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September 12, 2006

**MEETING OF THE BOARD OF COUNTY COMMISSIONERS**  
**OF INDIAN RIVER COUNTY**

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1840 25<sup>th</sup> Street, Vero Beach, Florida, on Tuesday, September 12, 2006, at 9:00 a.m. Present were Chairman Arthur R. Neuberger, Vice Chairman Gary C. Wheeler, Commissioners Sandra L. Bowden, Wesley S. Davis, and Thomas S. Lowther. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, Executive Aide to the Board Kimberly Massung, and Deputy Clerk Athena Adams.

**1. CALL TO ORDER**

Chairman Neuberger called the meeting to order at 9:00 a.m.

**2. INVOCATION**

Reverend Ray Huddle, Church of Redeemer Lutheran Church, delivered the Invocation.

**3. PLEDGE OF ALLEGIANCE**

Chairman Arthur R. Neuberger led the Pledge of Allegiance to the Flag.



**4. ADDITIONS/DELETIONS TO THE AGENDA /EMERGENCY  
ITEMS - NONE**

1. Correction to Item 9.A.1 (page 172)

ON MOTION by Commissioner Wheeler, SECONDED  
by Commissioner Davis, the Board unanimously approved  
the change to the Agenda.

**5. PROCLAMATIONS AND PRESENTATIONS – NONE**

**6. APPROVAL OF MINUTES – NONE**

**7. CONSENT AGENDA**

Commissioner Bowden asked to pull, for discussion, Items 7.B, 7.J, 7.N, and 7.Q.

MOTION WAS MADE by Commissioner Davis,  
SECONDED by Commissioner Wheeler, to approve the  
Consent Agenda, as amended.

**7.A. APPROVAL OF WARRANTS – AUGUST 25-31, 2006**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of August 25-31, 2006, as requested.

**7.B. RESIGNATION AND APPOINTMENT TO THE PLANNING AND ZONING COMMISSION (P&Z)**

Commissioner Bowden was unhappy with “the tone” of a newspaper article she read regarding this matter. She discussed appointments to County Boards and thanked members who serve on these Boards. She also thanked Commissioner Lowther for his expertise and leadership in service to the Board.

MOTION WAS MADE by Commissioner Bowden, SECONDED by Commissioner Davis, to accept the resignation of Mr. Bob Bruce and approved the appointment of Mr. Richard D. Cahoy as the District 2 Appointee to the Planning and Zoning Board.

**7.C. APPOINTMENT TO THE AGRICULTURE ADVISORY COMMITTEE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved the appointment of Dr. Dan Chellemi as the Irrigation appointee to the Agriculture Advisory Committee,

replacing Mr. Ralph Lindsey, as recommended in the memorandum of September 6, 2006.

**7.D. OUT-OF-COUNTY TRAVEL TO ATTEND THE FLORIDA ASSOCIATION OF COUNTIES 2006-2007 LEGISLATIVE POLICY COMMITTEE MEETINGS – SEPTEMBER 27-29, 2006**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved out-of-County travel for Commissioners and staff to attend the Florida Association of Counties 2006-2007 Legislative Policy Committee Meetings September 27-29, 2006 at the Sheraton Sand Key in Pinellas County, as recommended in the memorandum of September 1, 2006.

**7.E. ENTERPRISE GEOGRAPHIC INFORMATION SYSTEMS (GIS) PURCHASE OF SOFTWARE – SUPPLEMENTAL WORK ORDER #2**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved Supplemental Work Order Number 2 to the Professional Services Consulting Agreement with Geographic Technologies Group, and authorized the County Administrator to execute same, as recommended in the memorandum of August 25, 2006.

**7.F. SAM MESSINA 23 L.L.C.'S REQUEST FOR FINAL PLAT APPROVAL  
FOR A SUBDIVISION TO BE KNOWN AS THE ENCLAVE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously granted final plat approval for the Enclave Subdivision with recordation of the mylar only after the letters of credit have been received, reviewed, approved and validated by the County Attorney's office and the contracts have been executed by the County Administrator, as recommended in the memorandum of September 5, 2006.

**7.G. ROBERT & DENISE WEBSTER'S REQUEST FOR PARTIAL RELEASE  
OF AN EASEMENT AT 5240 95<sup>TH</sup> STREET (LOT 5, THE RIVER BOAT  
CLUB SUBDIVISION)**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved Resolution 2006-120 releasing a portion of an easement on Lot 5 of the River Boat Club Subdivision.

**7.H. GH VERO DEVELOPMENT LLC REQUEST FOR PARTIAL RELEASE  
OF AN EASEMENT AT 2218 FALLS CIRCLE (LOT 21, THE FALLS AT  
GRAND HARBOR PLAT 29)**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved Resolution 2006-121 releasing a portion of an easement on Lot 21, The Falls at Grand Harbor Plat 29.

**7.I. IRC JAIL EXPANSION PROJECT CHANGE ORDER #4 – VIDEO  
VISITATION SYSTEM**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved AIA Change Order #4, establishing the Video Visitation Guaranteed Maximum Price of \$792,841.00 for the IRC Jail expansion project and authorized the Chairman to execute the documents; authorized the procedures for managing the progress payments for Change Order #4, and approved that Payment and Performance Bonds be required at 100% of the cost of construction, as recommended in the memorandum of September 5, 2006.

