

**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, December 15, 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
Martinn Winters	Assistant Secretary

Absent:

Tom Kleck	Assistant Secretary
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Also present were:

James P. Ward	District Manager
James Messick	District Engineer
Jere Earlywine	District Counsel
Greg Woods	District Counsel
Chris Donovan	Roetzel Law Firm

Audience:

Dave Boguslawski
Patrick Donegan

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, with the exception of Supervisor Kleck, 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

Administration of Oath of Office

Administration of Oath of Office for Mr. Manmohan Bhatla, Mr. Tom Kleck and Mr. Ronald Miller who were elected at the November 8, 2022, General Election

Mr. Ward: For the record, you have taken seats 14 days after the date of the election; therefore, there are two oaths you will take, one the Secretary of State has sent to you and you should have received that within the last week or so, and I will encourage you to fill that out, send them your \$10 dollars. That oath is different from the one I am going to give to you today simply because the statute for CDDs has a slightly different oath than the form of the Oath that you will get from the Secretary of State's office.

Mr. Ward, as a notary public, administered the Oath of Office to Mr. Bhatla and Mr. Ronald Miller.

FOURTH ORDER OF BUSINESS

Consideration of Resolution 2023-4

Consideration of Resolution 2023-4, a resolution of the Board of Supervisors of the Flow Way Community Development District, electing the Officers of the Board

The Board decided to keep the current Officers of the Board with Zack Stamp as Chairperson, Ron Miller as Vice Chairperson, and the remaining Board Members as Assistant Secretaries and Jim Ward as Secretary and Treasurer.

On MOTION made by Mr. Ron Miller, seconded by Mr. Bart Bhatla, and with all in favor, Resolution 2023-4 was adopted, and the Chair was authorized to sign.

FIFTH ORDER OF BUSINESS

Consideration of Minutes

November 17, 2022 – Regular Meeting

Chairperson Stamp added the last name of an audience member into the Minutes. He asked if there were any additional 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 November 17, 2022 Regular Meeting Minutes were approved as amended.

SIXTH ORDER OF BUSINESS

Consideration of Agreement

Consideration of Agreement with Nason, Yeager, Gerson, Harris, & Fumero, P.A. to assist the District Litigation Counsel (Woods, Weidenmiller), related to the Corps/SFWMD Permit(s) for the Preserves

Chairperson Stamp: We did come to an arbitration agreement of sorts with Taylor Morrison, but that left open any possible potential actions with the Army Corps of Engineers on the transfer of the permits. The Flow Way has the ownership, and the maintenance permit is in the HOA, they transferred that at the last minute when they still controlled the HOA, just as they transferred the ownership when they still controlled the CDD. There will be a couple purposes in engaging the expert. One would be to see what our options are going forward and what the approach ought to be to achieving those options. Greg and Jessica have had some discussions with her. She was Chief Counsel of South Florida Water Management District and has had a lot of experience with dealing with the Corps of Engineers. We all know the Corps totally changed their position. At the beginning of this, we had documentation from the Corps that was very supportive of what our position was on the transfer and the untimely transfer. Somewhere in the process, and one of them may have just been a personnel change, they totally switched sides without any explanation and refused to even return Ron's and Bart's phone calls. They have refused to answer our request for information to the extent that the first request sent a lot of stuff that had absolutely nothing to do with Flow Way. They have a document in their possession, that we also have, saying that they transferred the permit to the HOA in response to a letter dated something, but now they claim not to even have the letter that they are even responding to. So, something is there. To my knowledge, and Dave Boguslawski is on the call, but the last time we talked, Taylor Morrison had not yet provided the HOA with their application to transfer the permit. So, we don't know what happened. Part of that will be to try to figure out what we can do about that and what we can learn. This is a retainer agreement. It is not putting down cash. We will bill by the hour for services rendered and frankly she may have a great plan for us, or she may look at all this and say, well, Taylor Morrison has gotten away with it again. But it would be good to have a new set of eyes look at that and see what we can do.

Mr. Greg Woods: She does have some expertise in this area. We are going to have her look at it and try to set up a dog and pony show with the Corps and see if we can't convince the Corps that Taylor Morrison shouldn't be walking away from this without living up to its financial responsibilities. We may get in there, we may go to court, and it may all be for naught, but I think she brings an expertise that gives us our best shot at trying to pull it out at the Corps level. The Agreement with her firm still needs some work. We have to tweak it to alleviate some of Jim's concerns, but we should be able to find an agreement that works.

