

**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, March 17, 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
Martinn Winters	Assistant Secretary
Bart Bhatla	Assistant Secretary
Tom Kleck	Assistant Secretary

Also present were:

James P. Ward	District Manager
James Messick	District Engineer
Greg Woods	District Counsel

Audience:

Dave Boguslawski
Jim Hadder (ph)

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 Ron Miller, constituting a quorum. Supervisor Miller arrived 10 minutes late.

SECOND ORDER OF BUSINESS

Public Comments

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

Chairperson Stamp reviewed public comment protocols. He stated due to the anticipated length of the meeting certain Items would be taken out of order of the published Agenda. He asked District Council to proceed with the Staff Report, District Counsel, portion of the meeting.

Mr. Greg Woods indicated the HOA filed a revised answer in the lawsuit; the HOA did not file for a counterclaim but appeared via an answer. He stated the HOA changed their status and were no longer defendants. He reported under the case management plan, trial was set in the May/June trial docket; in the case management plan, mediation had to be completed prior to trial; therefore, he was trying to coordinate a date with Taylor Morrison in the first two weeks in April for mediation. He stated Mr. Stamp would be a representative of the Board but would have no power to bind the Board to any decision; a proposal would be brought to the Board during a shade session, discussed and voted upon. He stated a couple more depositions would be done of corporate Taylor Morrison. He stated discovery would be completed by the end of April. He stated the nonbinding arbitration was still set for April 26 and if they did not settle at mediation, and Mr. Stamp would attend the nonbinding arbitration.

Mr. Bhatla asked if the corporate persons being deposed belonged to the national Taylor Morrison corporate office, or the Florida Taylor Morrison corporate office.

Mr. Woods responded the Board was suing Taylor Morrison Esplanade, LLC., which was the entity who owned and owns property in the Esplanade development, as well as Taylor Morrison of Florida, Inc., which was Taylor Morrison's arm in the State of Florida.

Mr. Ron Miller joined the meeting via audio and indicated he was en route.

Chairperson Stamp indicated Item 6 would be discussed once Mr. Miller arrived. He stated the purpose of today's meeting was not to adopt a budget; therefore, the consideration of Resolution 2022-3 would be held until July when the Budget would be adopted. He asked if there were any items which would be discussed while waiting for Mr. Miller to arrive.

Mr. Tom Kleck noted Mr. Jim Hadder wished to speak about various lake concerns.

Mr. Jim Hadder: Throughout the golf course, especially on the 16th hole, there are unusual growths. There are trees there that are dead and dying. They don't belong in the littorals. They don't even belong on the golf course. They are kind of in the way. I was wondering if you would consider allowing the superintendent to remove anything that was non-littoral in fashion. I've shown pictures to Ron and Tom Kleck, and they don't belong there. So, at no expense to the CDD, if you could authorize the superintendent to remove those along the littoral banks, we would appreciate it.

Mr. Ward stated Mr. Hadder needed to meet with Jim Messick and if Mr. Messick approved then the undesirable plantings could be removed. No additional Board approval was needed.

Mr. James Messick stated that they could meet while the arborist was onsite to work together.

Mr. _____ 10:20 asked for photos and locations of the undesirable plants; he would ensure the plants were actually undesirable nuisance plants which could be removed.

Mr. Hadder stated the Grounds Committee, of which he was a member, was in a planning state, planning range expansion. He noted there was a section of the driving aqua range which was deemed to be eroded and could be filled in. He stated this eroded section was on the right side of the driving range between the range and Tee Boxes. He stated the preliminary bill to take care of the erosion would be \$39,000 dollars just to fill in and did not include the cost of building up the littoral banks. He stated it might be advantageous to both the CDD and HOA to include this cost in next year's budget.

Mr. Messick asked if the intent was to fill a portion of the lake which was eroded. He asked for a sketch of what Mr. Hadder proposed to do.

Mr. Hadder displayed a photo of the area and discussed what the plans were.

Discussion ensued regarding Mr. Hadder's recommendation. Most of this conversation was (indecipherable), no audio was picked up. There was approximately three minutes of lost audio at this point.

Chairperson Stamp noted audio was back and asked Mr. Ron Miller to discuss Item 6 on the Agenda: Supervisor's Request - Discussion of additional Taylor Morrison lawsuit for construction defects and deferred maintenance.

Mr. Ron Miller thanked the Board and Chairperson Stamp. He noted the court date for the lawsuit was fast approaching. He noted the Board had never had a discussion regarding how much money it wished to obtain through the lawsuit. He asked if there were any possibility of having this conversation off this record.

Mr. Woods stated the desired amount could not be discussed ahead of time; if a settlement was proposed by the other side, the Board could then be brought into a shade session for discussion. He stated discussing lawsuit money in a public session would create multiple problems for multiple reasons, and from a litigation standpoint, should not be done.

Mr. Miller asked if the judge or jury would ask what the CDD wanted.

Mr. Woods responded in the affirmative; he would be making a request for a certain amount of money based upon the testimony to date. He stated Mr. Tim Hall testified the amount of money needed to take care of the preserves in the future was in the \$3 million dollar range. He stated claims were made for past payments in an amount close to \$1 million dollars.

Mr. Miller stated he believed if Mr. Woods polled all five Board Members, Mr. Woods would receive five different numbers. He stated \$3 million dollars was just scratching the surface.

Mr. Woods stated the opinions of the Board Members did not matter in a court of law. He explained only someone with expertise in the actual cost of the environmental cleanup could make a determination.

Mr. Miller stated it was a matter of maintenance in perpetuity, not a matter of specific numbers. He noted the CDD had limited investment options; funding for a \$250,000-dollar annual maintenance cost in perpetuity would not be covered by \$3 million dollars.

