

**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, August 17, 2023, at 1:00 P.M. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.

Present and constituting a quorum:

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

Also present were:

James P. Ward	District Manager
James Messick	District Engineer
Jessica Tolin	District Counsel
Michael Pawelczyk	District Counsel

Audience:

Lynn Hyduk

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

July 20, 2023 – Regular Meeting Minutes

Chairperson Stamp asked if there were any additions, deletions, or corrections for the Minutes; there were none.

On MOTION made by Bart Bhatla, seconded by Ron Miller, and with all in favor, the July 20, 2023, Regular Meeting Minutes were approved.

FOURTH ORDER OF BUSINESS

Consideration of Resolution 2023-10

Consideration of Resolution 2023-10 a Resolution of the Board of Supervisors of the Flow Way Community Development District; Authorizing the Extension of the Maturity Date of the District's Taxable Revenue Note, Series 2022, from October 28, 2023 to May 1, 2024; Providing that the Payment of the Principal of and Interest on the Note will be further secured by the District's Operation and Maintenance Special Assessments for the District's Fiscal Year beginning October 1, 2023; Approving the Form of a First Amendment to Loan Agreement and an Allonge to Note; Authorizing the Execution of the First Amendment to Loan Agreement and Allonge to Note; Providing a Severability Clause; Providing for Conflict and Providing an Effective Date

Mr. Ward: This resolution is an extension of our existing Truist note, to extend the maturity date from October 28, 2023 to May 1, 2024. It is the same rate that we have on the existing note, which is 4.92%. We will pay interest on the closing date, tomorrow, and will pay interest again, and the principal when it comes due on May 1, 2024. The reason I am requesting you do this is because when I did my last cash flow projections after the last board meeting, we were seriously going to be in some hot water with respect to having cash to operate through October, November, and December of this year. Rates have gone up tremendously from what we were at when we did this, so they are extending a courtesy to us to extend this note as of that date. That is the reason for it, the Resolution is in order. There is a First Amendment to the Loan Agreement, an Allonge to the Note itself, and a Certificate from the District extending the term of the Note at a rate of 4.92%.

Discussion ensued regarding the clarification of the interest rate of 4.92%, and the one-year note, and all cash was paid upfront - \$500,000.00, and we could not do in tranches, so to speak, and then we just repay it when the Note comes due. It's not a revolving loan.

Chairperson Stamp asked the difference between the loan versus a line of credit.

Mr. Ward indicated that a line of credit really does not work in government.

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

On MOTION made by Martinn Winters, seconded by Ron Miller, and with all in favor, Resolution 2023-10 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. Memo on Legislative updates**

Mr. Pawelczyk: The one item we have on the Agenda is the Legislative update. There is really not a whole lot that happened in the 2023 Legislative Session that's of real interest to you as Board Members and to this District, except for the ethics training statute which will require you to do 4 hours of ethics training starting January 1, 2024 for the next calendar year. Within the Legislative update, the only item worth mentioning deals with the punch list on contracts the District enters into with contractors. What this statute does is, if we have a contract that says we pay 20% deposit and 80% when the project is completed and accepted by the District, this statute requires a methodology to be included in the agreement to deal with the punch list items on a particular project and how to calculate those punch list items so the District would only be able to hold back 150% of the cost of the punch list and essentially not be able to hold the contractor accountable until he finished the project. It benefits contractors in a way that they get more money in their pocket quicker. It hurts Districts who need to get the contractor to come back to finish the punch list and sometimes the only way we can do that is if there are significant funds outstanding. We are going to be working on an agreement provision we can include in the agreement that best protects the District under this new statute.

Discussion ensued regarding the ethics training requirement which would begin January 1, 2024.