Chairperson Stamp: The HOA is also going to be signing a similar agreement.

Mr. Woods: The HOA will be sharing some of the costs.

Chairperson Stamp: And they have some tweaks that they want to make too. What I'm asking today is approval conceptually in engaging this person and this firm, and we will work out the contract provisions close to what you are seeing, but with some tweaks to it.

Mr. Ron Miller: Did you say that the HOA has the maintenance responsibility?

Chairperson Stamp: They have the maintenance permit and just parenthetically, during the depositions, Taylor Morrison was real clear that they ought to be both in the same party. It shouldn't be divided, but then they did this, so they are in violation of what they said ought to be.

Mr. Miller: This person you are talking about, is this person a nonlawyer consultant?

Mr. Woods: She is both. She is a lawyer and a consultant.

Chairperson Stamp: She was the Chief Counsel at South Florida Water Management District for a period of time.

Mr. Miller: What is bringing this person on board – do we have a big picture plan?

Mr. Woods: Our intent is to get her opinions from her experience with dealing with the Corps on how to best impose Taylor Morrison's obligations back upon it. And because she knows the Corps people, if she thinks there is a strategy that we can do it, that would be the goal, to get the Corps back on our side. There is a basis in the Corps regs for potentially holding Taylor Morrison liable if something happens on their watch. She knows the details of the Corps, what they will and won't do, and she knows the people, so I think we are going to have a sit down strategy with Zack and the HOA counsel, and talk to her and see what her gameplan is and then the goal would be if she thinks we have a good plan, we would then take it to the Corps. If she says we are SOL, then we would consider that.

Mr. Martinn Winters: Who is going to be the point person with her?

Mr. Woods: Zack will be at the meeting, and also the HOA, and their counsel will be at the meeting as well so we can have a team meeting and hear her thoughts.

Mr. Winters: Will one of the avenues of pursuit be considering putting political pressure on the Army Corps of Engineers through either Senator Scott or Senator Rubio?

Mr. Woods: I have not discussed that with them. I don't know if they have connections. I don't know if we have connections. Every different avenue you can take is a good thing, but I would see what she has to say before I go the political route.

Chairperson Stamp: Realistically, we have a large contractor that employs thousands of people and makes lots of contributions versus 1,000 homes here. I'm not against it; obviously, it's more my first instinct than anything else, but again, I would look to her.

Mr. Winters: Some politicians take their oversight responsibility seriously, particularly when it comes to environmental concerns and water management, and it might be that somebody's attention would be grabbed by a situation like this.

Discussion ensued regarding discussing ideas with new counsel regarding possible plans of action; the HOA sharing in the costs related to new counsel; the HOA wishing to be involved; the CDD not being able to cover costs for the HOA, but the HOA being able to share the cost with the CDD.

Mr. Bhatla: I would like us to pursue a more non-legal strategy with the Corps prior to proceeding with the legal basis, because if you have a legal basis, the Corps will completely shut up and bring their attorneys and it becomes another ballgame. We need an answer from them regarding what is the status and the regulatory framework.

Chairperson Stamp: We can file a lawsuit on our own. I'm not trying to avoid going that direction.

Mr. Miller: It seems to me that the Corps can do what they please with or without our permission.

Mr. Earlywine: I would just make one comment. These are litigation matters and you all are discussing this on a public record. To an extent, you are discussing strategy and things like that, it's on a public record and the Army Corps and other parties will be able to review that record and use it against you later.

Chairperson Stamp: I think the motion should be to accept this conceptually.

Mr. Ward: The motion should be to accept the Agreement subject to--

Chairperson Stamp: Conceptually and I would sign off on the modifications.

On MOTION made by Mr. Ron Miller, seconded by Mr. Bart Bhatla, and with all in favor, the Agreement with Nason, Yeager, Gerson, Harris, & Fumero, P.A. to assist the District Litigation Counsel (Woods, Weidenmiller), related to the Corps/SFWMD Permit(s) for the Preserves was approved conceptually, and the Chair was given authority to sign off on the modifications.

SEVENTH ORDER OF BUSINESS

Consideration of Agreement

Consideration of Agreement with Roetzel Law Firm, to act as appellate Counsel in the matter Flow Way CDD v. Taylor Morrision, Case Number 2020-CA-4147

Chairperson Stamp explained this Agreement was to hire appellate counsel which would be less expensive than continuing with Mr. Woods' firm. He noted Greg Woods was on board; this was not a rejection of Mr. Woods' firm. He indicated it was possible the appellate counsel might not be needed.