Mr. Bhatla stated he understood the engineer would determine the operation and maintenance costs; however, an engineer could not make the necessary funding estimate; an actuary was needed. He noted he spoke with an actuary consultant who estimated more like \$8 million to \$10 million dollars would be needed. He recommended the lawyers bring in an actuary expert.

Mr. Miller agreed.

Chairperson Stamp noted the Corps had mentioned it would apply a 2-3% interest rate.

Mr. Winters agreed indicating the Corps said the benchmark was 2%.

Mr. Miller stated the best circumstance would be if an offer were received and the shade session was entered. He stated it was important to hold this discussion. He noted the attorney needed a roadmap.

Mr. Woods explained the lawsuit was attempting to declare the transfer invalid, so Taylor Morrison would still hold the title to the preserves. He stated if this were accomplished, the \$3 million would become irrelevant. He noted whatever amount the Board indicated it wished to receive through the lawsuit was irrelevant as he was required to have an expert opine as to the cost of the remediation and ongoing maintenance expense, and another expert opine as to the calculation of the fund needed to maintain the preserves. He stated the interest rate used would follow the lines of what the Corps would typically use. He noted an expert could opine as to the percentages based on the Corps' numbers. He stated these would happen at trial. He noted in terms of settlement, when there was an actual settlement offer, then numbers could be negotiated and discussed; however, the opinions of the Board Members would be irrelevant for the trial. He stated he would try for the highest number possible, but at the same time you did not want to appear with a number which was too high and lose credibility.

Mr. Miller stated he wanted to discuss filing a second suit for construction defects. He stated in August of 2018 Taylor Morrison lost a \$17.3 million dollar suit to Aqua Lakes Community Association and in November 2021 Taylor Morrison lost a \$35 million dollar suit to Poinciana CDD. He noted Taylor Morrison had two other lawsuits pending against them. He discussed the motion he made and withdrew during the last Board Meeting regarding filing a second lawsuit for construction defects.

Mr. Woods stated the judge ruled a separate suit would have to be filed regarding any defective construction issues.

Mr. Miller stated he felt this should be done sooner rather than later. He noted the Board now had significant numbers it had to assess to the residents because of Taylor Morrison. He stated while it would be wonderful to file a joint suit with the HOA for construction defects, he did not want to wait for the HOA if the HOA were not ready to file. He stated he wanted to have this second suit filed before entering the courtroom for the first suit. He noted he understood the Board did not have a lot of money to spare at this time, but he did not feel it would cost much to just file the suit; the time and money came later with due diligence, discovery, depositions, etc., and this could be deferred until the funds were available. He asked how the other Board Members felt about this idea.

Mr. Winters stated (indecipherable).

Mr. Woods indicated he could not hear Mr. Winters.

Chairperson Stamp stated Mr. Winters was saying in effect, the Board already authorized a second lawsuit as it authorized trying to amend the lawsuit to add the claims.

Mr. Woods stated Mr. Miller was correct, a second suit could be filed, and it would not be expensive to get the filing done; the costs came later. He stated if the Board wished this to be done, he could file the secondary suit relatively quickly. He stated Counsel's preference was to try and file this suit with the HOA as a plaintiff. He noted the HOA was hopeful to be ready to file suit in 6 to 8 weeks; from a strategic

standpoint he would like to be joined with the HOA in the same suit, but this might not occur for a couple of months or longer; therefore, if the Board wished to proceed with filing the suit this could be done.

Mr. Kleck stated he felt hearing Taylor Morrison was losing other cases was a good indication the CDD had a good chance of winning its case as well.

Mr. Bhatla stated he felt authorization to file a construction defect suit had already been given. He stated before increasing the residents' assessment the CDD needed to show it was taking action and it needed to show cause for why assessments were being raised. He stated he was watching corporate Taylor Morrison carefully and watching the Taylor Morrison annual reports. He noted Taylor Morrison seemed to be underrepresenting its potential environmental liabilities. He stated he felt the SEC would not be pleased.

Chairperson Stamp discussed reporting rules as related to the SEC.

Mr. Bhatla discussed ESG and the Taylor Morrison Corporation. He noted Taylor Morrison had eight presidents and the President of Taylor Morrison of Florida may or may not communicate with the Corporate Office.

Mr. Ron Miller stated he did not know whether the President of the Taylor Morrison Corporation knew of the lawsuit specifically, but he knew the President of Taylor Morrison in Phoenix was aware of the situation. He noted he wrote the President of Taylor Morrison in Phoenix a letter a long time ago.

Chairperson Stamp stated he agreed he was given the authority to move forward with filing a second lawsuit; it was more a judgment regarding tactics and strategy that this was delayed. He noted it was the advice of Counsel, and he agreed, that it was better to wait and file with the HOA. He noted at some point it may be necessary to move forward without waiting for the HOA, but he did not feel this was necessary yet. He stated if the case went to trial in June, and there was an excellent chance the trial would be postponed, the secondary case could be filed the week before the trial and there was plenty of time to wait for the HOA to be ready to join the case. He added if the purpose was to show the public the CDD was trying, the Budget was not going to be adopted until July and the construction defect case could even be postponed until July. He noted there had been discussion between CDD counsel, HOA counsel, and the HOA. He stated it was possible, in the next 60 days plus, which would still be before the June trial date and the July budget public hearing, even if filing a joint case with the HOA fell through, the CDD could still accomplish its goals.

Mr. Ron Miller suggested not taking any action today but perhaps during the April Board Meeting this could be considered again, and he might make a motion during the April meeting to file suit no later than May 31, 2022.

Chairperson Stamp thanked Mr. Woods.

THIRD ORDER OF BUSINESS

Consideration of Minutes

February 17, 2022 – Regular Meeting

Chairperson Stamp asked if there were any corrections to the 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 February 17, 2022, Meeting Minutes were approved as amended.

