

**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, November 16, 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:**

Ron Miller	Vice Chairperson (via WebEx)
Bart Bhatla	Assistant Secretary
Tom Kleck	Assistant Secretary
Martinn Winters	Assistant Secretary

**Absent:**

Zack Stamp	Chairperson
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**Also present were:**

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

**Audience:**

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**

Vice Chair Ron Miller called the meeting to order at approximately 1:20 p.m. Roll call was conducted, and all Members of the Board were present, with the exception of Zack Stamp, 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.**

Vice Chair Miller reviewed public comment protocols.

Mr. Ward asked if there were any public comments; there were none.

**THIRD ORDER OF BUSINESS****Consideration of Minutes****October 19, 2023 – Regular Meeting Minutes**

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

**On MOTION made by Bart Bhatla, seconded by Tom Kleck, and with all in favor, the October 19, 2023, Regular Meeting Minutes were approved.**

**FOURTH ORDER OF BUSINESS****Consideration of Resolution 2024-1**

**Consideration of Resolution 2024-1, a Resolution of the Board of Supervisors of the Flow Way Community Development District authorizing the execution of and accepting the Drainage, Detention, Flowage, and Irrigation Easement on, over, under and across numerous parcels owned by the Esplanade Golf & Country Club of Naples, Inc.; Accepting the Fee Simple Interest of Tract P1, Esplanade Golf And Country Club of Naples Hatcher Parcel; Authorizing the Chairman or Vice Chairman to Execute any documents on behalf of the District in Order to Effectuate the Conveyances described herein; Providing for Severability; And Providing For An Effective Date**

*Mr. Ward: Just in the way of some background, both your District Attorney and myself have been working for some time now on cleaning up some of the problems we have had since turnover with respect to easements and what tracts of land belong to the CDD and belong to the HOA, etc. This Resolution is doing two things. It is basically having the homeowner's association give the District easements for all tracts of land for facilities and services that we operate pursuant to the statute that we didn't have the easements when we turned over from the developer board to the homeowner's association board. For example, the easements primarily related to the irrigation system were not existent. We had drainage easements over a lot of the facilities, but we didn't have the irrigation easements that were necessary to operate and maintain the system. The same for the easements at the front entryway. We didn't have the landscaping easements, etc., in place. In addition to that, what has come up is our favorite parcel of land, which we call the Hatcher Property, which as you remember was the subject of one of the later bond issues that we did that we did not turn over those funds to Taylor Morrison. That particular drainage area is still in the name of Taylor Morrison, but it is under the permits that we have with South Florida Water Management District that we operate and is also partially permitted through the HOA also. So, this Resolution basically accepts the deed from Taylor Morrison for that Flow Way, and your backup does show a map of that location along with granting the easements to the CDD from the golf course to allow us to maintain the infrastructure that we are currently maintaining. Those are the two primary reasons we are doing this resolution.*

*Mr. Tom Kleck: Will we ever get the title from Taylor Morrison for the Hatcher property?*

*Mr. Ward: This deed that we have in the Agenda does that. It will give the District the deed for the lake that's in the Hatcher property. The easements along the roadways in Hatcher were in the name of the*

*HOA and as such they are giving us additional easements across the internal roadways, including some of the other areas within the District.*

*Mr. Kleck: I noticed in this agreement that we are going to be sharing expenses 50/50 with the HOA. Are we also going to be sharing the income?*

*Mr. Ward: The cost sharing agreement that you are looking at is not subject of this Resolution. We will get into that in a moment.*

*Mr. Ron Miller: With respect to the deed for that property. Doesn't Taylor Morrison have to sign that over to us?*

*Mr. Ward: They do, and I did make a phone call and asked that question and they are more than happy to deed that to you.*

*Mr. Miller: Is there any reason why we don't want the property?*

*Mr. Ward: No. Not in my opinion. It is a part of the water management system. It is supplying drainage to your residents in the Hatcher area. They are subject to the permit that we have with the regulatory agencies, and it should be turned over to the CDD.*

*Mr. Miller: Should we table this so that Zack has an opportunity to participate? Or is this so routine we think he would be happy?*

*Mr. Ward: It is very routine. I can tell you Zack has been involved with this easement, the deed, and the cost sharing agreement as much as I have been involved over the last 6 or 8 months. I never want to put words in a Board Member's mouth, so we can rescind it next month, but yeah, he's happy with this.*

**On MOTION made by Bart Bhatla, seconded by Martinn Winters, and with all in favor, Resolution 2024-1 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. Drainage, Detention, Flowage and Irrigation Easement and Track P1, Hatcher Parcel (included in Item 4, Resolution 2024-1)**
  - b. Access Easement Request**

