

**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, April 20, 2023, at 1:00 P.M. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.

Present and constituting a quorum:

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

Also present were:

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

Audience:

David Boguslawski
Robert Abell
Julia Wright (ph)

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

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

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

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

SECOND ORDER OF BUSINESS

Public Comments

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

Chairperson Stamp reviewed public comment protocols. He asked if there were any public comments.

Mr. Robert Abell asked when the lake bank erosion behind his home would be addressed. He indicated he lived on Montelanico Loop.

Chairperson Stamp responded Montelanico Loop was coming up.

Mr. Robert Abell asked if littorals would be planted in his lake.

Mr. James Messick responded if littorals were originally permitted, then the littorals would be reestablished. He stated he would look up when the lake would be addressed and whether the littorals would be planted and let Mr. Abell know.

Ms. Julia Wright indicated she lived on Terrasina Drive. She noted she received an email in December which said the damage from the last hurricane had been addressed. She stated she wrote an email to Mr. Dave Copsis (ph) and the HOA Board because the community property in the preserve on the east side of the pass, near Terrasina, had fallen trees which crushed the fence, sprinkler heads which were not functioning, and landscape failures as a result of the nonfunctioning sprinkler heads. She further discussed these issues. She said Mr. Copsis told her to attend the CDD meeting and ask Mr. Stamp about these issues.

Mr. Messick explained the bids received in December for fencing were for the external perimeter of the preserves, not the internal section of fencing Ms. Wright was referring to along the walking path.

Ms. Wright stated there was no fencing along the external perimeter of the preserves and people were racing four wheelers up and down the road in the preserves all night long.

Mr. Messick indicated the road was a public right-of-way and was adjacent to the preserves, not in the preserve area; therefore, there was nothing the CDD could do about the four wheelers racing on this road. He stated what the CDD was looking into was to provide a fence along the perimeter of the preserves to prevent four wheelers from leaving the road and entering the preserves. He stated he was meeting with a fence vendor tomorrow regarding the internal chain link fence Ms. Wright was concerned about.

Discussion ensued regarding the section of fencing Ms. Wright was referring to.

Ms. Wright asked about the irrigation problems in the same area.

Chairperson Stamp explained sprinklers were not the CDD's responsibility.

Discussions continued regarding where the problems with the dying landscaping, lawn and trees were located; the CDD would not be addressing these issues; and the trees which had fallen on the fence.

Mr. Abell asked when he would hear from Mr. Messick regarding his questions.

Mr. Messick responded the lake erosion should be addressed within the next month. He noted the erosion being addressed was the erosion which was in excess of the maximum slope allowed; the erosion which was not as steep would not be addressed because it was still within permit regulations. He explained, however, most of the area which was considered eroded was being addressed.

Mr. Abell asked who he could send the pictures he had of the erosion to.

Mr. Ward responded the pictures could be emailed to himself and he would forward them to Mr. Messick.

Mr. Messick noted if the erosion was located up near the homes, it was outside of the CDD easement and would not be addressed by the CDD; only erosion within the easement could be addressed.

THIRD ORDER OF BUSINESS

Consideration of Minutes

March 16, 2023 – Regular Meeting [Page 7]

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

On MOTION made by Ron Miller, seconded by Martinn Winters, and with all in favor, the March 16, 2023 Regular Meeting Minutes were approved.

FOURTH ORDER OF BUSINESS

Fiscal Year 2024 Budget Plan

Fiscal Year 2024 Budget Plan along with the Capital and Asset Evaluations [Page 18]

Mr. Ward: This is the second month of the plan to approve your budget. Your approval will come at your next Board Meeting where you will be asked to approve it for purposes of setting your public hearing which will be scheduled for July at that point in time. I would like to make sure you have all of the input you want to have either this month or next month, and I know the Chairman will probably do the same process that we did in the prior year about accepting changes to the budget. I would like to have them basically in final form by next month so that we will have a budget ready to be adopted by your July meeting. Briefly, I will go over it with you again, and I want to focus on the cash position. By the end of this calendar year, based on our existing expenditure projections for operations and all of the administrative part of this District, we are going to be in a negative position by approximately \$65,000 dollars. When we did the budget last year for the year that we are in, we anticipated being in a positive position of around \$85,000 dollars and I was assuming during this year we would not spend the \$100,000 dollar contingency line item. That was the amount of money we moved out of the preserve fund into a contingency, so essentially by year end we would have been in a position to have roughly \$185,000 dollars at September 30 which was going to be almost sufficient enough to carry us through the first couple of months of the fiscal year. So, going into this year, based on our current projections, we are going to be basically underwater another \$65,000 dollars. So, we will need to do one of two things, we will either need to secure an additional note going into 2024 to carry us through, and/or alternatively be able to extend our existing note. We need to get a little further down the road to see where we will be because we may need to do a whole new note because we will again be underwater for \$65,000 dollars. This all assumes that we will not get any moneys out of the arbitration award obviously that was entered into last year for purposes of your budgeting process. The budget itself is relatively consistent