FOURTH ORDER OF BUSINESS**Consideration of Resolution 2022-2**

Consideration of Resolution 2022-2, a resolution of the Board of Supervisors of the Flow Way Community Development District: (i) approving the execution and delivery of two applications to the South Florida Water Management District requesting a transfer of an existing Water Use Permit from Taylor Morrison to the District; and (ii) authorizing the District Manager to sign or execute such additional application documents as are necessary or required in connection with obtaining further approvals of any modifications to the Water Use Permits

Mr. Ward: This is the authorization to transfer the existing water use permits for the irrigation system within all of Flow Way from its current ownership, which is Taylor Morrison, to the CDD. We deferred it for a couple of months. I think Bart was going to go look at some items with respect to that permit along with Jimmy and they are in concurrence it is time to move forward with transferring those water use permits over to the CDD.

Mr. Messick agreed it was appropriate for the CDD to maintain and take responsibility for ownership of the irrigation consumptive use permits.

Mr. Kleck asked about potential expenses as a result of this transfer.

Mr. Bhatla: It is only the fee involved, which is \$100.

Mr. Kleck discussed his previous experiences with a different HOA in which the HOA took over responsibility for the fountains in the neighborhood which ended up being a tremendous expense to maintain.

Mr. Ward: Yes. There is a substantial expense for the District to get into the business of maintaining the assets it owns. This irrigation system is one of those assets. We will incur a significant expense as a part of the 2023 budget for which we will get into all of the costs of that, including the irrigation system, when we talk about the budget. We do have estimates of that, and if you don't mind, we will do that as a part of the budget process.

Mr. Winters: Should we know what that number is before we vote to take it over?

Mr. Messick: We have looked at the assets. We do know that one of the reuse pumps is being looked at today, so we will find out the cost to get that back up and running this week.

Mr. Ward: I want to point out, because Martinn's question is good, we already are maintaining these assets. All of the assets of the District have come into the CDD basically as of January 1 of this year, so all of the expenses, the reuse/irrigation system, the stormwater system, the lake banks, littoral shelves, entranceways, the fountain, roadway, bridge, landscaping, etc., all are in the CDD and being maintained by us right now. So, this facility is a CDD facility. All we are doing with respect to the permit is just ensuring

that 374 million gallons of irrigation water that's in this community is permitted correctly on a going forward basis. We can always change the permit. That's clear we can do that. That permit is integral to, and important to, the integrity of the assets of this entire community and has to go somewhere, so it has to get out of Taylor Morrison's name and come to the CDD. The cost of the maintenance, whether the HOA does it or the CDD does it, is not insignificant.

Mr. Winters asked if there were any deferred maintenance or construction defects associated with the asset.

Mr. Ward: As a part of your budget process, we are going to go through all of the capital elements that need to be repaired, replaced, etc. I don't really see any major issues with the reuse/irrigation system. We do obviously have some problems with it at the moment, which are being worked on and repaired, but we will get into that with the budget process. These are minor at the moment.

Mr. Bhatla: I think it is reasonable to ask our engineer to prepare a brief report indicating the expense that we are learning about, like an information item, so the Board Members are aware of the cost. Everything you said was appropriate. It has to come to us. He asked for a report including information about the ground wells, etc., the replacement and repair costs, etc.

Mr. Ward indicated this could be done.

Mr. Dave Boguslawski indicated he had information regarding the pump which was inspected.

Mr. Ward asked him to defer this until later in the meeting.

Chairperson Stamp called for a motion.

On MOTION made by Mr. Bart Bhatla, seconded by Mr. Tom Kleck, and with all in favor, Resolution 2022-2 was adopted, and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS

Fiscal Year 2023 Budget Plan

Fiscal Year 2023 Budget Plan and Five (5) Year Capital and Asset Evaluations

Mr. Ward: I am required to prepare and present a budget to you on or before June 15th of each year. At some point during the process, you have to approve it so we can set a public hearing and do the mailed notice requirements. Conceptually, the process would be that we would start that process today by reviewing your proposed budget. We will have today, April and your May 19th Meeting for purposes of review of the budget. At the main meeting you will need to make a decision on, for lack of a better term, approval. It does not bind you to anything, but it merely allows Staff to proceed forward to your public hearing. Then in June we will do the mailed notices and at the July meeting you adopt the budget. Approval lets you move forward, and adoption puts in place the assessment rates and the programs with respect to your budget. Today, we are going to start that process with you and in preface to actually preparing the budget, you had authorized in the latter part of 2021, Calvin Giordano (CGA) to prepare a number of reports for that outlined the status of the existing assets, values of our existing assets, five year

capital plan for all of those assets, what needs to be done on a short term basis for 2023, and on a five year basis for the restoration of all those assets, and how to handle that on a going forward basis. Then one they finish that with you, I will get into the financial impacts of the plans that have been prepared for you by CGA for all of your assets. We will start with Jimmy with his three reports and when he's finished, I will summarize that with a review of your proposed 2023 budget. All of the information and the costs that he has in his reports then fall into your proposed budget for 2023.

