

**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 18, 2021, at 1:00 P.M. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.

**Present and constituting a quorum:**

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

**Also present were:**

James P. Ward	District Manager
James Messick	District Engineer
Greg Woods	District Counsel
Andrew Gill	JP Ward and Associates

**Audience:**

Lynn Gorski (ph)  
Doug Hansel (ph)

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**

**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 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**

**Consideration of Minutes**

**October 21, 2021, Regular Meeting Minutes**

Chairperson Stamp asked if there were any additions or corrections to the Minutes; hearing none, he called for a motion.

**On MOTION made by Mr. Tom Kleck, seconded by Mr. Ron Miller, and with all in favor, the October 21, 2021, Regular Meeting Minutes were approved.**

Chairperson Stamp noted public comments regarding Agenda items were permitted during the meeting. He asked any who wished to speak to identify themselves and come forward to speak. He noted speakers would be given three minutes to make comments. He indicated there would be a period for public comment regarding anything not on the Agenda at the end of the meeting.

### THIRD ORDER OF BUSINESS

#### Staff Items

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

- a. Request to call Executive Attorney/client shade session. Discussion of settlement matters with Tim Hall and Turrell and Associates (File Number: 2020-CA-4147)
- b. Arbitration Hearing - January 18, 2022, at 9:30 a.m.

*Mr. Greg Woods: The executive session is recommended for Thursday December 16, 2021, at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119, after the District's regular meeting. The sole purpose of the executive session was to discuss the settlement of the Flow Way development and File Number: 2020-CA-4147. This is a potential partial settlement. The executive session can be expected to last approximately 20 minutes. The attending members shall be the following members of the Board: Supervisors Zack Stamp, Tom Kleck, Martinn Winters, Ron Miller, Bart Bhatla, District Attorney Greg Woods and District Manager James Ward. The executive attorney/client session is closed to public. The entire session will be recorded by a certified court reporter. At the conclusion of the executive session, the District will reopen the regular meeting.*

*Chairperson Stamp: At one point there was discussion about moving it to December 2, 2021. Do we still need to do that? Would that be your preference?*

*Mr. Woods: I would like to informally poll the Board for their availability. The earliest we could have the executive session would be December 2, and I was just curious if the whole board would be available.*

*Mr. Ward: If you do December 2, it would be a continuation of this meeting because I don't have time to advertise because of the holiday. We would just recess this meeting until December 2.*

Discussion ensued regarding who would be available on December 2, 2021, for an executive session. Portions of this discussion were (indecipherable). It was decided the executive session would be held December 2, 2021, at 8:00 a.m.

*Mr. Ward: The record will reflect that the continued meeting, for purposes of the executive attorney/client session, will be December 2, 2021, at 8:00 a.m.*

*Chairperson Stamp: There will be no public participation at this meeting. In some states this is called a closed meeting or shade session. There will be a transcript and eventually it will be made public.*

*Mr. Woods: The arbitration hearing will be on January 18, 2022. It starts at 9:30 a.m. I do not recall where the meeting will be located, it could be by zoom. We could all meet here for instance, or maybe at my office.*

*Chairperson Stamp: We can't meet for the arbitration hearing; it would be a violation of the Sunshine Law.*

*Mr. Woods: (Indecipherable). Also, we are in the process of filing the report (indecipherable).*

*Mr. Ron Miller: I made a bad presumption that the executive session would be about the (indecipherable), but since we are going to arbitration in January, it seems to me that there ought to be an executive session or something for the Board to discuss strategy or whatever for the arbitration.*

*Chairperson Stamp: It is my understanding that we cannot meet in shade session unless there is a bonified offer on the table. We can't meet to talk about litigation strategies in general.*

*Mr. Miller: What's going to happen at that session?*

*Mr. Woods: I can't actually say (indecipherable). It's tougher for mediation (indecipherable), just a Board or judge because it costs parties money. It reminds the parties (indecipherable). Basically, the lawyers will do what's called proffers. I will go: We expect the evidence is going to show --, but the Army Corps Permit says this and this. The Taylor Morrison witness is going to say this. This witness is going to say this and for all these reasons we are going to win. Taylor Morrison's lawyer will go: No, we have this defense, and we have this defense and it's going to show this, and the arbitrator, who is an attorney, will then, after 10 days, will issue a ruling declaring one side or the other as the winner or (indecipherable). Either side can appeal the non-binding arbitration. (indecipherable). The only advantage of winning in non-binding arbitration is that if we go to trial and the party who appeals receives a number 25% worse than the result of the arbitrator's award the party can potentially file for attorney fees from 30 days after the arbitration.*

