

**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, June 29, 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:

Lynn Hyduk	HOA Manager
Fritz Riep	

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.

THIRD ORDER OF BUSINESS**Consideration of Minutes****May 18, 2023 – Regular Meeting [Page 6]**

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

On MOTION made by Tom Kleck, seconded by Martinn Winters, and with all in favor, the May 18, 2023 Regular Meeting Minutes were approved.

FOURTH ORDER OF BUSINESS**Consideration of Resolution 2023-6**

Consideration of Resolution 2023-6, a resolution of the Board of Supervisors of Flow Way Community Development District amending the Approved Proposed Budget for Fiscal Year 2024; providing for Severability; providing for Conflict and providing for an effective date. [Page 24]

I. Supervisor Ron Miller – Comments on Fiscal Year 2024 Budget. [Page 62]

Mr. Ward: As you may recall, we approved your proposed budget at your last Board meeting for the purpose of setting your public hearing. I did make an amendment to your proposed budget that does not affect your assessment rates for Fiscal Year 2024. Essentially, the change is to remove all of the line items that were in your general fund related to either the internal or external preserves and then in lake management, lake bank, and littoral shelf restoration, I added a tree removal and miscellaneous cleaning in the amount of \$20,000 dollars which was a partial amount of that money. The balance of the funds that were in the preserve area maintenance have been moved down into the overall contingency line item. In addition, there was one change to the capital program that required lake bank restoration on the golf course going into next year. That was included. All that really does is change the overall reserve and contingency. The assessment rate stays the same as what I referenced to you in the prior year. It is recommended that we basically amend the approved proposed budget for Fiscal Year 2024. We have already provided notice, pursuant to the law, to Collier County so it gave us the full 60 day window. We still have time to do the advertising for the public hearing scheduled for your July 20, 2023 meeting.

Chairperson Stamp: Questions? Ron, I understand you submitted some written comments, but my understanding is the changes that were made address what you were going to talk about.

Mr. Ron Miller: Yes, they do. Once again, Jim has been helpful and insightful.

Mr. Martinn Winters: I wasn't at the last meeting, but I read the minutes and there was some concern about us unintentionally obligating ourselves to maintenance on the preserves by calling it maintenance. Ron had an objection to that, and I am sympathetic to that. My thought was, could we create a category called "Safety" which would include things like trees, fences, signs, that would give you more latitude under the budget to spend on items without having to go to contingency and then getting our approval.

Mr. Ward: That's what I hope this amendment does. It provides about \$20,000 dollars to handle some of the safety issues, downed trees, signage, that kind of thing that may occur, that's needed during the year, and then the rest of it will fall to a contingency item which generally I bring contingencies back to you for consideration if we tend to need to use those spots.

Mr. Winters: Do you think \$20,000 dollars is enough?

Mr. Ward: Based on the last two years I think that will be sufficient. If we need more, I will come back to you with a budget change to move some of the contingency funds, but I think that will be sufficient.

Mr. Winters: Do we as a Board need to pass a resolution saying that we don't accept responsibility for maintenance of the preserves?

Mr. Ward: You may do what your counsel tells you to do for purposes of operations of the District. The lack of it being funded does just that.

Chairperson Stamp agreed with Mr. Ward's amendment to the budget.

Mr. Miller: Martin had an interesting comment. I think he was being more progressive in asking if the Board should make a motion to say we will not spend any money on preserve maintenance because it's not our responsibility. Is that something worthwhile that we should think about?

Mr. Greg Woods: From a legal standpoint, I think having a resolution that you are not doing something doesn't really make sense because you could have that on a thousand different items that you are not doing.

Mr. Mike Pawelczyk agreed.

Mr. Winters asked if the CDD should send notice to the HOA that it was the HOA's responsibility to maintain the preserves.

Chairperson Stamp: David and I have had conversations. We provided him the information on who the CDD had previously engaged, the environmental engineer, as well as copies of the contract, and David is going to be in touch with Susan Martin, the attorney we hired to deal with the Corp.

Mr. Winters asked if it was the HOA's intent to take it over.

Chairperson Stamp indicated if Susan Martin indicated the HOA had to, then the HOA would.