I. Calvin, Giordano & Associates – Capital and Asset Reports

- a. Capital Improvement Program**
- b. Asset Replacement Cost Report**
- c. Stormwater Erosion Report**

Mr. Messick discussed his process including investigative work researching various permits. *With regard to the environmental resource permit through South Florida Water Management District, there were quite a few permits. There was a family of 22 applications that have been submitted to the District for approval. Originally in 2002 the original PRP was submitted. It's application 000518-10. Since the original permit there have been various permit extensions and compliance minor mods that were submitted, until 2012 in November, the conceptual approval and (indecipherable).*

Mr. Messick continued to discuss the various permits which were approved and modified over the years. He indicated he also researched the plats submitted to Collier County which outlined what parcels and what dedications were required for the HOA, Esplanade Golf and Country Club of Naples, Inc., Collier County Water and Sewer District, Collier County, Public Utility Easements, North Collier Fire Control District, and reserves to the developer. He explained this research allowed him to do an inventory of the assets. He reported assets included the drainage system, irrigation system, entry feature, entry roadway, and landscaping. He reported the drainage system consisted of lakes and canal banks, pipes, and structures; the irrigation system was primarily the pump house, pumps, controls, irrigation mains; the entry feature was the roadway, landscaping, curbing, striping, signage, marquis sign, and fountain at the entrance along Immokalee; and the landscaping included the landscape buffers and internal common elements identified.

Mr. Messick indicated his first report identified what the asset replacement costs were; the total projected asset replacement costs were estimated at \$12.2 million dollars. He noted these numbers should be updated annually to account for construction and District changes due to inflation, labor rates, material availability, taxes, and insurance. He noted the purpose of this report was to provide the CDD with asset replacement construction costs in order to establish a capital reserve program. He discussed the irrigation pump house and system; the pump station located northeast was well landscaped and the overall irrigation reuse system used surface lakes for withdrawal for irrigation systems through the community. (Indecipherable). He reported the Hatcher parcel had a separate system which had its own pump station, valve, motor with electrical and filter, and included its own mains. He discussed the stormwater drainage system which included the control structures, weirs, culverts, drainage structures, littorals, pipes, etc. He discussed the next asset, the entry feature, which included paver brick roadway, curb and gutter, pavement markings, signage, marquis sign and entrance water fountain. He stated lastly was the landscaping and a map was included which identified the landscaping areas. He discussed the various landscaping buffers. He stated the report also included pictures of the various assets.

Mr. Messick reported in order to develop an accurate 5-year Capital Improvement Plan (CIP), all the permit conditions were taken into consideration. He discussed the condition of the lake banks noting the easements and slopes in the community had deteriorated and been compromised by weather and wave erosion, as well as installation of downspout yard drains. He noted rip rap was installed to help with erosion, but he recommended not allowing any future installation of downspout yard drains. He stated the homes, or the affiliated association, would be responsible for rectifying these downspout conditions prior to lake bank restoration. He discussed the footage per lake which would require corrective action or reconstruction, explained the materials required for lake restoration, and the fiscal impact of providing these improvements. He noted the permit held the CDD responsible for correcting erosion. He discussed lake bank erosion restoration options and costs. He noted dredging or recovering the fill which had been eroded, and re-grading the lake banks, particularly into Geotubes, was the recommended option as it was the least intrusive and disruptive to residents and cost \$49.50 per foot, totaling \$618,629 dollars. He stated these numbers were also included in the Capital Improvement Plan based on the lake erosion evaluations and ratings identified; rating was from 1 through 5, with 5 being worst with over 30 inches of lake bank restoration necessary to meet permit conditions. He stated GIS prepared maps for review. He noted there were tables which identified necessary lake bank restoration and costs per lake. He stated the cost for littorals were also included in the CIP.

Mr. Messick stated the last item prepared was a Capital Improvement Program which was a “cliff notes” of all the CIP projects. (Indecipherable). He read the executive summary: “The Capital Improvement Program establishes, prioritizes, and plans funding for programs to improve existing infrastructures and facilities. CIP promotes better use for the CDDs limited financial resources, reduces costs, and assists in coordination of community asset maintenance. The CDD’s CIP is a five year program which identifies the major expenses over and above routine annual operating expenses. While the CIP serves as a long-range plan, it is reviewed and revised annually. Priorities may be changed due to funding opportunities or circumstances that cause more rapid deterioration of the community’s asset.” He indicated the Capital Improvement Program included the capital improvements proposed in the budget for Fiscal Year 2023 through Fiscal Year 2027. He discussed the different sections of the Capital Improvement Plan including stormwater management services, erosion restoration, drainage pipes, internal and external preserves, irrigation pump station and community (indecipherable). He noted the Program outline included who, what, where, when, and why for each project.

Mr. Kleck asked when his lake would be fixed. He noted the report indicated it would only cost \$1,485 dollars to fix his lake.

Mr. Messick responded his lake was projected to be fixed in 2027 as it was a small lake with little erosion.

Mr. Kleck asked what the \$1,485 dollars would fix.

Mr. Messick responded the slope of the bank would be restored to permit requirements.

Discussion ensued regarding the reports presented by Mr. Messick; a previous estimate of \$500,000 dollars to bring littoral plantings up to permit requirements; and the investigation of lake bank littorals revealing there were no littoral areas missing; all littoral plantings were up to and exceeding permit requirements.

Mr. Messick indicated the CIP included lake bank erosion restorations, littoral plantings, drainage pipes and structures. He explained the immediate actions needed in pipes and structures were identified, as well as lake bank restoration.

Discussion ensued regarding littoral plantings, permit requirements for littoral plantings; and the lake maps including permitted littoral plantings.

Mr. Messick noted not all lake banks were required to have littoral plantings.

Mr. Kleck noted the Audubon Golf Course, which was also a Troon property, and the lakes at the Audubon were gorgeous. He discussed the flowering littorals around the lake and the clear water. He asked if anyone had contacted the Audubon regarding how it was maintaining its lakes. He stated he felt whatever plan the Audubon followed was clearly working very well.

Mr. Messick responded he had not communicated with Audubon.

Mr. Kleck asked if it would be possible to communicate with Audubon.

Mr. Messick responded in the negative.

