

**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 20, 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
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
Greg Woods	District Counsel
Andrew Gill	JP Ward and Associates
Tony Grau	Grau and Associates

**Audience:**

Marty Teperow  
Jordan Ball

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 Martinn 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.

**THIRD ORDER OF BUSINESS****Consideration of Minutes**

- I. December 2, 2021- Meeting
- II. December 16, 2021 – Regular Meeting

Chairperson Stamp asked if there were any additions or corrections to the December 2, 2021 Minutes; hearing none, he called for a motion.

**On MOTION made by Mr. Bart Bhatla, seconded by Mr. Tom Kleck, and with all in favor, the December 2, 2021, Meeting Minutes were approved.**

Chairperson Stamp asked if there were any additions or corrections to the December 16, 2021 Minutes; 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 December 16, 2021, Meeting Minutes were approved.**

**FOURTH ORDER OF BUSINESS****Consideration of Audited Financial Statements****Consideration of Audited Financial Statements for Fiscal Year 2021, which ended September 30, 2021**

Mr. Ward introduced Tony Grau of Grau and Associates.

Mr. Tony Grau reviewed the Audited Financial Statements for the Fiscal Year ended September 30, 2021. He reported page 1 and 2 reflected a clean opinion with respect to the audit of the financial statements of the District. He indicated there was a new item in the audit report on page 2, an additional information spreadsheet, which was now required by Florida Statute.

*Mr. Bhatla: You said clean audit. We are in the hole for the budget this year because of the assumption of the (indecipherable) we have the preserves. Has that been uncovered by you? Is that not in the last fiscal year?*

*Mr. Ward: It's not in the last fiscal year.*

Mr. Grau stated the next section was the management discussion and analysis which was a recap of the financial activity during the Fiscal Year. He indicated page 4 showed the statement of net position with comparative numbers to 2020. He stated page 5 was the income statement (changes in net position) with comparative numbers. He reported pages 7 and 8 were the government wide financial statements, which were on a full accrual basis and included capital assets and long term debt. He stated page 9 was the fund financial statements reflecting the general fund, debt service fund, and capital project fund. He noted Flow Way CDD had approximately \$3.5 million dollars in fund balance, most of which was in the debt service fund. He stated page 11 was the income statement for the governmental funds showing the assessments, expenditures, general fund, maintenance and operation, and debt service. He noted there was a large transfer out of the capital project fund into the debt service fund during the current fiscal year. He reported next were the footnotes to the financial statements which were similar to the prior year. He

indicated on page 19 was the transfer for Note 5, the capital assets which reflected the appreciation in the current year. He stated Note 7 itemized the long term debt for the different phases. He noted debt was paid down by approximately \$1.7 million dollars. He reported there were very large prepayments during the year, one for approximately \$1 million dollars. He noted page 21 was the amortization schedule and the Note related to the preserves. He indicated page 22 was budget to actuals; page 24 was the new schedule required by Florida Statutes and the Auditor General which was basically additional information supplied by management. He stated the remainder of the report contained the various reports required under government auditing standards and by the Auditor General including the newly required additional data which was supplied by management. He noted there were no findings and only clean opinions.

Chairperson Stamp asked if there were any questions.

Mr. Bhatla asked for a copy of the Audited Financial Statements.

Mr. Ward noted the Audited Financial Statements were included in the Agenda Packet.

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. Bart Bhatla, and with all in favor, the Audited Financial Statements for Fiscal Year 2021 were accepted for purposes of inclusion in the record.**

## FIFTH ORDER OF BUSINESS

### Discussion

#### **Discussion of use of lake maintenance easements and recreational use of the lakes and water management system**

*Chairperson Stamp: We are having issues arising from the lakes. One is, there is a 10 foot maintenance easement around all of these lakes and there has been a couple of different scenarios where we believe Taylor Morrison built right up against the easement and put the landscaping in the easement which wasn't the buyers fault. The second, we have had at least one, if not a few, who have built out or put landscaping into the easement. We need to talk, and the HOA needs to talk, because the HOA technically has jurisdiction over that, about a general policy. I am not prepared to do anything today, but I wanted to raise this, because Jim and I and Greg will probably be talking with the HOA, or maybe Bart would be better brought into this than me, about what kind of policy we are going to have and how we are going to address it when there are issues. I assume there will be some landscaping that really doesn't matter and landscaping that really matters, and how we are going to treat each of those could become important. I just wanted to put this on people's radar as something we going to be doing.*

*Mr. Miller: Do we know the measurement of this 10 foot easement from the (indecipherable)?*

*Mr. Ward: The easement is going to be 10 feet over from what's called "control." Control is an imaginary line from where the water reaches its highest point. The water when it gets to its highest level, the easement starts 10 feet above that, so it will vary all year long. You might see 10 feet of lake bank, you might see 8 feet, you might see 12 feet of lake bank or more depending on the elevation.*

*Mr. Miller: Does the easement fluctuate with the water level?*

*Mr. Ward: The water level fluctuates, but the easement doesn't. Generally speaking, you can look at any lake and the top of the slope of the lake bank is the top of the easement.*

