



**SPECIAL MEETING OF THE FOREST LAKES FIRE
DISTRICT BOARD OF DIRECTORS
DRAFT MEETING MINUTES
JANUARY 27, 2023**



The Board of the Forest Lakes Fire District met in special session on Friday January 27, 2023, at 9:00 am. Board members attended telephonically, with Chief Rodriquez also attending telephonically from the main equipment bay of the fire station. (Dial in information: 888-861-1255; Participant Pin: 767585#.) Members of the public were invited to join the Chief at the fire station.

1. Call To Order. The meeting was called to order by Chairman John Hennessey at 9:08 am.
2. Pledge Of Allegiance (Omitted).
3. Roll Call of Fire Board Members. In addition to Chairman Hennessey, in attendance were Clerk Julie Swanson and Treasurer Pete Batschelet, all by telephone. Due to technical difficulties Member Massion was unable to attend. Due to a schedule conflict, Member Torres likewise was unable to attend. Also in attendance was Chief Dave Rodriquez. There were no members of the public in attendance. We had a quorum.
4. Chair's Welcome and Activity Report. Chairman Hennessey welcomed everyone, and thanked them for making time in their schedules for this special meeting, which he assured them will not be the norm going forward. Due to the short notice, we are holding today's meeting telephonically. He used an expanded agenda to help manage the discussion. In Julie Mattila's absence he stated he will publish draft meeting minutes by close of business today, and John Nelson will post the same. We have only one item to address today, and that is to seek board approval to allow the Chair to represent the district in signing Amendment 1 to the Option and Lease Agreement with DW Tower, and its related Confirmatory Estoppel, both of which had been sent to the board prior to the meeting.
5. BUSINESS.
 - a) Motion and possible action re: Authorize Board Chair, John Hennessey, to review, modify, and sign the First Amendment to Option and Lease Agreement with DW Tower as well as the associated Confirmatory Estoppel.

By way of background, at this month's regular board meeting, it was reported that an agreement in principle as to how best to handle the encroachment issue between DW Tower and Zion Bank had been reached, with the understanding the final details would be ironed out at a conference call on January 25th with the assumption that the final details could be accomplished using the same board approval granted to Chairman Hennessey at this month's board meeting.

The subject meeting was held via teleconference January 25th as scheduled with FLFD representatives (Chairman Hennessey, Chief Rodriquez and Julie Mattila), Zion Bank's representatives (Lee Davis and Garrett Gross), DW Tower's attorney (Matt Traiser) and the district's legal counsel (Bill Whittington and Devon White), during which final details were agreed upon in two areas: Amendment 1 language and the related Estoppel.



At the advice of counsel, the final solution details, agreeable to all parties, were deemed to be changed enough to require new board approval, necessitating a special session of the board.



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As noted in the Chairman’s Remarks, the revised documents requiring Chairman Hennessey’s signature were sent to all board members prior to the meeting:

-  First Amendment to DW Lease - DW Tower Redline v1 1.25.23 (Execution).docx
874 KB
-  Confirmatory Estoppel 2023-0125.docx
18 KB

Chairman Hennessey then noted the significant changes to Amendment 1 language, with Paragraphs 3 and 4 added to address the Confirmatory Estoppel and the APS Utility agreement:

3. **Estoppel.** Landlord and Tenant acknowledge and agree that additional time is necessary before Landlord can comply with its obligations under Section 22(g) of the Agreement. Tenant authorizes and permits Landlord to have an additional 15 days from the later of the date this Amendment is executed and Zion Bank’s written consent, to execute, acknowledge and deliver to Tenant, in writing, an estoppel as contemplated by the parties.

4. **Warranties.** Section 10(b)(ii) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(ii) Except the interest of Arizona Public Service Company pursuant to that Utility Easement dated December 13, 2019, recorded January 22, 2022, the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement;”

Additional Amendment 1 language changes included the revised legal description of premises and lease area (was simple rectangle, 68 ft by 26 ft, or 1,768 sq. ft.) with the new description being an irregular shape of 1,828 sq. ft.:

**EXHIBIT 1 - Revised
DESCRIPTION OF PREMISES**

The Premises consists of any easement of record over the Property and that portion of the Property utilized by Tenant or its subtenants for ingress, egress and utility purposes from the Premises to a public right of way, including but not limited to:

A PORTION OF ALL THAT CERTAIN PARCEL OF LAND LYING IN THE TOWN OF FOREST LAKES ESTATES, COUNTY OF COCONINO, STATE OF ARIZONA, DESCRIBED IN INSTRUMENT 3567810, FURTHER DESCRIBED AS:
 BEGINNING FROM A COMPUTED POINT, FOUND ON THE NORTHWEST CORNER OF SAID PARCEL, AND HAVING ARIZONA STATE PLANE COORDINATES E:1037289',-N:1215833';
 THENCE, N 56° 12' 38" E FOR A DISTANCE OF 26.00 FEET TO A POINT;
 THENCE, S 34° 23' 36" E FOR A DISTANCE OF 70.97 FEET TO A POINT;
 THENCE, S 55° 57' 04" W FOR A DISTANCE OF 18.81 FEET TO A POINT;
 THENCE, N 34° 37' 47" W FOR A DISTANCE OF 0.89 FEET TO A POINT;
 THENCE, S 61° 02' 56" W FOR A DISTANCE OF 5.15 FEET TO A POINT;
 THENCE, N 34° 24' 09" W FOR A DISTANCE OF 4.84 FEET TO A POINT;
 THENCE, S 55° 35' 51" W FOR A DISTANCE OF 2.06 FEET TO A POINT;
 THENCE, N 34° 23' 33" W FOR A DISTANCE OF 64.91 FEET TO THE POINT OF BEGINNING
 CONTAINING 1,828 SQFT -OR- 0.04 ACRES.

