

**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, January 19, 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
Bart Bhatla	Assistant Secretary
Martinn Winters	Assistant Secretary
Tom Kleck	Assistant Secretary

**Also present were:**

James P. Ward	District Manager
James Messick	District Engineer
Greg Woods	District Counsel
Tony Grau	Grau and Associates

**Audience:**

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

**PORTIONS OF THIS MEETING WERE TRANSCRIBED VERBATIM. ALL VERBATIM PORTIONS WERE  
TRANSCRIBED IN *ITALICS*.**

**FIRST ORDER OF BUSINESS**

**Call to Order/Roll Call**

Chairperson Zack Stamp called the meeting to order at approximately 1:00 p.m. Roll call was conducted, and all Members of the Board were present, constituting a quorum.

**SECOND ORDER OF BUSINESS**

**Public Comments**

**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****December 15, 2022 – Regular Meeting**

Chairperson Stamp added the last name of an audience member into the Minutes. He asked if there were any additional corrections or deletions; hearing none, he called for a motion.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Martinn Winters, and with all in favor, the December 15, 2022 Regular Meeting Minutes were approved as amended.**

**FOURTH ORDER OF BUSINESS****Consideration of Audited Financial Statements****Consideration of Audited Financial Statements for Fiscal Year 2022, which ended September 30, 2022**

Mr. Ward introduced Tony Grau, Senior Partner with Grau and Associates.

Mr. Tony Grau reviewed the Audited Financial Statements for the Fiscal Year ended September 30, 2022. He reported the format of the report had changed, but there was no impact to the report itself, only the wording changed. He stated the audit reflected a clean opinion with respect to the financial statements of the District; Grau believed the financial statements were fairly stated in accordance with generally accepted accounting principles. He stated the next section was the management discussion and analysis which was a recap of the financial activity during the Fiscal Year. He indicated on page 4 was the government wide financial analysis which showed the statement of net position with comparative numbers with the prior year in condense form on the full accrual basis. He reported on page 5 was the condensed income statement which showed revenues, expenses, and the change in net position with comparative numbers to the prior year. He noted there was a slight decrease in the loss of net position between the two years. He reported after that, on page 7 and 8, were the government wide financial statements; first was the balance sheet which showed assets, liability, and net position; then was the statement of activities which showed expenses, and program revenues. He noted the \$472,000 dollars was the arbitration agreed to, so this was shown as revenue on the statements. He reported on page 9, there was the balance sheet for the governmental funds with the three major funds: the general fund, debt service fund, and capital project fund. He noted the arbitration award was unavailable at the fund level since it was not received in a timely manner to pay for expenditures of the general fund which resulted in a net position deficit of \$65,000 dollars as of the balance sheet date. He reported the income statement for the funds was on page 11. He reported on page 13 were the footnotes to the financial statements which were consistent with the prior year. He indicated on page 19 were the changes in the capital assets; there were no additions, the only change was the depreciation which occurred during the year. He reported note 7 showed the various outstanding bonds: 2013, 2015, then 2015 phase 4, 2016 phase 5, 2017 phase 6, 2019 phase 7 and 8. He indicated the detail for this was at the bottom of page 20 reflecting the various bond issues along with the principal payments made during the year. He stated the District owed approximately \$29,000,000 dollars on the various bonds. He reported on page 22 was the litigation disclosure explaining the status as it existed as of the date of the report. He reported budget to actual was on page 23 and page 25 was the information required by the State of Florida and the Auditor General. He stated the remainder of

the report contained the various reports required under government auditing standards and by the Auditor General. He reported there were no findings and only clean opinions.

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

**On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, the Audited Financial Statements were accepted for purposes of inclusion in the record.**

Chairperson Stamp noted the Court Reporter was not yet in attendance; therefore, the meeting would proceed until the Court Reporter arrived at which point the meeting would be closed to the public for the Executive Session.