Mr. Woods: If we had a ten day jury trial, I would say that we should keep the appeal because we know all the testimony and all the evidence and all that, and someone else would have to read ten days' worth of transcripts and that would bring the cost up. In this case, the judge did it on motions. The motion for summary judgement, there is an arbitration award, and then there is a hearing on the motion to approve the arbitration, so you are really just doing it off the appeals, on the paperwork, the motions on the paperwork. So, it would take a new lawyer only the time it took to read the motion to begin working on the appeal and the appellate issues. Chris does appellate work full time. I do appellate work every couple of years. Chris knows judges on the Court of Appeals because he is in front of them all the time. I'm up there every couple of years. He explained Mr. Chris Donovan was very experienced in the appellate court and familiar with the various appellate cases. He noted Mr. Donovan's rate was reasonable. He indicated he could continue with the appeal; however, he felt Mr. Donovan would be less expensive, more efficient, more objective, and Mr. Donovan's experience would benefit the case.

Mr. Miller asked what was being appealed.

Chairperson Stamp: The judge entered the arbitration award, except for one provision, which we don't think she can legally do, and that one provision was to award them their attorney's fees for the directors.

Discussion ensued regarding the judge's arbitration award and how Taylor Morrison was taking advantage by interpreting the award to mean all attorney's fees would be awarded to Taylor Morrison.

Mr. Woods indicated Taylor Morrison was trying to take advantage; therefore, there would be a fee hearing and a fee expert would be retained for this purpose. He noted this would be a fight up the road.

Chairperson Stamp: That's the issue, does the judge have to enter the arbitration award in total or can she go in and amend it? Our position is she cannot amend it. But that's what appellate counsel will tell us. That's going to be the summary.

Discussion continued regarding the appeal and the arbitration award and the legal issues; the appeal being that the judge could not amend the arbitration award; if the appeal was lost there would be a hearing; the appeal taking up to a year and a half; and the case being complicated.

Mr. Chris Donovan introduced himself; most of his speech was (indecipherable). He discussed his qualifications and his experience. He discussed a similar case.

Mr. Miller asked whether Mr. Donovan had ever represented Taylor Morrison.

Mr. Donovan responded in the negative; he personally had not, however, it was possible someone in his firm had represented Taylor Morrison. He discussed the process of filing an appeal and the timeline associated.

Mr. Bhatla asked what the CDD's chances were of winning the appeal.

Mr. Woods indicated Mr. Donovan only had the very basics of the case and could not answer this question accurately at this time.

The audio recording cuts out here for approximately 2 minutes.

On MOTION made by Mr. Bart Bhatla, seconded by Mr. Ron Miller, and with all in favor, the Agreement with Roetzel Law Firm, to act as appellate Counsel in the matter Flow Way CDD v. Taylor Morrison, Case Number 2020-CA-4147 was approved.

*Chairperson Stamp: Not on the Agenda is engaging the fee expert, and this is again hoping that it gets staid until (indecipherable). **Audio cuts out here for approximately 4 minutes.***

Chairperson Stamp: Are we going to bring this person on to have them ready or start paying them money?

Mr. Woods indicated the CDD could wait a couple of months.

Mr. Bhatla: What is the request for the stay?

Mr. Woods stated it was basically, "Judge, why would you waste a day and a half of your time holding this evidentiary hearing on fees when the second district court of appeals might reverse because of all of the procedural complications of this case?" He stated he believed the judge understood this was not a clean case and understood there might be problems.

Mr. Bhatla: When are we going to apply for the stay?

Mr. Woods: We will try and get the stay, but she could say no.

Discussion continued regarding filing for a stay with the judge.

Chairperson Stamp asked if there was a consensus to allow Mr. Woods to pursue the fee expert. He noted he had been given the authority to sign off on the retainer contract if needed.

Mr. Miller asked if this could be done later.

Mr. Woods noted the judge controlled the timetable.

Mr. Miller stated (indecipherable).

Mr. Woods explained this was why the discovery was being done. He indicated he already asked for Taylor Morrison's invoices, checks on payments, engagement letters, conflict waivers, etc. He noted consideration of a fee expert could wait until the January meeting, maybe February. He indicated he just wished to be ready to move forward when the judge set the hearing.

