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BOARD OF COUNTY COMMISSIONERS
OF DECEMBER 5, 2006

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December 5, 2006

REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Tuesday, December 5, 2006, at 9:00 a.m. Present were Chairman Gary C. Wheeler, Vice Chair Sandra L. Bowen, and Commissioners Wesley S. Davis, Joseph E. Flescher, and Peter D. O'Bryan. Also present were County Administrator Joseph Baird; County Attorney William G. Collins, II; Executive Aide Kimberly Massung, and Maria I. Suesz, Deputy Clerk.

1. CALL TO ORDER

Chairman Gary C. Wheeler called the meeting to order 9:00 a.m.

2. INVOCATION

Jim Davis, Public Works Director, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Chairman Gary C. Wheeler led the Pledge of Allegiance to the Flag.

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PROCLAMATION DESIGNATING DECEMBER 7, 2006 AS PEARL HARBOR REMEMBRANCE DAY

Chairman Wheeler read and presented the Proclamation to Larry Wapnick, President of the Veteran's Council. Mr. Wapnick handed out Hawaiian Leis to the Board. Present with him were two Pearl Harbor survivors, Eugene Bebermount and Joe Brook.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF SEPTEMBER 19, 2006

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the Minutes of the Regular Meeting of September 19, 2006, as written and distributed.

6.B. REGULAR MEETING OF OCTOBER 3, 2006

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the Minutes of the Regular Meeting of October 3, 2006, as written and distributed.

6.C. REGULAR MEETING OF OCTOBER 10, 2006

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously

approved the Minutes of the Regular Meeting of October 10, 2006, as written and distributed.

7. CONSENT AGENDA

Commissioner O'Bryan requested Items 7.R. and 7.S. be pulled for discussion.
Commissioner Flescher requested Items 7.G. and 7.M. be pulled for discussion.

7.A. APPROVAL OF WARRANTS – NOVEMBER 10 – NOVEMBER 16, 2006

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for November 10 – November 16, 2006, as recommended in the memorandum of November 16, 2006.

7.B. PRE-SEASON LEGISLATIVE DELEGATION LUNCHEON

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously authorized the County to pay the \$10.00 fee associated with the Pre Session Legislative Luncheon being held on Thursday, December 14, 2006, at 12:00 p.m. at the Heritage Center, 2140 14th Avenue, Vero Beach for Commissioners and County Officers, as requested in the memorandum of November 29, 2006.

7.C. SCHOOL BOARD APPOINTMENTS TO COUNTY COMMITTEES

The Board noted the list of appointments for the record.

7.D. BOARD OF COUNTY COMMISSIONERS' COMMITTEE ASSIGNMENTS

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Alternative No. 1, the Board of County Commission Committee Assignments for the year 2007, as recommended in the memorandum of November 28, 2006.

7.E. ELECTION OF CHAIRMAN FOR SCHOOL PLANNING ELECTED OFFICIALS OVERSIGHT COMMITTEE (EOOC) 2006

The Board noted the Election of Ken Daige as Chairman of the School Planning Elected Officials Oversight Committee for the year 2006.

7.F. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR MICHAEL CREEK FILL MATERIAL

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the cut and fill balance waiver, as recommended in the memorandum of November 21, 2006.

7.G. WOODFIELD P.D., PHASE 2, REQUEST FROM DEVELOPER, CENTEX /LENNAR AT WOODFIELD, LLC FOR AN EXTENSION TO COMPLETE REQUIRED IMPROVEMENTS

Commissioner Flescher was concerned that if the developer was so close to completion why they needed an extension. After Engineer Joseph Schulke gave a project status report and Attorney Collins clarified that the extension was already granted to the Letter of Credit in contemplation that the contract would be extended, Commissioner Flescher gave his support.

MOTION WAS MADE by Commissioner Flescher, to extend the Letter of Credit for a three-month period. There was no Second. Motion DIED.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, by a 4-1 vote (Chairman Wheeler opposed) the Board approved the Modification to Contract for Construction of Required Improvements No. PD-03-04-11-CFCPH2 (2002120063-48453) for Woodfield P.D., Phase 2, provided that each existing SunTrust Bank Letter of Credit be amended to extend the expiration date to September 5, 2007 which is 90 days beyond the June 5, 2007 requested extension date; and authorized the Chairman to execute the Modification. The amendment to the letter of credit must be received no later than 12:00 noon on Tuesday, December 5, 2006

by the County Attorney's Office, otherwise staff is to call the respective letter of credit prior to its December 8, 2006 expiration date, as requested in the memorandum of November 28, 2006. Additionally, no building permits are to be issued during this extension.

