonstrates that the pipes and weir were the correct decision, and we possibly averted a disaster. In addition, as a result of our litigation, Taylor Morrison is required to pay us an award of \$472,000 dollars. This is a result of an arbitration award to which Taylor Morrison agreed. That should have been paid in the last fiscal year, but as you can imagine Taylor Morrison is delaying and stalling that payment. We will get more information on this later from our legal counsel. If they had paid on time, we would not need this short term borrowing. We are literally out of cash to pay bills as we sit here today. The money from the assessment will start coming in, in December, but the vast majority of money will not hit our bank account until January. This is not a comfortable position for me, and I would guess for the rest of the Board. Our options are limited: 1) not borrow, not pay our bills, putting us in a bad situation with current and future vendors, as well as the State of Florida; 2) borrow

short term and absorb the cost and fees of a short term loan, but retain the ability to pay our bills in a timely manner. In my mind there are no good options, just a less bad one. We do not know what other surprises we may get hit with over the next few months. A bug of some sort seems to emerge out of every rock we have overturned thus far. We must be prepared for unbudgeted expenses. I believe the short term borrowing is the least bad option for us. The amount is far larger than we anticipate needing and the duration far longer than we will need, but only one bank would even consider giving us a short term loan and those are their minimum terms. We cannot get a line of credit because we are a government agency. There are no prepayment penalties. We should be able to pay this off by the second quarter of 2023, reducing the interest cost. He asked Mr. Ward to review the loan terms.

Mr. Ward: Skip Miller with Greenspoon Marder is present on video with you today. He is the counsel I retained as the attorney to handle the documents. The loan amount I had requested is \$500,000 dollars; the bank will be Truist Bank which is the bank the District uses for general operations funds. There weren't any banks who were interested in this. The shortness of this loan and the size of it did not lend itself to other banks being able to finance this. There are two ways for a governmental agency to finance this type of a project; one is through a tax exempt basis, and one is taxable. This particular loan is priced at a taxable rate of 4.92%. The loan is structured as taxable simply because the cost of the borrowing overall, including the attorney's fees is less than it would be on a tax except basis by around \$5,000 dollars over the term of this note. I anticipate that we will be able to pay this off by March 31 of next year at the latest, if not sooner. The loan is secured by special assessments which we levied this past July for our general fund. They are what we call limited obligations of the district and do not constitute a general obligation or indebtedness of the issue or are payable solely from the pledged funds which are defined pursuant to the note as the special assessments for our general obligations. The money that we collect from our general fund assessments this year must be used to repay this loan within 12 months (by October 28, 2023). I do anticipate this will be paid for by March 31. The money will be funded directly to our operating account by wire transfer to the District tomorrow. Some of the more salient points of the agreement is the litigation certificate we are providing that basically indicates there are no actions or proceedings pending against the District or affecting the issue, basically as it would obligate the District related to the repayment of the loan itself. We have an obligation to repay this loan on a timely basis and none of the monies coming in from assessments can be used outside of the context of our operating budget for repayment of this loan or for the operating expenses associated with our annual budget. There are some other salient points with regard to providing an audit which we will do, but we won't need that. We do have an obligation to provide ten days' notice in the event of a default. Default in this instance would be extremely limited; it means that we didn't collect the revenue necessary in order to pay the obligations pursuant to the loan agreement itself.

Mr. Bhatla: my comments are concerned about what kind of safeguards we can put in place that this does not happen again. I know there were extenuating circumstances, but this is a business. It is a very distressing situation.

Mr. Ward: I think that the safeguards we already have in place with respect to what we did this year in order to size our budget to meet the obligations of this community in terms of paying for the operations on a regular annual basis, we've met that obligation. The situation of repaying the loan is really just a big issue we will deal with on an internal basis, so I do not foresee this being something we will get into in the future unless we get into future larger litigation. From an operational perspective we spent from basically December of last year through April I believe, preparing a budget for fiscal year 2023 and beyond, from a capital perspective that will allow us to operate in a fiscally responsible method on a going forward basis.

Mr. Bhatla: My concern is that safeguards in place as to the contingency that cannot be used by the operating people, as an example, and projecting three months onward of anticipated expenditure. Those kinds of safeguards. I am only just suggesting, but I think we need to put into place safeguards, so we don't get into this kind of situation again.

Chairperson Stamp: I think what got us into trouble last year was the unanticipated and the things we didn't budget for because we didn't know they existed. You can never do that except by having a sufficient reserve which is part of the five year plan to build up, so we can't sit here and say it will never happen again, but it could have hit us harder than it did. I understand what you are saying, but I think the budget and us getting a monthly report at the monthly meetings are the safeguards for what can be reasonably anticipated. But who knew about the pipes and the weir and two pumps and all these other expenses which we didn't put in the budget the year before because we didn't know they existed, and we burned through our reserves. That's why we are here.

Mr. Ron Miller: The finalized budgets that we did in addition to (indecipherable) another \$100,000 dollars to that reserve.

Chairperson Stamp: Correct and that will cover that shortfall from an accounting standpoint, but yes, we would start the five year plan to build a reserve.

Mr. Bhatla: I am interested in – we should be able ring the bell 3 months in advance as we are heading into the situation and maybe take steps, because it became a crisis, and I think that's the part I want to ask us to come up with something that we try and anticipate so we don't get into crisis mode.

Chairperson Stamp: This does not increase the assessment for next year. We can pay this back with the current assessment rate passed in July which went into effect and which people will start paying in December and January, so even though we've thrown around the word special assessment and that kind of thing, it does not necessitate anything beyond the assessment that is already on the books. We should not need to do that. If we get into a situation where we have unanticipated expenses, we will just take a haircut to other things to make sure we keep it within the assessment.