CHANGE ORDER IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**7.J. ACCEPTANCE OF CHANGE ORDER NO. 16 FOR THE NEW COUNTY  
ADMINISTRATION BUILDINGS**

Commissioner Bowden appreciated the update on the Administration building and questioned whether the potential for leakage, mentioned in the report, was a design flaw in the wall height of the towers. She inquired whether the Architect or the County would foot the bill and wanted to be updated on any other design flaws.

Project Manager Steve Blum explained that it was a feature that was always a bit difficult, but with the combination of the main roof of the building and the meeting of the tower roofs they decided to go ahead and make this change to prevent any future problems. He added that the County would cover the cost to make the change.

ON MOTION by Commissioner Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Change Order No. 016 and authorized the County Administrator to execute same, as recommended in the memorandum of September 6, 2006.

**7.K. MISCELLANEOUS BUDGET AMENDMENT 023**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved Resolution 2006-122 amending the fiscal year 2005-2006 Budget.

**7.L. OSLO ROAD/LATERAL “J” CANAL BRIDGE REPLACEMENT CHANGE  
ORDER NO. 4 – 60” RCP REALIGNMENT AND FINAL ROADWAY**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved Change Order No. 4 – 60” RCP realignment and final roadway, with Lucas Marine Construction, Inc., with funding as specified and as recommended in the memorandum of August 22, 2006.

CHANGE ORDER IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**7.M. APPROVAL OF BID AWARD FOR IRC BID #2007003 (ANNUAL BID  
FOR CORRUGATED STEEL AND ALUMINIUM PIPE) PUBLIC WORKS  
DEPARTMENT/ROAD & BRIDGE DIVISION**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously awarded the Bid to Contech Construction Products, Inc., as the lowest and most responsive bidder meeting the specifications as set forth in the Invitation to Bid; authorized the Purchasing Division to issue blanket purchase orders or individual job purchase orders, as needed, for the period of October 1, 2006 through September 30, 2007 with the recommended bidder; and, authorized the Purchasing Manager to renew this bid for two (2) additional one (1) year periods subject to

satisfactory performance, zero cost increase, vendor acceptance and the determination that renewal of this annual contract is in the best interest of Indian River County, all as recommended in the memorandum of September 5, 2006.

**7.N. PROGRESS REPORT – NEW COUNTY ADMINISTRATION BUILDINGS  
AND NEW EMERGENCY OPERATIONS CENTER**

Commissioner Bowden sought clarification of language/terminology in the Schedule (page 103, Progress Report) that reads, “ ... may require a modest time extension, at least a provisional time extension.”

Project Manger Steve Blum explained there are always concerns at the end of a job where things might get out of sequence hence the possibility of a request for time extension.

MOTION WAS MADE by Commissioner Bowden,  
SECONDED by Commissioner Davis, to approve staff’s  
recommendation.

A brief discussion ensued regarding the date of completion.

The Chairman CALLED THE QUESTION and the  
Motion carried unanimously. The Board accepted the  
progress report as presented and as recommended in the  
memorandum of September 6, 2006



**7.O. APPROVAL OF RESOLUTION RE-AUTHORIZING IMPOSITION OF 911**

**FEE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved Resolution 2006-123 providing for the establishment of a countywide “911” telephone fee to pay for system charges; providing for severability; providing for inclusion in the Indian River County Administrative Code; and providing for an effective date.

**7.P. APPROVAL OF STATE AND FEDERALLY FUNDED SUBGRANT**

**AGREEMENT CONTRACT NUMBER 07BG-04-10-40-01**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved the FY 06/07 EMPA portion of the State Funded Subgrant Agreement and funds to be allocated as follows:

1. Continued funding of the salaries and benefits of the existing Emergency Management Planner position detailed in the 001-238 General Fund budget account and the expenditures of the remaining funds to be determined at a later date (EOC project).

The Board also authorized the Director of Emergency Services John King as the contract manager for this agreement, as recommended in the memorandum of August 31, 2006.

COPY OF AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**7.0. BOARD CONSIDERATION TO APPROVE A COST-SHARE GRANT  
AGREEMENT WITH THE STATE DIVISION OF HISTORIC RESOURCES  
TO UPDATE A 1992 INDIAN RIVER COUNTYWIDE ARCHAEOLOGICAL  
SURVEY**

Commissioner Bowden noted that the County's match for this Grant was not quite 50/50 and inquired why this update was needed, and if it would go for salary.

Community Development Director Bob Keating replied that it does not go to staff salary but would go towards hiring a consultant. He briefly explained the need for the Grant and the principal result of the archaeological study done in 1992.

Commissioner Davis provided explanation as to his knowledge and understanding of the matter. Discussion ensued regarding architecture, sand mines, and artifacts.

ON MOTION by Commissioner Bowden, SECONDED by Commissioner Wheeler, the Board unanimously approved the Grant Award Agreement and authorized the County Administrator to sign the agreement and other related grant documents on behalf of the County, as recommended in the memorandum of September 5, 2006.

COPY OF AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.A. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE**

**9. PUBLIC ITEMS -**

**A.1 PUBLIC HEARINGS - THOMAS WILMOTH'S REQUEST FOR ABANDONMENT OF THE PORTION OF 14<sup>TH</sup> STREET SW EAST OF 32<sup>ND</sup> AVENUE SW *LEGISLATIVE***

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

Planning Director Stan Boling explained that this was a request to abandon a segment of right-of-way (a paper street) located in the south County. He reviewed his memorandum of September 5, 2006 through a slide presentation and outlined the sites and surrounding areas involved. He noted that County staff and utility providers have reviewed the Petition and determined that the specific right-of-way segment is not needed for access to any of the lots within Grovenor Estates as they all have frontage and access from the other roads. He asked the Board to approve staff's recommendation to retain the 20-foot wide drainage and utility easement down the center of the existing right-of-way.