*Mr. Bhatla: So, what is the issue.*

*Chairperson Stamp: The issue is a couple things. One, what do we as the CDD, hopefully in conjunction with the HOA, want to do about people who have planted in the easement, some unintentionally and some intentionally? In some places it may not matter. Obviously, it will matter more if it's a tree versus a bush. We need to start developing a policy regarding how it's going to be handled and Jim can fill you in on what some others have done where they have a notice that goes out that basically says, "We know you built these, but you know you're in the easement. We reserve the right if we ever need to come in for maintenance or emergency to take out what's there, and you agree we have the right to do that." We need to work this out with the HOA. We don't have the authority to fine someone for building in that, where the HOA has the authority to fine or take remedial action.*

*Mr. Kleck: If they've got the authority, why are we getting involved?*

*Chairperson Stamp: We need the access.*

*Mr. Ward: The lake bank is an integral part of your water management system. It was issued under the permit that's requires it remain in place and that the integrity of the lake bank be maintained. What I see sometimes in Districts is landscaping is the easy part. It's the fences, really big trees, pavers, air conditioners, and this other stuff. Some Districts have, and what's been recommended to you, is we might want to come up with a procedure, so if someone wants to put something in the easement, other than just landscaping, then we can go through a procedure where we can permit that, and they sign an agreement which says if we have to go in there, then we would be able to remove that structure (encroachment). That's the concept.*

*Mr. Bhatla: My impression was we could not plant a tree in the easement area and the HOA was very strict and they do it through the architectural committee. I think in this transition everything got kind of lax because people started to plant in their backyards, etc. A year and a half ago it was a "no-no." You just couldn't do it. So, probably it's an enforcement issue of the HOA. They have it. They have a policy in place, but I think it is not being enforced at the moment. We need to talk to them.*

*Chairperson Stamp: We need to talk to them. There are innocent violations and outright violations. The other issue, of which I've only seen one example, is a few weeks ago, there was a man, woman, and dog kayaking in one of the lakes. Again, we need to talk to the HOA. Frankly, I'm okay that they are out there. I'm more worried about the liability if there's a problem. I don't want the CDD or HOA assuming liability if something happened to a boater or a boater caused some other problem. That's another issue. We will be addressing that. This was just an informational item.*

## **SIXTH ORDER OF BUSINESS**

### **Staff Items**

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

- a. Discussion of outcome of Motion for leave to amend hearing**
- b. Non-Binding Arbitration Hearing - February 28, 2022**

*Mr. Greg Woods: Since we last met, we had a hearing on our motion for leave to add the claim with regard to the lakes and fencing and that stuff. The Taylor Morrison fought it and because their position was if we add those claims, they are going to have to bring in their subcontractors and subcontractors take another 60 days and it's going to blow all the current scheduling in the case. The judge agreed with them, so we have to file a separate action. We are coordinating with the HOA because the HOA needs to file an action on their issues as well. The HOA is kind of lagging. They still need a couple reports and things of that nature, but I think they will ultimately be filing suit. We will probably join in their suit on those different defective construction etc. claims.*

*Mr. Bhatla: So, it would be an addendum. How would you classify this?*

*Mr. Woods: It would be a separate lawsuit. I will probably need Board approval when the time comes to approve the filing of the second lawsuit on the construction defects.*

*Chairperson Stamp: Or we could give you the authority to do it when the time comes.*

*Mr. Woods: The Board already approved adding it to the case. I think the Board would probably approve now even though it has to be done separately.*

*Mr. Miller: I would be open to a motion on that just to move forward in the most expeditious manner. Indecipherable).*

*Mr. Woods: I think the motion would be along the lines of the Board is authorizing the filing of a second lawsuit for construction defects relative to the lakes, the piping system in the lakes, the fencing, and any other construction issues that may arise in the interim. As a part of that, do you want to make Mr. Stan Foss (ph) the liaison for the litigation attorney for the second case as well.*

*Mr. Bhatla: What is the practicality of combining that with the HOA lawsuit? Because the majority of their lawsuit is going to be for construction deficiencies and defects. Is that practical?*

*Mr. Woods: We are working with them to potentially file a different lawsuit. We could file ours separately. We could file jointly. I think there are advantages to filing jointly. I don't think there are any changes in economics because we haven't prepared our claims, they haven't prepared their claims, and actually there are some savings in that we can kind of share --*

*Mr. Bhatla: What about the processing and preparing both if they have to handle and schedule two different.*

*Mr. Woods: There is a little bit of a delay with an extra set of attorneys when you try to schedule things, but that is a minor delay. I think the benefits of having two attorneys on the same side asking questions and depositions, we can take turns if we are having discovery. Some of that stuff can be shared too which is a cost savings. There are overall benefits. But obviously the HOA has to agree that they want to file the suit with us. So, we have to deal with that as well. But there are benefits to doing this jointly.*

**On MOTION made by Mr. Ronald Miller, seconded by Mr. Bart Bhatla, and with all in favor, the Board authorized the filing of a second lawsuit**

**for construction defects relative to the lakes, the piping system in the lakes, the fencing, and any other construction issues that may arise in the interim.**

*Chairperson Stamp: What about the HOA joining the underlying lawsuit, switching from being a defendant to a plaintiff?*

*Mr. Woods: We have been encouraging the HOA's attorneys to do so. They just haven't quite gotten there yet. There is intent to go that direction. The nonbinding arbitration got moved. It is now February 28. It probably needed to be moved because we need some discovery. On Monday I will be deposing another one of the Taylor Morrison Board Members. I forget his name, but after speaking with some people, we felt he would be a good person to call for his deposition based on the information we are trying to elicit. We will take that deposition and then Taylor Morrison has designated Barbara Kininmonth, their President of the local branch here, as their corporate representative, and then they also named their outside attorney as their corporate representative on some of the legal issues which is somewhat unusual, but we will have those depositions coming up as well. Hopefully, we should have them all done ahead of the nonbinding arbitration, so we can put that information in front of the arbitrator.*