*Mr. Miller: It's a starting point?*

*Mr. Woods: Yes.*

*Mr. Miller: I've been involved in arbitration a few times in my life. An arbitrator's job really is to bring an offer to the table. Do we think numbers will be discussed at that?*

*Mr. Woods: If you were at the true arbitration I would agree. Sometimes the arbitrator will ask the parties if they want to negotiate settlements. I don't believe that's going to happen in this instance. This is truly just a process the clients have to jump through as part of the lawsuit. It is fairly standard. It just adds cost to the litigation. We will probably not be doing settlement*

*discussions. We will probably not be able to do that even if you try to push. He's just going to hear your party's position and issue some kind of rule based on what is discussed.*

*Mr. Miller: Just on the outside chance that something would come out of that, I would think anything like that should be brought before the full board.*

*Mr. Woods: (Indecipherable).*

*Chairperson Stamp: I have no authority to settle by myself. You gave me authority a couple of meetings ago to reject frivolous offers, so we didn't get drawn into shade sessions anytime somebody said I'll give you a dollar or something. I've got that, but I don't have the authority to settle.*

*Mr. \_\_\_\_\_ 14:45: (Indecipherable).*

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

### **a. Preserve Tree Removal Process**

### **b. Stormwater System Repairs**

#### **i. Phases 1 & 2**

#### **ii. Strategic Operational Plan**

*Mr. James Messick: good afternoon, I have a couple of items to discuss. We can add the gauging station for discussion. The first item is an update from the preserve tree removal. I have drafted a report that you reviewed, and you gave us direction to move forward on the priority 2 and 3 trees, a total of 30 trees. That is being prepared and is anticipated to be submitted for approval by the end of November. He stated he anticipated the cost of this tree removal would be \$7,500 dollars. He stated the request would be submitted to South Florida for approval.*

*Mr. Bhatla: As for the cost for these, do you get 3 bids or do you have a contracted source?*

*Mr. Messick: I think the quote that we have been given is typical for costs that we see from contractors; \$250 dollars a tree, is a useful quote. If we get a quote that is higher than that, we will be certain to go out and bid it to other contractors.*

*Mr. Bhatla: Is it the policy of the Board that we at least get three bids before we award? Can (Indecipherable) public interest, that we don't have a favored contractor.*

*Mr. Ward: Right now, the Board follows the law requirements, so the law indicates that anything under \$195,000 dollars a year was not subject to what we call the competitive bid process which means we advertise it in a newspaper, we take formal bids, and we then award a contract based upon lowest and best price from that procedure. On operations, generally speaking, as Jimmy indicated, we try to ensure that the prices we get are consistent with what I see and he sees in other communities that we are working on in the local area, to the extent that they are not consistent with that, then we will go out and get more pricing on it. And sometimes, we just as a matter of course do that. Right now, I will tell you we are not doing that simply because we are trying to transition the operations over before the 1<sup>st</sup> of January. We are*

*utilizing many of the vendors that the homeowner's association is currently using and just separating those contracts out at this point in time. That's the process we are currently using.*

*Chairperson Stamp: I would add the estimated cost of this is \$7,500 dollars. If it were \$75,000 dollars we would seek bids, even if we didn't have to under the law.*

*Mr. Messick: That's our estimated cost. If they come back at twice that, or even \$12,000 dollars, we will go out to make sure we are getting the best price.*

*Mr. Bhatla: I just want to make sure that the public can't come back and critique us that we have a favorite contractor. I want to avoid that perception.*