Mr. Dave Boguslawski: I think looking back at it, you made the right call here. Cleaning out the pipes, because we had a hurricane hit us, and so this is one of those situations where the best laid plans sometimes go off track and as you look forward, having a cash pot somewhere is going to be extremely important, just as on the homeowner's association's side. We keep passing on to residents the idea that we have a kitty that's set aside, but if that storm hits us hard and we have a lot of cleanup to do, and we have a million dollar deductible on our policies, we may come up short too. I think about the CDD and ask what kinds of things might be unpredictable. I don't know. I'm not sure Jim and company are doing that kind of thinking. Everybody lays out the best cash flow they can and hopefully they have a little cushion in there for those lesser emergencies, but we had a pump that broke, and you paid the tab, and then the things that Taylor Morrison should have fixed but they didn't and cash that Taylor Morrison should have paid but they didn't, so we can go on and on.

Chairperson Stamp asked if there were any additional questions or comments; hearing none, he called for a motion.

On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2023-1 was adopted, and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS**Consideration of Resolution 2023-2**

Consideration of Resolution 2023-2, a resolution of the Board of Supervisors of the Flow Way Community Development District (the "District") amending the Fiscal Year 2022 Budget which began on October 1, 2021, and ended on September 30, 2022; providing a severability clause; providing for conflict and providing an effective date

Mr. Ward: From a general accounting standpoint and for purposes of our audit, we need to provide and ensure that we have a balanced budget, that there is enough revenue coming in to offset our expenses for the year that just ended. Just briefly speaking about it, our overall expenditures for fiscal year 2022 were \$1,048,000 dollars, with \$600,000 dollars of special assessments that came in. This basically means we used up all of our cash reserves and then a little bit more in terms of doing that. In this budget amendment I have included the arbitration agreement award of \$472,420 dollars which I hope will be significant enough for the auditors to ensure that we are good with this. That's all this budget amendment is doing. You are now showing that the arbitration award is money that is owed to this District. It will be paid hopefully in this coming year, but that was sufficient funds in order to balance the budget for this year and saves us from going into what we call "state of financial emergency for governmental agencies."

Mr. Bhatla: What is the anticipated date of the award coming in? Is there a specific timetable?

Mr. Woods: No. Where the court ruled there are all kinds of procedural issues that would take a number of motions and hearings to sort out. I would hope that happens in the next couple months and then it would be 30 days from whenever we get a final judgment. If you are optimistic, it would be three months, but it could be six or seven.

Mr. Tom Kleck: Greg, do they pay interest on that?

Mr. Woods: It's statutory rate. I don't know what current statutory rate is, but I'm guessing it's around 4 or something. It's a standard published statutory rate.

Mr. Kleck: Shouldn't that be an incentive for wanting to pay it off sooner?

Mr. Woods: The longer they can hold onto the money, the loner they will.

Chairperson Stamp asked if there were any additional questions; hearing none, he called for a motion.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Ron Miller, and with all in favor, Resolution 2023-2 was adopted, and the Chair was authorized to sign.

SIXTH ORDER OF BUSINESS**Consideration of Resolution 2023-3**

Consideration of Resolution 2023-3, a resolution of the Board of Supervisors of the Flow Way Community Development District (the "District") amending the Fiscal Year 2023 Budget which began on October 1, 2022, and ends on September 30, 2023; providing a severability clause; providing for conflict and providing an effective date

Mr. Ward: One of the conditions of the loan agreement is that we ensure that we pay the loan persons back in fiscal year 2023 and absorb the legal fees that we have to pay in order to do the Truist loan. This budget amendment basically does this. It shows the Truist loan proceeds coming into the district, budgets the fees we will pay at closing tomorrow of \$19,000 dollars, which are the legal fees associated with this and it shows the repayment of the principal and interest that will be due on the loan, anticipating a March 31, 2023 repayment date and reduces that contingency line item of \$100,000 dollars by \$31,200 to absorb the interest due on the loan and the legal fees associated with it. That contingency line item will drop to \$68,800 dollars at this point in time. That's all this does. I am sure I will have another budget amendment in November or December, to true-up the cash from 2022 that we will probably be short and need to take out of the 2023 budget, but that I will calculate once I get closer to finishing some of the audit papers that need to be done.

Mr. Bhatla: When are we expecting receipt of the taxes? When do they start to trickle in?

Mr. Ward: They will start to come in generally the latter part of November. A lot of them will come in by the end of December. That was in the last couple of years. I really don't know what they will be this year, but generally, by February, we have over 95% of our total assessments in place.

Chairperson Stamp: There is a discount for paying early.

Mr. Ward: And most people pay early to take advantage of the discount.

Mr. Miller: Comment. I think we should add that to our list of construction delays and so forth as well. It's the reason we borrowed money in the first place.

Mr. Woods: I see what you're thinking Ron. I think under Florida law it's probably just a little too attenuated to be a damage. Let me mull that over.

Chairperson Stamp: Certainly, cleaning the pipes and all the other things that could be there, but this is individual items. He asked if there were any questions; hearing none, he called for a motion.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Bart Bhatla, and with all in favor, Resolution 2023-3 was adopted, and the Chair was authorized to sign.

SEVENTH ORDER OF BUSINESS**Supervisor's Requests**

- I. Chairman Zack Stamp – Discussion of Retention of District General Counsel (Litigation Counsel to remain the same)**

Chairperson Stamp: We are going to have to start looking for a new CDD counsel. It was always the intent that the Woods law firm would not be our CDD counsel in the long term. They would do that through the end of litigation. We didn't want to be paying two different law firms show up at all the meetings and we didn't want to have two law firms who would have to consult about every decision we made. We wanted to keep it consolidated to one law firm. CDD counsel is not a specialty of theirs, but it was efficient for us, and they charged a lower rate for the purely CDD work that they did for us as opposed to litigation. I approached Greg three or four months ago and said I didn't want him to hear we were starting to look, and he was more than happy to assist us in finding a replacement. Litigation is not over. They continue on the appeal and/or the rehearing on the matters regarding the arbitration award, dealing with the Corps of Engineers, as well as what we do in joining the HOA in their 558 suit. Those are still outstanding matters, but I would think we will have a substantial reduction in legal fees this year. There won't be the depositions and there won't be the discovery that we've had in the past.