7.H. HUMANE SOCIETY CONTRACT, SECOND AMENDMENT AND EXTENSION

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously authorized the Chairman to execute the Second Amendment and Extension to the Contract for Providing Animal Shelter Services for the County, and approved compensation rate of \$70 per animal for the current fiscal year, retroactive to October 1, 2006, \$75 per animal for fiscal year 2007/2008 and \$83 per animal for fiscal year 2008/2009, as recommended in the memorandum of November 28, 2006.

AMENDMENT IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

7.I. MISCELLANEOUS BUDGET AMENDMENT 004

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously

approved **Resolution 2006-183**, amending the Fiscal Year 2006-2007 Budget.

7.J. MISCELLANEOUS BUDGET AMENDMENT 005

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2006-184**, amending the Fiscal Year 2006-2007 Budget.

7.K. GFOA 2007 ANNUAL CONFERENCE

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously granted permission for the County Administrator to attend the Government Finance Officers Association Annual Conference June 10 – 13, 2007, as requested in the memorandum of November 29, 2006.

7.L. AGREEMENT OF IRC/POINTE WEST/PYROTECNICO FOR FIREWORKS

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the contract and authorized the County Administrator or his designee to execute the contract along with Pointe West as co-sponsors, as

recommended in the memorandum of November 15, 2006.

7.M. BID AWARD FOR IRC BID NO. 2007020, GIFFORD HEALTH CENTER GRADING, PAVING, DRAINAGE AND BUS SHELTER IMPROVEMENTS

Commissioner O'Bryan referenced a problem that the County recently had to face, and wondered if this bidder could do this project for the bid amount. After hearing a vote of confidence from Public Works Director Jim Davis that the project could be done for the bid amount, Commissioner O'Bryan gave his support.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved that the bid be awarded to L. H. Tanner Construction, Corp., as recommended in the memorandum of November 16, 2006.

7.N. BID AWARD: IRC #2007021 ANNUAL BID FOR ALUMINUM SIGN BLANKS AND HARDWARE, PUBLIC WORKS DEPARTMENT/TRAFFIC ENGINEERING DIVISION

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously awarded all items to the low bidder Universal Signs and Accessories, Inc., as the overall most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid. Timely delivery of

orders and compatibility of items offered is critical to the department operation. Universal Signs and Accessories, Inc. has held the current bid since October 1, 2001 for these items; established an open end contract for the period December 5, 2006 through September 30, 2007 with the recommended vendor; and authorized the Purchasing Manager to renew this contract 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 the County, as recommended in the memorandum of November 28, 2006.

7.O. BID AWARD: BID # 2007015 ANNUAL BID FOR ANTISCALANT, UTILITIES DEPARTMENT WATER PRODUCTION DIVISION

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously awarded the annual bid to GE Betz, Inc. as the lowest most responsive and responsible bidder meeting the specifications as set forth in the invitation to Bid; established an open end contract for the period November 2006 through September 30, 2007. The projected expenditures for FY 2006/2007 are \$50,000. The new Bid Price reflects a 21% unit price (for bulk) and a 29% unit price (per drum) increase

over the last (FY 2005/2006) bid; and authorized the Purchasing Manager to renew this contract for three (3) 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 the County, as recommended in the memorandum of November 28, 2006.

7.P. BID AWARD: IRC #2007022 ANNUAL BID FOR TRAFFIC SIGNAL EQUIPMENT, TRAFFIC ENGINEERING DIVISION PUBLIC WORKS DEPARTMENT

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved multiple awards of this bid by Sections instead of a single award to the overall lowest most responsive and responsible bidder as follows: awarded Section 1 to Multicom, Inc. and Sections 2, 3, and 4 awarded to Traffic Parts, Inc.; established an Open End Contract for the period December 5, 2006 through September 30, 2007 with each of the recommended award vendors; and authorized the Purchasing Manager to renew this contract 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 the County, as recommended in the memorandum of November 28, 2006.