#### **FIFTH ORDER OF BUSINESS**

#### **Executive Session**

**Executive Session of the Board of Supervisor's (Closed to the Public) – Estimated time for Session is One (1) hour, after which the Board of Supervisor's will open the Regular Meeting and take up any actions that may be needed from the Executive Session.**

**The sole purpose of the executive attorney/client session is to discuss a settlement proposal relative to the Flow Way Community Development District's lawsuit, File Number: 20-CA-4147, and related appeal.**

***The executive session is expected to last approximately one (1) hour. At the conclusion of the executive session the Board of Supervisors will go back into Regular Session to conduct the balance of the regular agenda items.***

***The attending parties shall be the following members of the Board of Supervisors, Zack Stamp, Ron Miller, Tom Kleck, Martinn Winters, Bart Bhatla: District Attorney Greg Woods and Jessica Tolin, District Manager James Ward.***

***The entire session shall be recorded by a certified court reporter and the transcript shall be filed with the District Attorney and shall remain sealed until the lawsuit has concluded.***

***At the close of the executive session the Board will reopen the meeting for any additional items to be considered by the Board of Supervisors.***

#### **SIXTH ORDER OF BUSINESS**

#### **Supervisor's Requests**

Chairperson Stamp indicated he would skip this Item until after the Shade Session.

#### **SEVENTH 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**

Chairperson Stamp indicated this Item would be discussed after the Shade Session.

## II. District General Counsel – KE Law Group, PLLC.

*Mr. Ward: Mr. Earlywine called me yesterday and told me due to a conflict, his firm would have to resign as the District Attorney for the Flow Way CDD. I will be receiving a resignation letter from the firm in the next week or two. He has not run up any fees to any extent at this point in time, and we are back to square one and I will begin a search again for you for a District Attorney. He wasn't able to tell me the nature of the conflict. He did say there would probably be an opportunity for him to tell me that, it would just not be in the immediate future.*

*Mr. Kleck: Did he send any bills in?*

*Mr. Ward: That he did do, but I'm not going to pay that bill. It was a couple of hundred dollars.*

*Mr. Miller: but he was not able to tell you what the conflict was?*

*Chairperson Stamp: He represented at the meeting that they had already cleared conflicts.*

*Mr. Ward: He did. He told me that on the phone too.*

*Chairperson Stamp: Which may have been a true statement. There is always the possibility that the conflict has arisen since then.*

*Mr. Ward: Which is I think what happened, but I don't know the nature of the conflict.*

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

- a) **Engineer's Report [page 27]**
  - 1. **Strategic Operational Plan**
  - 2. **Bonita Springs Floodwater Diversion Plan**
  - 3. **Award of Bid for Lake Bank Restoration – Lakes 12, 20 and 21 [page 45]**

*Mr. Jimmy Messick: I prepared a District Engineer's Report to review with you this month. There are only two current items, but you will see in Appendix C we do have evaluation of bidders for the lake bank restoration project this year. Going right into the Strategic Operational Plan, the current vendors are listed with the items that are being addressed on a monthly basis. I want to note the first quarter of the capital improvement plan, lake 12 and 2021, lake bank restoration was advertised November 11, 2022 and we did get bids opened on December 21, 2022 and were evaluated. I did prepare, after review of the three bids that are attached, an evaluation bidders' letter that identifies who was the low bidder, and that was Land Shore Enterprises, LLC. We have worked with that contractor in the past and we found them to have good recommendations and successfully completed work that was similar to the nature of what they are going to be doing at*

*the Flow Way CDD. With that, I'm not sure Jim if you want to obtain approval from the Board to award the contract at this time, or if there is further information that needs to be discussed.*

*Mr. Miller: How does the 165 compare to what's in the budget?*

*Mr. Messick: We had 167 in the budget, including the contingencies for those lakes, so we did fall within budget.*

*Mr. Ward: We had \$173,000 dollars basically for the project in the budget. I just want to clarify, Jimmy said Land Shore Enterprises, but the apparent low bidder is Cross Creek, correct?*

*Mr. Messick: Yes. Cross Creek. The next low bidder was Land Shore.*

*Mr. Ward: There is no action required from you. We went through the bidding process. I'll issue a purchase order for this because we didn't do it in the form of formal contract.*

*Mr. Messick: Then the next item was just a followup about the Bonita Springs Floodwater Diversion Plan. We did have a meeting virtually on December 16, right around the last Board Meeting, which included Collier County, South Florida, Big Cypress, and Bonita Springs. We are still waiting on a followup conversation to be had with the technical experts, the technical group, to address any concerns that we may have with their emergency discharge to the woodland preserves. And we still haven't heard about a followup date on that meeting. The only other thing I will mention, in the permitting table, Jim and I did discuss the existing Water Use Permit that is still stated as a permittee by Taylor Morrison, is set to expire in May 2025, and that's one of the permits we would like to transfer to the Flow Way CDDs name. Obviously, there are a couple of permits that we want to transfer over, but that the one that's in the works. We thought we were going to start kicking off with our counsel, but apparently, we are going to change directions a little bit. We will punt that till next month and try to figure it out.*