*The Chairman opened the Public Hearing.*

*There were no speakers and the Chairman closed the Public Hearing.*

ON MOTION by Commissioner Lowther, SECONDED by Commissioner Davis, The Board unanimously approved Resolution 2006-124 providing for the closing abandonment, vacation, and discontinuance of a portion of

14<sup>th</sup> Street SW lying east of 32<sup>nd</sup> Avenue SW in Grovenor Estates Unit 2A reserving a 20 foot drainage and utility easement lying 10 feet on both sides of the centerline of 14<sup>th</sup> Street SW, said land lying in Indian River County, Florida.

**9.A.2. CONTINUED PUBLIC HEARING FROM MEETING OF AUGUST 22, 2006: VALUE CONCEPTS, INC.'S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL TO CONSTRUCT A WIRELESS COMMUNICATIONS TOWER (QUASI-JUDICIAL)**

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE  
OFFICE OF THE CLERK TO THE BOARD

Planning Director Stan Boling recapped his report from the prior public hearing on August 22, 2006. He noted that Father Crowley's request to have the item postponed to today did not change staff's recommendation.

*The Chairman opened the Public Hearing.*

**Father John Crowley**, Pastor of St. John of the Cross Catholic Church, was concerned with the safety aspect of radio frequency radiation. He expressed the Church's plans to build a school near the site location of the proposed tower and was concerned with danger and exposure to radiation especially for the children. He suggested Nextel locate the tower approximately 2 miles north (agricultural area) in an unpopulated area.

Chairman Neuberger inquired if staff had done any research on radio frequency radiation.

County Attorney Collins explained the provisions of the Telecommunications Act of 1996, which sets the National Policy regarding wireless telecommunications siting. He cited provisions of the Act, which states, in part, “No State or Local Government may regulate personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” Therefore, the Board could not regulate placement of the tower based on the effect of radio frequency radiation, he opined.

Commissioner Lowther asked if the Board could decide not to have the tower at that location.

Attorney Collins pointed out that based on staff’s recommendation there was no indication that the applicant did not meet all the criteria and in that instance it has to be approved.

Discussion ensued regarding regulations and FCC standards, safety factors from aerial spraying if the tower was placed in an agricultural area, and cell phone radiation versus radio frequency radiation.

**Father Richard LaCorte**, Assistant Pastor, St. John of the Cross Catholic Church, did not question the legality of the issue but because there was no hard evidence, he felt presumption has to be in favor of no knowledge. He asked to be corrected in his assumption that there is nothing to prevent other devices from being attached to the tower (thereby increasing the amount of radiation, which would be even more serious) in the future because the contract is an open ended one.

Director Boling replied that the assumption was correct. He stated that the County's regulations in the wireless master plan encourage and require multiple users to limit the number of towers and this tower could have three (3) wireless providers on it.

**Father Crowley** asked why should they take the risk since there was no certitude on the damage created by radiation. He again asked that the tower be moved to another mile and a half away and not jeopardize the lives of young kids and elders.

**Lannie Greene**, representative of Nextel, discussed coverage needs that would not be met if they relocate the tower. He also addressed the matter of radiation and read portions of the American Cancer Society Study regarding radio frequency waves, which it compares to the same as in our microwave ovens.

**Dr. Cynthia Consalo**, resident, and member of the Governor's Council on Excellence in Long-term Care, spoke on the factors of radiation, one of which is what the media says. She recalled an article in the morning newspaper regarding microwave popcorn that induces cancer. She expressed that it was the Governor's and the Council's concern that the "quality of life and dignity of this fragile population" be maintained.

**Ken Shearn**, 7300 20<sup>th</sup> Street, #616 Village Green, was concerned with the radius of radiation and its long-term effect. He suggested the use of eminent domain to move the tower.

**Mr. Greene** commented on the study mentioned by Father Crowley and his suggestion that the tower needed to be a mile or two away from populated areas. If that was the case, he said, they would not have any wireless coverage anywhere except for rural areas. He argued that the tower does pose a public good, in that, it is critical for some of their customers. Further, Nextel would comply with FAA and FCC rules and Indian River County ordinance as well.

Chairman Neuberger asked what would result if the Board denied the application and asked Nextel to move a mile north.

**Mr. Greene** responded that it would damage their coverage and there was a lot more involved than just relocating.

Discussion ensued regarding moving further north and areas to be covered. Commissioner Lowther believed they should look towards serving the need of the people.

**Mr. Greene** asked that the hearing be deferred to the next BCC meeting so he could bring his technical support experts to present different scenarios of relocating and to show what the tower would look like if is moved a mile away.

Commissioner Davis asked Attorney Collins what would happen if the Board denies the application.

Attorney Collins explained that the applicant would have the option of looking for another piece of property or going to court.

Discussion ensued on whether to deny the request, the consequences, and collocation.

Commissioner Lowther suggested a motion could be made to deny and have Nextel move the tower further west.

**Mr. Greene** again requested that Nextel be given the same courtesy extended to Father Crowley, to return to the Board with more information on why another location would not work, before contemplating a denial of their application.

**Mr. Shearn** inquired of the height of the towers on 12<sup>th</sup> and 8<sup>th</sup> Street. Director Boling replied about 280 feet.