*Mr. Miller: Do you think we are still on target for May?*

*Mr. Woods: We are currently, I believe, on the end of June docket. He discussed the difficulties in scheduling due to COVID. Based on other cases I have in the pipeline, my best guess is June might be optimistic.*

*Chairperson Stamp: I want to point out a couple things from Drew Millers' deposition. He was very candid in that they never intended to honor the permits. Their intent from the beginning was to give it to the CDD, the permits be damned. Keep in mind, he didn't know who his employer was or what his job title was. There were a lot of things he didn't know if you read the deposition.*

*Mr. Miller: (Indecipherable). He did not know who his employer was. He did not know where his paycheck came from, and he did not know his title.*

*Chairperson Stamp: In fairness to him, I get that he was trying to draw distinctively that he didn't know if he was employed by Taylor Morrison Florida, Taylor Morrison Esplanade, or Taylor Morrison --, but he was being too cute in not knowing who he worked for.*

Discussion continued regarding Drew Miller's deposition.

*Mr. Bhatla: What's the implication of these two people who are being presented, the VP and the other? These are the additional people that we are going to depose?*

*Mr. Woods: We can ask for the deposition of their corporate representative. The corporate representative's testimony on a specific topic can bind the company. For instance, Drew Miller testified, but this is just Drew Miller as an individual testifying. You want to bind the company on its specific legal positions for the case. But they are entitled to decide who they put up as their corporate representatives, so they split it into two.*

*Mr. Bhatla: I think that's a good move because I've gone through the deposition and Drew gives the impression that basically the permit exists, but it doesn't mean anything. That was his attitude.*

*Chairperson Stamp: They were doing us a big favor. He made that very clear, that we should be eternally thankful for them giving us a debt.*

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

- a. Preserve Tree Removal**
- b. Strategic Operational Plan**
- c. 20-Year Stormwater Needs Analysis**
- d. USGS/SFMWD Surface Recorder**

*Mr. James Messick: I have five things to review with you. Number 1 is Preserve Tree Removal. After our submittal to the District, South Florida Water Management District, Mike Connor met with their Staff to review the submittal and trees that were requested as the priority to be removed. That took place on January 13. After the visit, I spoke with Mike and there were some conflicting opinions about trees and Mike is going to revise those priority trees so that it is acceptable to the District to get approval from them to be removed. He is in the middle of revising his plans.*

Chairperson Stamp asked if the safety hazard the trees presented was discussed.

*Mr. Messick: Yes. If it's 35 feet off of the path, and it is a 32 foot tall tree, Mike may have pushed a little bit to have that tree removed, the dead tree. Another thing that they brought up was that they expected the trees they did approve to have the top half of the trees removed while the bottom half of the trees would be left in place (if it weren't a safety hazard) in case there were woodpeckers or other types of birds who might want to use those trees as a habitat.*

*Mr. Bhatla: Who is the approving party on that?*

*Mr. Messick: South Florida Water Management District. They have an environmental department that he met with, and they went and looked at all the different trees. I would like to note that the prices we gave you were just to cut down the trees; that's what we've done in other communities. Their request to cut down a portion and actually remove the portion, would increase the cost for those trees, but it may be offset by the fact that not all of the trees were agreed upon, so there may be less trees, but more cost per tree. We will have a revised budget and approach once we have a revised plan submitted and approval from the District.*

*Mr. Bhatla: Removed to where?*

*Mr. Messick: They would have to be removed offsite and be disposed of.*

*Mr. Bhatla: Why? Can't we just ask the Authority to drop it there in the preserve?*

*Mr. Messick: I think it causes a threat if there is a forest fire and there is a lot of kindle and other trees that are dead and just laying around. They want it removed out of the preserve.*

Discussion ensued regarding leaving the cut tree portions onsite; the potential problems the trees could cause by impeding water flow and providing fuel for forest fires; and the existing dead trees in the preserve area already being fuel for fire.

*Mr. Messick: Item number 2 is Strategic Operational Plan. I want to give you an update on the items we are currently working on. We have approximately 90% of the assets investigated and have performed several site visits to evaluate those assets and the draft report is being prepared. Some of the deliverables I've noted. Last month we gave you the 2021-2022 fiscal year budget. We are working and trying to finish the draft budget for fiscal year 2022-2023 by the end of this month. We are about 25% with the 5 year CIP program (capital improvement program), and we are almost complete with the lake bank slope erosion report and the asset evaluation report. Those are being finalized hopefully before our next Board meeting. We have secured vendors for various assets. I've gone through and listed those; under the lake maintenance we have Ecologic Services for aquatic lake and wetland plant maintenance; under landscape maintenance we have Estates Landscaping Lawn Management which is for the interim planting and the First Class Pools which is the main entry fountain. The Everglades Pine Straw, the mulching is still under negotiations. For the irrigation pump station, we have both Metro Pumping Station and MRI undergoing services for their respective maintenance and treatment programs.*

*Mr. Bhatla: Is that all under the permit? The improvements we are making?*

*Mr. Messick: All the vendors are to maintain the various assets. We are not making any improvements; we are just maintaining the existing assets we have. Landscaping, the pumpstation, etc. those are the vendors we currently have, and we are in negotiations and have actually prepared P.O.s for this fiscal year.*