*Mr. Ward: I agree.*

*Mr. Messick: The second item is the stormwater management plan. Obviously, the failures have been set up from the Forge Engineering Report which was presented to the Board back in June. Phases 1 and 2 have been completed. Phase 1 being the broad crested weir erosion, completed on October 22. We were invoiced and paid them for that work. Phase 2 being sediment and debris removal for the entire stormwater management system including catch basins, pipes, etc. They completed the work at the end of October. They did note that there were three structures that needed additional work which was beyond the scope of the contract, and I have noted those structures: structures 1040, 1057 and 83, in three different sections of the development. I went out and looked at those sections myself. Currently, the water is too mucky, and you can't see down into them, but based on the report and discussions with them, they kind of explained what the problems were, and they gave us a quote for those three structures. I'm working on getting a quote from another contractor and as soon as I get those costs. I will recommend fixing those three structures. The remaining items will be Phases 3 and 4 and will be captured in the strategic operational phase plan being prepared.*

*Mr. Winters: When we got started on this several months ago, we asked for, as part of due diligence, to have cameras run up the pipes to see if they were in decent shape and were told that they couldn't do it because the pipes were so clogged that they inaccessible. Now, that they've been cleaned out, is it a good idea to go back and do what we tried to do in the first place, now that the cameras can see how the pipes are constructed?*

*Mr. Messick: In my experience, my opinion would be to look at these same structures to see the if they have the same sediment problem. At this point, we've got the most important pipes and structures cleaned out and as part of the strategic plan we will go back and look at that system and make sure that the sediment hasn't taken place again in the system and then we can go to other ways of looking at the system and see if there is a broken pipe or something upstream that we can't see.*

*Mr. Winters: So, there will be followup.*

*Mr. Messick: There will be followup, definitely.*

Discussion ensued regarding whether the pipes should be videoed to evaluate the condition of the pipes; the possibility of there being pipe defects due to a construction error by Taylor Morrison; and the cost of videoing the pipes being relatively high.

*Mr. Miller: Apart from the pipes that are broken, what you saw and what we found, is that common, or is this extraordinary, or should there have been maintenance done previously?*

*Mr. Messick: If it hasn't been maintained on a five year basis, it is not uncommon to see sediment buildup over 50% to 85%. I think what I would like, is not TVing the entire stormwater management system, but TVing the structures that had a significant amount of sediment built up in them in the last 7 years.*

*Mr. Miller: Thinking long term, when do we need do this again, clean out the sediment? A year from now, 5 years from now?*

*Mr. Messick: Every 5 years.*

Discussion ensued regarding the cost of cleaning out the stormwater management system structures and how often the pipes should be cleaned of sediment.

*Mr. Messick: The Forge Engineering Report which included costs from MRI to do the cleaning, was more than \$80,000 dollars. The \$80,000 was just the structures that had more than 25% sediment.*

Chairperson Stamp asked what was wrong with the three structures mentioned.

*Mr. Messick: Structure 1040 was a 36 inch RCP which is reinforced concrete pipe, substantially cracked. The recommendation is to replace 16 feet, or two sticks, of RCP pipe, in lake 6. Structure 1057 was 2 inch pipe in the MRI report, and they suggested replacing it. I haven't gotten the cost back yet.*

Mr. Bhatla indicated it would be good to know the cost of replacing structure 1057, as well as the cost of repairing structure 1057.

*Mr. Messick: The third structure is structure 83. That particular structure had a significant amount of debris and rocks stuck in the pipe and they couldn't clean it out by hand. In order to clean it they are going to have to plug the upstream and down stream structures to clean this structure. It was not a significant amount, but it is located in lake 14 which is centrally located. The last is just an update on the strategic operational plan. The CDD asset investigation report from October report was reviewed from the current CDD Staff. The utility and asset investigations have started. I met with our inspectors who were walking lakes this morning. I've done that for the last week or so, and we will continue to (indecipherable). Confirmation of the CDD's ownership for maintenance of the roadway entries and landscape buffers have been requested through the legal team and we are awaiting a response from them. (Indecipherable).*

*Chairperson Stamp: So, you are going to put together a proposal for TVing certain pipes, ones you think need to be, and you're going to bring that back to us?*

*Mr. Messick: Yes.*

*Mr. Miller: Do we have any wastewater?*

*Mr. Ward: Just stormwater.*

*Mr. Winters: The maintenance of the lakes is still under the HOA's management. Is that correct?*