Mr. Ward: When you are picking a general counsel, specifically for the purposes of Community Development Districts there are not a lot of lawyers individually and/or firms in the State that handle Community Development Districts. In Naples there are only two that I know of, one is the Urbancic firm, Greg Urbancic, and the other firm is Woodward, Pires and Lombardo. Greg's firm is much larger in terms of its presence for CDDs. State-wide there are two other firms that I do a lot of other work with and represent lots of Community Development Districts in the State of Florida, one of which I particularly like, and then there are a few other smaller firms, one in Ft. Lauderdale and one in Bradenton, that handle CDDs directly. It's up to you. They are your counsel, so it's your decision. Obviously, I am more than happy to work with anyone that you like. I can give you other names if you want to know who they may be, but it is a very small pool of people who do this for a living. And you do need a good general counsel for CDD work. It is a pretty specialized field, and any general lawyer is not going to get this right.

Chairperson Stamp: I know the process of hiring an engineer is extensive. What is the process of hiring a new lawyer.

Mr. Ward: The process of hiring an engineer is according to the Engineer's Full Employment Act. That's codified in State Law. The attorneys, they have excepted themselves from that process, so you can just pick whoever you want to hire. You don't have to go through that process. You can interview them, get recommendations from either Greg or myself, or names of people, and then you can pick one. You don't have to interview them in public.

Chairperson Stamp: But if two of us sat down with a law firm, isn't that a meeting?

Mr. Ward: No. You cannot do that.

AUDIO CUTS OUT HERE FOR APPROXIMATELY EIGHT MINUTES

Chairperson Stamp: Okay, we are back on the record. Tom had asked a question, Jim was answering.

Mr. Ward: In answer to your question, we both said we would resign, Greg did, you accepted his and mine is what it is. I don't whether he still wants to do this job. I have not talked to anybody with respect to this issue. That is up to you if you would like me to. I don't know if he will, or he won't.

Mr. Tom Kleck: The reason I mentioned it, I work with Greg and a couple other CDD organizations, and from my technical standpoint he should absolutely understand what's going on since he was involved from the get-go, and unless there is some reason why we shouldn't go back to him, I would at least check and see if he is interested.

Mr. Miller: Going back to the very first Board meeting, the first motion made was to select (indecipherable), the second motion I made was to fire Tim Hall, the third motion I would have made was to fire (indecipherable). (Indecipherable).

Chairperson Stamp: I don't know Greg, I never worked with him. In the meetings I attended as a resident, he resigned. I think he was helpful on his depositions. We didn't sue him. I think we had no basis upon which to sue him successfully, but if there is an animosity here, and I know there is, whether it's deserved or not, we probably don't want to go that way.

Mr. Woods: My professional dealings with Greg Urbancic have been very good. He is a straight shooter. You have to remember his boss was the Taylor Morrison appointed board members, so he followed their instructions at the time. I know maybe should he have challenged something or spoken up a couple of times potentially, but again, he was following the directions of those who were in charge. In my personal opinion I think Greg is lovely. He is a smart lawyer who knows CDDs. Nobody else in Lee or Collier Counties know CDDs like Greg.

Chairperson Stamp: That has been my experience as well. I worked with him. He was very cooperative, very honest in my eyes. I never had any issues with Greg, and I agree with Mr. Woods, he was working for Taylor Morrison which in effect would have guided his opinions and directions. I think we need to start looking at a process to start looking at other people. I wouldn't want to bring him in on a 3 to 2 vote. But having been a lawyer, sometimes your clients want you to do things, and nothing he did was unethical. It might not have been helpful to us in the long run, but nothing was unethical or improper that I have seen.

Mr. Woods: I would say with Jim's guidance on these other four potentials, he would be closer and could attend if even if Zoom is not available and you can do a lot on Zoom, but there are still times they really need to be down here for you to meet physically. So, Bradenton or Ft. Lauderdale would be a better call than Tallahassee based attorneys. You might want to factor that into your decision.

AUDIO CUTS OUT HERE FOR APPROXIMATELY 1 MINUTE

Mr. Ward: --speaking, there is not a lot of crossover, so I would suggest we try to find a lawyer who is acceptable to all, and I agree with Zach, a three to two vote is not something anybody is going to want to come in here with. We probably need to stick with somebody who is in the southwest area or at least who can attend your Board meetings, but you need to stay local so they can attend your meetings as opposed to coming here on Zoom all the time.

Mr. Miller: In the meantime, (indecipherable) serious technical issues.

Mr. Woods: I will be happy to attend as long as you will have me.

Chairperson Stamp: There is no project pending that I am aware of.

Mr. Bhatla: What's the deadline?

Mr. Woods: I am here as long as you need, but I would love to be replaced at some point.

Chairperson Stamp: There will come an end. Anyway, this is on the table. Jim can look around and start the process and we will revisit it.