*Mr. Bhatla: Is that at the entrance?*

*Mr. Messick: Yes. Primarily the landscape buffers are on the south side and at the entrance. The next item I would like to present is the 20-year Stormwater Needs Analysis. Based on recent Florida legislature, there is a need for a long term plan in process for stormwater and wastewater. Obviously, wastewater is not applicable for Flow Way. Per section 403.9302 Florida Statutes requires a 20 year Needs Analysis for local governments. That includes CDDs providing stormwater services. The analysis will be completed by June 30, 2022 for the first round of the Stormwater Needs Analysis. CGA has reviewed the template and prepared the analysis of existing stormwater management system. A lot of the items included in the previous item, Strategic Operational Plan, will be incorporated into this template and the draft will be provided to the District Manager by March 2022 for review. Attached in Exhibit 3 are the memorandum of Stormwater Needs Analysis and the template worksheet that we will use.*

*Chairperson Stamp: Okay, want to talk about the Service Recorders?*

*Mr. Messick: We got the revised draft agreement approved at the last supervisor meeting and the District Manager signed fully executed agreement was sent by our counsel to USGS and South Florida on January 12, 2022. As stated before, this program is intended to be completed this Fiscal Year, so our ability to work with them cooperatively was much appreciated.*

*Mr. Bhatla: What are we doing here? Is this the USGS station you were talking about?*



*Mr. Messick: This is the surface water recorder. It is a gauging station they will use to update their water models. We do not maintain it. It is fully owned and operated by them. It's just on our land.*

*Chairperson Stamp: It's powered by a solar panel and is way off in the northwest corner of our property in the preserves.*

*Mr. Bhatla: What is our role in that?*

*Chairperson Stamp: We just have to approve them placing it there.*

*Mr. Messick: The fifth thing I wanted to discuss was the South Florida Water Management Consumptive Use Permit Transfer. We are currently investigating and preparing documents to transfer that, and supervisor Bhatla had requested public records from South Florida that we are currently waiting on. They actually just replied to me requesting a fee of \$74.40 that we have to pay them to get the public records released.*

*Mr. Bhatla: I think we should spend the money and also, I would recommend we have a pre-permit application meeting with the Agency. It usually avoids a great deal of revisions and going back and forth, and you understand their intent, and they will provide direction on how much work is involved. You want to minimize the amount of work and establish an understanding because it is so important to get your water permit. It is very customary to do that.*

*Mr. Messick: That is something we can perform and attend with you or by ourselves and then we can –*

*Mr. Bhatla: I think we need the owner present there, in other words the CDD. We are the owners and I think we'd like to be there. I will volunteer to be there.*

*Chairperson Stamp: We have a visitor who has a comment. I would like to go out in the preserves and see them. I don't want to set up a special visit, but if one of the vendors, or yourself, is going out there and has room on a gator or something, I would like to go out and see the place. I think some of the other members might like to go, but we cannot go together because then it becomes a public meeting.*

*Mr. Marty Tepero (ph): I am noticing a very large imbalance on the height of the lakes, depth of the lakes, particularly if you look behind (indecipherable). The lakes there are lower than I have ever seen in my life and here it is only mid-January. I'm wondering, does anybody come out and look at this and monitor the lakes and walk the area to see the imbalance?*

*Mr. Messick: There are monitoring wells that we can refer to on a quarterly basis if we can get our hands on the report to get some historical water level elevations, but those are primarily not in the lakes, but in the preserve areas. I can certainly talk to my Staff that's out there in the field and get their opinion about the water levels, but we have not been the District Engineer for more than a year, so we don't have the experience that you may have been here for four years. We have only been through one dry season. This would be our second dry season. But if I can get my hands on some of those water table monitoring reports, then I can look back at years past to see where we are at and see if there is any historical significance with the water level.*

*Mr. Miller: It might be a good thing if we could identify the lake he is referring to and then it is my understanding that all the lakes are interconnected with pipes, so the levels of all the lakes, with one exception, should be the same. If the water level on one lake was not the same, that might be an indication that we have a clogged pipe.*

*Chairperson Stamp: Jim, it might be worth looking at the pipe to see if any interconnects are not working. Marty is going to send pictures and I will forward them on.*

*Mr. Messick: If we can identify the exact location that would be great.*

*Mr. Miller: (Indecipherable).*

*Chairperson Stamp: I explained to Marty when he came in, if you have specific questions on specific agenda items, just get my attention; otherwise, there will be a public comment period at the end.*

*Mr. Jordan Ball: (Indecipherable).*

*Chairperson Stamp: Jimmy can you hear the questions?*

*Mr. Messick: No. You will have to paraphrase what he's asking. Sorry.*

*Chairperson Stamp: They are concerned about the lakes, the littoral plantings in them, and now balls are getting lost in the littorals.*

*Mr. Jordan Ball: if you go to any other driving range with a lake. The edge of the lake banks is clear. You can walk right down. It's sand, but here we don't have that luxury, so we lose – as fast as we can put golf balls into circulation, we lose them. Not to mention (indecipherable) we have a boat they go out on, but because the littorals are so thick, and with the drop-offs, they can't get the balls, so we have a big problem with members not having golf balls, and with the supply chain issues currently we can't buy golf balls. At this rate within the next couple of weeks we are going to be totally out of golf balls.*

*Mr. Bhatla: Do you have a suggestion?*

*Mr. Jordan Ball: I do. My first suggestion is, long term suggestion, how can we along the lake banks, get rid of the vegetation? Is there a certain percentage of lake bank planting that needs to stay? If that's the case, can we clear out the driving range lake and count the other lakes at the percentage? If not, is there an opportunity for us to put a boom in it which is a floatation device which contains the golf balls.*

A short discussion ensued regarding the driving range which was (indecipherable).