Mr. Miller stated he did not understand why there was a hurry, and he would prefer to receive input from Mr. Donovan first.

Chairperson Stamp: For one, there is merit in locking somebody in if for no other reason than that the other side doesn't lock them in, but he is not going to be able to give us anything other than what he thinks we can win on appeal a year and a half from now, not what might happen in the judge's mind three weeks from now.

Mr. Bhatla: What is the downside of waiting?

Chairperson Stamp: It may slow down Greg's discovery not having the expert to talk to on how to evaluate, and then Taylor Morrison could hire this guy.

Mr. Wood: I'm not worried about that. I just want our expert to have plenty of time to read everything and be fully prepared so if this thing picks up with the judge, we can be ready. That said, he doesn't need to be on board for the next 30 days, but at the next meeting I may say they filed for this or that and we need to get on it.

Mr. Miller: Why don't we delay this for a month?

Chairperson Stamp: We will put it on the Agenda for January, and we can always roll it over again.

Mr. Miller: (Indecipherable) get his advice on this matter.

Chairperson Stamp: Keep in mind that if Greg and I have a private conversation with him and he says, "I absolutely, 100% assure you we are going to win this in a year and a half" and the judge orders the hearing to start in May, the fact that we might win it a year and a half from now doesn't obviate having to go through the whole process. So, I don't mind talking to him and seeing what he thinks, but he can't give us any answer that influences this decision.

Mr. Winters: Is there one person under consideration or more?

Mr. Woods: There are two. I lean towards the local guy who knows the judge as opposed to the guy who is more statewide.

Mr. Winters: So, the question is whether or not we give you the authorization to proceed to get someone on retainer, or authorize you to pick one of the two and choose that one? Does the Board make the decision to choose, or do you make the decision?

Chairperson Stamp: If the Board wants to do that we can defer until January and bring back a specific name and we can deal with it then.

Mr. Bhatla: In the meantime, on the arbitration award, where do we stand on that?

Mr. Woods: We need to appeal it. We filed the notice of appeal, so the brief will be due in about 120 days from the notice of appeal.

Mr. Bhatla: so is this basically in reprieve?

Mr. Woods: The judge changed part of the arbitration. We don't think she could change part of the arbitration, so we are appealing that to the court of appeals.

Chairperson Stamp: We won't see any of our money until this is all resolved. I think counsel is going to ask for a shade session in January to discuss some of these issues and it may become clearer.

Mr. Woods: More importantly, Taylor Morrison sent me a settlement proposal, so we at least have to discuss that along with other issues. The shade session will probably be part of the January meeting.

EIGHTH ORDER OF BUSINESS

Consideration of Engagement Letter

Consideration of Engagement Letter to assign the District's construction defect claims against Taylor Morrison to the law firm Roetzel & Andress, LPA

Mr. Woods: So, the HOA has about \$7 million dollars in claims against Taylor Morrison. They have done their 558 construction defect notice. We have about \$95,000 dollars in construction defect claims. In the HOA's case there is going to be a lot of deposition. There are going to be significant attorney's fees incurred. The thought I had, and ran by Zack, is that we assign our construction defect claims to the HOA for them to run with. This gives them one more claim to add in the numbers and they really are not spending any more. Their attorney's fees will be the same, and it saves the CDD Board attorney's fees. If

there were a resolution, basically you would take out the attorney's fees the HOA paid, and then say the settlement was for around 75% of the \$7 million dollars, after taking out the attorney's fees we would get 75% of our \$95,000 dollars which is very fair since it saves the CDD from incurring attorney's fees. It also helps the HOA by giving the HOA standing in pursuing the lake claims all at the same time. It makes a lot of sense from my perspective.

Mr. Miller: I like the concept.

Mr. Earlywine: I was trying to follow the assignment document and understand exactly how the proportional recovery would occur, especially in the context of a settlement if we are assigning the claim over. I want to understand, if the HOA gets a piece and the CDD gets a piece, how do you determine who gets what piece?

Mr. Woods: The HOA claims are set forth in amounts, and ours are set forth in amounts, so it would be pro rata. It would be our \$95,000 dollars percentage over \$7 million.

Mr. Earlywine: I realize they are fronting all the cost, I just know sometimes the litigation numbers that are requested are sometimes inflated, so I didn't know, is it based on what their initial claim is? Is that the proportion? You may just want to add that to the document to add that level of detail, so we are not arguing about it later with the HOA.