*Mr. Ward: Yes, at the moment.*

*Mr. Winters: I don't know what the status is of the CDD taking over that contract, but just as a general housekeeping matter, I get calls and emails periodically from residents saying there is something wrong, can you send somebody out? I'm getting those kinds of requests and I don't know what to do with them other than to ask Jim to send you guys out to look at it and tell us what it is. like a drain pipe coming from a house which had been installed improperly, which is not acceptable. My question is, who is the proper person to point to, to send somebody out to look at these problems? Wouldn't the HOA management company be the intermediary for these kinds of requests?*

*Mr. Ward: Based upon the last meeting, we are actively transitioning all of the operations that are part of the CDD into the CDD. We will have that transition done for the water management system, and the landscaping on or around December 1, of this year, and then the irrigation system on January 1. With respect to the process, at least initially, what I would recommend is that whether they contact you or contact me or Jimmy directly, I would like to at least leave it at this level for some period of time so we can see and understand what's happening in the systems and making sure that we respond to them in an appropriate manner. After some period of time, we may transition that to another member of Jimmy's team that will be able to handle that kind of stuff on a day to day basis, but right now, in a transition, I think it's most appropriate to handle it at this level.*

*Mr. Winters: I just want everyone to be in agreement as to what the process is.*

*Mr. Ward: I clearly would like it to come to me and Jimmy so we can handle it.*

*Mr. Bhatla: I think we need an inventory of the complaints.*

*Mr. Ward: We honestly don't get that many of them. We are pretty good about taking care of them.*

*Mr. Bhatla: My issue is responsiveness. A complaint comes in and it ends up on Facebook, we don't want that to happen.*

*Mr. Ward: I agree. We take care of that stuff immediately.*

*Mr. Miller: (Indecipherable). Does anybody know how many miles of shoreline we have?*

*Mr. Ward: We don't know yet. We are just in the beginning stages of actually putting together all of the assets that we own, shorelines, littoral shelves, lakes, everything in the system. Part of the program that you authorized last month for CDA is when that strategic plan comes out in February or March, we will have a much better handle on all of the assets that we have, what we own, what their values are, how we are going to operate them, what the cost of the operations of all of the systems are going to be on a going forward basis. We are going to try to project that over a couple year program, so we know going into our 2023 budget how much it is really going to take to operate and maintain the system.*

*Ms. Lynn Gorski (ph): I am the Chair of the (indecipherable), so I get (indecipherable).*

*Mr. Doug Hansel (ph): I live on lake 22. Lake 22 has zero amount of littoral plantings, has zero percent. (Indecipherable). I've looked at County Code 3-5-10 for storm management ponds and also the current (indecipherable) brochure, and all those documents say that all ponds (indecipherable). The lake has about 25 homes, (indecipherable). What's the plan for putting littoral plants on that lake? (Indecipherable). It looks really terrible especially when the water goes down. I'm just here to find out what is being done.*

*Mr. Messick: Part of the lake bank restoration will include littoral planting, and we will look at the permit requirements, whether it's per lake or permit wide requirements, and will make sure to include that in our plan for upcoming years of littoral planting restoration. It will coincide with the lake bank restoration.*

*Mr. Hansel: Part of what I wondered is Lake 22 has no plantings.*

*Mr. Messick: I'm not certain that was originally permitted or acceptable with the permitting agencies, but if there is a problem with the lake bank that needs lake bank restoration, if there is a slough off into the lake, those littorals will help that and those will be part of the restoration of the lake banks.*

*Mr. Hansel: (Indecipherable).*

*Mr. Messick: Well right now we still aren't maintaining that. It's in the process of being transferred from the HOA to the CDD. We will put together a plan, we will have the immediate action items for this coming fiscal year and several years out.*

*Mr. Kleck: I worked with the CDD Board or was on the Board at Vasari and the lakes and littoral banks issues are ongoing. Believe me, it's a never ending issue. One of the things I think you need to understand is this CDD Board is fairly new from an owner controlled standpoint, and that project is one I am very familiar with, and a pet peeve of mine, because these lakes and ponds are awful. There are very little littorals. The promising thing that I've noticed is that Audubon, their lakes and banks are beautiful, so it can be done, and what I would recommend to the Board, or to you Jim, is that we contact Audubon when we get to that point, and we can do something and find out what they've done to get to that point.*