An unidentified member of the audience stated: You have to keep in mind too, the developer giving you a starting point of what they were required to do, so maybe they have gone and done further enhancements on top of that. What we've found is that the plants are all where they are supposed to be and there are additional plants around portions of the lake in addition that have either volunteered or were over planted. They are also all the same plant more or less, 80% to 90% of the littoral plants are spikerush and cordgrass. He noted there were some littoral plants which did flower in some of Flow Way's lakes, but this was not widespread, while Audubon may have had mostly flowering littorals permitted and planted.

Mr. Ron Miller made comments in regard to other communities using creeks to control the water levels in the lakes.

Mr. Messick: You see, with stormwater setups that are setup with positive inflow and a discharge, you will get the clearer water, it will pass through to make it a little bit cleaner. In this case the Flow Way canal on the outside is what's leading water from the preserves to the north to the Cocohatchee canal on Immokalee and we don't reap the benefits of that fresh water coming in. The Flow Way is not feeding our lakes, but it is connected. We have overflow control structures that discharge to the canal. Typically, you are going to see water leaving, not water coming in.

Mr. Winters: This is a 5 year plan, and I assume there are assets whose lives last longer than 5 years. My question is, for those long-lived assets, are we establishing preserves, or should we be establishing preserves, to replace some of these more expensive items that are going to fail in year 6 or 10?

Mr. Ward: In my perfect world the answer is absolutely we should be doing that. But we are operating on a cash basis.

Mr. Winters: Is it worth setting up a contingency (indecipherable)?

Mr. Ward: I don't think it's large enough to really need it. If we did it, in a project this size, it's going to be a \$150,000 dollar a year addition to your budget for that kind of a reserve. I don't think we need it right now. I think in three years we could take a look at that.

Chairperson Stamp: Part of it will be how the lawsuits come out.

Discussion ensued regarding the necessity of setting up a reserve account; and revisiting the reserve account in a few years.

Mr. Ron Miller asked a question to Jimmy Messick and made some comments regarding assessments on the residents increasing, while looking at a 5-year plan that instead of killing everyone on year one, looking at options of moving items from the budget by priority.

Mr. Messick: The priority level is based on how much erosion the lakes have, so lakes 12, 20 and 21 were put in front of lakes 7 and 8 because they have more erosion to them, but certainly the Board, if you want us to move one in front of the others, the work could be done. (Indecipherable) could make the case to let them do the improvements and they will come in and finish the lake bank restoration after they're done, whether that's in 2024 or we can push it back to 2025. We have the time to decide that. This discussion is good because that wasn't considered in our –

Mr. Miller: Or we can leave things just the way they are, and make those decisions at that time?

Mr. Ward: The answer is yes. We can do that. If you look in the 2023 capital program, we do keep a contingency. I'm keeping a contingency item within the erosion restoration, so there is a \$10,000-dollar contingency item in here, plus what we don't know right now is whether lake 11 and lake 21 are going to be at those total numbers. They might be under; they might be over. So, we have some leeway. It's not going to be October, November, December, January leeway, but maybe by March or April next year we will have a better understanding of whether we can actually say yes to moving it, but conceptually we can make those kinds of changes on a going forward basis. It's just something we should look at maybe after the winter.

Mr. Messick: It's worth mentioning that we will put out an RFP for contractors to bid on for all five years, so we will that will hold those pricing down they will have to stay to those prices for that period and see those prices now.

Mr. Miller: I just wanted to make sure that we have the opportunity to cooperate in the (Indecipherable).

Chairperson Stamp: We have pretty good transferability between lines. We can pretty much move stuff around, but we have to have a good rationale for doing it.

Mr. Bhatla: I got the impression that the lakes and littorals we got from the developer were in good shape, in other words they complied with the permit requirements.

Mr. Messick: yes.

Mr. Bhatla: So essentially the capital improvement program, operations, and maintenance, is not including (indecipherable).

Mr. Messick: yes.

Mr. Bhatla: So, all this information would also provide us information about what we might have had as deficiencies at the time of the turnover. We need these starting points.

II. Proposed Budget – Fiscal Year 2023

Mr. Ward: I'm going to start on page 1. Pages 1 through 4 are the meat of your operations budgets. One of the most important elements of this budget is how much cash we will have at the end of the existing fiscal year that will carry us through December 31 when we begin to receive a lot of the assessment revenue from the project. Our estimate is that we will only have about \$90,000 dollars left by the end of this fiscal year that will let us pay bills October, November, and December. What I've calculated here is a way to get that cash level up to roughly \$350,000 dollars to \$400,000 dollars by the end of 2026, so we will then have enough money to carry our budget. I have included \$91,000 dollars in this year's budget. You'll see it as a negative number in the far right column. A negative number in a government in this line item is really money coming in. That's money that will come in, in 2023, 2024, 2025, and then going into 2026 we will have enough money to basically operate the district on the first three months. I've spread that pain out over a three-year period, for lack of a better term, in order to try to meet these requirements. In actuality, the number is roughly 2.7 months of your current year operating budget. The 2.7 comes in because these days we tend to get money around the 18th, 20th, 21st, 22nd of December just due to the way the appraisers and the collectors send us money on an ongoing basis.