Chairperson Stamp: You and Greg or Jessica can work on it.

Mr. Woods: If you want to take the language and redline me something that would be fine. I don't think it will be a problem.

Mr. Earlywine: That makes sense, thank you for the explanation.

Mr. Bhatla: Do we have any exposure at all? We are just going to do the paperwork with the HOA, assign them – we don't have to spend any attorney fees, we don't have to do anything else. In other words, we have no exposure. They are going to fight for us. If they get settlement, we get a portion of it?

Chairperson Stamp: I assume they might consult with Jessica or Greg on something hear or there, so I won't say absolutely no attorney's fees, but they would be very minimal.

Mr. Bhatla: If we won \$50,000 dollars, but it cost \$50,000 dollars it might not be worth it.

Chairperson Stamp: That's one of the reasons I didn't want to file our own 558 claim for the last several months. I thought it might eat up everything we were asking for in legal fees. So, this is a way to grab a hold.

Mr. Miller: I think this is a good approach.

Discussion ensued regarding the CDD's construction defect claim; how much the CDD had spent recently cleaning out the stormwater pipes and pump replacement, etc. Portions of this discussion were (indecipherable).

Mr. Bhatla: Won't we be exposed during the deposition part of the process?

Mr. Woods: Theoretically yes, but I think given the size of the claim in relation to the other claims, if they did more than one deposition of one representative, I would be shocked.

On MOTION made by Mr. Ron Miller, seconded by Mr. Bart Bhatla, and with all in favor, the Engagement Letter to assign the District's construction defect claims against Taylor Morrison to the law firm Roetzel & Andress, LPA, was approved.

NINTH ORDER OF BUSIENSS

Supervisor's Requests

Chairperson Stamp indicated no requests were submitted.

Mr. Miller stated his ad hoc color committee went silent because the bridge was not going to be painted for a couple of years yet. He discussed whether painting the skirts around the bridge before the bridge itself was painted was a good idea.

Mr. James Messick noted the idea of painting the skirts now as opposed to waiting until the bridge was painted was suggested by the HOA. He stated it was in the budget and the skirts were noticeably less black, and he was just trying to follow what he was requested to do.

Mr. Bhatla asked how much it would cost to paint the skirts.

Mr. Ward indicated it would cost less than \$2,000 dollars.

Mr. Woods indicated he needed to leave and asked if there were any additional questions.

Mr. Ward: You are requesting a shade session?

Mr. Woods: We are requesting a shade session because we have received a global settlement proposal from Taylor Morrison.

Mr. Ward: And the date of the session will be January 19, 2023. I need a motion for that.

On MOTION made by Mr. Bart Bhatla, seconded by Mr. Ron Miller, and with all in favor, a shade session to be held January 19, 2023 was approved.

Chairperson Stamp: Anything else on the bridge? We can wait until summer to do that.

Mr. Miller: Learning the Amount, if its just \$2000 dollars, I don't care if we have to paint it again.

Chairperson Stamp: It's starting to look shabby.

Mr. Ward: And we did get a request.

Mr. Miller: The whole bridge looks shabby.

Chairperson Stamp: Well, that's just a couple years down the road.

Mr. Ward: That is a real capital improvement.

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

TENTH 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**

No additional report.

II. District General Counsel – KE Law Group, PLLC.

Mr. Ward introduced Jere Earlywine.

Mr. Earlywine: I just wanted to thank you all for the opportunity to work with you. I appreciate it and we are excited about it. I think the first assignment that we've gotten from Jim and Zack is to get started on some real property review and turnover items. That's what we will be following up on. Happy to answer any questions and thank you again for the opportunity.

III. District Engineer – Calvin, Giordano & Associates

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

Mr. Jimmy Messick: We did get bids back for the lake bank restoration project for Lake 12 and 20-21. We are currently reviewing those bids to make sure they included everything requested, and the cost, and we will be making a recommendation to the Board in January. The bridge we talked about, and certainly we can discuss pushing it back a couple of months to make sure we are in the dry season. I did notice coming in today the water levels in the canal had dropped down low, but we can continue the job. The spraying of the trees and grasses, wetland planting along the lake bank slopes, and the lily pads – we've ramped up our spraying in the last month to address the lily pads and try to get them under control. It is a several month process and we should remain patient as we address those lakes that are hardest hit. We do have to be careful of creating algae blooms if we over spray.