7.Q. APPROVAL FOR FINAL PAYMENT TO THE SCHOOL DISTRICT OF INDIAN RIVER COUNTY PER DEVELOPER'S AGREEMENT TO EXTEND MASTER PLANNED WATER MAINS TO THE NEW LIBERTY MAGNET SCHOOL SITE

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved final payment to the School District of Indian River County in the amount of \$658,840.95, as recommended in the memorandum of November 27, 2006.

7.R. VEROLAGO, PHASES 2, 3, 4 AND 5 REQUEST FROM DEVELOPER, CENTEX HOMES, FOR AN EXTENSION TO COMPLETE REQUIRED IMPROVEMENTS

Commissioner Flescher pulled this item for discussion seeking a better explanation from the developer as to they needed an extension.

Joseph Shulke, Engineer from Shulke, Bittle and Stoddard, L.L.C., explained that most of the work is completed, but it was a very big project to be completed in one year, and they needed a little more time.

Chairman Wheeler did not think the request was for good cause and he supported pulling the Letter of Credit.

Nelson Bennett, Centex Homes, confirmed that they are trying to do punch-out work now and they are getting ready for the paperwork and certifications.

Attorney Collins in response to Commissioner Davis' question, advised that the County would be responsible to go out to bid to see that work is completed if they pulled the letter of credit. Commissioner Davis suggested extending the Letter of Credit and not issuing any more building permits until they see that the work is done.

Commissioner Flescher suggested that a stipulation could be not to issue building permits until the developer is caught up, if they choose to extend. The developer wanted to see that stipulation broken out into each Phase, because they are so close to completion on this Phase.

Attorney Collins pointed out they were asking for an extension to June 5, 2007 to complete all work and all Phases. Administrator Baird suggested giving them an extension until April.

MOTION WAS MADE by Commissioner Davis to extend the letter of credit till June 5, 2006, and not issue any building permits until the work is finished. There was no Second. Motion DIED.

MOTION WAS MADE by Commissioner O'Bryan, Seconded by Vice Chair Bowden, by a 2-3 vote (Chairman Wheeler, Commissioners Davis and

Flescher opposed) to extend the letter of credit for three months. Motion FAILED.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner O'Bryan, by a 2-3 vote (Chairman Wheeler, Commissioners Bowden and Flescher opposed) to extend the letter of credit, but not issue any building permits until the work was completed. Motion FAILED.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Wheeler, by a 4-1 vote (Vice Chair Bowden opposed), The Board denied staffs recommendation to extend the time to perform to June 5, 2007, as recommended in the memorandum of November 27, 2006.

Administrator Baird responded to Vice Chair Bowden's inquiry that he would have to go through the bidding process, but first he needed to review this item and bring it back at their next meeting.

7.S. ASHLEY LAKES NORTH, DEVELOPER: ASHLEY LAKES NORTH, LLC (STANLEY MARKOFSKY / MARK ACKERMAN – MANAGING MEMBERS), RATIFICATION OF MODIFICATION TO CONTRACT FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS

Commissioner Flescher pulled this item for clarification.

County Attorney William G. Collins explained that the Board approved on September 5, 2006 the one year extension subject to an updated cost certification of which they have now received from the developer, Ashley Lakes North, LLC, and they are bringing it back to plug in the final numbers.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chair Bowden, the Board unanimously approved the Modification to Contract for Construction of Required Improvements No. SD-04-10-48-CFC (2004020225-48531) that implements the Board's direction, as recommended in the memorandum of November 29, 2006.

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

7.T. QUAIL CREEK PD, DEVELOPER: SLM INVESTMENTS, LLC (STANLEY MARKOFSKY / MARK ACKERMAN / EUGENE SHALIK / EDWARD KALIKOW – MANAGING MEMBERS), RATIFICATION OF MODIFICATION TO CONTRACT FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the Modification to Contract for Construction of Required Improvements No. PD-04-07-12-CFC (2004020196-48349) that implements the Board's direction, as recommended in the memorandum of November 29, 2006.