**Dennis (last name unclear)** asked if additions could be made to the height of the 280-foot tower. Director Boling informed that it could be done but not without going through the application process again.

**Mr. Greene** responded regarding the height of tower being extended in the future. Discussion ensued regarding Nextel's specific need for tower heights.

**Father LaCorte** asked the Board to take tower heights into consideration as well.

**Mary Martin**, representing Pine Creek Condominium, trusted that the Board would study the issue and make the right decision for residents.

**Bob Johnson**, Coral Wind Subdivision, pointed out that Nextel's website showed that there is adequate coverage for Indian River County. This is an upgrade to their system, which indicates there is no deficit in coverage at this location and as such seemed like the tower is not needed.

**Mr. Greene** reported that Nextel has about a half million-dollar investment in this tower and if there were no need to build or if they could have collocated on another tower they would not be doing this.

**Bill Valyo**, Building Chairman at St. John's, stated that Nextel may have a half million but they have a \$6 million investment, which justified their presence at the hearing.



**Mr. Shearn** thought the information from the Internet was interesting. He asked the Board not to give Nextel the tower if they do not need it and let them take us to court and use Nextel's words against them.

**Geraldine Simmons**, Heritage Plantation, asked the Board not to base its decision on money because health cannot be bought.

**Ms. Consalo**, Indian River Estates, commented that radiation has not been studied systematically and urged the Board to deny the application.

**George Reardon** who lives in the vicinity of the proposed tower hoped the Board would not be swayed by big bucks.

**Gene Mesley** believed that we need technology in our world today and that we must share a world of concerned leaders and parents. However, he had a safety concern and asked the Board to consider what they were doing for "young America".

**Dennis** reiterated prior comments that if we allow Nextel to erect a tower, who is to say that other communications companies would not want to erect towers themselves.

**Ed Garthwait**, Spanish Lakes Fairways, Fort Pierce, also a member of St. John's Church, was concerned for people's safety. He inquired if this was a change of use for the property.

Director Boling explained that this is a special exception use request that will only affect a small portion of the site and there are criteria to be met.

**John Connolly**, Grove Isle, St. John's parishioner, spoke of cell phone radiation and its effects on his heart/pacemaker.

**Trista Patton**, Parishioner of St. John's, was aware of the need for coverage but opposed the tower out of concern for her young child who attends St. John's. She felt there were enough alternatives to deny the request.

**Guy Mastrangle**, Spanish Lakes Fairways and Parishioner of St. John's, recited an ancient axiom (Latin) "Salus populi supremo lex" – translated "the safety of the people is the first law."

*There were no other speakers and the Chairman closed the Public Hearing.*

MOTION WAS MADE by Commissioner Lowther,  
SECONDED by Commissioner Bowden, for discussion, to  
deny the application for the tower.

The Board discussed population issues, the needs of the people and public safety issues. Commissioner Bowden felt that Nextel should be given another opportunity to return and explain themselves. Commissioner Davis did not believe Nextel experts could bring much more light to the situation.

Commissioner Wheeler read laws of the 104<sup>th</sup> Congress of the United States regarding regulation of personal wireless service facilities on the basis of environmental effects of radio frequency emissions. He noted that they (Commissioners) have all taken an oath to uphold the law and did not think they were in a position to make decisions otherwise and that they should not make decisions on emotions. He sympathized with expressed concerns but felt he had no options based on what he had heard and read.

Commissioner Davis wanted to see the tower further away from population with an increased coverage area. Commissioner Lowther discussed objections with the Federal Government laws but thought this situation was different because of people's safety.

Commissioner Bowden clarified that she did not second the Motion based on radiation. She agreed with Commissioner Davis' comments and was interested in having Nextel come back and speak with the Board. She asked if there was another site for them to look at.

Discussion ensued regarding 800 MHz frequency. Commissioner Wheeler felt that if the Board was contemplating denial, it was only fair to continue this matter at Mr. Greene's request.

Chairman Neuberger addressed comments heard throughout the discussions. He did not see the matter as a big threat and would like to see the tower moved back. He recalled that an Attorney had told him, long ago, to base his decision on competent substantial evidence.

The Chairman CALLED THE QUESTION and the MOTION carried by a vote of 3-2 (Commissioners Neuberger and Wheeler opposed) to deny Value Concepts Inc.'s request for Special Exception Use approval to construct a wireless communications tower at the proposed site.

*The Chairman called a break at 10:37 a.m. and reconvened the meeting at 10:47 a.m with all members present.*

**9.A.3 HEON YOUNG KIM'S REQUEST FOR SMALL SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT APPROVAL TO REDESIGNATE ± .52 ACRES FRP, L-2 TO C/I; AND TO REZONE THOSE ± .52 ACRES FROM RS-6 TO CG (LEGISLATIVE)**

Community Development Director Bob Keating said this is a proposed small-scale land use amendment and a rezoning. He explained “small scale amendment” and recapping his memorandum of August 15, 2006. Staff feels the proposed change would be consistent with the Comprehensive Plan and recommended that the Board approve the request. Planning and Zoning also voted 6-0 for the Board to approve. Director Keating answered questions from the Board regarding other properties in the area.

*The Chairman opened the Public Hearing.*

**Michael O’Hare, Esquire**, representing the Applicant, provided a brief history of his involvement with the project and invited questions from the Board.

**Bob Johnson** thought this was a good example of rezoning, when the Commission is informed of all the circumstances of what would happen to property when it is rezoned. The Board should in the future obtain more information on rezoning before decisions are made, he said.