Mr. Woods: I believe it is also their intent to, they have a potential claim against Taylor Morrison relative to maintenance, etc., and that may be part of the HOA's lawsuit.

Mr. Winters: In order to clarify responsibilities between the two groups, it might help for us to have a resolution saying it's not our responsibility, that we believe it belongs to the HOA, so it provides notice to the HOA that they need to pick up responsibility.

Mr. Bhatla: We own the property. We have to give them the right-of-way to do things, so it would entail additional agreements, because they don't own the property. We have implied responsibility. I don't know if it accomplishes anything. It is a protest I think, and I don't know if that has a good deal of value to it.

Chairperson Stamp: They have not asked us to do anything, so it's not like we are refusing.

Mr. Woods: I would recommend not discussing this yet, as some of this may be addressed during the shade session.

Chairperson Stamp: We can always come back to it.

Mr. Miller: I'm still intrigued by Martinn's idea that we make it official that we do not have the maintenance responsibilities that are in the permit, because the permit is not ours, so maybe table this for the moment, that we don't need to have a motion to do that, but I think it's intriguing enough that I'm going to keep it in mind. Let it be duly noted in these minutes that the Board, unless somebody objects, and please object if you do, that all the Board members agree that we do not have the maintenance responsibilities that are prescribed in the Corps Permit.

Chairperson Stamp: I don't think anybody disagrees with that.

Mr. Miller: Let that be duly noted.

Chairperson Stamp called for a motion.

On MOTION made by Martinn Winters, seconded by Tom Kleck, and with all in favor, Resolution 2023-6 was adopted, and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS

Staff Items

- I. District General Counsel - Billing, Cochran, Lyles, Mauro & Ramsey, P.A.**
 - a. Required Ethics Training [page 63]**

Mr. Michael Pawelczyk: Board, there is a memo in your packet regarding required ethics training. When you fill out your Form 1, now there is a part that says "I, hereby, certify that I have completed the four hours of Ethics Training." As you know, this year and in previous years, you were not required to complete that section. Starting January 1, 2024 that will be required of you. This Memo details that legislation, basically what the legislation does is, municipal officials, county officials, etc., are already required to do this ethics training and they are adding special district supervisors to that requirement now. It's really to put you on notice that this is there. As we get closer to the new year, my office or Jim's office will be advising you of webinars that you can log into in your free time to satisfy this requirement. You can do it sometime between January 1 and July 1 of 2024. Hopefully, we can do this at no cost to you or the District.

Mr. Miller: I thought I saw you could download a program, do it, and you were done.

Mr. Pawelczyk: Starting next year, you should be able to go onto the ethics website, fill out your form online. It sends and gives an automatic receipt back to you saying yes, you've sent it in. You won't have to go through the Supervisor of Elections next year. That came about as a result of legislation. It will be easier to be certified, but you will have to put in four hours annually to certify you completed the ethics training.

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

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

Chairperson Stamp: We are going to skip litigation counsel for the moment.

III. District Engineer – Calvin, Giordano & Associates

- a. Engineer's Report [page 68]**
 - 1. Strategic Operational Plan**
 - 2. Prior Board Inquiries**

Mr. Jimmy Messick: My Engineer's Report includes a couple of items. There is the strategic operational plan; obviously, the vendors that maintain the current assets were still out spraying and installing landscape and maintaining irrigation and so forth. We have the Solitude Lake Management Quarterly Report completed. They had a typical maintenance next visit for all sites, except for lakes 1 and 2 which did require a reinspection that was due to the noted surface algae and shoreline leads. I did take a look at those lakes several weeks after they prepared their report and unfortunately when I was out there was the day after they were done spraying those lakes, so you see the foam on top of the lakes, so I unfortunately did not get great pictures, but I do know Ecologic is aggressively treating those areas for algae and underwater weeds. We will continue to treat them. My thought is, they are at the front where we are aggressive with our fertilizer. There is not a lot of rainwater runoff other than those landscape areas, so you don't have a lot of water pushing through those lakes. Those are going to be the continual problem lakes, but we will stay on top of the spraying so that we get a hold of the algae problems.