Chairperson Stamp: Why don't you explain how long it takes. I know some people don't know whether the lakes have been sprayed for lily pads or not.

Mr. Messick: From my understanding it can take up to several weeks to see results.

Discussion ensued regarding the lily pads in the canal, spraying the lily pads, and the risk of an algae bloom with over-spraying.

Mr. Messick explained you had to go slowly, spraying a little at a time, to get rid of the lily pads without causing an algae bloom; therefore, it could take several months to get rid of the lily pads.

Chairperson Stamp asked about the lake bank restoration.

Mr. Messick stated the bids were being reviewed; the plan was to begin restoration in February. He reported he and Mr. Stamp met last Tuesday with the fence contractor to get an overall proposal for the perimeter fence in the preserve area and was waiting for the numbers.

Chairperson Stamp indicated at the meeting with the fence contractor, he asked about whether the fence should be three strands or five strands.

Mr. Messick concurred and noted the contractor would check to see what the governmental agencies required.

Mr. Miller asked why any fencing was needed.

Chairperson Stamp responded liability.

Mr. Ward: You have some sovereign immunity limits, but sovereign immunity is a Florida Statute, so you're limited to the sovereign immunity limits as long as we are in State court. If it ever gets to be a federal matter, then there is no sovereign immunity for local governments in Florida. Since we got the preserves, we don't have a lot of problems with it, but we do have problems with animals in there, from time to time I've had issues with hunters in there. And it is a good idea to try to do something to try to protect that area on a long term basis and fencing it is the best way to do that.

Mr. Miller: Fencing is not going to do anything with respect to hunters or trespassers.

Chairperson Stamp: It gives you a defense if they had to climb over a fence or go through a gate.

Mr. Bhatla asked if there would be a reduction in insurance rates with installation of the fence.

Mr. Ward responded in the negative.

Mr. Miller indicated he was against spending any money on the preserves.

Mr. Earlywine stated installing a fence helped with trespass laws. He explained you needed to have no trespass signs posted every so many feet, or have a fence installed. He stated putting a

resolution which dealt with trespassing in place would be helpful as well. He indicated he would send Chairperson Stamp the language for the resolution.

Mr. Messick indicated it could cost approximately \$25,000 dollars, but he was still waiting for the bids.

Mr. Miller restated he was against spending this money on the preserves and would vote against it.

Mr. Bhatla asked if the CDD was required to fence the preserves through a regulatory requirement.

Mr. Ward stated he was unaware of any permit requirement, but the permits were massive and there could be a requirement in the permits somewhere. He noted it was somewhat fenced now, so he felt there must have been a requirement to fence it somewhere.

Mr. Messick stated he believed fencing the preserves would have been required by Army Corps or South Florida Water Management District.

Chairperson Stamp noted if Taylor Morrison fenced it, it must have been required, as Taylor Morrison would not have installed the fencing otherwise.

Mr. Messick stated there was no update regarding the Bonita Springs Floodwater Diversion Plan, although he did have a meeting scheduled tomorrow morning with Collier County and Big Cypress Basin and South Florida Water Management District during which this would be discussed. He noted consideration was being given to Collier County building a connection point for Bonita along (indecipherable) Boulevard which would prevent material from getting into the District's preserves.

Mr. Miller asked if the CDD could send a bill to the City of Bonita Springs for our expenses for this.

Chairperson Stamp: I don't know what the legal theory behind that would be. We've chosen to engage; we're not forced to engage.

Mr. Miller: We are protecting our property.

Chairperson Stamp: I understand, but I don't know what the legal theory would be.

Mr. Bhatla: It appears to be, until the event has occurred, everything is in anticipation. If the event has occurred, sure.

Mr. Miller: I'm talking about the expenses incurred in preventing this from happening.

Chairperson Stamp: Again, I don't know the legal theory on this. It would be analogous to saying, "I thought Joe was going to break into my house, so I bought an alarm system and I'm going to send him the bill. I'm just protecting my property."

Mr. Earlywine: What are the expenses for that would be sent to the City?

Chairperson Stamp: That's the question. What expenses could we send to them that there would be a legal basis for demanding they pay.

Mr. Miller: I though we paid people to represent us at some of these meetings.

Chairperson Stamp: Greg's been to one meeting. I've been to one meeting. Bart's been.