*Ms. Gorski: We've already contacted Audubon and (indecipherable). (Indecipherable).*

*Mr. Bhatla: We investigated. We did meet with the County, and they have approved everything, and they were holding a bond close to a million dollars, and they have released the bond. Our expectation was that they were going to, that Taylor Morrison was going to present a unified report showing the completion of littorals in every lake, but we haven't found those documents. They don't exist. We have done the search. We are here where I think Taylor Morrison has done an incomplete job and they have squeaked through as approved from the County, so we have to resolve that issue. It's not been a part of the communication, we will have to see.*

*Mr. Hansel: We can add littorals to that as well.*

*Mr. Bhatla: All that is a capital expense. Of course, there is going to be an ongoing expense of maintaining the littorals, but I think at least up to the point of transfer, we wanted everything in reasonably good shape, and that has not been done.*

*Mr. Hansel: We could potentially recover what should have been done per code at the time of turnover.*

Discussion continued regarding the littorals; the County's signing off on the lakes; the County utilizing third party engineering firms to sign off on permit requirements; the lack of documentation from Taylor Morrison regarding what was completed in terms of fulfilling permit requirements; whether the engineering firms were culpable to the extent that records were not kept; the County not wishing to "mess with" Taylor Morrison; the County being the control point and if the County approved, then the engineering firms could not be held accountable. Much of this discussion was indecipherable.

*Chairperson Stamp: It's going to cost us a lot of money, like \$800,000 or \$900,000 dollars to do all of these, and our budget for operations and maintenance is what a year? For the year we are in? Is it half of that?*

*Mr. Ward: Not even half.*

*Chairperson Stamp: So, it would actually double our budget just to do that and not do the other things. It's going to be a long process and it's going to take some time. We are going to have to put together a plan and work the plan. Some people are going to be first and some people aren't. We have to start somewhere. We will have to rely on the engineers to tell us what the priority is and where we have to start and how we can do this in the most cost effective way. I don't want to hold out any hope that it will be next year.*

*Mr. Hansel: So, could the homeowners themselves do the littoral planting?*

*Chairperson Stamp: I doubt it. Nobody's ever asked that question, but I can't imagine you could go into the water.*

*Mr. Kleck: We had a staff that came in full time to Vasari, and we spent literally thousands of dollars to plant littorals and 50% of them never made it and we went back and spent another thousands of dollars. It is an ongoing, almost impossible task to keep these lakes looking good. I'm ashamed to say it, but I don't know what the answer is unless Audubon has the answer because I'm impressed with what they've done.*

*Mr. Winters: Do we have anything in the 2022 budget as far as the plantings go?*

*Mr. Ward: No. Not even close. In the current year we are in, the budget is extremely limited. We've spent close to \$100,000 dollars already of a \$225,000 or \$250,000 dollar operation piece of this budget. I think we are going to have to wait a number of months before we even know, but we clearly don't have much more money left other than to do the basic operations of just taking over what the HOA wants to do. Even the TVing of the lines, based on other Districts, that's a \$40,000 dollar job. We are not going to have the money to do that. I can tell you we can get the numbers and see where we need to go, but it's going to be a really, really tight year.*

*Chairperson Stamp: Can we talk about the gauging station?*

*Mr. Messick: Sure. I don't have anything prepared in my report. I do have some picture, but do not have them with me. I did forward the agreement on to our attorney to take a look at it. Gauge stations now are a smaller footprint and through USGS rather than through South Florida Water Management District. They do have a different location in mind than what we originally discussed. It is not in the direct view of any resident. It is along the western property line up next to one of the cow ponds, kind of tucked away behind some trees there. I will attach the pictures into December's report if you want to come back after you have looked at them with any questions. I will request to come back to the Board for approval once (indecipherable). They want to start this fiscal year and get it constructed prior to next rainy season. The first quarter of their fiscal year (indecipherable).*

