

**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 17, 2022, 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
Tom Kleck	Assistant Secretary
Martinn Winters	Assistant Secretary

**Also present were:**

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

**Audience:**

Joe Stigliano

All resident's 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**

**October 27, 2022 – Regular Meeting**

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

**On MOTION made by Mr. Ron Miller, seconded by Mr. Tom Kleck, and with all in favor, the October 27, 2022 Regular Meeting Minutes were approved.**

**FOURTH ORDER OF BUSINESS****Supervisor's Requests****I. Chairman Zack Stamp – Discussion of Retention of District General Counsel (Litigation Counsel to remain the same)**

*Chairperson Stamp: The only item I have is the retention of District Counsel (Indecipherable). Audio cut out for a couple of minutes.*

*Mr. Ward: -- in Collier and Lee County. There have been a handful of them that do this kind of work. Obviously, the lawyer we had before, Coleman, Yovanovich & Koester, they do a lot of CDDs here in the Naples area. Another firm that does a lot of work in the area is KE Law Firm. It is a Tallahassee based firm, but they represent probably more than 80 or 90 CDDs across the State. There is one particular lawyer that I do work with a lot that's with this firm. His name is Jere Earlywine, and then the rest of the law firms are kind of smaller law firms that work in this business. All of the firms all have done work, or currently do work for Taylor Morrison, and that's going to be consistent with what you see throughout the State because it's a relatively small pool of lawyers that do this work globally. That is a normal thing to see. The individual I prefer working with is Jere Earlywine with KE Law Firm. It is a Tallahassee based firm, but he does a lot of work across the whole State. I think he represents personally probably 30 to 35 CDDs here in Florida. He would be a good fit. He's a bit on the younger side, but he is a very good, meticulous attorney when it comes to CDD work and I think he would fit well with you all. That is my recommendation to you.*

*Mr. Kleck: Is he a local guy if we needed him to come to meetings or anything?*

*Mr. Ward: No, he is not local. He lives in Tallahassee I think, but he is across the State all the time, so he can be here, but frankly we do the video conferencing pretty well with the CDD, so he is always available via video and I'm sure if you need him here, we could schedule him quarterly or more often or less often as you deem appropriate.*

*Mr. Ron Miller: Is this a Florida Statute requirement or just a recommendation?*

*Mr. Ward: The Statute permits you to retain three individuals. I am one of them, District Counsel is another, and the District Engineer is another. The Statute is silent as to whether they are required to be on board. It would be particularly unusual in a governmental agency not to have those three positions filled. I'm more used to seeing that in CDDs that we don't have a District Engineer, that we don't go through the process to hire one, because we just don't use them.*

*Mr. Miller: I can see a definite need ongoing with respect to both people here and the need for an attorney to come to meetings. I'm not against hiring one, but I don't know that we need to spend the money. If we were to get into an issue either us going after someone or some coming after us, then we're going to hire a different attorney anyway as a litigator. (Indecipherable) to me that's just having someone sitting at the meeting charging us.*

*Chairperson Stamp: We are paying him on an hourly basis, and we can control whether comes to the meeting or doesn't come to the meeting, depending on what our needs are. You are right about if something pops up, but if something pops up, we can't hire somebody until the next meeting and that might be three weeks. If we get sued today and we walk out of here, we are either going to have to schedule a special meeting with 14 days' notice or wait for the next monthly meeting. It's kind of like a fire department. You want to have it sitting there, so if you need it, you have somebody to call. We are not paying him \$2,000 dollars a month just to be available, we are going to pay him for time billed. And he can attend by Zoom call. We can dictate how he attends and when he attends depending on what the situation requires.*

*Mr. Bart Bhatla: What does everybody else do, the other CDDs?*

*Mr. Ward: Every CDD has a District Attorney, or more than 90% of them do. I have one CDD that just doesn't have a District Engineer because it doesn't need one. Generally, CDDs all have attorneys. I have one that I think I talk to the guy for 30 minutes the entire year. If you don't need him, you don't use him and you don't pay him.*

*Mr. Miller: I'm not opposed to hiring one, but if we don't need one (indecipherable). I'm pleased to hear we can control the hours.*

*Mr. Joe Stigliano: Are we hiring an Attorney or hiring a Law firm?*

*Chairperson Stamp: We are hiring a law firm.*

*Mr. Stigliano: You have to get a Fee schedule for the services.*

*Chairperson Stamp: Joe, we've got that. They gave us a proposal.*

*Mr. Bhatla: I think we need an attorney.*

*Chairperson Stamp: Yeah, because you don't know when you're going to have to have one to pick up the phone and call about something. Is there a motion to hire the KE Law Firm?*

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Bart Bhatla, and with all in favor, the hiring of KE Law Firm was approved.**