with what we have done year over year. The contingency amount that's in next year's budget which was a part of the original reserve fund is still in the budget going into 2024 of \$100,000 dollars. In addition, this year I added an \$80,000 dollar line item that would begin to accumulate some funds in the event of a natural disaster. One thing I did see this year which you fortunately did not experience was substantial damage from Hurricane Ian along the west coast of Florida. Those damages were in the quarter of a million dollars or more range for this year, so I included a little bit of money for next year with respect to that. All in all, the overall budget has not changed much. The assessment rate, I did increase it to the maximum rate without requiring the District to send notice. Our existing rate is \$1,399.81. This budget contemplates it being at \$1,676.42 which is a couple of pennies below the maximum rate. As we had for the prior year and this year, legal expenses are generally a very unknown part of where we will go into 2024. I will tell you I dropped dramatically legal fees in the 2024 budget than what we have in the current 2023 budget which is roughly \$195,000 dollars in the current budget. So, that's been dropped somewhat in order to deal with, hopefully, decreases in our legal fees going into 2024, which is always probably the biggest open item that we have in the budget.

Mr. Bhatla: We need a new note now? We have already paid the note that we had?

Mr. Ward: No, it is not due until October. So, between now and then, I've asked for an extension to the note. I'm pretty sure the bank will grant us the extension, but we may need another note simply because we are going into a negative position, in addition to the current note.

Mr. Bhatla: How much time will it take to get the additional note?

Mr. Ward: It takes about 60 days from start to finish to have the Board approve it and get the documentation done, signed, and legal opinion signed and funded.

Mr. Ron Miller: Are we required to take the entire \$500,000 dollars or can we take only what we need?

Mr. Ward: We took the entire \$500,000 dollars. The bank traditionally asks us to take it in one tranche, but I can ask again. Depending on where we will be I can also reduce the par amount of financing going into the next year.

Mr. Miller: Budget question. There is still \$131,000 dollars budgeted for the preserves. To be consistent, I would like to see that entire \$131,000 dollars moved out of the preserve budget, so we have no preserve budget. We should move this into contingency.

Mr. Bhatla: Is that \$131,000 dollars in contingency already?

Mr. Ward: No. There is an additional \$100,000 dollars. The \$131,000 dollars was for internal preserve maintenance and \$75,000 dollars for capital, which is repairing the fencing problems that we are seeing along the external perimeter of the preserves.

Mr. Winters: (Indecipherable).

Mr. Ward: Literally after making a lot of phone calls, it was the only one who would do this, Truist, where we have our checking. We were with SunTrust and now it is Truist.

Chairperson Stamp asked for any who wished to make an amendment to the budget to let Mr. Ward know before the next meeting so the amendments could be prepared and voted upon.

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

No report.

Mr. Bhatla: I would like you to elaborate a little on the Sunshine Law because it seems absurd that we cannot talk to each other because talking to each other we can come up with some good ideas.

Mr. Michael Pawelczyk: My advice to you is to follow the Sunshine Law because otherwise you could be criminally or civilly penalized. I know you think if you got together you could come up with some good ideas, but the reason the Sunshine Law is there is because in the 60s there were other people who came up with bad ideas and worked together to keep things out of the public realm. It's in the Constitution, there's a statute, so basically you are restricted from discussing any matters that could come before the Flow Way CDD Board for a vote with another Board Member outside of a Board Meeting. Not many Board members like it, but unfortunately, that's the law. I don't like driving 55 mph, but that's the law in some places. If you have particular questions or you want to discuss any matters pertaining to the Sunshine Law that particularly affects you, lets set up a quick call and I would be happy to talk to you. I think most of the Board Members do understand the Sunshine Law, but any questions you have, you can ask. My only advice is you have to follow it. There are no exceptions.

Mr. Bhatla: I was interested in the scenario that the Chair is not able to appoint a group among the Board Members to study an issue and come up with a recommendation. Right?