*Mr. Messick: I can speak on this. I did talk to my environmentalist about littorals and whether or not we can modify them. The approved South Florida permit has littorals on the aqua range, primarily on the south side of the lake and the kind of wrap around the east on the preserve and the west on the flow way. It does not creep along the east and west sides of the lake and there are no littorals required on the north side of the lake immediately adjacent to where they are driving from.*

*So, we can move littorals, we can shift littorals, as long as we keep the minimum linear foot of required littorals in that lake preserved, we don't have to go back to the District. It is all a maintenance issue. We can cut down littorals and replant if you want to move them to a different area. There are certainly things we can look at to try to make it easier with your operations at the driving range, so you don't have problems retrieving all the golf balls being hit into the lake.*

*Mr. Jordan Ball: Would it be possible to set up a meeting for myself and Joe to meet with you in the near future to look at that in detail and come up with an Agenda, and if that is the case where we have to have a certain percentage of littoral on the driving range lake, we could at least identify that and then get with the HOA Board on putting a boom in to eliminate golf balls from getting into the littorals.*

*Mr. Messick: The first thing I can do is prepare an email and send it to the District Manager to coordinate with you and I can show you where the littorals are permitted. If there are littorals in other areas, you can remove them as long as you keep the permitted littorals in the permitted areas. If you want to meet on site to look at them in more detail, I can certainly meet with you myself or as I said, I have Staff that's out there every week and are more familiar with the lakes and lake banks and they have don't a lot of the strategic investigations of the assets for the CDD.*

*Mr. Jordan Ball: Once we identify that area, is there any CDD restriction on us putting in a boom, which is a floatation device?*

*Mr. Ward: That would need to be permitted. We need to give you permission to do that, which I don't see being a problem, but you have to go through the process.*

*Chairperson Stamp: The only problem I see here is "quick." I don't know what quick means. (Indecipherable). We can meet quickly but reaching a solution –*

*Mr. Jordan Ball: Understood.*

*Mr. Kleck: Does every lake have the same percentage of the among of littorals that they are supposed to have?*

*Mr. Messick: Not the same. In fact, there is an interior lake, I believe someone got up and spoke about not have any littorals before, and that lake does not have any required littorals. There never was supposed to be littorals in that lake. We can certainly add littorals to that, but there was a zero percentage on that lake and there are other lakes that have higher percentages. The average littoral percentage is anywhere from 30% to 50% depending on the lake.*

Discussion ensued regarding littoral percentages in lakes; the lake without littorals; helping to get the driving range lake littorals to a manageable level; the CDD's budget limitations; and the cost of moving littorals. Portions of this discussion were (indecipherable).

*Mr. Miller: if a lake only has 25% littorals planted. If that's the case, I think what I'm hearing, what they would be asking, is much less than removing 25%. If it's only a 25% requirement, we could help them achieve their objective easily by removing littorals in the places where balls are found. This whole matter came to my attention a couple of weeks ago. I don't use the range, but I'm hearing other people whining about the lack of balls. There just aren't any golf balls to hit at that point, and*

*one thing led to another. I had a tour which was quite interesting, I learned a lot. The guy in the boat was trying to net balls and that wasn't working. There was another guy on the north shore taking them out one at a time, dodging the people on the range hitting balls right at them. I wouldn't want that job. I do fully support doing what we can for them quickly. (Indecipherable). Perhaps we don't know what the real critical need is, or top two critical needs, and assuming we can remove the littorals, finding out how much that might cost. Are we talking \$5,000 dollars, \$10,000 dollars? We can come up with that kind of money. We as a CDD must do things (indecipherable) and should want to do things to help the community. I would prefer postponing the \$7,500 dollar tree cutting and spending \$7,500 dollars to pull the weeds out of the lake. I haven't heard a single person say, Ron, when are they going to cut down those trees? I've only heard complaints about the range.*

*Mr. Bhatla: I want to propose that we should assign somebody through Jimmy who can go ahead and prepare a sketch, etc., of the project we need to do and that could be the basis, but I think this seems to be urgent because if we don't do this, we'll have a lot of unhappy people. I think we need to attempt this, Jimmy, as quickly as possible.*

*Chairperson Stamp: I have heard a couple of complaints, but more because the trees are ugly, but it is certainly not a predominant theme out there. Jimmy will be in touch to set up a meeting.*

*Mr. Bhatla: Hopefully the problem will be resolved inside a month.*

*Chairperson Stamp: If we are going to do that, we need a process to do that, and we need a budget to do that.*

*Mr. Bhatla: So, we need a definition of the problem and the amount involved, and then we can act.*

*Mr. Ward: As Ron indicated, he did bring this to my attention a couple of weeks ago. I have gotten CGA involved in the process to determine what we can do and how quickly we can do it within the constraints of our existing budget, and then to the extent it's not in there we would have to figure out what the cost is going to be, whether we can afford it etc. I clearly have the authority to do that outside of the Board Meetings and will continue to move forward and do that process. If it's out of control and the number is not fathomable, we will have to come back to you, but it is on our radar.*