II. Supervisor Bart Bhatla - Discussion of Bonita Springs Stormwater Plan

Mr. Bhatla: I wanted to talk about the stormwater disposal by Bonita Springs, and I know that we have come to a dead end. I assume that the governmental agencies and the regulatory agencies under the emergency cover they are going to approve the alternative. The alternative is to dispose the floodwater through our preserve. That is going to happen. So, we are going to be the impacted party essentially, and if there are any damages, we will have to prove those damages to be able to litigate the recovery. I was thinking we need to look into another alternative and I would like to propose that we should look into the alternative of being a part of the solution as opposed to projecting. I propose we have a property which is strategically geographically located, and it can be used for solving a problem for all the stakeholders and that includes the government and the City and everybody, at least over the short term, because there are no easy short term answers, but to explore and propose that we can be the treatment facility which would be a part of the solution; however, we would be compensated for that. All that of course has some works for the agencies, and I think the cover is the emergency. The disposal only occurs when there is an emergency state, and they can overrule everything. In our case, we can be the treatment facility in waiting; however, we have to be compensated and we can come up with a plan here to come up with the compensation, either ourselves or an independent consultant agreed to by the City. I would like to propose to pass a resolution to explore this alternative. I'm encouraged because I was looking at the 2017 stormwater disposal plan by the City. It includes a recommendation that the City should consider acquiring floodplains from other areas to incorporate into the overall scheme. We could be a part of that, and I think in the long range it could be that the City could buy us out. It's possible. At this time, it seems there are a lot of regulatory orders, but I think, as you look at the problem, it is going to be beneficial to all the stakeholders, including us and it may resolve our problem. I would like to put a positive spin on this and have us explore this alternative and see where it goes.

Mr. Miller: The easiest thing to say would be no but saying no probably wouldn't carry the day. I think Greg has attended some of these meetings. I think a significant piece of the puzzle would be where Collier County stands, because Collier County, you would think, would be on our side in saying no. That may not carry the day either. Big picture wise it seems like South Florida Water Management District, the Big Cypress Basin Organization, they seem to have enormous power, and if they want to do something, for either the CDD or for Collier County, to be a speed bump, it may not carry the day. That's all speculative. They have so much power. It seems to me that if treatment facilities, or stormwater sewers, or whatever, can be done by Bonita Springs or by Lee County, that's where the money should be spent and that's what should be done. Speaking from a place of ignorance, if that simply is a physical impossibility and cannot be done, and they have to put the water someplace else and we are convenient, I guess I could see where South Florida Water

Management would say we would like to help you guys, but we can't. There's no place to put it, so we must (indecipherable). (Indecipherable) Bonita Springs should spend their money to do their job. Should there be any cooperation, but that would be totally against doing anything. Those treatment facilities were built, funded, and dedicated to them, and we are not going to go changing Bonita Springs or Lee County after the fact to get these things.

Mr. Bhatla: Is there a bottom line to your comments? I just don't understand the punchline.

Mr. Miller: Well, the final thing that comes to mind is that I don't see any reason why we should cooperate. That reason might be, if there truly is no solution at the Lee County or Bonita Springs, it's a physical or geological impossibility that they cannot take care of it, that would seem to say that South Florida Water Management or Big Cypress Basin would have to come to us for that solution. But if there is a solution available up there, they should assess their residents and they should take care of it. If that's not possible and they have to come to Collier County, then if we were to cooperate with that, I think it would be absolutely necessary for whatever facilities or necessary treatment plans, storage basins, detention ponds, all of that would have to be completed before we can step in. We do not want to get involved and spend even one dollar of the CDDs money and then go chasing Bonita Springs for reimbursement. That will not get us anywhere.

Mr. Bhatla: I agree with that. I think basically being helpful and cooperative; however, asking for compensation up front, as opposed to opposing and going to litigation -- I think we should consider cooperating and exploring those alternatives. And South Florida Water Management is all powerful. They have the charter to take care of all the flood controls in this part of the country, so you are talking to the –

AUDIO WENT OUT HERE FOR APPROXIMATELY ONE MINUTE

Ron Miller: If they were willing to provide us this compensation that you are suggesting, they can spend that compensation up in Lee County. They don't need us. The only way they would need us is if there is some type of true physical inability for that part of the country to absorb this. For us to agree to any compensation and then have 100% overrun on expenses and be chasing them is not something I would be interested.

Mr. Woods: We had attended the Big Cypress Basin meeting where they presented the plans that have been agreed to by the City of Bonita Springs and the South Florida Water Management District engineer, so they were noting it to that Board, and that Board is an Advisory Board. They don't make the final decision. South Florida Water Management District makes the final decision. We got there; Collier County was there. Their representative spoke, Zach spoke, Dave spoke, I spoke, and I think the Basin Board was very sympathetic to our position that the City of Bonita Springs shouldn't be dumping their problems onto us and they were trying to get approval to develop a plan and what we tried to point out was this plan didn't address what's going to happen if they come, who's going to clean it up, what's the quality of the water, etc., etc., all of that was not addressed. So, that Board seemed to be very much on board with that and basically told South Florida Water Management District engineer to get with the City of Bonita Springs to get with Collier County and get discussions going on a plan. I think at the moment all of that is in limbo and maybe our discussions here are a little premature. But it is something we need to keep an eye on, because obviously we want a plan that addresses who's paying for this plan, when can they turn pumps on, what's going to be the

water flow, etc. These are all things that are critical to the CDD. That's my opinion on where I think we are at.

Mr. James Messick: Trinity Scott with Collier County brought up the fact that she could possibly look into providing a canal along Logan Blvd. It was really speculative in nature, but she would look into having a canal along Logan which would accept the runoff from the pumps rather than going through our preserves. I had since reached out to her to try to make contact this week and have yet to hear back from her. But that was something I thought was – we don't want to just be in opposition, we want to have some sort of solution, and I think that's probably the best solution I've hear yet from any of the parties that were at the Big Cypress Board Meeting. Everything else Greg mentioned, all the concerned parties that were at the Big Cypress Board Meeting made the same points of the environmental effects, and nothing's been considered, but during an emergency condition, that's not required to be considered, so that's really our concern. And they acknowledged that.

