

**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, September 21, 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	Homeowners Association Manager
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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. Ron Miller was present by phone.

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 noted there were no members of the public present.

THIRD ORDER OF BUSINESS**Consideration of Minutes****August 17, 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 Tom Kleck, seconded by Martinn Winters, and with all in favor, the August 17, 2023, Regular Meeting Minutes were approved.

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

Mr. Michael Pawelczyk: One of the items I've been working on with Jim and Jimmy is the easement from the HOA. It's kind of a blanket easement. The purpose of the easement is to make sure that we as a CDD have easement rights on all property owned by the HOA where the CDD has infrastructure, and the primary purpose of moving this forward as quickly as we can is the irrigation permit renewal with South Florida Water Management District. We've sent that to counsel for the HOA earlier this week and haven't heard back from them, but I will follow up on a regular basis with Steve and if anyone can follow up with the HOA that would be great.

II. Litigation Attorney – Woods, Weidenmiller, Michetti, & Rudnick**a. Status Report on Appeal**

Chairperson Stamp: Litigation counsel, we will come back to you at the appropriate time.

III. District Engineer – Calvin, Giordano & Associates**a. Engineer's Report**

- 1. Strategic Operational Plan**
- 2. Prior Board Inquiries**
- 3. SFWMD Permit Compliance Status**

Mr. Jimmy Messick: Items to discuss, current assets, just going through, the lake maintenance, we are continuing to treat aquatic lakes and wetland plants. The vendor is treating the lilies as needed. The cord grass has been affected by the drier than normal conditions. I'm sad to say we are getting more rain over here than you are getting on that side. I hear that the levels are still low. We are hoping with more rain those things are able to get washed out. They are treating the weeds along shorelines and cord grass beds, algae, everything as they pop up and trying to be proactive about that. We got our waterway inspection report for August back from Solitude. I attached it as appendix D. It does show a summary of observations that we are aware of the deficiencies. We are going to be switching out the vendors in 2024, October 1, and we are going to increase the personnel that are going to be out spraying the lakes and the additional treatments as are included in our budget. The other thing I have attached is the water quality

sampling report. It's back from June. I didn't get it until August, so now it's in this month's budget. Again, like last time, there are no outstanding water quality issues. However, there is a caveat that there are some cyclic trends from dissolved oxygens and nutrients increased, visual investigations and treatments are needed by the lake maintenance company for algae growth. Obviously, during the summer months, we've seen the algae growth in the last couple of months and that report is attached to my report for your review in more detail. The landscaping asset, we are continuing to trim. We have scheduled pine straw mulching for October and November. We are also scheduled to trim the fakahatchee grass along the Immokalee canal in early October. We have the newly installed irrigation filtration system up and running and it seems to be running just perfectly at normal conditions. Minor things we did, the entrance, some pedestrian pressure washing. We replaced the electrical and cooling fans at both pump stations on the west fountain. The pavers were sprayed to prevent weeds. Mole crickets were treated, so on and so forth. Some of the projects we are working on, we removed dead and hazardous trees, 44 of them, in the external preserves around the pedestrian path on the external side of the community. That was considered a safety hazard and we got approval, and they have been removed and we are done with that for this year. We finally got the fence company to finish their repair on the west property line. They removed the pedestrian gate and put up fabric and fence to close off for security to that western preserve portion. The last thing is lakes 18 and 19 were regraded. There was a little bit of erosion. That was completed by the bank vendor under his warranty. It took a little bit longer than we had hoped, but he was able to get out there and fix those lake banks. The last thing here, and you can see the pictures of the pumping station filter installation that was done. If you go to appendices C, you will see the pictures from some of the assets, bank restorations and so forth that were completed that I mentioned. The last thing I want to go over is the amended capital improvements plan. I amended it this summer in August really because with the irrigation filter piece that had broken and we replaced, we sat down with the vendor and discussed, preventative maintenance, what those costs are, and the insurance cost wise, that pump station is an expensive asset to maintain and we want to make sure that we invest in it and keep those pieces primed so that they don't go bad and we are stuck with a larger bill than what we anticipated. All of the changes are in red so you can go through and see what has changed, but I want to point out, page 70, pump station repairs. Those costs are broken down based on replacing, restoring, motors, pumps, there are various things he recommended, and I go through the more detailed description in the added capital improvements program leaflet, but certainly I can answer any questions you have about the capital improvement program addendum I prepared for you.