## FIFTH ORDER OF BUSINESS

## Staff Items

### I. District Attorney – Woods, Weidenmiller, Michetti, & Rudnick

- a) **Status Report on City of Bonita Springs application to SFWMD to discharge floodwater into Collier County (including the Preserve)**
- b) **Status Report on Litigation**
- c) **Update on discussions with HOA as to potential new litigation (558/HOA)**

*Ms. Jessica Tolin: On the Bonita Springs pumps, we're basically still just monitoring the situation. To my knowledge they were not turned on during Hurricane Ian. We've taken a look at the Agenda for the South Florida Water Management District meeting tomorrow the 18<sup>th</sup>. I do not see that the Bonita Springs pumps are on their Agenda. It is not the Big Cypress Basin Board Meeting. That is likely where we will see this as an item that's discussed, but again, monitoring that situation and can let you know when we have an idea of when that's going to be discussed. On litigation, currently we have the motions for rehearing pending before the court. We filed two different motions for rehearing, one directed to the summary judgment order, and the other directed to the final judgment, and with both of those the judge asked the other side to submit a response, so it does seem that the judge is considering the motions, reviewing everything, and we should be receiving an order on those motions at some point. We're hoping sooner than later now that the judge has everything to review. As far as the HOA and their litigation, we have some exchanges with the HOA's counsel, and we are considering the claims and trying to determine the extent in which the CDD may need to be involved and the claims that would be available.*

*Chairperson Stamp: Are we going to file an appeal as well in case the rehearing doesn't happen or doesn't go our way?*

*Ms. Tolin: We are hoping to have an order on the motions for rehearing before the appellate deadline which will give us an idea, but if not, then yes. Or if the motions get denied, we will file the notice of appeal.*

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

- a) **Engineer's Report**
  1. **Strategic Operational Plan**
  2. **Bonita Springs Floodwater Diversion Plan**

*Mr. Jimmy Messick: I have two items that are current. They are not different from last month. Item number 2 is the update on the floodwater diversion plan. I should mention that we are monitoring the two boards, Bonita Springs and the Big Cypress Basin. For the Strategic Operational Plan, I just modified our plan to clarify the bridge painting is just for the black arches and not the entire bridge. It is still scheduled for January. Lake 12 and 20 – 21 is out to bid and scheduled to start construction of improvements. We have authorization to start spraying for lily pads which will take place on lakes 1, 2, and 4. One item that's not documented is we are getting the fencing contractor out to look at the preserves once it starts to dry up.*

*Chairperson Stamp: Are we going to spray the rest of the lily pads after we start up? That's the biggest question I've been getting: when are we going to get rid of the lily pads?*

*Mr. Messick: Yeah. We are going to address out front first and continue to spray as they go through them. I've been told that they are valuing the lakes each time they come out and go by which ones need to be addressed first. So, it does change, but they have a plan.*

Mr. Kleck asked what material the black tunnel portion of the bridge was composed of.

Mr. Messick responded it was concrete and was a permanent part of the bridge.

Discussion ensued regarding the bridge; painting bids; and the decorative bridge materials versus the structural bridge materials.

*Mr. Ward: If you ever saw a roadway over a culvert pipe, where you see water going through the pipe, and then there's roadway. That's what it is. It's just built up on the sides and on the side where the dirt is to make it look like a bridge. It's not a bridge per se, it's just a road.*

*Mr. Miller: But behind the skirts, is it just dirt?*

*Mr. Ward: It's a pile of dirt, yeah.*

Discussion continued regarding the bridge and the decorative skirts.

Mr. Miller indicated some of his neighbors did not like the decorative skirts and wished for them to be removed or lightened.

Discussion ensued regarding whether to delay painting the skirts.

*Mr. Kleck: Since we don't have a price on what it's going to cost, if it's a few hundred bucks then no big deal, but I'm thinking it's going to be pretty costly to paint the whole bridge number 1, and if it's not a big deal to just paint the black areas, that's not a big deal either, but when we get into spending a lot of money for something we can't afford that really doesn't need to be painted, I say leave it alone.*

*Chairperson Stamp: It's in the capital budget two years out for the bridge itself. We don't have to cross the bridge as to what color we want to paint it or even whether to defer painting it for another couple of years. Your committee can meet several more times.*

*Mr. Miller: There are two possibilities, defer the painting of the skirts until the entire bridge is painted, or accelerating the bridge to repaint all of it, and the latter is probably not something we would want to do.*

*Chairperson Stamp: I would think if we were to accelerate it, we would have to cut something out of the capital plan. Lake banks or something's got to go.*

*Mr. Miller: I'm ok with that. The other option is to suggest deferring painting the skirts.*

*Mr. Ward: It is a focal point of your community. Those skirts are not black anymore. They are a very strange color. They are in the budget. They are in the plan to do it, and I think it's an important thing for us to do for this year. The painting of the rest of the structure is not in there*