*Chairperson Stamp: Lily pads. I know we sprayed. I know we have been in conversation. They still look to me like they are alive. Are they fooling me, or they just need a bit more?*

*Mr. Messick: I know that's been their focus and the cord grass was started. They explained to me that it's a several month process. I know you don't want to hear that, but they are working on that. The letup in rainwater I think is going to help the process when they start attacking and spraying for that, but they are continuing to address the lakes that have the worst amount of lily pads in them.*

*Chairperson Stamp: Those drainage pipes that go out into the lake, those technically aren't our responsibility, but you're going to take a look at what needs to be done or can be done and the cost?*

*Mr. Messick: At this point we have been made aware of some of the rainwater leaders, or yard drains, that extend out into the lakes that have become buoyant and are starting to float, but we don't have a good understanding of what was constructed because they are not in the South Florida permit. It's not something that was turned over to the CDD as an asset. But they are within the lakes that we do maintain, so while we go through, we are going to evaluate how many we have, where they are at, and come up with a game plan of how to address them.*

*Chairperson Stamp: We did get the dead alligator out. What did they do with it?*

*Mr. Messick: All I know is he put it in the back of his truck, and he went to dispose of it in a lawful manner.*

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

- a) Financial Statements for period ending December 31, 2022 (unaudited) [page 74]**
- b) Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities (Continuing Item – no report for January, 2023)**

*Mr. Ward: I have nothing for you. I will tell you that, from a financial perspective, we are literally just getting the fiscal year started, so our expenditures are pretty low. Our revenues are okay at this point. If you recall, the State extended the payment date on assessments out to December 31 to take the 4 percent discount, so in all of the Districts I represent I am seeing a slower pace come in, but that's going to change because December 31 was the discount date. You guys are actually a littler higher than what I've seen in other Districts, but I still want it to get a little higher. That will trigger an analysis of exactly when I can repay the Truist loan, which I am anticipating – I originally said March 31 – I am anticipating probably by end of February at this point.*

*Mr. Miller: Was that a permanent extension?*

*Mr. Ward: That was a one time extension due to Hurricane Ian.*

*Chairperson Stamp: You are going to start looking to refinance the bonds in a few months?*

*Mr. Ward: Your 2013 bonds were issued around December 15, 2013. This year, that will be the earliest date we could do a refinance. So, for either your next agenda, or in March, I will have an item that will explain the process that we need to go through to retain the consulting team to look at refinancing those bonds and then once we retain the consulting team, putting together the time schedule to do that, and then shoot for a date so that we can do the refinance on or around the date of the issuance of the bonds 10 years later.*

*Mr. Miller: (Indecipherable).*

*Mr. Ward: That's 500 pages of documents. I'm going to have to go back and look. I don't remember that date. I remember December 2023, but I'll double check. Do you remember where you saw that?*

*Mr. Miller: (Indecipherable).*

*Mr. Ward: That would be helpful in trying to read all of those pages of documents.*

*Mr. Miller: I have one other (indecipherable), with respect to the debt fund that we have service bonds (indecipherable).*

*Mr. Ward: No. The interest on the money is only available for debt service. I cannot move the money out. We levy it. Max annual debt service, so that was max annual debt service at the time of issuance of the bonds. On each of these bond accounts, the number sticks in my head of about \$5,000 dollar a year for each issue, but as that money accumulates, I can't do anything with it.*

*Mr. Miller: (Indecipherable).*

*Mr. Ward: It's only available for use for debt service. I invested these funds when the issues were initially done. The interest rates are different, but they were all done based upon whatever the interest rates were in that market at the time of issuance. But I recall they run between \$5,000 and \$7,000 dollars a year for whatever funds we can invest in, which is basically just the reserve account. I cannot invest the assessment money that's coming in because that's paying current year stuff.*

*Mr. Miller: You can't even do that in (indecipherable)?*

*Mr. Ward: Under these trust indentures, not under the instruments that I'm permitted to invest in. They are extremely restricted. I can't go stick it in any money market fund. It's basically in the Trustee's money market fund, overnights, and that's basically nothing. It's not at the 4% that money markets are at right now.*