Nothing from GHD services. The next water quality sampling report is due in June. I will probably receive that next week and it will be included in next month's engineer's report. With regard to landscape maintenance, we did install new plantings in the median at the front entrance from the bridge up to the gate and in bare spots. In the irrigation, there was no ongoing maintenance for both the pumping system and the chemical treatment for reuse. The last assets, the front entrance, we did notice a large usage at the fountain. We did see that the fountains were emptied after several consecutive weekends. We changed the pumphouse autofill and turned off the autofill and since then, the emptying stopped, and then the other thing of note for that front fountain is that there has been some vandalism. Detergent was added to the front fountain and created foaming in the early hours of the weekend, so we think some kids got into the fountain area. We were able to purchase defoaming and address the issue. We will keep the defoaming at the guardhouse in case there is any more future vandalism at the fountain.

CIP Projects. We've actually finalized and finished up the lake bank restoration projects. The final lift of sod was completed at the end of May. I do have some pictures in the appendices showing the lake bank restoration geogrid and with the sod installed over it. Unfortunately, in that picture, you see some of the sod eroding off of it, and that's one of the things we've had to address with the contractor. There were isolated areas that needed to be corrected post construction. I did talk to the contractor this morning asking him if this was typical, and it's something we've seen in the past and he's aware of. It's a fine line area between finishing lake bank restoration early and having no rain, and the grass dying, and in the summertime the waters start there is potential for erosion, or not getting the sod installed early enough, not taking root, and then during the summer the heavy rains can start some erosion. We will continue to watch this and be in close contact with the contractor.

Another item on the Agenda, the perimeter fence repair at the east nature trail has been completed. We are still waiting for them to come back out and address the ped gate replacement. The fencing company closed the work order after they finished the east fence replacement thinking that the west had been done, and it hadn't. They are trying to schedule something as soon as possible to get that pedestrian gate replaced. One thing of note, the estimated cost to add the no trespassing signs around the perimeter. I mistakenly made the calculation based on the field fence quote we received from Carter Fence for 1,300 linear feet, and estimated \$300 dollars a sign, for 30 signs, about \$9,000 dollars. Unfortunately, the fence is actually 54,000 feet, not 1,300 feet. That is the perimeter of the entire external preserves, not just the length of fence needing to be replaced. That is my error and I apologize for that. Also, unfortunately, I assumed the signs would be \$300 dollars; it's really \$240 dollars a sign, but when you are looking at the total number of signs that need to be installed per state statute, the estimate went from \$9,000 dollars to \$27,000 dollars. I am asking the Board to confirm they want to spend the estimated \$27,600 dollars to install the signs along the perimeter of the external preserves.

Mr. Bhatla: \$27,000 dollars seems like quite a bit of money.

Mr. Messick: We had \$25,000 dollars in our budget for fencing, and we are now exceeding that by \$2,600 dollars.

Mr. Miller: That fencing budget is for maintenance and we are not doing that. In my view, if we want to talk about something we should be doing as an owner, it makes sense to talk about no trespassing signs in concept, but just having the fencing budget is not where I would want to go. We have already put that to bed. That's not our responsibility.

Mr. Messick: We are not installing fencing. I'm just talking about the budget we have that we could use for the no trespassing signs.

Mr. Tom Kleck: How effective are no trespassing signs? Anybody who wants to come into the property is not going to pay attention to a sign. I guess from a liability standpoint, do we have to have no trespassing signs? I agree with Ron, we are not responsible legally for taking care of the property, why do we care?

Chairperson Stamp: We don't have to do the signs, but if we call the Sherriff's office and say there's somebody out there trespassing, they are not going to arrest them because we have not posted.

Mr. Kleck: Would they if there was a sign?

Chairperson Stamp: Yes, they say they would. And to make the legal requirement, the signs need to be posted every 500 feet. And we may decide we don't want to do it. I was fine at \$9,000 but I'm not sure I'm fine at \$27,000.

Mr. Miller agreed. He noted the signs may not make any real difference other than giving the CDD the ability to call the Sherriff.

Mr. Messick indicated the signs could be placed every 500 feet nearest the areas where the public could enter the external preserves. He stated the Sherriff most likely would not check the inaccessible areas to ensure the signs were posted. He noted the signs had been ordered.

Mr. Bhatla stated it was silly to install signs in areas which could not be accessed. He suggested being practical about it.