Mr. Pawelczyk: One of the tasks that I've been working on is the easements we need to obtain from the Association. As you might imagine, there are multiple plats, and multiple parcels. My office has drafted a draft of that easement which we are going to expand upon a little bit, to make sure that the CDD has drainage, irrigation, and retention easements over all the roadways, and that we have easements for any other public infrastructure, for instance at the entrance parcels. The District Engineer is putting together a list of those parcels, and we are going to include those in the easement. I think that will be able to be circulated sometime next week, at least the easement form, as Jimmy works on these parcels. We will circulate that to the HOA attorney with the hope of getting phase 1 of the conveyances done as quickly as possible. This would not include any of the preserve areas. This is really just to make sure we have easement rights over common area parcels. We can send it to the entire Board if you like, and if you have any comments, you can send it back.

Chairman Stamp: Mike, is this a reciprocal – are we giving the HOA easement rights over anything?

Mr. Pawelczyk: If we are, we haven't been asked for that.

Mr. Ward: It's unlikely we will need to do that because they actually have underlying fee title ownership over the land, and we are the owners of the easements.

Mr. Pawelczyk: Remember, the reality is the better way of doing this would have been to convey the parcels to the District. I don't know what the history was there, but it appears they are doing everything by easement, but I would say the preferred way would have been if the District owned those parcels rather than granted easements. At this point, Jim informed me there's restrictions and the declaration of covenants that govern how the HOA is run and to convey those parcels to the district would require a 51% signoff of all those owning property within the District and, as you might imagine, that would be cost prohibitive and difficult, if not impossible, to obtain. So we are going the easement route which gives us the rights we need to continue to maintain and improve

those particular parcels. And that's all I have for today, unless there are any other questions for me.

Chairman Stamp: Sounds like you're done – okay, thank you.

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

a. Status Report on Appeal

Chairperson Stamp: Jessica is here. We can just hold until we have the shade session.

III. District Engineer – Calvin, Giordano & Associates

a. Engineer's Report

- 1. Strategic Operational Plan**
- 2. Prior Board Inquiries**

Mr. Jimmy Messick: We are still ongoing with Ecologic Services where we are maintaining the lakes, targeting the lilies as they pop up. Broad leaf weeds and vines were removed from the cord beds, and we are hoping the continual rains will help flush out some of the exotics and clean up the algae problems we've had during the dry season. At the landscape, we've installed 7,000 new plants and mulch at the front entrance. We've trimmed some of the palm trees. We've installed the everglades pine straw mulching in the median last month. For the irrigation pump house, we've installed two cameras with a Wi-Fi router just for security purposes. We also installed two solar cameras at the front entrance fountain because of the vandalism we've had over the summer. We're hoping that helps prevent any further vandalism and makes it easier to secure those two areas. The irrigation filter was delivered and installed at the irrigation pumphouse. It has been completed and is up and running, so we are back to full power for the pumphouse irrigation filters. I am working on a CIP amendment that includes costs for maintaining the pumphouse per the pump reps' recommendations. Next month will be motor restorations, pump restorations, replacements, gaskets, heat exchange, surge protectors, stuff like that for which we are coming up on the five to ten year marks. Some of the projects we have been overseeing that have been completed this month: we installed the no trespassing signs per the Board's directions. 28 signs were installed around critical areas that were identified. Within the first couple of weeks of installation we had visitors in our preserves and Collier County gave us a call and they were able to go onto the preserves and apprehend the trespassers, so kudos to the Board and us for getting the signs up and installed. The signs did what they were supposed to do. The perimeter fence repair, unfortunately they were unable to complete it, they had to reschedule. They are now scheduled for August 22, and they will finish replacing the pedestrian gate that had the broken lock. The last thing worth noting is, yesterday one of the recharge pumps went down. Luckily, we had purchased a backup pump and we were able to install the backup pump, so we were able to keep up with our recharge flow and the pump manufacturer is looking to see if any part of the pump is salvageable or if we are going to have to order another backup pump. I did include some pictures of some of the improvements that have been made in appendix c showing the trespassing signs, the annuals at the front entrance, some of the tree trimming, the cameras installed and so forth. I want to commend our field operations for getting some of this stuff done.