*Mr. Michael Pawelczyk: Thank you for approving the Resolution. We have worked on that with Jim and Jimmy. We think that will clean up the easement issues that the CDD has. As to the tract P1 Hatcher parcel, we have already ordered the title for that to make sure there is nothing on that title that would give us reason to believe that we should not accept it to the Vice Chairman's point. We are going to check the title first, and your Resolution includes that as a step, make sure that the title is okay, and if it is, the CDD can then accept the quit claim deed from Taylor Morrison. Hopefully we can wrap both of these up very soon. I have spoken with the HOA, and I expect they*

*will sign that easement. They might have some minor tweaks I am told, hopefully they are just minor. If they are not, we will have to bring it back to you.*

*The only other issue I have, and I think Jim passed out something, on the access issues, it's on the Agenda as access easement request, from a Michael Colosi who owns property to the north of the District. He wants an easement of some sort over District property, and I think the easement area he is referring to is towards the southeast side of the property. I think Jim can show it to you a little better, but the HOA has a parcel of property that runs from the north end of the District south to a point approximately 100 yards, or 100 feet, and it just ends. I think Jim can show you that parcel. The HOA, I'm told, has told this Colosi gentleman that they don't really care if they grant an easement. I believe it is a dirt road that runs between the two properties and that dirt road is located just west of Collier Boulevard right-of-way and the Collier Boulevard unimproved right-of-way. In order to continue down that HOA property, this Colosi gentleman would need an easement from the District to get from the HOA to the improved part of the Collier Blvd right-of-way. Mr. Colosi has made the same request through a lawyer of the Quarry CDD to your east, and they have replied to him, "Please send me information. Why do you need the easement? What's it for? What conditions would be imposed on that easement? And, if we give you an easement, you're going to have to pay for it." That's a summary of what Quarry CDD said. I guess he's just searching for an easement to get through. At this point I'm just presenting it to the Board to see what your thoughts are. My initial thoughts having looked at it are, why don't they just use the Collier Blvd right-of-way? Why would they come to the CDD to request that easement? And the answer to that is, it's probably easier to go to the CDD than it is Collier County. The other concern I have is, if we were to grant this easement, we would want to impose certain conditions on what sort of vehicles are going back there, what is the use going to be and do we need to improve that area in any way, and lastly, is a title search going to reveal conservation easements that prohibit anyone from utilizing that property for the stated purpose. There are a lot of questions here at this point. We just want to present it to the Board just to see what your thoughts are.*

*Mr. Bart Bhatla: My understanding is it's a conservation easement, if it is the preserve.*

*Mr. Ward: My personal opinion is there's a Collier County right-of-way that adjoins our property and the homeowner's association property. It's not an improved right-of-way, but it's there. So, use the roadway however you want to, but there really doesn't seem to be a need for him to have access on our property simply because the roadway right-of-way is not improved.*

*Mr. Kleck: I agree. Mike, is there ever an instance where if it came push to shove that he could demand access to that?*

*Mr. Pawelczyk: At this point he has thrown some legal mumbo jumbo indicating it's an easement of necessity, a statutory easement, but frankly, we don't have enough information as to what the purpose of the easement is to analyze his legal arguments. So, I think the Board can say no for now, but we need more information to see if his legal arguments hold water. Our initial review is that they don't. But frankly, we don't have all the facts. He just sent a letter to us. He sent the same letter to the Quarry CDD, a little different, just to see if he could find some sort of easement access from that north parcel which is substantially north of our two CDDs as shown on the map. So, I don't know if the owner bought the property and then realized he can't get there without spending a bunch of money and improving the Collier Blvd right-of-way.*

*Mr. Kleck: I think I would respond with the same response that the Quarry has given. We are not interested in –*

*Mr. Pawelczyk: I agree. That's what I would recommend. They don't need CDD property. They could use the right-of-way. They might need property north of us to get to the Collier Blvd right-of-way which does end at the northernmost limits of the Quarry and Flow Way CDDs. I will respond accordingly, get some more information, and bring it back to you.*

*Mr. Martinn Winters: Does the Collier County right-of-way end at that point?*

*Mr. Ward: Probably not. I would doubt it.*

*Mr. Pawelczyk: The Collier Blvd right-of-way, the unimproved portion, I think ends at the northernmost limits of both CDDs.*

*Mr. Jimmy Messick: I have a map that depicts the properties. The Collier Blvd right-of-way, unimproved, stops where the Quarry CDDs preserve starts, which is about where our houses stop, and our preserves run north.*

*Mr. Winters: So, he does need an easement to get to it because the Collier County right-of-way stops, that's where the path ends right?*

*Mr. Pawelczyk: Yeah, but he doesn't need an easement over CDD property.*

*Mr. Ward: The Collier County right-of-way runs basically from here, all the way up to the Quarry CDD.*

Discussion ensued regarding where the Collier County right-of-way was located; the fact that this gentleman did not need access to any Flow Way CDD easement and granting the easement could open the CDD up to liability issues.