On Motion by Commissioner Lowther, **SECONDED** by Commissioner Wheeler, the Board unanimously adopted the following Ordinances:

Ordinance 2006-026 amending the future land use element of the Comprehensive Plan by changing the land use designation for more or less .52 acres located east of US Hwy 1 and approximately 470 feet north of southeast 21<sup>st</sup> Street, from L-2, low-density residential-2 (up to 6 units/acre), to C/I, commercial industrial; and providing codification, severability, and effective date.

Ordinance 2006-027 amending the Zoning Ordinance and Zoning Map for more or less .52 acres located east of US Hwy 1 and approximately 470 feet north of southeast 21<sup>st</sup> Street, from RS-6, single family residential district (up to 6 units/acre), to CG general commercial district; and providing codification, severability, and effective date.

**9.B. PUBLIC DISCUSSION ITEMS**

**1. REQUEST TO SPEAK FROM BRIAN M. SEYMOUR, GUNSTER YOAKLEY, REGARDING SEBASTIAN RIVER 160 PARK, LLC, MT VERO HOLDINGS LLC AND BENT PINE LLC – SETTLEMENT**

**Brian Seymour, Esquire**, GunsterYoakley, Attorneys-at-Law, spoke about the proposal for settlement of three “Harris” Claims (Bert J. Harris Act) they filed on behalf of their clients. He introduced Martin Tabor from MT Holdings and Bent Pine LLC and Larry Deddy from Sebastian.

**Martin Tabor**, Real Estate Developer in Martin County, spoke about property he purchased in Indian River County in 2004 and time he spent understanding the rules of the County. He felt the County has the strictest Comprehensive Plan in the State, second only to Martin County. Mr. Tabor said he was “here to correct a terrible wrong” which he believed has occurred. He explained that at the closing on the two (2) Bent Pine properties and the MT Vero Holdings property, he filed applications for site plan approval, and the plans were approved in December 2005, a year after the closing. Thereafter, his Engineers submitted checks for prepayment of concurrency in accordance with the standard policy and customs of the County, but the Board rejected the checks, due to a proposed policy change. He felt the policy was unjust and explained why he had to file Claims under the Bert J. Harris Act to protect his rights. He discussed contractual obligations that he has to meet and asked the Board to be fair and correct this wrong before his ability to obtain bank financing is destroyed. He proposed a fair settlement and handed copies of the proposal to Board members. He reviewed the basic points of the settlement by way of a slide presentation.

Commissioner Davis thought the Board should have an “executive session” to be informed in light of the lawsuit. Attorney Collins did not think they could have a shade session at that time.

**Mr. Larry Deddy** from Sebastian River Park expressed that all that Mr. Tabor said applied to his Park. He also was seeking fairness from the County, as they have followed all the rules of Law. He outlined his obligations and gave a brief history of the project from the onset.

**Mr. Seymour** felt the proposed settlement was a reasonable way to resolve the matter.

Attorney Collins provided a brief background of Mr. Seymour's lawsuits and discussed the proposed settlement. He was concerned with the proposal that the fees required to vest concurrency be paid no later than 30 days after the land development permit.

**Mr. Tabor** responded to comments of jumping ahead of others reiterating a Judge's comments that there are no damages until you get the building permits.

Commissioner Davis sought clarification from Attorney Collins regarding vesting and concurrency and where to draw the line.

County Administrator Baird thought that the line of discussions between Commissioner Davis and the County Attorney should be made at a Shade Meeting. Mr. Seymour did not object.

Attorney Collins stated that Notice of an Attorney-Client session has to be given. Discussion ensued on giving notice and whether the session could be held next week. Administrator Baird suggested taking a break and giving Attorney Collins an opportunity to research the matter.

*The Chairman called a break at 11:39 a.m. to allow the County Attorney to review the requirements for holding an Attorney-Client session at the September 19, 2006 BCC meeting. The Chairman reconvened the meeting at 11:50 a.m. with all members present.*

Attorney Collins addressed the scheduling of an Attorney-Client session explaining the law and certain requirements that should be met, one of which is to give reasonable public notice.

Discussion ensued regarding reasonable public notice, issuance of building permits, and staff's ability to bring back information at short notice.

There was consensus with all parties to schedule the Attorney-Client session for next Tuesday.

No Board action taken.

## **2. TRAFFIC IMPACT CONSULTANT – FINAL REPORT**

Assistant Public Works Director Chris Mora presented an update of the Traffic Impact Consultant's Report (copy on file in the office of the Clerk to the Board). He introduced Joe McMahon, Registered Professional Engineer of McMahon & Associates, who prepared the Report. Through a PowerPoint presentation he reviewed the Consultant's recommendations as presented in his memorandum of September 5, 2006 and asked the Board to accept staff's recommendation (Alternative 1) authorizing staff to initiate amendments to the applicable Land Development Regulations. Mr. Mora also recapped and discussed the seven (7) Recommendations (Nos. 4, 5, 8, 9, 10, 18, 20 and 21) that the Planning & Zoning Commission (P&Z) did not agree with and asked the Board to approve them.

**Donna Keys, Chairperson of the Planning & Zoning Commission,** answered questions from the Board regarding opposition to the aforementioned recommendations.

Lengthy discussion ensued on whether to count all trips and/or vested trips, adding 'ghost' trips, and assignment of trips.