*Mr. Miller: What is your authority level in spending money without Board approval?*

*Mr. Ward: Within the constraints of the budget, I have authority to do so, but the budget is kind of a hot mess at the moment. We are going to go through that in a minute. I can move things around as I deem appropriate.*

*Mr. Kleck: Jimmy, if you meet a few guys from the golf course, are you able to give them an estimate of what they want to have done would cost?*

*Mr. Messick: Yes.*

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

- a. Review of Operations Financial Position – Remainder of Fiscal Year 2022**
- b. Review of Questions and Answers to Audience Questions from the December 16, 2022, meeting**

**c. Financial Statements for period ending December 31, 2021 (unaudited)**

*Mr. Ward: I provided to you our current fiscal year 2022 operations. From an overall perspective, we have roughly \$753,000 dollars in our budget for our entire operations during the current year. Of that \$753,000 we are anticipating using about \$150,000 dollars of existing cash to fund it. Taking over the operations of all of our assets, you will see in the estimated expenditures out, they include the lakes, the MRI cleaning, the landscaping for (indecipherable) as you come into the community, the irrigation, a little bit of a contingency, and we have also identified in the last two months alone extra items that have come to our attention as items that should have been repaired in the past, but haven't been repaired, like the video of the drainage pipe, the structure repairs and broken pipes, the entrance (indecipherable) which were partially inoperable, and the preserve tree removal. In total, in just what we know today, there is \$1,172,000 dollars in anticipated operating expenditures through September of 2022. That simply means there is not enough cash in the bank to fund this entire operation for the balance of this fiscal year. I put together items that either can be deterred or not done in the current year, including your preserves and all of the extra items that we have identified to date. Even doing all the operations excluding program reductions, by the end of this year, I anticipate our cash balance to drop to \$82,000 dollars. That is insufficient to fund the operations in October, November and December. Just doing normal course of business for that time period would be roughly \$203,000 dollars in operations. If we are going to continue down this road, clearly all the extra items we cannot do. The preserve item we can defer the decision on doing that but based on the purchase orders we already have written, in order to do the landscaping, doing the preserves in June is not something I think we are going to be able to do at this point. I will continue to update this for you as we go forward through each month. As I mentioned to you, it seems like every time we turnover a rock something new pops out that we did not know about and it's not a \$2,000 dollar item, it's always a 5 digit number item we have to deal with. This is the state of financial affairs that we are in at the current time.*

*Mr. Bhatla: You made a comment about the already purchase orders relative to the preserve that you can't implement. Is that what you said?*

*Mr. Ward: Yes. That is what I said. In order to handle the standard operations for lakes, landscaping, irrigation system, there won't be sufficient funds, I don't think, to do the preserve maintenance item that is normally at this sum. I'm going to caveat, "I don't think," because we will know that in a few months when we get there. The number may not be \$250,000; it may be another number this year. It does seem to be going down on a yearly basis in terms of what we are actually spending to do the maintenance, but it's a decision we will have to make in two months.*

*Mr. Miller: do we have the authority to borrow money? Did we think about getting a line of credit to get us through this time?*

*Mr. Ward: I have been reaching out in the last three or four weeks to numerous professionals that I know that would know, and there are only two that I have come across: Synovus is one bank, and I forgot the name of the other bank. I will be reaching out to them, but it's unlikely that we will be able to do that, but it's something I want to try. No other banks I have found do that.*

*Mr. Miller: Is it reticence on the part of the banks?*

*Mr. Ward: The reticence is there is no security for the pledge of the borrow. It's like a bond anticipation note. The pledge is you would be required to levy an assessment next year to fund the repayment of that note. You can't guarantee that right now because you haven't gone through the public hearing process, you haven't levied the assessment. It's a chicken and egg thing.*

*Mr. Miller: It might take some creativity, but don't we have substantial deposits with several banks?*

*Mr. Ward: All of the money that we have, which is millions of dollars obviously, is in trust accounts or pledged to the bond issues. Those cannot be pledged for any other source. The only money we have is our cash account which as I said is \$350,000/\$400,000 whatever the number may be, but it's not enough to pledge what I know we are going to need. But I still want to proceed and figure out if a solution is discoverable, but I am not optimistic at this point.*

*Mr. Bhatla: The implication is, if we don't do the maintenance of the preserves, we have internalized the problem it seems to me, through lawsuit and we haven't brought the Corps into it, at least informing them that we have this conundrum. We have to solve it because if in future they apply a fine etc., part of the consideration of this is that they will say you never informed us about these issues. We need to bring them in and share our problem, and I think they will understand about the delay. Also, I think we need to bring to the surface that we have to explain to the court what has happened. We have assumed responsibility without the funds, and we are unable to do this. What is their take on it? We don't have a downside on that. We are involved anyway. We have to get it done. But I think not to inform the regulatory agency and internally just deciding we will delay – we need to be transparent. Everything we do is essentially transparent. I propose we meet with the Corps, and the theme is the permit application because that permit also has to come to us eventually. The court indicated there is no need to make a transfer at this point in time because they were concerned about the success on the part of Taylor Morrison, so they might have some comments, and they might call Taylor Morrison and say hey guys, we want to do this, that or the other. I think we need to bring up the problem in the open and not just internalize it. By internalizing I mean is we are trying to recover the fund through our lawsuit, but the agency is controlling us, and we are not informing them of what's going on. I don't think it's a good idea because when push comes to shove if there are any penalties, one of the considerations is cooperation and information sharing. We don't want to fall into that because everything we do is—*