*Mr. Bhatla: (Indecipherable).*

*Mr. Ward: The closeout?*

*Chairperson Stamp: The last payment will be reduced because we have that money sitting there.*

*Mr. Ward: Right. Whatever is leftover in those accounts at the end of the term of the bond, generally, you can reduce it to –*

*Mr. Bhatla: So, it will come back (indecipherable)?*

*Chairperson Stamp: It will reduce your last assessment.*

*Mr. Ward: Right, so if you pay \$2,000 dollars a year towards it, it goes down to some other number.*

*Mr. Miller: We have to keep the interest, which is excess redemption money we already have (indecipherable).*

*Mr. Ward: You can reduce the 30<sup>th</sup> year assessment. I have some ability to use some of the interest, but you have to accumulate cash before you can start to do that, but what that does is it will lower your assessments on the debt service side by \$5 bucks, \$10 bucks, \$15 bucks a unit, but then you are right back up there the following year. It's not a lot of money. \$5,000 dollars over 300 or 400 people within a bond issue is not a lot. It doesn't make a ton of sense to bury those assessments that little in a bond issue.*

Mr. \_\_\_\_\_26:47: So, do you have the ability to roll over that investment on an annual basis, or has that money been invested?

Mr. Ward: It's been invested. I think I did five year investments on these things, so whenever we did a bond issue, then I roll it to the next five years. The reserve account stays invested for five years, and then in the fifth year I will roll it to whatever the interest rates are at that particular time. In the 2013 series, whatever the excess is in that account, when we do the refinance, I can use any of that excess that's been accumulated towards the refunding, so what that will eventually do is, instead of issuing a par debt that's higher than what it is now, it will be slightly lower because of the interest we have accumulated over time.

Chairperson Stamp: Court reporter report?

Mr. Greg Woods: I was hoping it was the court reporter's fault. It appears that my assistant, who I generally love, is not on my good side at the moment. She is scrambling to see if she can get somebody. The good news is, most court reporters work out of home these days, so if we find someone who lives reasonably close, we might be able to scramble somebody over here.

Mr. Ward: So, we could just recess for like 20 minutes and see what you come up with?

Mr. Woods: I apologize.

## **EIGHTH ORDER OF BUSINESS**

### **Audience Comments**

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

Chairperson Stamp asked if there were any audience comments.

Ms. Lynn Hyduk asked a question which was largely (indecipherable).

Chairperson Stamp: Those are the homeowner's responsibility. I've got one of those too. Most of us do. This was before you were here, but originally when they built the first lots, they were going to rely on the slope between the houses to drain the water and they didn't put in any drains, and then they were cutting into the bank so bad they realized that they were losing a lot of shoreline, so they put those pipes in, and some float, and some don't float, and they are all kind of hell. So, they are the homeowner's responsibility, but what we are talking about is looking at the CDD picking that up. We don't have a legal obligation to do that, but we are seeing what that would cost us to roll into our lake bank restoration project.

Ms. Hyduk: so (Indecipherable).

Chairperson Stamp: I understand, and that's why we are looking at trying to do that.

Ms. Hyduk: So, your recommendation is (indecipherable)?



*Chairperson Stamp: Well, we are going to look at what we can do, but it's going to be all 22 lakes, not all of them have pipes in them.*

*Mr. Ward: Our thought is, we are in the middle of a 5-year lake bank restoration project, so as we do these lake bank restorations, there may, and I emphasize the word may, there may be an opportunity for us to rebury those pipes in a way that they won't float back up as much as they have been recently. The reason they are floating is time; as the lake bank deteriorates or changes over time, consistent with everything that goes on in Florida, they pop up, and that's what's happening. They are owned by the homeowner because they are draining their particular individual roofs, or theirs and the homeowner next to them, or in the case of multifamily, however many units are in those buildings, so ultimately, they own it, and it is their responsibility to do whatever they want with it. We are going to look at doing this, but this is not going to happen in the next month, two months, three months. It's over the next 4 or 5 years.*

*Mr. Bhatla: It could be the responsibility of the homeowner's association (indecipherable).*