**Consultant Joe McMahon** gave reasons for his recommendations.



County Administrator Baird commented that if they decided to go with P&Z recommendations it could not be done overnight. Discussion continued on how to count trips that have been approved without crashing the system, and definition of a 'ghost' trip. Discussion also centered on long-range transportation plan, road improvements and future projections.

**Mr. McMahon** in response to Commissioner Lowther's question explained that Palm Beach County does it the same way as his recommendations. He provided more clarity using Palm Beach, Miami/Dade and Broward Counties as examples pointing out the differences as well.

Commissioner Davis responded to Director Keating's question on how far back they should go. He wanted to be able (from information he has) to determine, well in advance, what is required to be done and the possible alternatives for resolving matters. Commissioner Bowden thought that was a fairly reasonable expectation because of past mistakes.

**Recommendation # 4:** Approved Project Trips (page 242 of backup)

MOTION WAS MADE by Commissioner Davis, SECONDED by Chairman Neuberger, to count non-vested trips in aggregate of the approved subdivisions in Indian River County, for planning purposes, but only count vesting for concurrency.

Commissioner Davis clarified his Motion for Commissioner Bowden. Attorney Collins understood what Commissioner Davis was suggesting but thought it probably would be a little more labor intensive.

The Chairman CALLED THE QUESTION and the MOTION carried unanimously.

**Recommendation #5:** Peak Hour Analysis

Mr. Mora gave examples and explained why staff chose to go with p.m. trip counts only.

**Mr. McMahon** explained why he recommended using both roadway (link) traffic counts [morning (a.m.) and afternoon (p.m.) peak hour analyses].

MOTION WAS MADE by Commissioner Davis, SECONDED by Chairman Neuberger, to approve staff's recommendation.

**David Hall**, Vero Beach, was concerned that the Board was making motions without public input. He questioned the height limitation on buildings in the five counties, and the densities of the overall acreage that resulted in the numbers mentioned.

**Mr. McMahon** replied they were not making recommendation on changing densities in this county; they were looking at traffic methodologies only.

The Chairman CALLED THE QUESTION. The Board unanimously approved to maintain Indian River County current practices of P.M. trip counts only.

### **Recommendations # 8, 9: Deminimis / Link Assignments**

Mr. Mora explained the Consultant's recommendation, which staff did not agree with. He felt the County's current practice is very restrictive in comparison to the Consultant's recommendation, which he described as "way too lenient". Planning and Zoning Commission voted 4-3 to maintain our current practice. Staff believed a compromise might be the better way to go, as the current way was too tedious, costly and time-consuming. Staff recommended 10 peak hour trips (2 lanes) or 15 peak hour trips (4 + lanes).

Mr. Mora responded to questions from the Board regarding increase of peak hour trips. The Consultant endorsed staff's recommendation for 10 or 15 trips based on the reasons Mr. Mora gave.

MOTION WAS MADE by Commissioner Lowther,  
SECONDED by Commissioner Davis, to approve staff's  
recommendation.

There were no further discussions.

The Chairman CALLED THE QUESTION. The Motion carried unanimously to approve 10 trips on a 2-lane road, or 15 trips on a 4-lane or wider road for link assignments.

**Recommendations #18 and 20:** Maximum Age of Traffic Counts to be allowed in a study

Mr. Mora reported that staff agreed with the Consultant's recommendation that traffic counts used in traffic studies should be no more than one-year-old and asked the Board to accept it. The Planning and Zoning Commission voted 6-1 to maintain the current practice, to require traffic counts 6 months old or newer. Staff believes that a 1-year traffic count, once it is seasonally adjusted, can be used and is a perfectly good number.

Commissioner Bowden preferred the 6-month standard. Mr. Mora explained the disadvantages of using the 6-month standard. He also answered questions from the Board as to what fund this comes out of, whether it was practical or worthwhile and whether staff does traffic count all year long.

MOTION WAS MADE by Commissioner Lowther,  
SECONDED by Commissioner Wheeler, to approve  
staff's recommendations for # 18 and 19.

**Joseph Paladin**, Atlantic Coast Construction & Development, thought it was already being done every 6 months and he would not have a problem staying with 6-month if there was limitation on the time-span when traffic reports are read and sent back to developers.

More discussion ensued on 1-year or less traffic patterns and link numbers.

**Mr. George Christopher**, Planning and Zoning Commission member, did not understand comments from the Board and sought clarity. He also was concerned with the delay in having traffic reports returned to developers.

The Chairman CALLED THE QUESTION and the Motion carried unanimously to approve traffic counts maximum age to 1-year prior to methodology, once seasonally adjusted.

**Recommendation #21: Turn Lanes**

Mr. Mora asked the Board to approve staff's recommendation to maintain the current practice to require turn lanes only when a specific threshold of turning volumes is met. Planning & Zoning voted 5-2 to accept the consultant's recommendation to review on a case-by-case basis and to require turn lanes for even lower volumes than what we have in our standards.

MOTION WAS MADE by Commissioner Lowther,  
SECONDED by Commissioner Davis for discussion, to  
approve the Consultant's recommendation.

Commissioner Davis questioned how the County would apply a standard, and did not think it should all be left up to staff. Further discussion ensued on case-by-case basis. Administrator Baird thought they should have regulations.

**Ms. Keys** suggested a compromise to establish current criteria as the minimum standard giving staff the ability to increase or to decrease the number of trips requiring a left turn lane depending on the situation. She explained what she meant by "depending on the situation".

Commissioner Lowther withdrew his Motion in favor of Ms. Keys suggestion, to have limited terms with identifier numbers to make adjustments as seen fit.