## **II. District Engineer – Calvin, Giordano & Associates**

### **a. Engineer's Report**

- 1. Strategic Operational Plan**
- 2. Prior Board Inquiries**
- 3. SFWMD Permit Compliance Status**
- 4. Access Easement Request**
- 5. Front Entrance Bridge Painting**

*Mr. Jimmy Messick: The original plat does have tract 12 which shows as owned by the HOA as a 30 foot right-of-way easement per OR722, page 73, tract 12, open space DE. Mike may want to look into that. That's what they are looking to use to get to the public right-of-way, but I don't think they need to continue down all the way to what they've requested from us.*

*Mr. Messick: The landscape, we conducted a wet check to check irrigation heads and did some adjusting to make sure we weren't over spraying. We have the landscape vendor touching up pruning in the front entrance. As we get into the rainy season, we tend to see those shrubs grow sporadically. We've also started fertilizing which we applied the first round in October and the*

*second round is scheduled here in November, dependent on whether we get the insect and fungi treatments on as well during this part of the season. For the lake maintenance, the new aquatic vendor started treating the various lakes, 12 through 14, 15b, 16, 17, 20, 21, 22, 25, 1, 5b and 7, flow Way Canal, 23, and 24, for grasses, weeds, and vines. The first initial round of maintenance was completed, but they did also do a sonar treatment to try to address the lily pads and that was done in the Flow Way, and various lakes listed in my report. In other asset news, the irrigation pump station was painted to match the new community color scheme, and along the entrance we installed 3,800 annual begonias, 10 Japanese blueberries, and pine bark mulch, 1,800 bales of pine straw and we worked with South Florida's maintenance crews to clean up the Immokalee Canal. We are hoping to further that relationship with their operational team for future maintenance. Some future items coming up, the front entrance guard house pressure cleaning will be scheduled in the first quarter, and the lake drainage system annual inspection of the storm system is going to start this quarter. We are starting to get some of the feedback from our contractor and we should be prepared to report next month or in January on the drainage system.*

*Mr. Kleck: What is the sonar?*

*Mr. Messick: It is a type of treatment for in water materials, like lilies or weeds, and the sonar treatment will kill them and then they drop out and it causes the lakes to clear up from those exotics. I would have to look and get back to you on exactly what the process is.*

*Mr. Ward: It's a chemical.*

*Mr. Messick: The other issue is the ERP compliance status for the South Florida permit. I have the same update in there because there was really nothing changed, but we did get an email. Our environmentalist was able to submit the minor modification by the October 25 deadline and that's in for review. They typically take 30 days, so we should hear in the next week or so whether we are approved or not. Our environmentalist did go out and start the on site inspections. There were a lot of trees which came down last year due to Hurricane Ian causing trouble with navigation, but he was able to spend some time in some of those external preserve areas, 2, 3, and 5; 1 and 4 aren't as critical, but he still has to do that as part of his investigational work. He discussed some of the findings from the environmentalist and indicated the contractor bid documents would be drafted before the end of the year for work to start during the 2024 dry season.*

*Mr. Messick: The Colosi Access Easement Request, we did talk about that, we don't need to go through my item in detail, but in page 8 of my report is a map which shows in blue what areas he is requesting, the red is the tract 12, and the yellow parcel is the Colosi property that he bought which is just east of our external preserves. It's not quite up through the panhandle, so it's not all the way north of our CDD limits, but it is all the way north of the Quarry CDD. It is our recommendation that sufficient access is already provided through the existing Collier Blvd right-of-way property and additional easement is not warranted. The last thing on my agenda is the front entrance bridge painting. The HOA President emailed the District with what paint colors they selected for the bridge. He discussed what colors would be used on the bridge. He noted the painting was scheduled in the capital improvement plan for 2026 at \$31,000 dollars, but to stay in line with the Master Building Painting Schedule it would be included in this year's capital improvements. He stated he felt it would cost significantly less than \$31,000 dollars.*

*Mr. Miller: We are not flush with cash, how does the painting fit?*

*Mr. Ward: The estimated cost of doing the painting this year is right around \$22,000 dollars. The next item I'm going to talk to you about is the cost sharing agreement for the preserves with the HOA, so with that savings, along with the completed litigation, we will save significant money this year on legal fees, and with help from the HOA on the cost sharing with respect to the preserves, we will have more than sufficient funds to do the painting this year.*

Discussion ensued regarding what color the bridge would be painted and when the bridge would be painted.