Chairperson Stamp: Are you going to talk about where we are with South Florida?

Mr. Messick: We met with the District, we had Hugh Dinkler and Susan meet with the District. We talked to them. Jim was on the phone as well. We discussed the timeline. Jim emailed the Board a brief synopsis of what happened at that meeting. We are still engaged with the environmental consultant.

Mr. Ward: In our discussions with South Florida Water Management District, which was last week, on the phone was myself, Hugh Dinkler, Susan Martin, Jimmy, and a number of South Florida Staff, all of the individuals needed on this call to ensure we could move the process forward. I think it was a very productive call. At the end of the call, basically what we agreed to do with South Florida Water Management District was, since we are basically out of compliance with the permit, we would do a letter modification to the permit over the next month or so to

allow us to extend the dates we need to meet the success criteria out two years, perform the work over that two year period, and then close out that requirement for compliance in year 3. The letter modification does that. It is a simple way to make a modification to a permit without going through the entire process of modifying the entire permit. That's where we are with South Florida Water Management District. Mr. Dinkler is preparing the letter modification. He's going to do an inspection of the sites to see where we are. Jimmy and Hugh will be responsible for the preparation of the bid specifications and documents that we need to put this out to bid again, and then we will move forward with the process. I assume this will take some months to get through this process at this point. One of the two big open items is, we don't know what the preserves look like at this point because it hasn't been inspected in a couple of years now. Mr. Dinkler will be doing an inspection of the site. South Florida Water Management District did want the well monitoring data from two wells that are on site. None of us know where those wells are, so they need to be located at this point in time.

Mr. Bhatla: Did they inquire about the status of the mitigation itself? Are we done with the mitigation? Because the groundwater monitoring itself is routine.

Mr. Ward: South Florida is of the opinion that none of the mitigation has been done to bring the permit into compliance.

Mr. Bhatla: They made that comment, that the mitigation is incomplete?

Mr. Ward: Correct.

Mr. Miller: Did it come up in the conversation, that it was transferred to us out of compliance and incomplete?

Mr. Ward: No. That was not the intent of the conversation. We did not discuss that with them.

Mr. Miller: Did this individual happen to mention what motivated him to do this drive by quick look?

Mr. Ward: Actually, Jimmy answered that question for me, because I asked the same question after the last board meeting. Because of the trees that we took down in the preserves, the dead trees along the perimeter, he noticed that we were out of compliance. That's why he was there. We tried to do something good, and we got dinged for it.

Mr. Miller: No good deed goes unpunished.

Chairperson Stamp: You've talked with Dave Boguslawski to let him know?

Mr. Ward: I have brought Dave up to speed.

Mr. Winters: So, have they agreed to give us two years, or are they thinking about it?

Mr. Ward: They agreed to give us two years with the letter modification to bring it back into compliance and do the reports for the two years and then close out the compliance reporting portion of the permit in the third year assuming we can get it done that quickly.

Mr. Miller: Once we get this underway and the relationship is amicable and so forth, would there be any sense that we could go back to them and say, "Can you help us get a little money from Taylor Morrison for turning it over to us in this condition?"

Mr. Ward: That's probably not going to happen. That would be my initial thought.

Chairperson Stamp: Do they even have the authority to ask someone who is not on the permit anymore?

Ms. Jessica Tolin: at this point I think you're seeing the (Indecipherable).

Mr. Bhatla: Could we see a copy of the modification request that our engineer is preparing? I would like to go through it. Because the big issue is, are we done with the mitigation or not, and then there is the routine compliance of things.

Mr. Messick: The permit modification does not change the requirements that we need to meet for compliance. The permit modification is just to change the date as to which we provide reporting for it.

Mr. Miller: It seems to me that it wouldn't hurt if someone goes back and lets them know they are the ones who approved the permit transfer to us and the HOA while Taylor Morrison was not in compliance and had not met the requirements. South Florida Water Management District, they are a powerful organization, they are the government, and they can basically do what they want. Just as they were going to issue us a noncompliance letter, why can't they issue Taylor Morrison one and perhaps get us some help in this regard? If they could issue them a retroactive noncompliance report.