Mr. Boguslawski: Emergency conditions are different than normal pumping. If they have an emergency declared in Lee County all bets are off. We are in the midst of the problem, whether we like it or not. In my view, you can say it's premature, or reactive or partially reactive, but the first thing to do when you have a problem, and I think we do, is you define the problem. We could put together a swat team to find the problem to think about some of the options available to us and have a paper for the Board Meeting to discuss. Our problem is very simple. Bonita Springs has made progress inside South Florida Water Management District with one person, convincing him there was no flooding issue, he didn't even look at containments, but the point is they are making progress on the (indecipherable) pumping and in the meantime, a hurricane happens, state of emergency declared, you could get dumped on in the preserves and you could lose all of your native species and all of a sudden cost of maintenance goes through the roof. You're back at the beginning of remediation. So, there is a problem out there. I think from the homeowner's perspective, they don't know what they don't know, but the fact of the matter is, whether there is action taken or not externally, internally it would seem to me that we have some expertise built up and start learning more, poking a little bit more at various agencies to see what's up. It's very clear in these meetings that all of the environmental community that was involved in setting up the preserve wanted nothing to do with Bonita Springs. I think part of the goals become some of the things you're talking about. We don't pay for anything, we don't pay for the studies, that's their job, so I would think, especially since you guys can't talk outside of Board meetings, it seems to me you want somebody to bring back a paper so you can be educated as well. Two conversations I've had with Lisa Keeler (ph) at Big Cypress Basin Board, she basically said repeatedly, Trinity Scott is your biggest advocate in Collier County but ultimately, it's going to play through Bonita Springs. And Big Basin Board wants nothing to do with this. They want somebody else to take the lead. My advice is if Bart and a couple people, possibly a few volunteers from the HOA, if we wanted to put a small team together, and I would prefer to be involved in the kickoff meeting, and then step aside and watch.

Chairperson Stamp: I'm never going to say don't talk to anybody, but my concern is Bonita Springs has the problem. Why are they not reaching out trying to solve it? Why are they sitting there saying we'll dump this when we get ready to dump it? I question how amenable they are going to be. Otherwise, you'd think they would be out looking for what does it take to get you on board, what do we need to do to take care of your concerns. They are not doing that. That's a concern to me. I've had some discussions with people in this community who are knowledgeable about insurance to look and see if there is some kind of performance bond that maybe Bonita Springs could sign a contract of

remediation and buy a performance bond to do it, and don't have a definitive answer yet. That's a possible solution out there that takes care of a lot of our problems. It's not as expensive as the ideal one of sending the water into the Imperial River which I understand already has too much water in it. And the environmental groups don't want that canal coming down because they don't think the river down here can handle it. But they've got some other wetlands and options outside of our preserves. So, there is a potential for a solution. I think the working group task force with Bart participating is probably a good way to start thinking about this. I just question why the people with the problem are just sitting there. Maybe they just think they will pull the switch when the time comes, and they don't care. And when you go to them and say let's solve this, they are going to say well, bring your checkbook, because you've now said there's a problem and you want to be a part of it, write a check. That's my concern from a tactical and political standpoint. The fact they didn't turn them on during Ian maybe good news for us. If they didn't turn it on during Ian, when are they going to turn it on? But there are a lot of unknowns here.

Mr. Woods: Bart, if you are part of that committee, you've got to work with conservancy people because they've had some real expertise. I would communicate with them because they are fully on board, and they can give you a lot of background.

Mr. Bhatla: I have talked to them. I wanted them to decide we need to get involved in a nonlitigation place, define the problem and options, and start discussions, because until we do that, we cannot solve the problem without understanding the problem.

Discussion continued regarding defining the problem, developing solutions, and the possibility of Bonita Springs doing a performance bond.

Mr. Miller: Commercial insurance policies exclude flood protection. It's not available, so this would have to be an exception and I doubt we would ever get one. In the insurance industry this is known as a moral hazard. If insurance policies covered flood, people would build along rivers. So, for 100 years there has been no flood protection insurance policies. If Bonita Springs gets coverage for their flood problems, they will start improving developments increasing the possibility for flood. It's a moral hazard, something that builds upon itself. I don't see any good solution for them to dump their water on us. And the only time they would want to dump their water on us, would be a time when we are having the exact same problem.

Mr. Kleck: Greg, who is the enforcement arm for checking up on, or going after people who do stuff in counties, like Lee County, if they are doing something wrong like dumping water or sewage into our county, who is the enforcement on looking into that and protecting us from that kind of situation?

Mr. Woods: If you are talking water and sewage, South Florida Water Management District. They control it regardless of county lines. That's their jurisdiction.

Mr. Kleck: Are they saying anything to Lee County?

Mr. Woods: The issue hasn't gotten up to them, so we don't know where they stand on it. Obviously, Bonita has had this emergency capability of pumping for a while.

Mr. Kleck: Then Lee County may not do anything if they can do it during an emergency. Why spend the money if they can get away with it?

Mr. Bhatla: The city of Bonita Springs is required to get an ERP Permit and that permit is issued by South Florida Water Management District. They are basically in touch. In 2017 a 400 page study was made presenting alternatives of stormwater management. It includes the flood control, so there is a great body of information about this. They City has not come to grips with the problem, but the regulatory agency has the responsibility in case what happens under emergency conditions they do these things. I think we need to get into the problem and discuss with them to formalize that answer and compensation, as opposed to going to court and asking for damages. But that is an impossible situation because you have to prove the damages. If damages occur to our preserves, we have to prove there was damage and that is difficult. So, before that process, I think we can start the process of discussion. We are not making any commitments at this point.

Mr. Boguslawski: My model is not to start talking to agencies. My model is to put together a team, have the team define the problems and the possible solutions for us and have that team come back before this body and the HOA Board and publicly discuss.

Chairperson Stamp: If somebody wants to volunteer to meet with Mr. Boguslawski's working group and report back to us, I think that would be a great thing. But I cannot appoint anyone to do that, so we are not going to have a resolution to do that.

Discussion ensued regarding proper protocols for reaching out to South Florida Water Management District and other such agencies.