Mr. Ward: This budget is broken down by department. Departments are just the segments of the way in which we will operate the District. The first section is all of the administrative costs of the District which we have had in this budget from the beginning of this District. In the current year we are in, it's a \$306,000 dollar a year operation. In 2023, that is a \$350,000 dollar a year operation. Really, the only change to it from budget year to budget year is legal fees and a little increase in insurance projected for 2023. Obviously that number can go up or down simply as a result of the legal fees. The remaining items in here are relatively static items that stay consistent from year to year with some minor changes based on contract changes that we have on a year-to-year basis. Your engineering fees are the second part of this administrative piece. In the current year we are in, your budget is \$25,000 dollars. I've increased it to \$55,000 dollars for 2023. We have a significant cost in the current year we are in simply to get all of the kinds of reports we've developed with Calvin Giordano in the current year necessary to operate this District beginning in 2023-2024, etc. We go to the next part. Your stormwater management system is broken down into essentially two parts. One part is your favorite part of this entire budget which is the external preserve maintenance item. The budget has traditionally been roughly \$260,000 dollars a year. It's basically the same as what it was in 2023, except for \$55,000 dollars that are coming into the budget from some capital improvements, and if you look on the capital plan, that is simply the fencing for the external preserves that's been scheduled in over the five-year period. The next part of your stormwater is the lakes, the lake banks, the littoral shelves, the capital associated with that, and how we are going to operate that in fiscal year 2023. Interestingly enough, our 2022 budget has that number at roughly \$81,600 dollars for the current year. Those are the numbers that we had been consistently carrying for a couple of years in our budget. Now that this is the first year of pay operations and the first year that we have really had an

opportunity to evaluate what it really costs to maintain the system, that number needs to go up to \$476,000 dollars for fiscal year 2023, and that includes the capital elements that I will get to in a few moments and that Jimmy has mentioned on an ongoing basis in order to maintain the system. I'm not going to tell you that's the Audubon's scale of operations, because I don't know that obviously, but it will get us to an operational base that I think is substantively more reflective of a community that's built out and that we need to have on a year-to-year basis going forward. You will see improvements from what we have now. The next part of this budget and the other part of the program is the community wide irrigation system. The irrigation permits, as Jimmy referenced, were permitted at 374 million gallons a year of irrigation water for this entire community. It sounds like a lot of water but for a community of this size it's pretty normal. It included the pump station, the pumps, and wells with the station, etc. In the past, it was estimated at \$35,000 dollars. The real number is roughly \$125,000 dollars a year in order to operate and maintain that system including a few minor capital elements that go with it. Then another big piece is the landscaping systems and those assets at the front entranceway. They include your fountains, pavers, the bridge which surprised me. It's a private bridge, not maintained by Collier County. It's a bridge specifically for Esplanade, so it's got to be insured, it's got to be operated and maintained correctly. That budget is \$268,000 dollars for fiscal year 2023. In our old budgets we had roughly \$45,000 dollars, obviously not even close to what it's going to require to maintain that bridge. So, your overall operating budget is \$1,653,000 dollars for fiscal year 2023, plus the \$92,000 dollars to try to move some of the cash balance up, so your total assessment is going to be roughly \$1,744,000 dollars for fiscal year 2023. What does that mean? It means our existing assessment is \$525.04 dollars per unit. Our projected assessment for fiscal year 2023 is \$1,473.28 dollars. Although it is a pretty significant number in terms of the change, what we tried to do in terms of this budget was make that number sustainable for five years. Basically \$1,500 dollars a year is what we think we will need, but maybe with some minor increases or decreases, most of that I think will be more litigatory in nature in terms of increases, and if we have any other unexpected expenses, it may have an impact on that number.

Mr. Bhatla: Certain systems have been moved from HOA to CDD, so essentially the cost it isn't going up because we were spending it already.

Mr. Ward: What's in the existing anticipated columns we pulled over basically from the HOA. But then we did do an external separate evaluation of the cost it would take us to do that, including the capital costs, which is a significant portion of this entire budget process.

Chairperson Stamp: But there is a difference. When the HOA was under developer control, they didn't do the maintenance. We are building in numbers for maintenance that they didn't.

Mr. Bhatla: In other words, the irrigation system was being operated by HOA, now we are just taking it over, so we are increasing our costs, and the HOA is decreasing their costs. Would there be a net number?

Mr. Ward: No this is not a net number.

Mr. Miller: I think what he's saying is that there isn't additional money for the residents, it's just that if the Taylor Morrison HOA was to do this, but they didn't and that's why we are suing them.

Mr. Ward: Right. That's what I'm saying.

Mr. Bhatla: So, it's all an additional amount.

Mr. Ward: A lot of it is. The one thing we, as a government, cannot do – I don't make representations that an HOA number should go down by what we are doing. We independently looked at this entire system, and at what the existing HOA is doing, and what was being done by Taylor Morrison, and we came up with an independent analysis of that. That's what all of Jimmy's reports do for us, come up with the real cost of maintaining the system. Whether the HOA does it or we do it, this is the number. This is what it's going to take to run this program for this year, for this coming year and for the four years thereafter, on a reasonable basis for this community. As Ron was trying to say, the numbers we had in our budget were old Taylor Morrison HOA budget numbers. They were just not right. They were too low. They never were right. So, the \$1,473.28 is the assessment rate proposed for 2023. The other number that's important is what we call the cap rate. That's the rate that we establish where we don't have to do mailed notice every year to the community. This year we are going to send out 1,183 notices to the community. The cap number is \$1,767.94. That means as long as we don't go over that assessment rate for the next however many years, then we will not need to do mailed notice if we stay within the constraints of this budget. Along with the capital program element for the next five years, and what we anticipate may be some changes, either increases or decreases going forward for operations, I'm confident we should be able to stay within the \$1,700 dollar number.

Mr. Winters: What's the importance of not having to send mailed notice.

Mr. Ward: It's more just doing it. It's a \$5,000 dollar expenditure for us to go through that entire process.

Mr. Bhatla: These costs include the maintenance of the preserves?

Mr. Ward: Yes.

Mr. Bhatla: Which of course is very much a subject of discussion. Why this should be included?

Mr. Kleck: The perimeter fencing issues, do we have monies in there for that?

Mr. Ward: Yes, we have phased those in over a 2-to-3-year period to handle the fencing.

Mr. Miller made comments which were (indecipherable).