Chairperson Stamp: Let's hold that until we get to that point.

Mr. Bhatla: I think we should address this immediate noncompliance issue and then we need to have a meeting with them to understand the overall scheme of things. We are essentially beholden to everything. We have assumed the position that we don't want to own it, but now we are being told, you are the owner, so you better get in line. I think we need to understand all that.

Mr. Ward: I think you are right, we need to get through the next two years.

Mr. Tom Kleck: My question is to Jim. Do we have a clear understanding of what exactly the District wants us to do, item by item, over the next two years to come into compliance?

Mr. Ward: The environmental consultant we hired is going to prepare essentially a plan for us that will get us into compliance in two years. That will be submitted to South Florida Water Management District along with the letter modification. They will go through their process of reviewing it and approving it and then we will start that process.

Mr. Kleck: Who will be doing the actual work?

Mr. Ward: We have to go through a process to bid that, and whatever vendor we choose will do it.

Mr. Kleck: It would not be Jimmy and his team?

Mr. Ward: No, they don't do on-field work. We will bid that out.

Mr. Miller: If there is any merit to what I said and the Board Members agree, I think we should not wait until the end of the two years, we get on this thing in the beginning of the process to see if we can't force Taylor Morrison's cooperation in this regard.

Chairperson Stamp: All I think they can do is say no.

Mr. Messick: Jim, do you recall when our budget was suspended what our budget included for the mitigation?

Mr. Ward: I know we used to spend about \$250,000 dollars a year, and then we stopped at year 2 or 3. We stopped in 2021, I think.

Mr. Bhatla: We need to get the environmental engineer to get an assessment for us, after he has addressed immediate issues, to see what is involved on an ongoing basis, where we stand with remediation, and their recommendations, what we should do, how we should contact the Agency, so that we can move forward with these items. This is the responsibility of our environmental Engineers to provide these recommendations for us.

Mr. Ward: We agree.

Mr. Miller: We should let them know that in this regard of compliance and turning it over in noncompliant form and so forth, that the court awarded us \$472,000 dollars for that item, because Taylor Morrison failed to do that. We should make South Florida Water Management District aware of that in our pleading.

Mr. Messick: I think they understand that we are willing to work with them, just on the fact we met with them, with an environmentalist. We discussed what the next steps were, and we are ready to make that assessment and prepare the initial report. I don't think they need to know specifically that we have the money awarded to us from Taylor Morrison. That's someone else's call, but I feel comfortable with the District's position and them working with us moving forward.

Chairperson Stamp: We are getting ahead of ourselves. We are talking about maybe two months from now, or after the letter of modification and report are filed, then we can revisit.

Mr. Bhatla: It appears to me that the inspector, he went to the preserve, he saw something, and he just said, they are going to be out of compliance. I don't think the people up above them know any of the details because we haven't contacted them, and they could care less unless we bring up the issues.

Mr. Ward: This was not just an inspector. We talked to one of their attorneys in the general counsel office. We had their enforcement people online, their regulatory compliance people

online. I think we had five or six South Florida Water Management District people online during the discussion. To the credit of Susan Martin, she was a great resource to get that many people on the phone, all on the same day, all on the same page. That was a monumental task.

Mr. Bhatla: If you call the agency and tell them you are bringing your counsel online, it is a very natural response for them to bring everybody in. I think it was a response to our action.

Mr. Ward: I think it was different than that. We asked Susan to contact the agency on the District's behalf. We knew we had this email out there, and we wanted to do something proactive to bring this into compliance, and we asked for those people to be on this phone call, so we could get through this process relatively quickly. I don't think it was a response to a field inspector basically sending an email for noncompliance. We up front said we wanted to be proactive in doing this.

Mr. Bhatla: To summarize, we are going to address the noncompliance issue and get the schedule from the environmental engineer, and also should we task preparing an assessment for the overall scheme of things, where we stand.

Mr. Ward: He has been. And we will share it with all of you.

IV. District Manager – JPWard & Associates, LLC

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

No report.

FIFTH 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.

Chairperson Stamp announced the Board would now go into executive session.