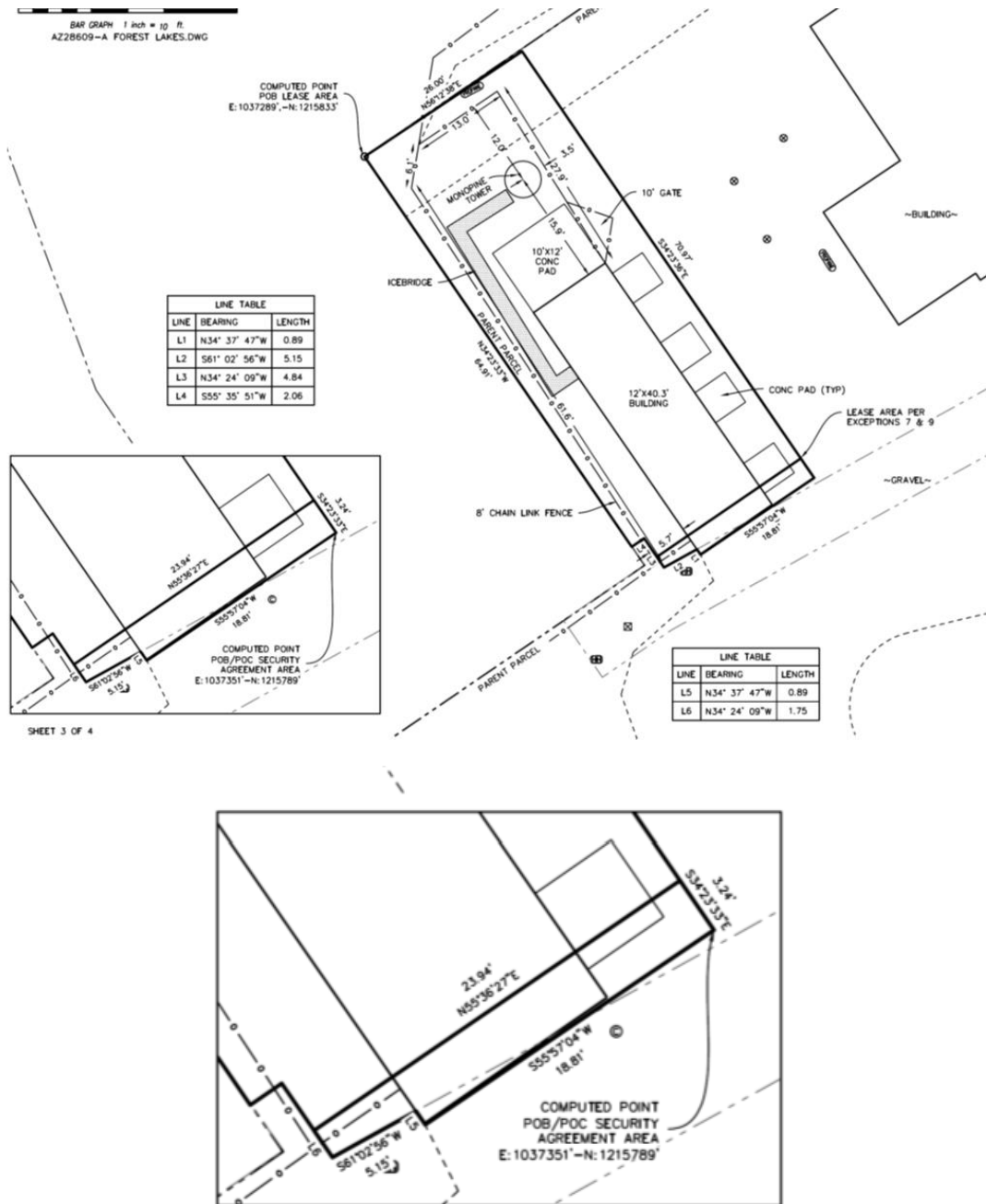
TOGETHER WITH THAT CERTAIN 10' INGRESS AND EGRESS EASEMENT PER DOCKET 853, PAGE 168 IN THE OFFICIAL RECORDS FOR COCONINO COUNTY, STATE OF ARIZONA.



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The graphical description of the revised premises and lease area was discussed, including the small area that is encroached upon by the new lease area, per Amendment 1, onto Lot 297, which was provided to Garrett Gross, Zion Bank, to be incorporated into the legal description of Amendment 3 of the LPA agreement between FLFD and Zion Bank prior to recordation:





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The final change to the documents to be signed addressed the Confirmatory Estoppel, where the following was included:

- (vi) Landlord does not make any representation or warranty as to the accuracy of Exhibit 1-Revised as set forth and included within the First Amendment to Ground Lease.

There being no further discussion, Member Swanson made a motion to authorize board chair, John Hennessey, to review, modify, and sign the first amendment to Option and Lease Agreement with DW Tower as well as the associated Confirmatory Estoppel. Member Batschelet seconded the motion, and the motion passed unanimously.

6. Fire Board Comments. Chairman Hennessey noted he will get the appropriate documents signed and notarized and sent overnight by FedEx to Matt Traiser.
7. Adjournment. There being no further business before the board the meeting was adjourned at 9:22 am.