MOTION WITHDRAWN

The Chairman asked if that would work for staff. Director Keating said it would not be staff making the decision all the time; it would be P&Z. His philosophy is that when there is a decision one has to use criteria to make that decision.

**Mr. Paladin** agreed but thought there should be some provisions about left turn lanes being built at the proper time.

MOTION WAS MADE by Commissioner Davis,  
SECONDED by Commissioner Bowden, to keep current  
threshold in place and give staff latitude to use discretion  
as needed.

**Ms. Keys** answered questions from the Board explaining Planning & Zoning's recommendation.

The Chairman CALLED THE QUESTION and the  
Motion carried unanimously.

*The Chairman called a break at 1:42 p.m., and reconvened the meeting at 1:50 p.m., with all members present.*

**9.C. PUBLIC NOTICE ITEMS - NONE**

1. **NOTICE OF SEPTEMBER 19, 2006 PUBLIC HEARING ORDINANCE AMENDING THE DEFINITION OF ALLOWABLE WATER ACTIVITIES IN A PARK OR RECREATIONAL AREA (LEGISLATIVE)**
  
2. **PUBLIC NOTICE OF SEPTEMBER 19, 2006 PUBLIC HEARING TO REPEAL SECTION 305.09 OF THE CODE TO ELIMINATE THE FINE UNDER THE DORI SLOSBERG DRIVER EDUCATION SAFETY ACT (LEGISLATIVE)**

The Chairman read the notices into the record.

**10. COUNTY ADMINISTRATOR'S MATTERS - NONE**

**11.A. COMMUNITY DEVELOPMENT - NONE**

**11.B. EMERGENCY SERVICES - NONE**

**11.C. GENERAL SERVICES - NONE**

**11.D. HUMAN RESOURCES - NONE**

**11.E. HUMAN SERVICES - NONE**

**11.F. LEISURE SERVICES - NONE**

**11.G. OFFICE OF MANAGEMENT AND BUDGET - NONE**

**11.H. RECREATION - NONE**

**11.I.1 PUBLIC WORKS – APPROVAL OF PROFESSIONAL SERVICE AGREEMENTS FOR ANNUAL CIVIL ENGINEERING SERVICES CONTRACT, ON AN ON-GOING BASIS**

ON MOTION by Commissioner Lowther, SECONDED by Commissioner Neuberger, the Board unanimously approved the Professional Service Agreement for Annual Civil Engineering Services on an on-going basis, with Arcadis G&M, Inc., Carter Associates, Inc., Kimley Horn & Associates, Inc., and McMahon Associates, Inc., as recommended in the memorandum of August 28, 2006.

**11.I.2 WORK ORDER NO. 1 TO THE PROFESSIONAL CIVIL ENGINEERING SERVICES AGREEMENT WITH ARCADIS G&M INC., FOR WIDENING 43<sup>RD</sup> AVENUE FROM OSLO ROAD TO 8<sup>TH</sup> STREET**

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Lowther for discussion, to approve staff's recommendation.



Commissioner Lowther had questions on the widening of 43<sup>rd</sup> Avenue to a boulevard design. Director Keating provided answers.

The Chairman CALLED THE QUESTION and the Motion carried unanimously to approve Alternative No. 1, authorizing the Chairman to execute Work Order No. 1 with Arcadis G&M Inc., with funding as specified and as recommended in the memorandum of August 28, 2006.

WORK ORDER IS ON FILE IN THE OFFICE OF CLERK TO THE BOARD

**11.I.3 PROPERTY ACQUISITION, 6478 85<sup>TH</sup> STREET (CR510) – CR 510 WIDENING AND IMPROVEMENTS, COUNTY PROJECT NO. 0610, JULIE A. KHAN, OWNER**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved Option 1, the \$175,000.00 purchase allowing the CR 510 widening project to commence on schedule, and authorized the Chairman to execute the Agreement to Purchase and Sell Real Estate, funding as specified and as recommended in the memorandum of August 29, 2006.

AGREEMENT IS ON FILE IN THE OFFICE OF CLERK TO THE BOARD

**11.I.4 AMENDMENT NO. 8 TO THE PROFESSIONAL ENGINEERING/LAND SURVEYING SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR OSLO ROAD WIDENING PHASE I FROM WEST OF OLD DIXIE HIGHWAY TO 27<sup>TH</sup> AVENUE**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved Amendment No. 8 in the amount of \$142,350.00 with Kimley-Horn and Associates, Inc. and authorized the Chairman to execute same, with funding as specified and as recommended in the memorandum of August 28, 2006.

AMENDMENT NO. 8 IS ON FILE IN THE OFFICE OF CLERK TO THE BOARD

**11.J.1 UTILITIES SERVICES – INDIAN RIVER DRIVE – NORTH PETITION WATER INDIAN RIVER COUNTY PROJECT NO. UCP-2632, PRELIMINARY ASSESSMENT RESOLUTIONS I AND II**

ON MOTION by Commissioner Lowther, SECONDED by Commissioner Davis, the Board unanimously approved Resolution 2006-125 providing for water main expansion along Indian River Drive north (US 1 to the northern end of the existing County water main) in Indian River County, Florida; providing the total estimated cost,

method of payment of assessments, number of annual installments, and description of the area to be served.