Chairperson Stamp: Jim and I worked to put this together and the thought is, some of these numbers are probably high, but it is my intent to let all of the Board Members go through this line by line at a meeting and say, I want to increase or decrease this line, and we can come to a consensus and vote on it. We can do that. We can shape it. These are the parameters of what would implement the plan with the obligations as they exist today. Maybe not as they exist after the court case or down the road, but that's the framework we wanted to put together. It's an attempt to capture everything. Keep in mind that it is easier to reduce than it is to add. In fact, we get to a point legally where we can't add.

Mr. Kleck: That being said, these numbers probably won't get any worse than what they are now in this report.

Mr. Ward: In terms of if you want to add something, the answer is no. My intent and Jimmy's intent was to make it something that is sustainable for us for a 5 year period.

Mr. Miller: I think it's good that we know the actual operating cost as this budget presents it, but still think we could remove some funding to preserves.

Mr. Ward: One thing I think it's important to remember, the adoption of the budget doesn't commit you to spending it exactly the way it's here. So, even though I have, for example, the budget for the preserves, what they are, that decision – personally I think leaving it in is a good idea just because we need to sustain the assessment level. It doesn't mean we have to do it.

Mr. Miller: but if we approve it, we have to assess it and don't have to spend it, what I'm suggesting is that we reduce the amount so that when we do the assessments that amount isn't included in the assessments.

Mr. Winters: I know you've beat this to death in prior meetings, but it's worth rehashing again, responding to Ron's point, are we liable to the Army Corps of Engineers for not maintaining it if we don't? Is that a legal question?

Chairperson Stamp: That's a legal question and I'm not a lawyer anymore. The simple answer is we don't know if we don't do it if they are going to go after Taylor Morrison or us. We can speculate and argue either side of that, but until it happens, we don't know.

Mr. Winters: I guess the next question is, has our counsel been in contact with Corps, and if so, have they offered any hope that they are going to step in and do anything or are they just waiting for Taylor Morrison to reach maintenance phase before they come back to finalize the permit.

Chairperson Stamp: The Corps has offered no guidance. There has not been any contact in quite a while. We've gotten no feedback from the Corps about anything. I guess the nature of government bureaucracy is, and I used to be part of one, is to wait for someone else to make the decision. That may be unfair to the Corps, but they know about all this; they have been advised but they are just not responsive.

Mr. Winters: So, is it fair to say that their current posture is that they are going to wait for Taylor Morrison to get through the mitigation phase before they have to sign off on?

Chairperson Stamp: I'm not sure they are going to do anything even then.

Discussion ensued regarding the Corps; most of this discussion was (indecipherable).

Mr. Miller: Jim, do we have the opportunity to get that stuff that to the (indecipherable)?

Mr. Ward: Yes.

Mr. Miller: Then I would suggest at least for the purposes of this meeting, that the Board consider eliminating the preserve maintenance, continuing to maintain the internal preserves plus \$10,000 for additional preserves and let the chips fall where they may and we will take care of emergency when they happen.

Chairperson Stamp: Remember Barbara Kininmonth indicated that the 1 and 3 preserves were done, and that they were spending literally hundreds of thousands of dollars on the preserves in the north end. So, it's not like they are being ignored if you believe what she said under oath. Again, we've got two more months. We could do it next month or the month after, or we could actually reduce the budget at the July hearing if we want to do that.

Mr. Bhatla: Is the preserve an independent piece of property with its own title, or is that wrapped up in the community?

Chairperson Stamp: There are separate specific deeds for that property that are not part of the Esplanade development.

Mr. Bhatla: Then the question would be how could the CDD accept that because this is an independent free standing property?

Chairperson Stamp: That was done by a Board controlled by Taylor Morrison. That is part of the lawsuit, that they violated their fiduciary duty when they accepted those parcels with essentially no debate at all. That is in essence the lawsuit against the directors; they should not have accepted it. And if there are any other items people want to make motions on, either up or down, we can't communicate with each other, but you could let Jim know as that would be helpful in facilitating what we are going to do. Also, if we do fully fund the preserves as recommended and we don't spend it, we are just adding to our contingency expenses down the road.

Mr. Miller: (Indecipherable).

Mr. Winters: Does that legal fee line item include the anticipated cost of the second lawsuit?

Chairperson Stamp: No.

Mr. Winters: Should we put an additional \$50,000 dollars in there?

Chairperson Stamp: We can do that. (Indecipherable). Keep in mind if we go to trial in June, which again is not likely, given the way they do it. They schedule a bunch of cases on the same days, knowing some will settle before trial, and you don't know if the line will get to you or not. But assuming we win everything, there is going to be an appeal, and it's going to drag out. We are not going to walk out of the courtroom with a check or anything, but after the trial our legal fees should be substantially reduced as trial time is very expensive.

Mr. Winters: I just think it would be a good idea to earmark funds for the second lawsuit.

Chairperson Stamp: That's reasonable.

III. Consideration of Resolution 2022-3, a resolution of the Board of Supervisors of the Flow Way Community Development District approving the Proposed Budget for Fiscal Year 2023

Chairperson Stamp indicated Resolution 2022-3 would be held until July 2022 when the Budget would be adopted.

SIXTH ORDER OF BUSINESS**Supervisor's Request****Mr. Ron Miller - Discussion of additional Taylor Morrison lawsuit for construction defects and deferred maintenance**

This Item was discussed during the Second Order of Business – Public Comments portion of the meeting.

SEVENTH ORDER OF BUSINESS**Staff Items****I. District Attorney – Woods, Weidenmiller, Michetti, & Rudnick**

- a. **Status Report on Litigation**
- b. **Non-Binding new Arbitration Hearing date – April 26, 2022**
- c. **Update on discussions with HOA as to potential new litigation**

These Items were discussed during the Second Order of Business – Public Comments portion of the meeting.