EIGHTH ORDER OF BUSINESS

Staff Items

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

- a) Status Report on City of Bonita Springs application to SFWMD to discharge floodwater into Collier County (including the Preserve)**
- b) Status Report on Litigation**
- c) Update on discussions with HOA as to potential new litigation**

Mr. Woods: We had mediation, and we had arbitration. After the arbitration, but before the 20 days could run for the arbitration award, the former Taylor Morrison Board Members had their motion for summary judgment and the judge granted their motion for summary judgment. Then Taylor Morrison did not file for new trial or trial de novo in 20 days. We did not file for new trial or trial de novo in 20 days. So, the arbitration award became binding. The court had previously noted entry of the judgment (indecipherable). The trial court has no discretion to deny such a request. (Indecipherable). They say as there is no motion for new trial (indecipherable) the trial court must enforce the decision of the arbitrator and has no discretion to do otherwise. That's the law as we understand it. If we were representing the individual former board members, we would have filed a motion for new trial for them within the 20 days, kicked them out and then had the court issue a written order granting some re-judgment, etc. They didn't do that. We believe they needed to do that, and they dropped the ball. We had the hearing on our motion to confirm the arbitration (indecipherable). (Indecipherable). Mr. Woods discussed the actions taken by Taylor Morrison, by

Taylor Morrison's attorneys, by the courts, the delays caused by the hurricane, the actions taken by the judge on Taylor Morrison's behalf. *We are going to file a motion for a rehearing on it, and hopefully she [the judge] sees what happened and she undoes what she's done. Hopefully that happens and we get this resolved very quickly. If she doesn't undo it, then a whole other series of things will happen. In the motion for summary judgment, she is supposed state her findings on the record and why she is granting a summary judgment; she didn't do that. Basically, she just told the other side, send me an order, and make sure it will be upheld on appeal. The motion for summary judgment itself was just on the two counts we had against the directors and the motion we just denied our claims against the directors, because they didn't make a claim for attorney's fees relative to those two counts. Taylor Morrison pled they had a counterclaim. They brought a counterclaim for the attorney's fees. The counterclaim wasn't in our motion for summary judgment. The counterclaim was never addressed, so she essentially (indecipherable) and the counterclaim should have been resolved by the arbitration because they didn't file a trail de novo as to the counter (indecipherable). That's something that should be mapped out, but somehow in her order, the order she signed, she's giving them fees under that statute. That's more of the procedural mess of where we are right now. The award still stands, interestingly enough. All of this (indecipherable) attorney's fees. And then the final judgment she signs, Taylor Morrison's judgment – so they say as between the CDD and Taylor Morrison Esplanade we find that neither part is entitled to attorney's fees, and she signed that, but there is a separate – she really can't award attorney's fees. (indecipherable) parties file motions for entitlement fees; that's the next logical step. She's signing an order to bypass that step, so we prevailed against Taylor Morrison Esplanade, both on the \$472,000 dollars and they filed counterclaims asserting there were written contracts with us and that they were entitled to fees under those contracts, so we prevailed on their counterclaims and should be entitled to fees in that. So, we are going to have to file a motion for entitlement to our attorney's fees. It's just a procedural mess.* He continued to discuss the judge's actions and the actions he would be taking to counteract said actions. *At the end of the day there should hopefully be a wash on the attorney's fees. A couple things I need to raise in the interim – we're going to file a motion to rehear, and I don't need the Board to approve that. If she doesn't undo this in time, we may not get the hearing in time for some of this and we may have to file a notice of appeal. I do need your permission to file a notice of appeal.* He discussed the repercussions of if this were to stand, and Taylor Morrison claimed attorney's fees, then there would be a fight regarding the amount of fees, especially given that Taylor Morrison had two law firms working on behalf of Taylor Morrison. He explained if the judge did not rescind her judgment, an attorney's fee expert would have to be brought in and a hearing regarding attorney's fees would have to take place.

Chairperson Stamp indicated he had the authority to approve the notice of appeal when the time came.

Mr. Woods: They are trying to say because the court granted the summary judgment before the 20 days, despite the fact that they didn't get an order saying to stop the case for final judgment, they are trying to say that (indecipherable). There is no case law supporting what they are claiming, but that's what they got the judge to sign. Hopefully we can get her to figure out that's not the case.

Mr. Miller: On turnover Taylor Morrison convinced the Corps to turn the CDD permit over to the HOA, so the HOA now owns the preserve permit, and we were trying to get information on what

they have on that, and we didn't get anything, and we were going after that a second time. Anything forthcoming on that?

Mr. Woods: We went back, and they basically said "we have nothing". Can we go to the attorney general and ask the attorney to investigate whether they have nothing or not? I would not recommend doing that at this time. We want to be friendly with the Corps and would not want to challenge what they produce and not produce at this time. It's something we could come back to.

Mr. Miller: The summary judgment to me, seemed to say that it made no decision with respect to any claim that the CDD may have against Taylor Morrison, the funding of the preserves. It seemed to me they were not answering that question.

Mr. Woods: In the summary judgment there isn't.

Mr. Miller: So, we still have the privilege of going after that funding?

Mr. Woods: I will say there are some findings in the final judgment that we don't like that kind of touch upon positions. They are not determinate, but it's something that Taylor Morrison would wave in front of the court. I would like to see the final judgment they proposed undone just because it's not necessary for decisions.

Mr. Miller: But that door is still open?

Mr. Woods: Yes.

Chairperson Stamp: Would you talk about the HOA, the 558?

Mr. Woods: I think there is a draft of a complaint in a certain stage. I don't think it's ready to go. I think at some point in the very near future it will probably run by us to look at it. We will probably bring out claims in that same suit in terms of damages and equipment overlap, lake responsibilities, etc. I will keep you posted on that.