*Mr. Bhatla: Is the only issue the aesthetics?*

*Mr. Messick: They are taking care of the maintenance. There's no cost, there's no permitting, there's no environmental impacts. Greg can speak to (indecipherable).*

*Mr. Woods: I've added a footnote to the agreement that basically says we are involved in litigation, and we may not ultimately be the owner of this property subject to (indecipherable).*

*Mr. Messick: This footprint goes down to a much smaller size, 24 x 30 feet.*

*Mr. Bhatla: what about the elevation?*

*Mr. Messick: the elevation is 2 – 4 feet. It may stick up a little bit, but nothing of reflectivity and the (indecipherable) the way they orient the solar panel, there's not going to be any glare to residents.*

*Mr. Bhatla: So, in your judgment, the visual impact is insignificant.*

*Mr. Messick: In my judgment there is zero visual impact.*

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

- a. State Law Requirements for new Stormwater Reporting.**
- b. Financial Statements for period ending October 31, 2021 (unaudited)**

*Mr. Ward: The State law was amended this past year to require a number of agencies, including Community Development Districts, to do these long term needs analyses. Although none of us know exactly why they want these long term needs analyses, the supposition is that they are being accumulated up into larger city or county plans for needs analyses across county-wide areas within the state. For this District it means there are two parts. One is a water and wastewater analysis. The other is a stormwater analysis. We obviously would not have to comply with the requirements of the water and sewer analysis, but we do have to comply with the detailed programming requirements for the stormwater analysis. These are five year programs. The first one is due in June of next year and then they are due every 5 years thereafter to both the state and Collier County. The program is required to include projected costs for facilities over five year increments and more long term, including the useful life of the assets, cost of the useful life of the assets and annual contributions that need to be made by the entity in order to achieve the requirements of funding under the plan itself. This has been handed off to Jimmy's team to begin the process of looking at it and identifying the needs analysis. One of the questions I do get asked periodically is do we know what the cost of this is. The answer is I have no idea because it is a new program in the State and from an engineering perspective, we are just going to have to go through this process for the first year before we figure it out on a going forward basis. I have asked Jimmy's firm to try to get this analysis done well before the June 30 date, so we have time to review it and then send it on to the appropriate agencies afterwards. Are there any questions?*

*Chairperson Stamp: I did want you to talk a little bit about where we are at in the budget process.*

*Mr. Ward: Our budget, we have roughly \$360,000 in our budget for operations for 2022. Of that \$360,000 dollars, roughly \$180,000 to \$190,000 is the external preserve maintenance. The remaining amount is for operations. Of that remaining amount, we have already spent close to \$100,000 of it at this point in time cleaning the pipes, repairing the weir, but we will have this other repair work. We are transitioning the operations now. I don't have numbers yet. I will have them probably within the next week or two. I suspect we will hit or exceed the overall \$360,000 budget for operations during this current year, just to take over the operations from the HOA at their level of service that they have, not being able to do any increased operations during the current fiscal year. As I mentioned at the last meeting, we will finish the strategic operations plans. That will include operational requirements at levels different from what we are taking over from the HOA, but more in tune with what I see in a community that is more built out on a going forward basis. I expect these numbers to go up dramatically in 2023. We will just have to pay attention to that as we go forward and budget for them accordingly. One of the things I know that we don't have in this plan, and I doubt the homeowner's association had in their budgets, are reserves for these assets. So, a large part of this program is going to be to identify the cost of this program and what we feel are appropriate reserves to keep these assets going on a long term basis. You will see that as a part of the program also. I have a couple of districts I have done this for in the last year. The numbers were staggering for operation reserves on a going forward basis and we just done have them in CDD budgets at the current period. We will just have to keep that in our minds on a going forward basis, but this next budget year will be a challenging budget year, but we will be able to see some of the fruits of the labor of Calvin Giordano hopefully by March of next year.*