II. District Engineer - Calvin, Giordano & Associates

- a. **Preserve Tree Removal**
- b. **Strategic Operational Plan**
- c. **SFWMD Water Use Permit Transfer**
- d. **Preserve Area Fire**
- e. **20-year Stormwater Needs Analysis**

Mr. Messick indicated these items were covered previously and he did not have anything additional to add.

Mr. Bhatla: We are still pumping at normal? How much is it?

Mr. Messick: Yes. I believe that one pump is pumping full and the other pump they are looking at.

Mr. Ward indicated he would provide an update about the pump during his report.

III. District Manager – JPWard & Associates, LLC

- a. **Manager's Report February 2022**
- b. **Financial Statements for period ending February 28, 2022 (unaudited)**

Mr. Ward: There are two wells that supply irrigation water to the community along with a lake which is where the water is flowed into. Those two wells house two pumps. One of the wells and the pumps is working just fine. The second well and pump are flowing at very low volumes. The pump and the motor have been pulled. The well casing itself is going to have to be inspected. It looks like there could be some damage to the well casing itself and I have no clue what that's going to cost, but we will know that as soon as we get it done. The main issue, it looks like the pump is shot, but the motor is in good shape, so the pump will go back to the shop for either repair or replacement

more than likely, and then the casing needs to be looked at before either of those go back in the system. That one will be offline. I don't have a time since this well and pump were just pulled while we were having this meeting. As soon as I have more information, I will advise you at your next meeting or sooner if it becomes egregious.

Mr. _____ 2:10:57: Do we have adequate water?

Mr. Ward: For the moment I think (indecipherable). I think the lakes are low because we are not pumping as much as we really need to pump. The community is getting enough water, but it does need to be fixed soon.

Mr. Kleck: The discrepancy we are finding now, is that due to a lack of maintenance on Taylor Morrison's part?

Mr. Ward: The pump and the motor are 30 feet down, so there is no maintenance to do on them unless they break. It broke. And it just broke two weeks ago. So, I can't say it's – this could happen to us 2 or 3 years from now. They should last a long time, but this one didn't. If it's been in the ground since 2013, it's 2022, so it's been the ground a while.

Mr. Bhatla: I hope it's the pump only.

Mr. Ward: Me too. I hope it's not the well casing.

Chairperson Stamp: We also have the issue of is there a pump available, what with the supply chain.

Mr. Ward: If a new one is not available, we will refurbish it for now and order a new one, but the well casing is the most important thing.

Discussion ensued regarding the pump and well casing; and the importance of being able to pump sufficient water.

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 additional comments or questions from the Board Members or audience members.

Mr. Boguslawski: A lot of good thinking going on in this meeting. I am very impressed with you guys and the work you did putting the budget together, putting the initial numbers together. If I were in your shoes thinking about a budget, I'd ask where the numbers could go down and where they could go up. You were sort of doing that. One of the big areas where you will see some shifting is from the HOA to the CDD and we've got to do that. It's a big unknown to me too, but obviously as we think about budgets, we are very interested in the irrigation system. We are very interested in that front bridge. So, some of your bigger costs, there are things that as we do the tear might come from you back to us. We have a different year

than you do timing wise. Ron, I don't think you were here when Jim Hadder spoke. He covered the aqua range a little bit, but the near term thing, (indecipherable) keep the golf balls within the aqua range. I really think the aqua range stuff is an earlier thing, not a later thing. We are going to try and make it happen. I don't know if we will be successful. Jimmy, you said something about downspouts spilling on the ground and having to be fixed before erosion is addressed?

Mr. Messick: Yes.

Mr. Boguslawski: If there is a need for us to do something on the HOA side just get a hold of me and we will connect you with the right people. That sounded to me like something we've got to get a hold on.

Mr. Messick: The downspouts from the house to the lake were not permitted and (indecipherable) recommend it get fixed or you are going to have the same problem again.

Mr. Boguslawski: Part of your answer is a straight shift. Taylor Morrison was subsidizing the lots, every year the subsidies drop, but we are still finding things that they didn't do. Some of it was the removal of the Taylor Morrison subsidies. They used to put flowers all over the place to make it look nice coming in and they paid for that entirely so that they could sell houses. The last issue is, on the failed pumps, I think the situation is a little bit worse than Jim said. Neither pump is working. When the first one came out, they shook it and it apparently started working. The first pump was down for quite a while. The second pump did not appear to be working. It turns out that the simple test (indecipherable) pulled 30 gallons of water in a minute for a pump that was supposed to be pumping 3 to 5 gallons per minute, so that pump obviously had a problem. The field report that I got before I came in here is that pumps are available at \$20,000 dollars per pump. I didn't hear about the pump versus – I didn't hear the split that you heard. I heard that the field guy thought that might have been (indecipherable). There are questions about how deep the well is. I clearly heard that the well may need to be not only inspected, but redrilled. So, there are going to be some costs there. That is, to me, a priority item. Then there are some downstream things about whether there was a defect in construction. There are some things associated with that, based on what the inspections find. We are finding lots of things that are failing at year (indecipherable). That tends to be due to the quality of materials or quality of assets that the developer did.

Discussion ensued regarding whether the pump issues could be a result of a construction defect.

Chairperson Stamp asked if there were any additional comments or questions; there were none.

NINTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – April 21, 2022

TENTH ORDER OF BUSINESS

Adjournment

Chairperson Stamp adjourned the meeting at approximately 3:30 p.m.

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

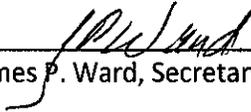
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Flow Way Community Development District



James P. Ward, Secretary



Zack Stamp, Chairperson