Mr. Messick noted state statute was not practical.

Mr. Pawelczyk: Under the statute, even if you post it correctly, the way trespassing works is, the officer has to give a warning to the trespasser. If the trespasser comes back at another time, or refuses to leave the property, then they can be cited. So, they basically get a free warning anyway. If they are a first time offender, the Sherriff is not going to arrest or cite them for trespassing. They have to give them a warning first.

Discussion ensued regarding the no trespassing signs, how the Sherriff handled trespassers, and whether installing the no trespassing signs was worthwhile.

Mr. Bhatla suggested installing signs in the accessible areas.

Chairperson Stamp agreed. He stated if the signs were printed already, they might as well be posted in the accessible areas.

The Board agreed.

Mr. Messick: Duly noted. The next item I wanted to talk about was the irrigation pump filter. On June 16, we noticed a leak and there was water at the floor of the pumphouse. When we contacted a contractor to come out, they shut down the irrigation system and welded the seam. By the way, this is a ten year old system. When they started the system back up, the weld held, but the rest of the phalange broke and the filter disassembled and was unrepairable at that point. Of the two filters, only one is currently online. They had to take down the gate valve and replace it with a blind phalange to get it back up and working. We have since gotten two proposals to replace the other filter that broke, and we are choosing the lesser of the two proposals, at \$89,000 dollars to fix the irrigation pump filter. It is \$89,000 dollars for the filter assembly installed. There is an 8 week delay on the pump filter assembly being delivered. This

does not replace the pump or motor, just the filter that filters the sediment, soot and rocks out of the water that the pumps are pushing into the main and that stops the valves from clogging. He noted the other quote was for \$110,000 dollars.

The Board discussed the high cost of the filter assembly.

Mr. Miller: Jim, do we have enough money?

Mr. Ward: I don't think we have a choice, but we will find it. The direct answer is we did not have this budgeted, but this is not something that could not be fixed, so it's got to be done. In another month I'll do another set of projections just to see where we are with cash going into next year.

Mr. Messick: It's worth noting that the vendor that we use for our irrigation pumps, we met onsite and discussed maintenance costs for pump rebuilds, motor rebuilds, and how many times you can rebuild them before you had to replace them, and he is in the process of putting those numbers together so we can amend the capital improvements program to include those costs. He noted it was important to keep the pumps and motors operating.

Mr. Bhatla: Is irrigation our responsibility or the HOA's?

Mr. Messick: It is our responsibility. It is an asset we have been designated to oversee and maintain. The last thing, we got approval from South Florida today for dead tree removal. We had a Phase 1 and Phase 2. We are now doing Phase 2 which is in the budget for this year. It is within budget, and we have a proposal from the contractor to go and remove those trees. Even though we have approval from South Florida, they want us to formally submit on their ePermits website, so we are in the process of getting that formalized before we can go out and start removing the dead trees.

Mr. Bhatla: What kind of cost is involved?

Mr. Messick: The budget was for \$5,000 dollars; our quote is \$4,700 dollars to remove the dead and unsafe trees. That's everything I have in my report.

Mr. Miller asked about the gutter systems which were causing erosion. He asked if the condo association had been asked to bury the problem gutter systems.

Mr. Messick: We discussed with the HOA. I believe he was present at the meeting where we gave the recommendation that the HOA would be responsible for those uphill, outside of our jurisdiction, lake areas, but no further correspondence has been made on replacing the rainwater leaders or above ground gutters.

Mr. Miller: If they don't do that will it cause us an issue?

Mr. Messick: It can. It's not eminent. If we catch it early in our inspections and address the lake bank erosion at the beginning stages, we can prevent the larger erosion, but it can. I think we need to continue to communicate that this is something they should include in their budget as a project and address before we continue to have to redo lake bank restorations.

Mr. Kleck: Jimmy, can you follow up with the HOA and make sure this is starting to happen?

Mr. Messick: Yes, I will reach out to the HOA and make sure I get something to them. I will verbally talk to them and follow up with an email stating the HOA needs to address these things or further undue maintenance would be required.

IV. District Manager – JPWard & Associates, LLC

a. Financial Statements for the period ending May 31, 2023 (unaudited) [Page 82]

Chairperson Stamp: We will move the District Manager's report down to the end of the Agenda.