COPY OF CONTRACT IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

8. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

9. PUBLIC ITEMS

9.A. PUBLIC HEARINGS

9.A.1. TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA), PALM BEACH COUNTY HEALTH FACILITIES AUTHORITY RETIREMENT COMMUNITY REVENUE BONDS (ADMINISTRATIVE)

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

Assistant County Attorney Marian Fell reviewed her memorandum dated November 27, 2006 explaining this hearing is required by the Federal Tax law because two facilities are here in Indian River County, and once the authorities issue the bonds the proceeds will be used to refinance the current debt and to perform hurricane renovations on five facilities. She disclosed that approximately seventy percent of the bond proceeds would be spent in this County.

The Chairman opened the public hearing. There were no speakers and the Chairman closed the public hearing.

ON MOTION by Commissioner O'Bryan,
SECONDED by Commissioner Flescher, the Board
unanimously approved *Resolution 2006-185*,

approving a Second Amendment to an interlocal agreement and the issuance of revenue bonds in an amount not to exceed \$50,000,000 by the Palm Beach County Health Facilities Authority.

9.A.2. AMEND CHAPTER 207, LICENSING AND LICENSE TAXES OF THE INDIAN RIVER COUNTY CODE (LEGISLATIVE)

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

Assistant County Attorney Marion Fell reviewed her memorandum dated November 27, 2006 stating that this is a request to amend Chapter 207 of the Indian River County Code. She explained that the Florida Legislature has changed the governing statutes to call the item “Occupational License,” instead of a “Local Business Tax” and replace the license with a receipt. Attorney Fell advised this is only for clarification. There is no change to the tax amount, and it is to be effective January 1, 2007.

The Chairman opened the public hearing. There were no speakers and the Chairman closed the public hearing.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously adopted **Ordinance 2006-040** amending Chapter 207 of the Code pursuant to Chapter 2006-152, Laws of

Florida, that changes the term “Occupational License Tax” to “Local Business Tax” and the term “Occupational License” to “Business Tax Receipt”; providing findings, amending the Chapter name to Local Business Tax Receipts; amending Section 207.02 specifically to include the definitions in Florida Statutes Section 205.022; amending Sections 207.03; 207.04; 207.05; 207.06; 207.07; 207.08; 207.09; 207.10; 207.11; 207.12; and 207.13 to change the term “Occupational License Tax” to “Local Business Tax” or “Business Tax” and to change the term “Occupational License” to “Business Tax Receipt”; creating a savings provision in new Section 207.14 of the Code to provide that certain Occupational Licenses issued before January 1, 2007 are valid; providing for repeal of other conflicting ordinances; providing for severability; providing for inclusion in the Code of Indian River County; providing for filing with the Department of State; and providing for an effective date.

9.A.3. REQUEST FOR CONTINUANCE OF PUBLIC HEARING REGARDING CONSIDERATION OF APPROVAL OF PROPORTIONATE FAIR SHARE AGREEMENT AND DEVELOPERS AGREEMENT FOR OSLO 27, LLC, AND APPROVAL OF AN AMENDMENT TO THE CAPITAL IMPROVEMENTS ELEMENT OF THE COMPREHENSIVE PLAN TO INCLUDE THE FOUR LANING OF 27TH AVENUE FROM 13TH STREET SW TO 17TH STREET SW (LEGISLATIVE)

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

Attorney William G. Collins, II reviewed the Assistant County Administrator's memorandum dated November 29, 2006 explaining that in the last week they came to an impasse that he hoped to work out regarding the impact fee credits and the request was for an extension for one week.

The Chairman opened the public hearing.

Jerry Swanson, 3001 Ocean Drive, Oslo 27th LLC, gave a brief background on this issue regarding the proportionate share agreement and the failing link between 13th and 7th Street SW. He had 10 trips that failed at that intersection and he agreed to enter into a Letter of Credit for \$5,000,000.00, plus 15% contingency required by the County.

Ron D'Hessler, Chief Financial Officer of P&S Properties, displayed a schedule (Exhibit "C" – copy on file) that he put together to make it easier to understand the economics involved in this transaction. He requested a credit of \$211,900.00 out of their transportation impact fees, plus they would give the County \$277,000.00 to go toward other transportation impact fees, and they would pay another \$142,000.00 in other

impact fees, i.e. solid waste, for a total of \$420,000.00 toward impact fees. They would still have \$212,000.00 that is allocated to that particular link, he said.