ON MOTION by Commissioner Lowther, SECONDED by Commissioner Davis, the Board unanimously approved, Resolution 2006-126 setting a time and place at which the owners of properties, located along Indian River Drive north (US 1 to the northern end of the existing County water main) in Indian River County, Florida, and other interested persons, may appear before the Board of County Commissioners of Indian River County and be heard as to the propriety and advisability of constructing the water main extension, as to the cost thereof, as to the manner of payment therefor, and as to the amount thereof to be specially assessed against each property benefited thereby.

**11.J.2. ORANGE HEIGHTS WATER SERVICE INDIAN RIVER COUNTY PROJECT NO. UCP-2563, RESOLUTION IV – FINAL ASSESSMENT**

ON MOTION by Commissioner Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Resolution 2006-127 certifying “as-built” costs for installation of water service to Orange Heights Subdivision in Indian River County, Florida, and such

other construction necessitated by such project; providing for formal completion date, and date for payment without penalty and interest.

**11.J.3 NORTH COUNTY REVERSE OSMOSIS PLANT – CAMP DRESSER MCKEE (CDM) AMENDMENT NO. 3 TO WORK ORDER NO. 1 FOR ADDITIONAL PROFESSIONAL SERVICES IN PERMITTING, CONTRACT DOCUMENTS & BIDDING ASSISTANCE**

ON MOTION by Commissioner Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Amendment No. 3 to Work Order No. 1 to CDM Inc., in the amount of \$32,200.00 for additional permitting and bidding services, and authorized the Chairman to execute said Amendment, as recommended in the memorandum of August 14, 2006.

AMENDMENT NO. 3 IS ON FILE IN THE OFFICE OF CLERK TO THE BOARD

**11.J.4 AMENDMENT NO. 2 TO WORK ORDER NO. 1 WITH ECOTECH CONSULTANTS, INC. FOR PERMITTING SERVICES FOR THE SPOONBILL MARSH SITE**

ON MOTION by Commissioner Lowther, SECONDED by Commissioner Bowden, the Board unanimously approved Addendum No. 2 to Work Order No. 1 with Ecotech Consultants, Inc., in the amount not to exceed \$35,640.00 to provide additional permitting services for the Spoonbill Marsh Site, and authorized the Chairman to execute Addendum, as recommended in the memorandum of September 1, 2006.

AMENDMENT NO. 2 IS ON FILE IN THE OFFICE OF CLERK TO THE BOARD)

**12. COUNTY ATTORNEY**

County Attorney Collins informed the Board that in order to hold an Attorney-Client Session he had to inform County's outside Counsel and also make a request for the Session to be held. He then made a formal request for an Attorney-Client Session to be held, regarding the Sebastian River Holdings, MT Vero and the Bent Pine Preserves for "Harris" Claims, on Tuesday September 19, 2006 in the County Administrator's Conference Room. The subject matter for the Session will be "Settling Negotiations and Getting Advice from Counsel". Present at the Session would be Commissioners Arthur R. Neuberger, Sandra S. Bowden, Wesley S. Davis, Thomas S. Lowther, Gary C. Wheeler, County Administrator Joseph Baird,

County's outside Counsel John Shubin, (participating via conference call), Assistant County Attorney Bill DeBral and a Court Reporter.

Commissioner Davis asked if certain staff members could be in attendance because they would be speaking about concurrency. Attorney Collins replied only if the law allows it. Only Chief Executive Officers and Attorneys could attend.

**13. COMMISSIONERS' ITEMS**

**A. CHAIRMAN ARTHUR R. NEUBERGER - NONE**

**B. VICE CHAIRMAN GARY C. WHEELER - NONE**

**C. COMMISSIONER SANDRA L. BOWDEN - NONE**

**D. COMMISSIONER WESLEY S. DAVIS - NONE**

**E. COMMISSIONER THOMAS S. LOWTHER - NONE**

**14.A. EMERGENCY SERVICES DISTRICT AND BOARDS**

The Chairman announced that immediately upon adjournment of the Board of County Commissioners Meeting, the Board would reconvene as the Board of Commissioners of the Emergency Services District. Those Minutes are being prepared separately and are appended to this document.

**A. EMERGENCY SERVICES DISTRICT**

**1. EMERGENCY SERVICES STATION 3, DEDUCTIVE CHANGE ORDER No.**

**2**

**2. EMERGENCY SERVICES STATION 5, DEDUCTIVE CHANGE ORDER No.**

**2**

**14.B. SOLID WASTE DISPOSAL DISTRICT**

The Chairman announced that immediately upon adjournment of the Emergency Services District Board Meeting, the Board would reconvene as the Board of Commissioners of the Solid Waste Disposal District. Those Minutes are being prepared separately and are appended to this document.

**1. APPROVAL OF MINUTES JULY 12, 2006**

**2. APPROVAL OF MINUTES SEPTEMBER 6, 2006**

**3. INDIAN RIVER CORRECTIONAL INSTITUTION'S REQUEST FOR SOLID WASTE ASSESSMENT ADJUSTMENT**

**4. APPROVAL OF BID AWARD FOR IRC BID # 2006098, GRAPPLE TRUCK WITH KNUCKLEBOOM TRASH LOADER, UTILITIES DEPARTMENT / SOLID WASTE DISPOSAL DISTRICT**

**14.C. ENVIRONMENTAL CONTROL BOARD - NONE**

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES.

**15. ADJOURNMENT**

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 1:57 p.m.

ATTEST:

\_\_\_\_\_  
Jeffrey K. Barton, Clerk

\_\_\_\_\_  
Arthur R. Neuberger, Chairman

Minutes Approved: \_\_\_\_\_

BCC/AA/2006 Minutes