Chairperson Stamp: I was going to ask Ron's question, because clearing the Corps has documents. In the one letter they say in response to your letter on such and such a date, and now they don't claim to have that letter, and they never turned it over to you, the filing they made to transfer the permit to the HOA. We don't know what they represented. We don't know anything about it, and the Corps doesn't seem to have it either. I want to switch to the preserves, and I don't expect you to have an answer, but the question this Board is going to have to face at some point, unless these permits get reversed, is what is our obligation regarding the preserves going forward? The Corps approved the transfer to us, and they also approved the transfer to the HOA, isn't that some kind of implicit admission or statement by them that all the preconditions were met? The monitoring, the maintenance, the mitigation, was all done? Otherwise, they would be violating their own permits.

Mr. Woods: That is certainly a very valid position. Obviously, we don't know where they would fall on that. I would say I think there is a track we would take with the HOA (indecipherable).

Chairperson Stamp: Right, and again, because we cannot talk outside of the meeting, I want the members to know we are thinking about this stuff. The other one is the timeline. Assuming we do keep these preserves and assuming we have to do mitigation, monitoring, maintenance, all of these were preconditions to turnover. Turnover has happened. So, what is our timeline? Do we have 2 years, 5 years, 10 years, to effectuate that? We are not turning them over to anybody, so can we spend \$50,000 a year or \$25,000 dollars a year to have a ten year plan to complete this? The triggering event has happened, so there is no trigger out there I can see.

Mr. Woods: I think at some point you want to meet the success criteria. Maintenance will be less expensive once success criteria has been met.

Discussion ensued regarding whether there was any timeline or goal date left to meet success criteria.

Mr. Miller: I think the permit indicates the success criteria have to be met for three years in succession, and if in any of those three years there was a failure to meet success criteria, the three year period starts over. I think there was a failure along the way at this point, so where are we on this three year success criteria.

Chairperson Stamp: Who made the determination that we failed? I think we may have for purposes of discussion, but nobody has found that.

Mr. Miller: We did have a commencement with Tim Hall (indecipherable). The way I read the documents was the success criteria has to be met, in order to get approval by the Corps and signoff, there was a success criteria formula, and it has to be met for three consecutive years. And then you get your approval. If at any time you fail, you start over from your first year. I think we did have a commencement of the (indecipherable).

Mr. Ward: We started the remediation. We did it for two years. We stopped it in year three, so we never got to the "met success criteria" to start the three year program, so we basically we have to continue on with the program before we meet the success criteria. We never met the original success criteria to start the three year period. We only started the remediation process. In a small part of the preserves, there were some areas that met the criteria, but from an overall perspective of the entire permit, we never met 100% of the remediation work necessary to start the three years.

Mr. Bhatla: I was under the impression that this coming March was the end of the fifth year that they have to rule that you have met, or you haven't met – I think we have to go back.

Mr. Ward: As I remember it from what Tim Hall said, the plan we were on was to get to the point of meeting success criteria five years after we started. We did two years. We stopped in year three which was fiscal year 2022. We have two more years to go before we could ask the Corps for the three year window that we would then be able to stop all remediation three years after that. We never got there.

Chairperson Stamp: But the transfer has happened, so why does it matter? That's the question.

II. District Engineer – Calvin, Giordano & Associates

a) Engineer's Report

- 1. Strategic Operational Plan**
- 2. SFWMD Water Use Permit (Consumptive Use Permit)**
- 3. Water Quality Report**
- 4. Bonita Springs Floodwater Diversion Plan**
- 5. Preserve Tree Removal**
- 6. Hurricane Ian**
- 7. Assets Dedication, Ownership & Maintenance Analysis Report**

Mr. Ward: Jimmy was awarded Engineer of the Year for the Civil Engineers Society for Broward County which is all of Ft. Lauderdale. That's a large group of engineers for which he has been recognized. Congratulations on getting that award.

The Board congratulated Mr. Messick.

Mr. Messick: Thank you. I appreciate it. The award was unexpected, and it was certainly nice to be acknowledged. I put together an Engineer's Report. Regarding the Strategic Operational Plan, looking forward to the first quarter for the fiscal year 2022-2023, the vendors are on top of their individual tasks for the lakes and landscape irrigation, etc. This first quarter of future work does include lake 12 and lake 20, lake 21, CIP lake bank restoration. It will be scheduled once the lake water drops to a sufficient elevation, and we will put the contract out to bid in the next several months. I anticipate construction starting in February of 2023. In addition, in January we have scheduled to paint the front entrance bridge and also in two months we've been authorized to spray the water management systems. For some reason we see lilies in the front lakes and the flow way, predominantly, so we are going to tackle those at first to try to take care of the items that need to be addressed first, and that's lakes 1, 2, and 4 and the Flow Way Canal. That work will commence in December.

The next item on my Agenda is to talk about South Florida Water Use Permit. That's been put on hold and Jim has asked me to put together an asset dedication, ownership, and maintenance analysis. I will go through that later on. Once we address those things, we will be able to get back into the water use permit transfer.

Number three was the water quality sampling report; that was completed. This report was completed in five sample locations: the Flow Way Canal, lakes 9, 7, 12, 18, and 19, for the same contaminants that were tested for in the last quarterly report. The report showed that the results, attached in appendix D, do not show any water quality concerns at this time. Actually, the next sampling event is coming up this month and we will get the report again in November and I will present it at the next board meeting. There are no water quality concerns at this time.