Mr. Bhatla: I had a great deal of interest from Southwest Florida regulatory agency. They said it was a very busy time after the storms, to be patient, but we have opened that avenue in case they want to sit down and have a civil discussion because they don't want to go to court. There is a great deal of precedent as they have been pumping floodwater into other preserves, Corkscrew, and other preserves, so there is a precedent. I think we need to talk to the City and if it is facilitated through the regulatory agency and the regulatory agency indicated they issued no permit.

Chairperson Stamp: Yeah, we slowed down the permit. There's no question of that.

Mr. Miller: I'm just saying to the extent that we have representation at these meetings to protect our personal property, we should send them a bill. Do I expect them to pay it? No, but that would get their attention.

Chairperson Stamp: I think you are right they will never pay it, because they have no legal obligation to pay it.

Mr. Earlywine: Local governments have a lot of immunity on different fronts depending on whether you consider it a legislative, judicial, or quasi-legislative, quasi-judicial act, so I can circle up with Jim and try to understand it a little bit better, what the nature of the claim would be and the amounts, but generally speaking, unless you have a contract or something like that, it's pretty hard to recover money.

Mr. Winters: I think we should invite Burt Saunders to a Town Hall and have them explain to us how this isn't a problem. His firm also represents Bonita Springs.

Mr. Messick stated the Water Quality Sampling Report taken in October 2022 was taken in five areas at three different times. The Report included a tropic state index level for each location and the only one which was not considered good was the Flow Way Canal which had high concentrations of Chlorophyl A, BOD, and dissolved oxygen, but after speaking with the engineer who took the report, it was noted the sampling was taken two weeks after Hurricane Ian and certainly there was a potential that upstream farmlands were flushed from the floodwater and raised these levels. He noted the levels would be retested in February.

IV. District Manager – JPWard & Associates, LLC

a) Financial Statements for period ending November 30, 2022 (unaudited)

b) Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities (Continuing Item – no report for December, 2022)

No report.

Mr. Miller asked if the District had received any assessment payments.

Mr. Ward responded in the affirmative; approximately \$400,000 dollars at this point, but he expected more payments to come in during December.

Chairperson Stamp: We have communicated to the HOA that we are conceptually fine with the three items we talked about last time, which includes the entrance of the bridge, the irrigation and all the permits which we have counsel now working on.

ELEVENTH 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 audience comments.

An unidentified audience member asked a question which was indecipherable.

Mr. Messick: We had a plan in place last year. We were able to budget a little bit more this year to ramp up those efforts and we started a couple months ago in the worst lakes, and we have a several month plan, starting with each tier where the worst lakes are addressed first. It will take a couple weeks for those to die out.

Chairperson Stamp: Two things, one we ran out of money. We had to do short term borrowing and had to wait until we started getting money for this fiscal year, and the second, I'm told, there is a way to kill the lily pads much quicker, but then they rot on the surface and the smell is horrendous, so it's better to take this slow.

Mr. Messick: There are also mechanical ways to address this, but the expenses are quadrupled.

Mr. ____: Part of my comments there, all of the property tax was significant, and just to try to minimize people complaining to you, that's the kind of stuff they look at (indecipherable).

Mr. Miller: Just an FYI, these minutes are recorded.

Mr. Boguslawski: In the packet that you put out before the meeting, there is a figure that shows all the lakes and everything. And in there, I've never noticed this before, you put a Flow Way CDD boundary and a property boundary. There's a difference between them. In the chunks of land between the CDD boundary and the property boundary, who owns those and is there any environmental responsibility that one of us has?

Chairperson Stamp: They are looking at the map, but keep in mind most of the preserves are outside of the CDD boundary. That was part of our dispute, whether the CDD could maintain and own property outside of its own boundary.

Mr. Boguslawski: I just never noticed this on the map before that there are these big differences. All you are doing with that map is tracking the way the ownership goes?

Mr. Ward: The property boundary line is basically the preserves outside the boundary of the CDD. The external preserves, the 1,000 acres, that's what you see outside our boundary.

Mr. Miller: It's confusing that we own property that's outside our boundaries. (Indecipherable). Taylor Morrison has forced ownership of this property on us.

TWEFTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Regular Meeting on January 19, 2023

Chairperson Stamp: The next meeting will be January 19. We will have the shade session in conjunction with that meeting.

THIRTEENTH ORDER OF BUSINESS

Adjournment/Recess

The meeting was adjourned at approximately 2:40 p.m.

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


James P. Ward, Secretary

Flow Way Community Development District

Zack Stamp, Chairperson