Chairperson Stamp: You want to address the South Florida Water Management District drive by the other day?

Mr. Messick: Jim got a call the other day, apparently an inspector had gone out to the preserves and noticed there were exotics and noticed us in writing with a letter.

Mr. Ward: I got an email a couple of days ago from South Florida Water Management District that essentially indicated that the District has not filed its reports pursuant to the terms and conditions of the existing South Florida Water Management District permit. That permit is in the name of both the CDD and the homeowner's association. We both have that permit. That is slightly different than what the Corps permit is like. The South Florida Water Management District permit's reporting requirements generally mirror those reporting requirements that are in the Corps permit related to the exotic removals in the external/internal preserves. There are obviously some other minor reporting requirements in there also. We have been now put on notice that the South Florida Water Management District will basically put our permit into a noncompliance state as of the end of this month. That likely triggers written notice to us of the deficiency in the reporting under that permit and may trigger other aspects of notification relative to fines, etc., that we may get under that permit. I forwarded you all a copy of the email yesterday that indicated they will put it into noncompliance if they do not receive the monitoring reports. An individual by the name of Matthew Brocias (ph) sent the email. I don't know who he is, and I've never heard of this individual before.

Mr. Kleck: What is the cost of submitting the reports to South Florida Water Management District.

Mr. Ward: The reporting under this permit was the same reporting that we were doing under the Corps permit, so you recall we had an environmental engineer we hired a few years ago. We had a vendor onsite once a year that was doing the exotic removal in the preserves, and between the two of them they prepared the reports, and those reports were basically sent to South Florida and the Army Corps of Engineers. At that time, we were spending roughly \$220,000 dollars a year on the permitting and the removal of the exotics and the reporting required under those permits. That obviously was the subject of our budget debates for the last few years and removal of all of that from that process, but that's what we were spending. The \$200,000 dollars is no magic number. It was tied basically to the Corps requirements. I'm sure we could lessen that if need be or increase it as need be. Obviously, we don't have the money in the current year's budget, and it's been moved to our contingency for 2024.

Mr. Kleck: What would you say would be the answer to this request from us to get SFWMD off our back?

Mr. Ward: My opinion is to go back to starting to not only do the work, but then do the reporting requirements for South Florida, which then dovetail into the Corps permit.

Chairperson Stamp: Keep in mind, the HOA and we are in this together. We may be able to split the costs. I've had some conversations with Dave Boguslawski. He's read this letter.

Mr. Ward: South Florida's mode of operandi generally is, if you don't respond to a noncompliance letter, they will then send you a letter which starts a per diem fine until you bring it back into compliance. Those are generally hefty numbers. They don't enforce the fine unless

you choose not to do anything. I have not responded at this point. I basically received this yesterday.

Mr. Bhatla: Do you plan to respond?

Mr. Ward: Based upon what you tell me today, the answer is yes. What I'm going to say, I don't know yet.

Chairperson Stamp: We've got other questions that need response today.

Mr. Ron Miller: Will there be an official letter of noncompliance we will receive?

Mr. Ward: It will be a noncompliance letter to follow probably next month if we do not respond. It will go out of compliance at the end of this month. It's only a couple of weeks away. If we don't respond, we will definitely get a noncompliance, and even if I do respond, I do need to tell them what we are going to do. If we are not going to go into compliance, if we are not going to do something, then I need to tell them that.

Chairperson Stamp: My thought on this is to use Susan Martin, who we used with the Corps. Susan was the chief counsel for South Florida Water Management District. To have her help us craft whatever our response is and maybe give them a call and say, this is the history of why we got to this point, and we will work with you, but maybe not in the time frame that you give us. I would hope that the Board would authorize us to engage Susan.

Mr. Bhatla: I am not sure we need any counsel on that. If you get a noncompliance fee you have to explain how you are going to get it into compliance and I think that will essentially suffice. Our engineer will do that.