## I. Future Funding of Preserve Mitigation and Maintenance

*Chairperson Stamp: I am going to read a statement and then there can be some discussion, and I don't anticipate, I don't hope, I don't ask, that anybody here (Counsel or Jim) give us a definitive answer to all of these or any of these questions. But I think it's something we need to put out on the table as we go forward, and that's how much money we are going to spend on these external preserves which we are trying to get Taylor Morrison to take back. With that understanding: Assuming we must maintain all of the CDDs assets pursuant to the bond covenants, at what level must we maintain them? Do half of what we are doing now, three quarters of what we are doing now? We don't know. The bond holders do not object to Taylor Morrison doing little or no maintenance or repairs on the pipes, the interconnect, the pumps, the weir, the fencing, so why would they object if we reduced funding for the preserves. Or would anybody object? Nor do they seem to be monitoring or concerned about the current litigation as far as we know. The lock interconnects could have had a major impact on the property and the assets and residents as opposed to what a couple more melaleuca trees or Brazilian peppers and how are they going to be harmed if we let those slide so we can do pipes and we can do littorals and things like that because we are not going to do everything. Failure of the weir obviously could have been catastrophic in some ways. In addition, the efforts toward success criteria that the Flow Way is currently under, what we think we have to do, was we are doing that pursuant to the Corps permits that Taylor Morrison obtained and they obtained those with the idea that they were eventually going to transfer these external preserves. Well, they've transferred them. Maybe we're contesting that, but they've transferred them, so do we have to maintain let's say rate of mitigation, or can we say that those are moot. That's no longer there. Can we do half of that? What do we have to do? We've got to look at those and we've got to have those discussions as to what we can do. In the for instance, could we find somebody else who would be willing to assume the liability without the trust fund and simply turn it over to them? I don't think we we're going to find anybody that can do that, but we've got to throw that out on the table. Can we slow down or stop the mitigation? That's something we are going to have to think about. What are the parameters of that? What are we going to have to do from the bond holder perspective and from the perspective of the permits? What can we do? We've got to consider that South Florida Water might be the one to enforce it, the standards, if there are standards as to what we have to do if we don't comply with the permit. Those are questions that we have to ask and decide. We also have to think about what the ramifications to the lawsuit are if we decide to go down this path. Are we going to help ourselves or are we going to hurt ourselves? I think we definitely have to consider what those ramifications are. I just wanted to make that – if Jim or Greg have any off the top comments, we'd appreciate it. Otherwise, I just threw it out there for the discussion that we are going to have to have. Because as Jim said, the budget is going to be terrible and a big part of that is going to be what we do with the preserves. If we do it with the preserves, we can't do it anywhere else. It's going to be a balancing act.*

*Mr. Kleck: I've been involved in two CDDs. Vasari CDD was one third the size of this preserve and this CDD. I'm wondering if we've bitten off more than we can chew by taking over a preserve of this size. Jim, have you had any experience with any of your CDD companies or neighborhoods that are larger than Esplanade?*

*Mr. Ward: I have obviously done CDDs much bigger than Esplanade. I don't have any CDDs and never have had any CDDs with a preserve this big in it, or at least that has required this much financial capital to go in it in terms of operations and maintenance. The only preserves that I am*

*aware of that I have been associated with larger than this did not require any active ongoing financial maintenance obligations pursuant to the permits. This obligation clearly far exceeds anything I am used to seeing.*

*Mr. Kleck: That goes with my question. Have we bitten off more than we can chew?*

*Mr. Bhatla: Why do we want to keep the obligation of maintaining the preserves?*

*Chairperson Stamp: That's the question that I'm trying to answer.*

*Mr. Bhatla: We've got no value from it. It's only liability. We don't have the expertise either. I think the trust has to be to divest it. It should go back to Taylor Morrison because it had a great deal of value for them. For us, we cannot justify the ongoing cost.*

*Chairperson Stamp: I think the Board's in agreement with that. That's why we filed the lawsuit. But the question is, between now and whenever the lawsuit is resolved, what are our obligations? We do own it now. We are the fee simple owner of that property whether we like it or not and we don't, but do we have an obligation? Is the Corps going to come in and say we're going to fine you, or is South Florida Water Management District going to come in and say we're going to fine you? That's one of the things I'm relying on these two guys to give us some input on, what we can do, and I just wanted to throw that out there.*

*Mr. Bhatla: Is there a clear definition of the penalties that they can apply?*

Discussion ensued regarding possible penalties; the possibility of minimally maintaining the preserves; how much it would cost to minimally maintain the preserves; and not wanting to do anything to negatively affect the lawsuit. Much of this discussion was indecipherable.