*for at least three more years out, maybe four years out, and I think whatever color it wants to be, you've got three or four years to figure that part of it out.*

*Mr. Miller: I think a committee of some ladies rather than a bunch of crusty old men like us making that decision is a better idea.*

*Mr. Ward: In terms of the color, whatever you want is up to you guys. But we do need to be – in two years we can deal with the color of the rest of the structure itself. The black, I clearly am strongly recommending you continue down the same path that we laid out when we got this budget. It's in the plan. I think we should execute the plan as we have it in place for the 2023 budget right now.*

*Mr. Kleck: If it's in the budget, do we know what the budget amount is?*

*Mr. Ward: We have it clumped in one because we do pressure cleaning of the pavers on a bunch of other stuff. There's like \$13,000 dollars in there total, of which the painting is a small part. The cleaning of those pavers is generally a pretty expensive thing on a yearly basis. It's in the plan to do it. I am not recommending deviating from the plan 30 days into this budget year.*

*Chairperson Stamp: It may also be a situation where two years from now the black will look really bad.*

*Mr. Stigliano: Made a comment on ensuring the quality of the paint to be used was considered and that the surfaces to be painted were cleaned and prepared proas a lesser quality of paint that will affect how the skirts look over time.*

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

- a) Financial Statements for period ending October 31, 2022 (unaudited)**
- b) Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities**

*Mr. Ward: We did close on the Truist loan the Friday after our meeting last month. Thank you all very much for all your work in getting that deal done and closed. All of our bills have been paid and up to speed, so we are in good shape right now. I thank you. I am anticipating that we will be able to repay that loan as I noted to you last month by March 31<sup>st</sup> at the latest, but I will probably be able to do this in February. We will just see how our collections come in. Zack mentioned to me, and Bart mentioned to me, I will – not this time because we are 30 days into this budget – but periodically I will start to give you a two minute dissertation on where we are financially on a going forward basis, once we get a month or two into this budget year.*

*Chairperson Stamp: Bart had raised the issue that it would have been good to have a little earlier warning when we started to get into this stress situation and hopefully that will provide that. Jim and I this morning met with Dave Kupstas and Dave Boguslawski to start working on the process of rearranging some of the permits, some of the easements, some of the responsibilities between the HOA and the CDD, and frankly this process is probably going to take years. Some of it won't, some of it could happen fairly quickly. Conceptually we have three items, which many of them have many subparts, so you could make it ten items if you wanted, but conceptually there is the maintenance of the entrance, and I think there seems to be, at least between Jim and I and David,*

*an agreement that that would be an appropriate thing to let the HOA take over, so we've got the same people doing all of the landscaping and everything else. Incidentally, we hired the same company that had been there before. I know there's been some people who think we let it go, or something, but it's the same outfit that's been doing it for years, so really it hasn't. Maybe perceptually it is just getting older, or maybe it's the skirts, I don't know, but that's one item. The entrance. The second is the irrigation system. The HOA asked us to consider letting them basically take over all of the irrigation system. It wouldn't be a transfer or ownership. It would just be a transfer of responsibility so that the residents wouldn't get the runaround of well that's the CDD's responsibility or that's the HOA's responsibility. Or we don't know, it might not be the runaround. It might be us trying to figure out exactly where one system stops and the other starts. We put it all under the HOA. As a government body we cannot give that to the HOA, we can only transfer government property to another government entity. But we can certainly sign a long term lease or a long term service agreement or something like that with the HOA, so that they will have control/responsibility of the entire system. That's another thing, there's got to be a service agreement there worked out. Jim prepared a draft of one, again conceptually. This is all concepts. Nothing concrete has been done at this point. And the last thing is the permits and the easements. In all candor, Taylor Morrison made a mess of everything, and some people might agree, as to who has what easement, who has what permit. They've still got permits; some of the permits this development is operating under are still in the name of Taylor Morrison. Others are seemingly randomly spread around. So, we are going to have to put together a sheet of where everything is, what needs to be moved, Jimmy's ideas. And he kind of touched on at the last meeting of where they ought to be moved to, but that's going to take a lot of legal work. We will probably be calling this new lawyer to help put together these documents to get that done. It's going to take time because some of it has to be approved by other government bodies or other entities. These are the three concepts. I'd like to see if anybody has any objections on a conceptual basis or any other thoughts, because the HOA is going to start spending a lot more time and engaging lawyers to start looking at some of this stuff. If there is a real objection or a problem by some of the members over any of these things, I'd like to talk them through right now before anybody spends a lot of time on them. The HOA has put this on the Agenda the last couple of times to give the community some notice that these are topics of discussion. We are a long way away from addressing them or from solving them, and I think the bridge (I call it the entrance) is probably the easiest to do, but the HOA needs to make budget allocations for that if they are to take it over. They might not take it over immediately, but again these are things we need to know and make decisions about. This may become a constant topic for the next couple of years. The HOA, I think, is going to appoint a committee to work with us, but as you know, as we are a government body, we cannot officially do anything, or we make them a government body. So, Jim and I will continue to work with them and report back as we proceed. Any questions or comments?*

*Mr. Bhatla: I think it makes sense. From an operational aspect of handing things, and in considering the costs, I think is a good approach.*

Mr. Joe Stigliano discussed the implications of transferring responsibility to the HOA; where the funding was coming from to cover the maintenance, portions of his discussion were (indecipherable).