The recording stopped here and restarted following the executive session at approximately 1:57 p.m.

Chairperson Stamp: Okay, we are back in open session. We need a motion on accepting the settlement. Motion by Tom Kleck, seconded by Martinn Winter.

Mr. Miller: Some discussion, if I may...I was at the shade session last month, not this one this month. What changes occurred on the settlement offer between last month and this month?

Chairperson Stamp: None. It's the same document we had. I raised the concern that once we would agree to this, Taylor Morrison would come back and say, well, yeah, but now we've got to change this and we've got to change that, and here's a couple of extra pages. We've got it in writing from them that this is absolutely it, there is no redline, there are no amendments, there's nothing. This is the agreement. And it is exactly the one you saw last month.

Mr. Miller: Some other comments I'd like to throw out...going down memory lane – I think what I'm about to say is factual – that when we got to the point of losing the arbitration apart from the \$472,000 dollars, counsel made two recommendations to us. The first recommendation was that we should appeal, and we did that. We have appealed. And I think, recalling from last month, the majority of the appeals' legal fees have already been spent. The second recommendation that counsel made was in the event –

Ms. Tolin: Ron, don't go into Attorney/Client privileged information.

Chairperson Stamp: You may waive a lot of it.

Mr. Miller: I'm going to do it no matter what. And then, the second thing is, should that not work out to our satisfaction, our attorney made a recommendation that we would then hire a different attorney to get to the bottom of the actual legal fees that we are required to pay, not the full amount. Should we vote to accept this settlement offer, we will be rejecting counsel's advice for two different things, and I would ask the Board to contemplate that. Why would we reject their advice based upon the point we are at, at the moment, and tell counsel that we don't like their advice?

Chairperson Stamp: I think both of those comments were made in open session, so there have been no Attorney/Client violations, we are not waiving any attorney/client privilege. First of all, we did appeal, and the appeal brought Taylor Morrison back to the table to negotiate, and we don't need to hire another lawyer if we settle, so we are following their advice. We did follow their advice, we filed an appeal, although some members of the Board did not want to do that, that brought Taylor Morrison back. Before that Taylor Morrison was saying they wanted \$900,000 dollars for legal fees and "we want you to take over the Corps permit, and we want you to do this and do that." The device of appeal has brought them to where we are today.

Mr. Miller: I would disagree with the second part of that. Disregarding the attorney's advice that should the appeal fail, we don't get to the second one, but the second one would be to pursue yet a different attorney to negotiate down the proper legal fees. We haven't reached that point yet because the appeal hasn't run its course. But should it run its course, then the second recommendation of counsel would apply.

Chairperson Stamp: Right, but we are not there.

Mr. Miller: We would be there should the appeal's decision go against us. So, we are ignoring our attorney after going through this for years, it seems like it's years anyway, two or three anyhow, we've gone all this way and now we are going to just say, "we give," and we are just going to ignore our attorney. That seems a shame.

Ms. Tolin: As one of your litigation attorneys I want to comment. What Zack said is correct. If you lose the appeal, that's obviously in a worst-case scenario category, and then you are proceeding with their motion for fees that is currently pending, of which the risk to the CDD is potentially their attorney's fees award being entered. So, that second step you are talking about is the retention of an expert on attorney's fees, which, if you are at that point of that step, that means the CDD has lost the appeal at that point. I don't think this is ignoring that particular piece of advice.

Mr. Miller: I don't understand that because I think we all agree that the second piece of advice is should we lose the appeal the second piece of advice is to move forward with the expert on the amount of the legal fees. That advice has been rendered and the fact that we are moving forward with the –

Chairperson Stamp: But the condition preceding is not there. If you go back several board meetings, I was in favor of engaging the fee attorney so he could give us some advice on how real is this number was and there was opposition from the Board that they didn't want to hire another attorney. So, we are somewhat flying blind here. Is the 477 a real number, is it really 600, is it 750 - with is that number a real number, because the Board didn't want to hire another attorney, so we didn't.

Mr. Miller: We did hire an appeals attorney and that money has been spent.

Chairperson Stamp: Correct. Well, there is more to be spent because they will file a reply brief and then we will get a chance to apply, and it may go to arguments. I don't think we are done. I think the majority of it has probably been spent, but I don't want to tell you that it's done.