*Chairperson Stamp: I don't think anybody here would disagree with that. The problem is we've asked the Corps for a meeting, and they haven't given it to us. We could ask again. Before the lawsuit was filed, we asked.*

*Mr. Bhatla: They won't meet with us?*

*Mr. Woods: If you approach them as a preapplication meeting and then perhaps I could bring a letter with deposition excerpts.*

*Mr. Bhatla: We do the preapplication meeting. They may say no, no, you can't do this etc. I think I'd like us to approach them, if you think it's alright, not on a legal basis. Because the protocol is, if you bring your attorney you have to inform them, and they bring their attorney, and the conversation will be different. We are speaking of preapplication requirements, etc., so at least we get some feedback. If you like, I think we can approach them.*

*Chairperson Stamp: Who do you mean by “we?” Through Jim? How do we approach them?*

*Mr. Bhatla: I think through Jim or us. We make a call as a CDD and ask. They may say write a letter in this form and then we'll respond. I don't think it hurts anything.*

*Chairperson Stamp: I don't think it hurts anything, but two concerns come to my mind. As individual board members we don't really have the authority to do anything. It doesn't mean we can't reach out. The other thing is, would that come back and bite us in the lawsuit. That's my two concerns.*

*Mr. Woods: It could be beneficial to have an open frank discussion. I just worry if they ask hard questions and then take a different –*

*Mr. Bhatla: Like what? We just are playing the game.*

*Mr. Woods: Well, let's not play a game because I'm tendering legal advice here.*

*Chairperson Stamp: You are also on public record.*

*Mr. Bhatla: I am asking what is the potential downside?*

*Mr. Woods: I don't want to explain the downside on the public record.*

*Chairperson Stamp: When I say you don't have any authority, it does not mean you cannot act. It just means you cannot act with any authority as an individual member. It doesn't mean you can't meet. You can meet and say you're a member of the board, you just don't have the authority to bind the board.*

*Mr. Ward: I must support Greg in this. It's really difficult to know what the Corps is going to do, good or bad. And if you anticipate what they normally do as being more bad than good to start with, I would be very careful of calling or setting up appointments or doing anything with respect to – I think you could look at this permit to begin with. If you don't do the maintenance, all it really does is extend your maintenance program another year or whatever time needed to meet the success criteria. I don't think it's a particularly onerous decision to defer it. It just extends the time period you have in order to do the maintenance. I would tend to be really careful, especially because we are in litigation, about doing anything at the Corps level.*

*Mr. Bhatla: I view this in this way, that we are not a party to the permit. We are by implication, by default we took ownership, and we assume we are the permit holder. We are not the permit holder. The Corps, I think, assumes that anybody they gave the ownership to, they give them the funds. That is how I think the discussion – as long as we don't do anything legally with the Corps, then technically are not going to be involved.*

*Chairperson Stamp: Question for legal counsel: Is the ability for the court to come to a decision, isn't that information going to come up in the trial that we got more than we can chew so to speak, and we got property that never got funded for? Won't that come out in the trial?*

*Mr. Woods: That will come out in the trial, but the Corps is not a participant in the trial. We have sent the Corps a very lengthy detailed letter on the position and the fact that there is no escrow fund*

*and all. The Corps is aware of that. The Corps has previously made several determinations in our favor, but Taylor Morrison tried to modify the permit to basically pass it off to us and the Corps said no, you are not going to modify the permit at this time. So, Taylor Morrison is still on the block. In response to what Jim said, delaying the success criteria, I don't think the Corps will let Taylor Morrison off until the success criteria are met, so that keeps Taylor Morrison as permittee out there. I believe we should, perhaps after depositions, we may want to send supplemental correspondence to the Corps just on some of the information we have gleaned. I don't know if you want to push them to make a decision now, but you want to keep them informed and let them know what's going on and that there is still no escrow fund and there might be a mention about our budget.*

*Chairperson Stamp: Is there anything to telling Taylor Morrison you are still the permittee by the way, and we are not going to fund this.*

*Mr. Woods: Taylor Morrison is probably aware of it. I bet Taylor Morrison pays attention to our meeting minutes. I think they are aware of the situation we are in.*

*Mr. Miller: Leaving this to the judgment of counsel, if there came a point in time, we might want to try an innocent communication with the Corps, I could be used as a vessel to do so as a citizen and not acting on behalf of the Board as I have had conversations and several pieces of correspondence before this thing really took off.*

*Mr. Woods: I could have a discussion one on one with you about timing and when a good time might be to do that.*

*Mr. Miller: The trust funds we have for the debt, they are on deposit with some bank or banks. It would seem they would probably like to give us a line of credit.*

*Mr. Ward: The trust bank is U.S. Bank, so most of these other banks, most of the trust departments in these larger banks over the last few years have been sold off. There are not many of them left in this state. As a matter of fact, our Florida U.S. Trust and Wells Fargo are the only two left. And Wells Fargo just sold theirs to some Hedge Fund. That is an opportunity, but it's not a strong opportunity, but it's something I could explore.*