*Chairperson Stamp: We would not be giving the HOA a check. We are a government body. We don't go around funding private enterprises. We could do some kind of a service contract, but this is all very tentative, and you are wanting to know details. This is all very tentative; we will be able*

*to shift our assessments and they will shift their assessments. You are right, the same residents are going to pay for it.*

*Mr. Stigliano: (Indecipherable).*

*Chairperson Stamp: Joe, we understand these things. And we do too. We pay the same thing you do. We understand. The dynamics are, depending on how much they take over, how much expenses are, we could cut our assessments. We could use it to speed up the five year plan. We could put it into reserves. We could do a combination of all of those things. You're right, inflation. The budget we put together could get eaten up by inflation. We may not have any room. You call it what you want, I'll call it inflation. We don't want to pay double either, but this is going to be a long process.*

## SIXTH ORDER OF BUSINESS

## Audience Comments

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

*An unidentified member of the audience stated that she worked with the HOA and indicated she was asked questions about the ponds which she did not have the answers to. I would love to have either a fact sheet or question and answer sheet that I could just give to people so they could understand more. Because they want to talk to a person, and I just don't know where to direct them. I always say go to the website and then they have other questions.*

*Chairperson Stamp: Jim is who they need to speak with, and I think the phone numbers are on there.*

*Mr. Ward: We usually don't have phone numbers on there.*

*Chairperson Stamp: Alright, but Jim is who they need to go to.*

*Mr. Ward: You can give them my cell phone number which everybody seems to have.*

*Ms. \_\_\_\_\_: I wouldn't want to do that to you, but at least (indecipherable).*

*Mr. Ward: It's on 1,163 tax bills, so everybody has my number, so you're welcome to give them my cell phone.*

*Chairperson Stamp: And that's part of what we're trying to do with getting all of this realigned, just so it makes logical sense who is doing what.*

*Mr. Stigliano: I think we should reevaluate your strategy regarding (indecipherable). In the Public Section, it really doesn't matter. Nobody ever goes to jail for flooding (indecipherable). (Indecipherable). Come up with a plan to get your stuff on the record with these permits. We're vulnerable. So, you want to protect yourself from (indecipherable). (Indecipherable).*

*Mr. Bhatla: So, we do have a small initiative in that direction. I have talked to the agencies, and they have told me that they will (indecipherable), so we will be talking to the interested parties. I think we will come up with an alternative. Right now, it's in the exploratory stage. We understand your concern and we are also concerned about that, but I think we are going to pursue it.*

*Mr. Stigliano: I'm saying you should also sit down with (Indecipherable).*

**SEVENTH ORDER OF BUSINESS**

**Announcement of Next Meeting**

**Announcement of Next Meeting – Regular Meeting on December 15, 2022**

*Chairperson Stamp: I misspoke at the last meeting and said we would be swearing in the new members who are elected in November, who aren't new, as they are Tom, Ron, and Bart, but their terms of office from the new election doesn't start yet, so we will have the swearing in of them to their new terms at the December meeting and election of officers.*

**EIGHTH ORDER OF BUSINESS**

**Adjournment/Recess**

The meeting was adjourned at approximately 1:45 p.m.

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

Flow Way Community Development District

  
James P. Ward, Secretary

**Z Stamp**  
Zack Stamp, Chairperson

Signature:   
Zstamp (Dec 21, 2022 10:31 EST)

Email: zackstamp@gmail.com

# FW - Minutes 11 17 2022 - To be Executed

Final Audit Report

2022-12-21

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Status:	Signed
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2022-12-21 - 2:03:46 PM GMT- IP address: 35.153.123.180
-  Document emailed to zackstamp@gmail.com for signature  
2022-12-21 - 2:05:20 PM GMT
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2022-12-21 - 2:50:45 PM GMT- IP address: 74.125.210.131
-  Signer zackstamp@gmail.com entered name at signing as Zstamp  
2022-12-21 - 3:31:15 PM GMT- IP address: 71.208.28.183
-  Document e-signed by Zstamp (zackstamp@gmail.com)  
Signature Date: 2022-12-21 - 3:31:17 PM GMT - Time Source: server- IP address: 71.208.28.183
-  Agreement completed.  
2022-12-21 - 3:31:17 PM GMT