Mr. Miller: I've made my comments, I've made my points, and I pray two other Board Members will join me in rejecting the settlement.

Mr. Bhatla: I think we have come to this, the advice of the attorney at this point time is how to save a couple of hundred thousand dollars without any other exposure involved, so I think we need to take everything into account and see if we are setting a very bad precedent legally, morally, and of course with the possibility of future actions. We are doing it for a couple of hundred thousand dollars saved. I think it's kind of premature to say we need to go and reject this agreement.

Mr. Martinn Winters: In closed session I laid out an argument for maintaining our litigation with Taylor Morrison, and I couldn't get agreement on that point, and so, in light of that nonagreement, I think it's time to settle this thing. I think it's time to get this over with and I think it's the burden of the HOA to

pursue this. I think we need to put pressure on them to pursue it and tell them we did the best we could and now it's up to them.

Mr. Kleck: I agree with Martinn. I think we are beating a dead horse with this particular project, this particular judgment, and I think we give up and go on and let the HOA battle with Taylor Morrison.

Chairperson Stamp: I think the residents deserve an explanation of the history of this is in the minutes. This is not an easy vote for any of us. We've had an arbitration ruling in our favor for \$472,000 dollars with no defense costs owed to the directors because of their actions. If you read the ruling, they were outrageous, but in the end, they were protected by liability and by sovereign immunity. Taylor Morrison and the directors agreed to this ruling, and the trial judge, in what I believe was a very bad ruling at the request of Taylor Morrison, declared that despite the arbiter's ruling to which they all agreed, the directors were entitled to the cost of their defense which was provided by Taylor Morrison. The amount they are requesting appears excessive to say the least, but if accepted by the same judge, could have us writing Taylor Morrison a check for several hundred thousand dollars. We have filed an appeal which may take a year to be heard. I think we have a very good case. Our supporting brief is online at Flow Way's website. I recommend people take a look at it if they are interested. But nothing is certain. And legal fees would continue on both sides, and this potentially increases our downside liability on attorney fees. The appeal did bring Taylor Morrison back to the table and from demanding several hundred thousand dollars in excess of our judgment of \$472,000 dollars, and the CDD to take responsibility for the preserves under the Corps permit to the position we are in today which is that all the parties just walk away from their respective claims. We've run the settlement agreement by the HOA to make sure it does nothing to adversely affect their lawsuit. They are fine with the settlement agreement as is. They did not offer an opinion as to what we should do, nor did we ask them to offer an opinion. Our counsel has advised us that they believe all things considered, we should accept this offer. It is not a choice between good and bad, but rather a choice between bad and worse. I cannot put the residents of Esplanade on the potential hook for an assessment of \$500 dollars just so we can write a check to Taylor Morrison. I just couldn't bring myself to do that. I think I am willing to vote yes. Roll call please.

Mr. Ward: Supervisor Bhatla – no, Supervisor Kleck – yes, Supervisor Winters – yes, Supervisor Miller – No, Supervisor Stamp – yes

The motion passed by a vote of 3 to 2 in favor.

On MOTION made by Tom Kleck, seconded by Martinn Winters, and with a vote of two against and three in favor, the Settlement Agreement was accepted.

SIXTH ORDER OF BUSINESS

Supervisor's Requests

Chairman Zack Stamp – October 19, 2023 Board Meeting (Discuss Cancellation)

Chairperson Stamp asked to reschedule the October 19, 2023 meeting as he would be gone, and he believed Mr. Winters would also be gone. He suggested cancelling the October meeting.

Discussion ensued regarding whether to cancel the October meeting

The Board decided not to cancel the October 19, 2023 meeting.

Mr. Ward asked if the Board was willing to move the December 21, 2023 meeting to the first week of December, perhaps December 7, 2023.

The Board agreed to move the December meeting to December 7, 2023.

SEVENTH 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.

EIGHTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Regular Meeting October 19, 2023

NINTH ORDER OF BUSINESS

Adjournment

The meeting was adjourned at approximately 2:14 p.m.

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

Flow Way Community Development District


James P. Ward, Secretary


Ron Miller Vice-Chairperson