Mr. Pawelczyk: The Board can appoint one Board Member or someone in the public to do the fact finding and bring it back to the Board, but the CDD does not have the power to create a committee. If the Board were to create a committee, the committee would then be subject to the Sunshine Law and the meetings would have to be noticed pursuant to Florida Law, minutes would have to be taken, and they would have to be open to the public.

Chairperson Stamp: Florida had to choose between efficiency and transparency, and they chose transparency. That's a judgment they made, and we have to live with it. My question for you is, I think next week when we start talking about amendments to the budget, the external fencing is going to come up, and we would like your opinion as to do we increase our liability by putting up the fence, are we just putting in gates, that sort of thing. If you want to defer until next month I would be happy to have you discuss it next month.

Mr. Pawelczyk: This is the preserve fencing, correct?

Chairperson Stamp: Yes, the external preserves.

Mr. Pawelczyk: I will be happy to look at that and talk with Jim and get some more information and be prepared to discuss that at the next meeting.

Mr. Bhatla: We should talk about the fencing because that's an enormous expenditure. I'm wondering if our insurance would not cover the issue if there were an incident.

Chairperson Stamp: That's my question. Do we increase, decrease, what do we do with our liability or exposure, if you will, by putting up the fence or not putting up the fence? What do we do? We have ATVs apparently out running around there. What do we do with all that? So, I'm asking Counsel to come back and give us his opinion on that issue.

Mr. Miller: The CDD does not have the permit for the preserves. That permit is owned by the HOA. What I said a month ago I think I will just repeat now, I don't think the Board Members of a public agency should be taxing residents and spending money on a project that is not our obligation. We do not have the obligation to maintain the external preserves.

Chairperson Stamp: But we are the owner of it.

Mr. Pawelczyk: It is my understanding that the CDD owns the property.

Mr. Miller: But we do not have the operating permit which requires the maintenance.

Mr. Bhatla: It's not in the permit to put a fence.

Mr. Miller: It is in the permit.

Mr. Ward: It is in the permit. I don't know if it's required. There is a condition in the permit that allows the fence to be there. I don't know if it requires it or not. I just know it's in the permit.

Mr. Bhatla: I think we should choose to seek alternatives.

Chairperson Stamp: Yeah, that's what we're looking at.

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

- a) Status Report on Litigation and Appeal**
- b) Status Report on Corps of Engineers/SFWMD**

No report until Executive Session.

III. District Engineer – Calvin, Giordano & Associates

- a) Engineer's Report [page 53]**
 - 1. Strategic Operational Plan**
 - 2. Bonita Springs Floodwater Diversion Plan**
 - 3. Lake Bank Restoration using Geo-Tubes**
 - 4. External Preserves Brush Fire**

Mr. Jimmy Messick: We are continuing and focusing on addressing the lily growth and weeds. The shoreline foreign grass beds have been treated. We will continue to treat the remaining lilies. There are no known algae bleeds seen and the water levels continue to drop. For landscaping maintenance, we repaired a wall on 860, and then along the front entrance and east

berm we installed some new plantings, and at the front entrance and monument walls we installed 4,700 annuals. No update on the irrigation pump station and we have installed new nozzles and lights at the water fountain at the entrance and added no fishing signs at the bridge. The projects for lake bank restoration continue at lakes 12 and 20-21. Lakes 18-19 were accidentally labeled 20-21 on the CIP plan, so we're addressing the minor amount of lake bank restoration in 20-21 and lakes 18-19 all this year. Additionally, the outfall pipe was repaired at lake 8, (indecipherable) outstanding stormwater management system improvements. For the Bonita Springs Floodwater Diversion Plan no additional coordination has been made since we had our conversations with the County and Cities. We are still waiting to hear back from Big Cypress Basin's engineer with their proposed plan. Lake Bank Restoration using Geotubes is something Jim asked me to prepare for the website. I can read it for you, but –

Chairperson Stamp: I think everyone can go read it on the website. He indicated "thank you" comments were posted regarding the lake bank restoration information provided online.

Mr. Messick: The last item on my list is a followup about the external preserves brush fire. After further investigation, the brush fire was not in our external preserves. It was within a neighboring preserve. He noted the fire was controlled by the Fire Department and was prevented from spreading. He indicated the brush fire was in fact located on land owned by the Fire Department for training purposes and was caused by a faulty power line. He displayed some photographs of the front entrance, buffer wall, and lake bank restoration Geotubes.

Mr. Bhatla asked about insurance coverage for a brush fire.