*Mr. Ward: June of next year is when we would start the maintenance of the preserves. It is generally June, July, August, September, but that's when you need to gear up to get started, so we have until May basically to decide what to do in next year's budget for that, and I think between now and then probably, in the winter, we can work on what Greg had suggested and that is trying to minimize the maintenance and not do any aggressive work and lets see what the number is.*

Discussion continued regarding the budget for the preserves; and the best time of year to work in the preserves.

*Mr. Bhatla: We should ask our engineer to tell us what the minimum maintenance requirement is. Safety and security are at the top of everything, and then if there are any monitoring requirements in the budget, we need to consider those.*

*Mr. Ward: The Corps permitting requirements are to keep melaleuca out of there, spraying exotics, removing some larger dead trees, those kinds of things. Clearly, we need to find out what the minimum is for that level of service going forward. The timing of it on a yearly basis is on our part. It's not a Corps requirement as I recall it in those permits of when we do it, so we may be able to push them out to September, October, November, December, something like that, but the obligation itself at the moment is a quarter million dollars. We spent less than that this year on it. We spent, I think, \$160,000 dollars this year. It may be less than that going forward. And maybe the \$160,000 is*

*a result of the maintenance of the prior years and it's just starting to go down all of a sudden which was what was contemplated under this kind of a program pursuant to that original Corps permit. We will have to see how we want to do this.*

*Mr. Bhatla: is there any kind of reporting you have to provide?*

*Mr. Ward: The consultant we have that does that for us does a report on a yearly basis, after the work is completed.*

*Chairperson Stamp: Keep in mind that none of this year's does anything on the fencing. There's \$190,000 dollars' worth of fence repair that needs to be made out there that we have spent zero on and maybe we can get by spending zero.*

Discussion ensued regarding the fencing; the definition of fencing; and what the fencing was intended to keep out of the preserves.

*Mr. Miller: I think that the CDD is an inappropriate agency to handle keeping people out of the preserves. That is not our mission. These preserves are outside of the CDD boundaries. (Indecipherable).*

*Chairperson Stamp: So anyway, we are going to have more discussions about the budget. I just wanted to put that out there.*

*Mr. Hansel: What's our liability if someone drives a car out there, crashes and dies.*

*Chairperson Stamp: The CDD has some statutory limits on liability.*

*Mr. Woods: Correct.*

*Mr. Ward: Government agencies in Florida have sovereign immunity limits and they are relatively low, so we are covered for most of that. Someone dies out there, I'm going to tell you, that's a different ballpark because those are federal lawsuits not subject to the sovereign immunity limits for governmental agencies, but we do own it, we do carry enough insurance on it to cover us for the most likely of events that occur.*

## **FIFTH 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**

Chairperson Stamp asked if there were any additional audience comments; there were none. He asked if there were any additional Board comments.

*Mr. Miller: (Indecipherable).*

*Mr. Ward: We can remove that word Hatcher out of the title because we redeemed all the bonds that were associated with the Hatcher property, so I'll just change the title. It's now just Phase 7 and 8. We used the money. We moved it and redeemed the bonds that were due.*

*Chairperson Stamp: Our insurance went up 150% for this year, so we do have insurance.*

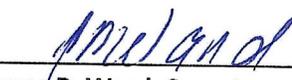
*Mr. Ward: Yes. We do. That number is going to change dramatically again going into 2023 now that we are taking over the operations of all of our assets, which at the moment are all in the HOA for insurance purposes.*

*Chairperson Stamp: Anything else? If not, we are not going to adjourn, but we will recess this meeting until December 2, 2021, at 8:00 a.m. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119. The shade session should not take very long. If there is nothing else, I will take a motion to continue.*

**On MOTION made by Mr. Ron Miller, seconded by Mr. Bart Bhatla, and with all in favor, the Meeting was continued.**

**Attest:**

**Flow Way Community Development District**

  
\_\_\_\_\_  
James P. Ward, Secretary

  
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Zack Stamp, Chairperson