Mr. Ward: I will help a little bit, but I think it will be a good idea to have Susan provide some color to South Florida Water Management District on what has been going on for the last two years and whatever you decide today, say just that, and then we might forestall a noncompliance letter with a fine in it initially. I think it doesn't hurt to have her make the phone call and provide some color around this issue, but beyond that we all need to decide what we are going to do after that.

Mr. Winters: Could we at some point get South Florida Water Management District to help us with our claim.

Mr. Ward: I don't think so.

Ms. Tolin: We initially filed, but they ultimately dismissed the petition early on.

Chairperson Stamp: It wasn't on merit, it was on the fact that the time period for an appeal had expired by the time we took over the Board.

Ms. Tolin: But in terms of permit conditions, I don't know if they would change them based on that official act.

Mr. Bhatla: I actually looked at the permit and it was assigned to us in March 2021, I think. I think we need to get used to the fact that we are the permit holder along with the HOA and we need to comply. Any other alternatives, it could be separate, because I don't think there is any sense in fighting with South Florida Water Management District.

Chairperson Stamp: I agree with that. I think Susan can help guide us and get us some more time and an idea of how much we have to do.

Mr. Bhatla: The other thing we need to know is how much we are spending on remediation and how much are we spending on monitoring. The two components of cost. And how long until we can be free of the remediation obligation.

Mr. Ron Miller: With respect to sharing this with the HOA, it comes out of the same pockets in the end. The only distinction (indecipherable) figure out something reasonable in that regard. The second thing that comes to mind is, this individual that sent the email to Jim is unlikely to be aware of the history of the whole thing and that should be considered when responding. We are talking about noncompliance here. Just to show we have interest, but also (indecipherable). At the time the permit was transferred to us, it was also in noncompliance, so why would you be angry with us and expect us to do remedial work when it was given to us like this. It should have been in compliance before it was given to us.

Mr. Kleck: I agree with Ron. Perhaps inviting her to come here and explain to us, and so we can explain to her, why we are not in compliance.

Chairperson Stamp: Jessica, I think she has a pretty good handle on this from the briefings we did with the Corps.

Ms. Tolin: Yes, she has an extensive background on this. As far as I know she has not seen this letter yet, but on the background of the permit she has knowledge of.

Chairperson Stamp: I wanted to make sure the Board is comfortable moving forward with her. Jessica has been the primary contact with the Corps stuff, so we will allow her to make the contact with Susan.

Ms. Tolin: You mean contact Susan? Yes, I can do that.

Mr. Miller: I wouldn't rule out the possibility of making this individual aware that there organization was aware of noncompliance, at the time, so cut us some slack, have an open mind, and maybe help us get some funds to bring it into compliance before we are responsible to take it over. It seems unjust to hand us something in noncompliance and tell us to put it in compliance. Seems to be over the top.

Chairperson Stamp: We don't know if this guy that sent the email is just a field inspector or a manager. Some of us think Taylor Morrison may have asked him to drive by and take a look. Susan Martin would know if we are addressing this problem with a field inspector or an intern, or someone else.

Mr. Bhatla: It shouldn't come as a surprise to us. We have to be on top of this and take care of the District. We are operating an environmental business.

Chairperson Stamp: We have the potential to have several things pending down the road with South Florida Water Management District and we really don't want to have a hostile relationship with them.

Discussion ensued regarding not wishing to have a hostile relationship with SFWMD; and having Jessica Tolin contact Susan Martin to speak with SFWMD.

Mr. Winters: Does the permit with SFWMD also contain language about an escrow fund.

Mr. Bhatla: Yes.

Mr. Winters: Has anyone approached SFWMD and asked if SFWMD would be willing to help the District get Taylor Morrison to put up the escrow fund. He asked if it was too late to raise the issue.

Mr. Miller: I approached SFWMD as a citizen and had several phone conversations with someone in a high position and explained to her what was going on and also that we did not approve the Taylor Morrison turnover. She was well aware of the issue. Plus followed up by maybe 50 to 100 letters were sent, that SFWMD received from residents.