*Mr. Ward: Only to the extent that that's a multifamily unit, but the single family homes, those drains are the individual homeowners, it belongs to them. It doesn't belong to the Master HOA. It belongs to them individually. It doesn't belong to the CDD because we didn't buy it or pay for it, nor was it turned over to us. It is their responsibility. What we did is, what the District did, because I'm going to say that's before most of our times here, they were permitted to put the roof drains in the lake, which is fine. That's an okay way to drain your roof, but this is what happens 5, 8, 10 years down the road. They tend to pop up.*

*Mr. Winters: They run underground until they get to the lake bank, correct?*

*Mr. Ward: They run underground till they get to the lake bank. They kind of stay under the lake bank, so it stays down, but they kind of popped up because you've got erosion on the lake banks and now the pipes are popping up.*

*Chairperson Stamp: Even in the beginning they did both. Some of them, this is a Taylor Morrison thing, they didn't necessarily all run under ground. Some of them when they put them in were sticking out, so I thought about using a hack saw to them, but fortunately they buried mine, but I think it's because I'm on the driving range and they were still trying to sell houses and they didn't want people out on the driving range seeing 6 or 8 pipes sticking out of the ground.*

*Mr. Kleck: That drain leads to the homeowner's property but goes into the lake which is not their property. How do they work on something that's not on their property legally?*

*Mr. Ward: They can because we said they can do it. I wouldn't stop anybody. If somebody called and said, "they are working on CDD property," I'm not going to stop it. It's like the golf course guy going in and getting golf balls. I'm not going to tell him not to go into our lake and get the golf balls.*

*Mr. Winters: Should they be buried in gravel once they come out?*

*Mr. Ward: The answer is yes. When we are doing the lake bank restoration, beyond putting some sand in, they are putting down GeoTube, a kind of fabric that's on top of it, and that GeoTube fabric will kind of keep it better in place than what it is now. But you can't do 20 some odd lakes at one time. They*

*anchor the GeoTube fabric and they can anchor that pipe underneath the fabric, and then sand overtop of it. So, that will help the problem.*

*Mr. Kleck: Isn't that what they've done in (indecipherable) with all the gravel drainage coverings that they've done? If you go into (indecipherable) they've all got it, one of these drainage pipe systems covered up with gravel. I remember they brought a lot of gravel in and all of those were taken care of. I was wondering if that was done by Taylor Morrison or if it was done by (indecipherable)?*

*Mr. Ward: It wasn't done by the CDD. Probably whoever the builder was for that particular project.*

Discussion continued regarding the yard drains.

Mr. Ward indicated the HOA was welcome to direct any questions about the yard drains to himself.

Discussion continued regarding the yard drains; the lake bank restoration project; and the littoral shelves; much of this conversation was (indecipherable).

Chairperson Stamp asked if a court reporter was available.

*Mr. Woods: They've tried a dozen people. No one is available at the moment. A couple are in court and will free up. One problem is we are supposed to respond to Taylor Morrison's settlement proposal by tomorrow. I can probably get an extension, I'm guessing, but we can probably have someone out here 3:30 ish. So, thoughts?*

*Mr. Miller: Can a court reporter do their job from audio later? If we were to record it?*

*Mr. Ward: No. You have to have the court reporter here in person.*

*Mr. Woods: I question that because I think the statute is older. The Governor issued an order that court reporters – court reporters appear in court by zoom, and I think the Governor's order on COVID would allow us to have a court reporter zoom in. If we can get them to zoom in, I think we have a better shot of getting someone sooner.*

*Mr. Ward: You're the attorney.*

*Mr. Woods: Let me check and see if I can get a zoom court reporter.*

*Chairperson Stamp: Let's stand in recess until 2:15 p.m.*

The meeting was recessed.

*Chairperson Stamp: Okay, we are back on the record at 2:27 p.m. The only other Item will be to recess or adjourn. If we recess, to what time and date do we recess? How is Friday the 27<sup>th</sup> [of January] looking to people?*

The Board agreed to continue the meeting until Friday, January 27, 2023 at 2:00 p.m.

**NINTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**Announcement of Next Meeting – Regular Meeting on February 16, 2023**

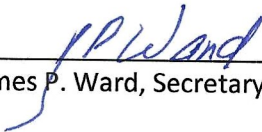
**TENTH ORDER OF BUSINESS**

**Adjournment/Recess**

The meeting was recessed at approximately 2:31 p.m.

**On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, the Meeting was recessed until Friday, January 27, 2023 at 2:00 p.m. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.**

Flow Way Community Development District

  
James P. Ward, Secretary

  
Zack Stamp, Chairperson