### **III. District Manager – JPWard & Associates, LLC**

#### **a. Financial Statements for the period ending October 31, 2023 (unaudited)**

*Mr. Ward: My office emailed you earlier a substantial and final form draft of a cost sharing agreement. Both your chairman and I have had numerous conversations with the HOA over the past couple of months about sharing the cost of the environmental work necessary to bring the external preserves back into compliance with the South Florida permit and the Corps permit. The HOA has signed off on that. Essentially it is a 50% sharing agreement where the District will pick up 50% of the costs of the environmental engineering and the HOA will pick up 50% of the environmental engineering, including the contractor work necessary to bring it into compliance. As you may recall, a couple of years ago, we were spending about a quarter of a million dollars a year on the maintenance work to bring them into compliance. We don't know where we are yet and how long it will take to get into compliance, but if we stick with the \$250,000 to \$300,000 dollar range, we will still be well under what I had originally budgeted in 2024. The thought is that we are going to try to do this as fast as we can over the next couple of years to bring them into compliance so we can then bring our budgets down dramatically to just keeping them in compliance.*

*Mr. Bhatla: What's happening to the contingency we had. The \$100,000 dollars.*

*Mr. Ward: It's in contingencies and I'm going to have to do another budget amendment to move it back into somewhere to do this, but once this agreement is executed with the HOA and the CDD and we start that process, I will bring that budget amendment to you. I'm guessing that will happen in January or February one we get some better numbers.*

*Mr. Kleck: Who initiated this contract?*

*Mr. Ward: I think this was a discussion initially between your Chairman and Mr. Boguslawski.*

*Mr. Kleck: In addition to the expenses we are going to share with the HOA, is that going to include their attorney's fees?*

*Mr. Ward: No, this is only related to bringing the preserves back into compliance. It actually doesn't include any legal fees whatsoever.*

*Mr. Kleck: Is this contract going to indicate any previous costs will be split?*

*Mr. Ward: No, this is only a going forward contract.*

*Mr. Winters: Do we have a rough budget of what it's going to cost to get into compliance?*

*Mr. Ward: We don't. It's a little early in the process. If we just look at history, we were spending a quarter of a million dollars a year. I think we were somewhere in the middle of year 2.5 when we stopped. The estimate was a 5 year program, so we are going to have to spend between \$600,000 and \$700,000 dollars over the next couple of years to get it back into compliance.*

*Mr. Winters: Does this contract cover maintenance expenses beyond that mitigation period?*

*Mr. Ward: It does not. It only covers expenses to get it to success, into compliance.*

*Mr. Winters: Who bears the expenses beyond that point?*

*Mr. Ward: At that point we could renegotiate this agreement with the HOA, or it would just be the CDD. My recollection of the cost of an ongoing treatment was under \$40,000 dollars a year to keep it in compliance.*

*Mr. Winters: The HOA has the permit, so the maintenance should be their expense going forward.*

*Mr. Ward: We can have that discussion, but I suggest we get past step 1 and then do this at another date. I want to get to the point of compliance and then we will deal with the maintenance issue.*

*Mr. Winters: Well, it's my feeling, the HOA has the permit, it should be their expense.*

*Mr. Miller: I'm confused. I thought we were co-permitees.*

*Mr. Ward: We are co-permitees.*

*Mr. Miller: Then going forward it should be the same 50/50 split.*

*Mr. Ward: My recollection is we are co-permitees on one permit, but not the other permit, but I could be totally wrong.*

*Mr. Messick: We are co-permitees on the ERP. I am not sure about the water use.*

Discussion continued regarding the permits and how the cost sharing agreement worked.

Mr. Ward explained the HOA would reimburse the CDD for costs incurred; the CDD would handle the work. He noted the reimbursement period was 30 days.

Mr. Pawelczyk indicated the HOA Board was aware of the agreement but had not held a meeting yet to approve the agreement. He noted there might be some minor tweaks to the agreement, but the HOA indicated it would approve the agreement.

*Mr. Ward: If you all approve it, which I recommend, it will come back if the HOA makes changes which were deemed inappropriate. I think this is a good step forward. He called for a motion.*

**On MOTION made by Bart Bhatla, seconded by Tom Kleck, and with all in favor, the Cost Sharing Agreement with the HOA was approved in substantial form.**

**SIXTH ORDER OF BUSINESS**

**Supervisor’s Requests**

Mr. Ward asked if there were any supervisor’s requests; there were none.

**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

There were no public comments.

**EIGHTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**Announcement of Next Meeting – Regular Meeting December 6, 2023**

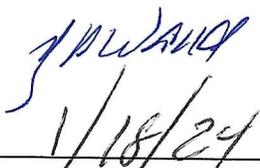
Mr. Ward indicated he had no items for December 6, and if Mr. Stamp also had no items, the meeting would be canceled.

**NINTH ORDER OF BUSINESS**

**Adjournment**

The meeting was adjourned at approximately 2:10 p.m.

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

  
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James P. Ward, Secretary

Flow Way Community Development District  
  
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Zack Stamp, Chairperson