Number four is the Bonita Springs Floodwater Diversion Plan. We did talk about it with our attorney and have identified what the last steps were. As you mentioned, the attorney attended the Big Cypress Basin Board Meeting where we opposed the emergency permit. We did have an emergency event; however, the flooding was not to a level where Bonita Springs enacted or submitted for the emergency plan to the District, so there is some silver lining in all of this. It seems that there are major events that will require this that we will want to address this, but if a hurricane doesn't do it, which has been one of the worst hurricanes on the west coast in recent

history, then that is kind of a good sign. We will continue to oppose the discharge of floodwaters in an emergency operation plan from Bonita Springs. I would like to mention, and I think it would be a good idea to email public comment from our District Manager, Attorney and Engineer combined to City Meetings at Bonita Springs. It was something brought up prior to September. There is nothing on their agenda that is going over the emergency plan, but it is something for public comment, so they are aware of our opposition. I know Collier County is opposed to it. We brought this up to South Florida's Big Cypress Basin Board, but it would also be appropriate to also bring up our opposition to Bonita Springs. If we send an email to them, they will read it at the public comments portion of the Board Meeting, and we can listen in virtually on what they say and take the next steps after that.

Discussion ensued regarding who should send the email. Chairperson Stamp indicated he would put one together from the Board.

Mr. Messick: Number five, preserve tree removal. We were able to follow through and the work was completed in August to remove the trees that were thought to be dead and needed to be removed. We got that in just in the nick of time prior to the hurricane. Certainly, there could be more trees out there and it's worth taking another walk along the preserve path. But we did complete the initial steps approved by South Florida in August.

Next item is Hurricane Ian. This has been one of the most powerful hurricanes to hit the U.S. in decades. It has taken its toll on everyone, whether you are directly affected by it or have friends and family. As you know, I grew up and started my profession on the west coast. We vacationed in Sanibel and were there this last weekend helping to cleanup. It's been crazy. I think Naples and Flow Way came away pretty unscathed compared to Lee County and some of the barrier islands. But having said that, we did feel like it was the right thing to do and the clean up the sediment debris and stormwater management system that was done last year really benefitted the stormwater management system for this storm. The lakes in the system worked exactly how they were permitted, and Collier County also took actions prior to the storm and prematurely lowered the Cocohatchee Canal which allowed for a surplus of rainwater to start, staging at lower elevations, and affected our system in a positive manner. It all worked out in the correct manner. I did prepare a stormwater emergency drainage exhibit to review how the storm would stage depending on the storm event; that is in the appendices in the Report. If you look at appendix C you will see the three phases. He reviewed Appendix C which included maps and illustrations of where the water would be stored and discharged during which type of storm events.

Last item was to review the Assets Dedication, Ownership & Maintenance Analysis Report. It's attached after the Engineer's Report. The bulk of it was the 11 plats attached to it which were reviewed. Those plats have public and private entities and ownerships that are dedicated various assets done during the development process. What we really wanted to focus on was trying to correct the known discrepancies in asset ownership and dedications by providing a list of recommendations that both the HOA and the CDD would need to agree upon to implement a plan to correct these discrepancies. As I mentioned, there are plats and permits to identify that. The executive summary has eleven key points, and you can read through them, and I can kind of go through them briefly, but we are talking about even basic preserve tracts in certain parcels which were never deeded over to the CDD. The lake tracts in various plats were dedicated, but not to the CDD. These need to be dedicated to the CDD for proper asset management. There are

also water management tracts in Phase V, and the original subdivision tract W, that should be dedicated to the CDD, and then a public utility easement tract could be dedicated to the CDD. Those are listed. I think primarily the reason these were missed was because the dedications assumed that the HOA would have the primary asset, but in reality, the CDD took the responsibility to maintain the drainage asset for the entirety. He reviewed other tracts which needed to be dedicated to the CDD. The last three items are the permits. The water use permit needs to be transferred to the CDD, both water use permits, and the U.S. Army Corps of Engineers permit needs to be transferred to the CDD. If there is anything, legal counsel can certainly review and confirm some of these items that are recommended in the Executive Summary, but certainly this gives us a start to begin the process.

Mr. Bhatla left the meeting at approximately 2:55 p.m.

Chairperson Stamp: It is the recommendation or thoughts of the Engineer that all the preserves out to be transferred to the CDD. It's not necessarily the opinion of the Board. Just to have that on the record.

Mr. Miller: Generally speaking, there is a thing called Casualty Losses. Generally speaking, casualty losses are not tax deductible. If you incur a loss in your house and it's not compensated by insurance, then you cannot deduct that loss. However, when the area is declared a federal disaster area, which I believe this has, then that casualty loss becomes tax deductible. So, people who have incurred losses on Lanais or roofs, if they are not compensated by insurance, and you itemize your deductions, those losses can be tax deductible. It might just be good for the community to know that.

Mr. Kleck: Is this something you can put together yourself as a homeowner or do you need an adjustor?

Mr. Miller: You just file your own tax return, and you keep the receipts and then you claim the deduction when you itemize. Secondly, it came to mind when Jimmy mentioned painting the bridge, I would throw out for the Board, what color?

Discussion ensued regarding bridge color. The Board requested the bridge be painted a lighter, eggshell/white color.

III. District Manager – JPWard & Associates, LLC

- a) Financial Statements for period ending July 31, 2022 (unaudited)**
- b) Financial Statements for period ending August 31, 2022 (unaudited)**
- c) Financial Statements for period ending September 30, 2022 (unaudited)**
- d) Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities**

Mr. Ward: The purpose of Jimmy's report today was such that we would be able to sit down with Mr. Boguslawski and his team and try to unravel this mess we have here with where easements belong and final ownership of whatever the assets may be and get them transferred around so we can operate correctly. So, we will be handling that over the next couple of months.

Chairperson Stamp: That will include letting the HOA take over the flowers in the front, the holiday lights, stuff like that and trying to separate some of that stuff out.

NINTH 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

There were no public comments.

TENTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Regular Meeting on November 17, 2022

Chairperson Stamp: On November 17, we will swear in the newly elected and reelected Board Members. We will also have the election of the new officers.

ELEVENTH ORDER OF BUSINESS

Adjournment/Recess

The meeting was adjourned at approximately 3:07 p.m.

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



James P. Ward, Secretary

Flow Way Community Development District


Zack Stamp, Chairperson