*Mr. Bhatla: What about our reserves? Do we have reserves?*

*Mr. Ward: We have no reserves, so to speak, in our operations. None whatsoever. What you see in reserves is only for our bond issuance.*

*Chairperson Stamp: You are saying to fully be funded and get caught up we would basically have to do another \$250 dollars per door basically for the preserves?*

*Mr. Ward: Correct.*

*Chairperson Stamp: And our current ballpark assessment per door is about \$2500 dollars, so we would be talking about going up to \$2750 roughly?*

*Mr. Ward: Correct.*



*Chairperson Stamp: But that doesn't take into account any of the other lakes, fencing, any of the other hiccups, and if we wanted to fully get caught up next fiscal year with all the deferred maintenance that we are aware of, and who knows what tomorrow is going to bring, what size increase in the assessment are we looking at?*

*Mr. Ward: I will not know that for another 45 to 60 days, until the CDD finishes the operating budget for 2021-2022 and we identify where all the deficiencies are, and then we can plan them out.*

*Chairperson Stamp: But if you don't plan them out and just say we are going to do it all in one year --?*

*Mr. Ward: I don't know because I don't know the number. For example, we know the lake banks are in poor condition and there's hundreds of thousands of dollars there. We know the littorals need work. We know a lot of things that need to be done, we just don't know the value of all of that yet.*

*Chairperson Stamp: Would \$1 million dollars be a ballpark figure?*

*Mr. Ward: I think that's a good ballpark.*

*Chairperson Stamp: That would be basically raising everybody's assessment from \$2500 to \$3500 or more roughly. That gets us caught up in one year and it could go back down after that.*

*Mr. Kleck: That could be a one-time assessment of \$847 dollars per door.*

*Mr. Miller: There is no such thing as getting caught up. We will be doing this every year. Frankly I would be opposed to paying \$1000 dollars for a catch up which wasn't going to catch anything up as opposed to assessing someone with a slow increase.*

Discussion continued regarding the assessment.

*Mr. Ward: The operating program numbers are a good quarter million dollars below where they really are, so you've got \$250,000 dollars to \$300,000 dollars more per year coming online just to do your operations, plus to do the capital over a period of time, and then that is a recurring program that you do every 3 years, 5 years, whatever it may be and that's another \$200,000 to \$300,000 dollars, so I'm guessing \$1 million dollars is not out of the ballpark. It's probably going to be that, but it's going to go up and \$100 dollar increase is not going to cut it.*

*Chairperson Stamp: We are talking serious numbers here. We are talking \$250 to \$500 dollars minimum for next year. It could be more. I just want to get that out there so people can start to understand.*

*Mr. Ward: The only other thing I have for you, I sent you under a separate cover, I did a memo that outlined the questions that you asked from the residents last month and what my answers are. I will just quickly go through those with you. Our fiscal year is set by statute from October 1 through September 30; no changes need to be made to that. Our bonds have a call provision and can only be refinanced in the call provision. The first series of bonds would be the year 2013 bonds and the refinance is for December 2023. They are at 645 for an average coupon, so we will be able to do that refinancing a few months before December of 2023 and we will start in January of 2023 to do*

*that financing. I gave you a schedule for when the refinancing dates are for the remaining bonds. The question asked about election of the board members, obviously you know you are elected by landowners when the District is established and after a specific period of time you transfer to qualified electors. That means all of you who sit on the board now, and which will forever sit on this board, must be citizens of the United States, residents of the state of Florida, and a resident in Flow Way CDD who has registered to vote with the supervisor of elections here in Collier County. Those are the requirements. The concept that someone outside of this District could be a board member is not going to happen from this point forward. Somebody asked about termination clauses in contracts. We do have termination clauses in contracts or purchase orders as we deem appropriate. They are relatively strong. The Hatcher property does pay assessments for operations. Obviously, the District did not fund this with any of its capital infrastructure, so as a result there is no capital infrastructure, and as the auditor mentioned, we lowered our bonds by \$1,075,000 dollars due to redemption of bonds for the capital which was supposed to go into the infrastructure.*

*Mr. Bhatla: We are electors. When the CDD was created, electors were the people who own land.*

*Mr. Ward: They are called landowners.*

*Mr. Bhatla: After everybody buys residences, is it landowners then?*

*Mr. Ward: Not landowner. To register to be a voter in the state of Florida, or anywhere else in this country, you have to live in the geographic location. You can be a renter, but as long as you live here and are registered to vote in the county where the agency is located, then you can sit on a particular board, county commission, city commission, whatever it may be. That is what you have here.*

*Mr. Bhatla: I was interested in the creation of the CDD. How in this case, could Taylor Morrison, they were the landowners, so they put everybody on the board? Is that the idea? As we have residential people come in, then they can become also electors, right?*

*Mr. Ward: Yes, they become electors. The minimum requirements are 6 years from the date of establishment and 250 qualified electors within the District.*

## **SEVENTH ORDER OF BUSINESS**

### **Old Business**

#### **Future Funding of Preserve Mitigation and Maintenance**

*Chairperson Stamp: We may as well take this off here going forward because it's going to get rolled into the budget issue.*

## **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 left in attendance. He asked if there were any additional comments or questions from the Board Members; there were none.

**NINTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**Announcement of Next Meeting – February 17, 2022**

**TENTH ORDER OF BUSINESS**

**Adjournment**

Chairperson Stamp adjourned the meeting at approximately 2:40 p.m.

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

Flow Way Community Development District

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

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