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 Supervisors will open the Regular Meeting and take up any actions that may be needed from the Executive Session.

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

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

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

Mr. Ward: The District will now go into an executive session. The time for the executive session is estimated at one hour, after which time the Board will open the regular meeting and take up any actions that may be needed from the executive session. The executive session is related to the lawsuit, file number 20-CA-4147 and its related appeals. The members attending will be Zack Stamp, Tom Kleck, Martinn Winters, myself Jim Ward, and Greg Woods as the District Attorney. The entire session is being recorded by a court reporter and shall be filed with the District Attorney and remain sealed until the termination of the lawsuit. We are now going into the executive session. I will turn off the video for the moment and I will turn the video back on as soon as we go back into regular session. Those Board Members who aren't present in person, I will ask that you hit the stop video button.

The recording stopped here and restarted following the executive session.

Chairperson Stamp: Okay, we are back in open session. The time is 2:27 p.m.

Mr. Greg Woods: Given our discussion today of the recent counter proposal from Taylor Morrison, I would like to call a shade session at the next board meeting on Thursday, July 20, at 1:00 p.m. I anticipate the shade session lasting about an hour with Board Members Winters, Kleck, Stamp, Miller, Bhatla and the District Manager Jim Ward, and myself, or Jessica Tolin, will be present at said meeting.

Mr. Ward: The shade session will also be recorded by a certified court reporter and a transcript will be filed with the District Attorney and remain sealed.

Chairperson Stamp: The only other thing is the Manager's Report.

Mr. Ward: I have nothing for you. Your financials for May are pretty good. Most of the expenditures are legal expenditures that are showing only through March. We still have a long way to go and still need to do some revised predictions for you based upon what we have learned today on the pump house.

SEVENTH ORDER OF BUSINESS

Supervisor's Requests

There were no Supervisor's Requests.

EIGHTH ORDER OF BUSINESS

Public Comments

Public 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: Are we going to give Fritz a chance to call in? He said he had some questions.

Mr. Ward: He said he was going to join by video, and he was sitting at home.

Mr. Fritz joined the meeting.

Mr. Fritz: asked a questions about the lank banks located behind his home on Terracina, which was (Indecipherable).

Mr. Ward: Jimmy has dropped off the call for now. What I will do is, now that I have your phone number, I will get either Jimmy or Richard Freeman to give you a call directly and they can meet you on site and go over what you had questions about.

Mr. Fritz: It's not just our house (indecipherable).

Mr. Ward: They are still doing work. The vendor still needs to come back to do more work. I just don't know specifically personally what they are going to do on your lake bank. I will have them contact you.

Mr. Fritz: Okay. It just seems like the whole thing is dragging out.

Chairperson Stamp: indicated that these projects took time to finish.

Mr. Ward: We will have them give you a call for sure and you can always follow up with me afterward if you want.

Mr. Fritz: He asked about what the responsibility of the HOA versus the CDD was.

Mr. Ward: Any landscaping that's on the lake bank, or sod that's on the lake bank would be either the homeowner's responsibility generally, or the condo association generally would be responsible for it.

Mr. Fritz: (Indecipherable).

Mr. Ward: Yes, that would not be a CDD issue.

Mr. Fritz: (Indecipherable).

Mr. Ward: We have not had that discussion in quite some time. I know it is on both of our plates to do, but I think that's going to happen a little further down the road. I'm not sure just when.

Mr. Fritz: It seemed from what he said it would strike a couple of things (indecipherable).

Chairperson Stamp: That's the way Taylor Morrison did it.

Mr. Fritz: it seems to me that there is probably (Indecipherable).

Mr. Ward: We talk to them daily.

Mr. Fritz: the lake erosion is (Indecipherable) but have noticed that it is where most of the erosion is happening.

Mr. Ward: That's where you get most of the prevailing winds, on your side, and you get more lake bank erosion.

Chairperson Stamp asked if there were any further questions; there were none.

NINTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Regular Meeting and Public Hearing on July 20, 2023

TENTH ORDER OF BUSINESS

Adjournment

The meeting was adjourned at approximately 2:36 p.m.

The meeting was adjourned at approximately 2:36 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