Mr. Winters: That's what I'm remembering. I'm remembering somebody tried to get them to help us and basically, they blew us off. I'm just wondering now if we could recite that back to them that we came to them for help originally, we were underfunded to begin with, we continue to be underfunded, we are going to have to tax our residents to fulfill somebody else's obligation, can you at least give us more time.

Ms. Tolin: I think Susan Martin would be the one that would be able to help guide through those issues as well because that's a part of what we have engaged with.

Mr. Winters: I think it's good background that we tried to engage them, and they were MIA.

Mr. Miller: Part of that letter down the path of this request is being made from that time when we were outvoted three to two to make that request in the first place and made them clearly aware that the Board was going to be turned over in 60 days to the residents so that at that time (indecipherable).

Mr. Bhatla: It was my understanding that Susan Martin was engaged, and she was going to produce a white paper to outline this tragedy for us. She was going to give us guidance on where we stand. If we haven't done that, I think we should be thinking about having an environmental attorney on board to give us the guidance that we have the permits, what's our path forward, what we can do, what we should do. Without that I think we are going to continue to have difficulties. Nothing emotional about it. We have a permit we have to comply with. What are our options? Susan should be able to help us on the short term and eventually be able to talk about if we get an environmental attorney. When it came up that she was going to be assisting, I had to ask the question, is she retained as legal counsel, or is she assisting as an environmental

consultant? It should be the task to put forth some sort of a white paper, otherwise we don't know what the contribution is. All I know is that she arranged a meeting, and the outcome was (indecipherable). So, we are in the dark. Everybody is in the dark. Everybody is more emotional. I think Susan can be tasked to lay out, describe it, in the short term.

Chairperson Stamp: I think we are all in agreement for the short term.

IV. District Manager – JPWard & Associates, LLC

a. Financial Statements for the period ending July 31, 2023 (unaudited)

No report.

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.

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 announced the Board would now go into executive session.

Mr. Ward: The District will now go into an executive session. The time for the executive session is estimated to be one hour to discuss the settlement proposal relative to the Flow Way CDD lawsuit, file number 20-CA-4147 and its related appeal. The members attending will be Zack Stamp, Ron Miller, Tom Kleck, Martinn Winters, Bart Bhatla, myself as District Manager, and Jessica Tolin as the District Attorney and a court reporter. At the close of the session, we will reopen, and consider any additional items or motions considered necessary by the Board. 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.

The recording stopped here and restarted following the executive session.

Chairperson Stamp: Okay, we are back in open session. The time is 3:08 p.m. The executive session is over.

Ms. Tolin: I would like to request another Executive Session for the September Board Meeting. The estimated time for the session would be one hour, after which the Board Supervisors would open the regular meeting and take up any actions needed. The purpose of the Session would be to discuss the settlement proposal relative to the CDD’s lawsuit and related appeal. The expected attendees would be Board Members Winters, Kleck, Stamp, Miller, Bhatla, and the District Manager Jim Ward, and myself, or Greg Woods, as well as a court reporter. A transcribe will be filed with the District Attorney and will remain sealed until the lawsuit has concluded.

SEVENTH ORDER OF BUSINESS

Supervisor’s Requests

Chairperson Stamp asked if there were any Supervisor’s Requests; there were none.

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 noted there were no members of the public present.

NINTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Regular Meeting September 21, 2023

TENTH ORDER OF BUSINESS

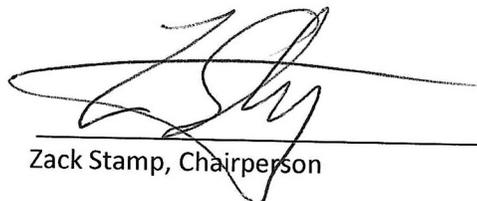
Adjournment

The meeting was adjourned at approximately 3:09 p.m.

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

Flow Way Community Development District


James P. Ward, Secretary


Zack Stamp, Chairperson