Mr. Ward explained the CDD carried general liability, as well as officers' and directors' liability; the policy was for \$1 million to \$2 million dollars. He stated he did not believe it covered fire. He noted the CDD had property damage coverage for some physical assets such as the entrance bridge coming in, the sidewalls, the entrance fountain, those kinds of things. He stated underground facilities such as lakes, lake banks, underground piping, roadways, etc., were not covered.

Mr. Messick indicated he had a discussion with the environmentalists for the external preserves about the external brush fire, whether there was anyone who could take pictures, and he had a report from North Collier County Fire Department which documented they put out the fire. He noted he had asked the environmentalist whether a controlled burn would be an effective way to rid the external preserves of exotics and weeds. He indicated the environmentalist responded yes; however, melaleuca tree spores were released during fires and would spread melaleuca trees; therefore, a controlled burn was not the recommended method for ridding an area of exotics. He noted a controlled burn could be effective in ridding the area of debris, however.

Chairperson Stamp noted if the preserve area burned, the CDD had no obligation to replant the preserves. He stated the definition of a preserve was it should be designed by nature.

Discussion ensued regarding a controlled burn and the ATVs in the preserve area.

Mr. Messick indicated he may have discovered the gate which the ATVs and dirt bikes were utilizing to access the preserves. He stated he was going to have the gate locked up.

Chairperson Stamp asked about the PVC pipes.

Mr. Messick: We got a quote to rip out all of the PVC pipes and that's something we will look at. Those pipes (indecipherable) water levels are so low you can see the drainage pipes, but we also have our GIS maps which locate all the drainage pipes, so if there are ever any questions, we can send the maps over to the vendor who can locate them by the map.

Chairperson Stamp: I just got some comments and complaints about these pipes sticking out. I told them I thought they would be leaving shortly.

IV. District Manager – JPWard & Associates, LLC

- a) Important Board Meeting Dates for Balance of Fiscal Year 2023:**
 - 1. June Board Meeting – June 29, 2023**
 - 2. Public Hearings: Fiscal Year 2024 Budget Adoption – July 20, 2023, 1:00 P.M.**
- b) Financial Statements for period ending March 31, 2022 (unaudited) [Page 81]**
- c) Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities (Continuing Item – No additional report for April 2023)**

No report.

Chairperson Stamp noted the June meeting would be on June 29th.

Mr. Pawelczyk indicated he would not be available June 29th. He stated if he could not call in, someone from his office would call in.

Chairperson Stamp cleared the room for the Executive Session.

SIXTH ORDER OF BUSINESS

Executive Session

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

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

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

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

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

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

Chairperson Stamp: The District will now commence an Attorney Client Session. It's approximately 1:48 p.m. The shade session is expected to last approximately one hour. The individuals attending the shade session today are Zack Stamp, Ron Miller, Tom Kleck, Martinn Winters, Bart Bhatla, Greg Woods, and District Manager James Ward. Please note that at the conclusion of this attorney client session the meeting shall be reopened and it will be announced at the termination of this session. At that time, we will finish the Board Agenda.

The meeting went off the record; the audio recording ended at this point. The Executive Session was held.

Following the Executive Session, Chairperson Stamp reconvened the Regular Meeting of the Board of Supervisors for the Flow Way Community Development District for Thursday, April 20, 2023 at 2:23 p.m.

SEVENTH ORDER OF BUSINESS

Supervisor's Requests

Supervisor Bhatla – discussion on Preserve Remediation success monitoring Report [Page 100]

This Item was deferred until the next meeting.

EIGHTH ORDER OF BUSINESS

Staff Reports – Additional Items:

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

- a) Request to call Executive Attorney/client shade session. Discussion of settlement matters pertaining to Taylor Morrison Defendants (File Number: 2020-CA-4147)**

Mr. Greg Woods: Based on the discussions today, and the need to get some followup information, we will need a shade session for the meeting on May 18, 2023. Present at that meeting will be Greg Woods or Jessica Tolin, Jim Ward the District Manager, and Zack Stamp, Ron Miller, Tom Kleck, Martinn Winters, and Bart Bhatla, and the court reporter. The session will last approximately one hour.

NINTH ORDER OF BUSINESS

Audience Comments

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

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

TENTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Regular Meeting on May 18, 2023

ELEVENTH ORDER OF BUSINESS

Adjournment/Recess

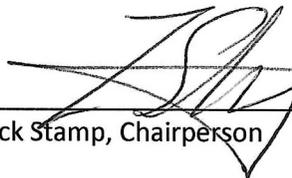
The meeting was adjourned at approximately 2:25 p.m.

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

Flow Way Community Development District



James P. Ward, Secretary



Zack Stamp, Chairperson