Mr. Swanson requested the Board give other developers the same credit on their impact fees as that given to Oslo 27th.

Joseph Paladin, Chairman of the Affordable Housing Task Force supported Mr. Swanson's request.

Mark Brackett, Developer, supported this item.

Bob Johnson, Coral Wind Subdivision, said it would be interesting to know why the developer cannot scale back his development.

There were no additional speakers and the Chairman closed the public hearing.

Attorney Collins stated that they are trying to find a way to make it work for everybody, reconciling two Ordinances, so they know the money is there up front instead of over a long period.

ON MOTION by Commissioner Flescher,
SECONDED by Commissioner O'Bryan, the Board
unanimously approved the public hearing to be
continued to a time certain, Tuesday, December 12,
2006 at 9:00 a.m.

**9.A.4. MARBROS LLC AND FIRST ATLANTIC CITRUS, INC.'S REQUEST
TO REZONE +/- 2.89 ACRES FROM CG AND CH TO IG (QUASI-JUDICIAL)**

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

Community Development Director Bob Keating used a PowerPoint presentation to review this item. Director Keating stated that this item started out as a code enforcement action because boat manufacturing is not allowed under this zoning district. He explained that the purpose is to amend the land use of this property, to accommodate light industrial uses, and that staff recommended approval.

The Chairman opened the public hearing.

Chris Marine, Co-owner of Marbros, L.L.C., revealed additional facts regarding their manufacturing process which consist of a gel-coat which is the one item that makes their company non-compliant to code.

The Chairman closed the public hearing.

ON MOTION by Commissioner Flescher,
SECONDED by Commissioner O'Bryan, the Board
unanimously adopted **Ordinance 2006-041**,
amending the zoning ordinance and the
accompanying zoning map for ±2.89 acres located
east of Old Dixie Highway and approximately 3,909
feet south of 45th Street, from CH, Heavy Commercial
District, and CG, General Commercial District, to IL,
Light Industrial; and providing codification,
severability, and effective date.

9.A.5. CONSIDERATION OF PROPOSED AMENDMENTS TO LDR CHAPTER 910, CONCURRENCY MANAGEMENT SYSTEM; TITLE X, IMPACT FEES; AND CHAPTER 912, SINGLE-FAMILY DEVELOPMENT (LEGISLATIVE)

Chairman Wheeler requested the Board consider a motion to move this item to January 23, 2007 to give them time to work on it, and asked for a public workshop on Thursday, January 11, 2007.

MOTION WAS MADE by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, to move this item to January 23, 2007 and schedule a workshop for Thursday, January 11, 2007.

The Chairman opened the Public Hearing. There were no speakers and he closed the Public Hearing.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously.

9. PUBLIC ITEMS

9.B. PUBLIC DISCUSSION ITEMS

9.B.1. REQUEST TO SPEAK FROM JOSEPH PALADIN, CHAIRMAN, GROWTH AWARENESS COMMITTEE REGARDING PROPOSED COUNTY POLICY OF RIGHT-OF-WAY ACQUISITION

Joseph Paladin, Chairman of the Growth Awareness Committee (a private-sector organization), read his Committee's recommendations (page 368 of the backup) of policy on right-of-way acquisition, to encourage more timely acquisitions of necessary right-of-way for road expansion and improvement.

Administrator Baird recommended that they move in the direction of the Committee's recommendations.

Attorney Collins commented that contacting property owners in advance, offers being supported by the appraisal, and the purchase price being the developer's price of bare land, as some of the recommendations already practiced.

Commissioner Davis commented that he does not need to do an "up-zoning" of a piece of property and then purchase it at the time of the right-of-way of the subdivision, which defies logic. He would like a policy made similar to the last Comprehensive Land Use change that they did. He felt there should be a way to get it into effect soon.

Chairman Wheeler felt that if they are in an area where they need those roads then they should look at it at that time.

NO ACTION REQUIRED OR TAKEN.

9.B.2. REQUEST TO SPEAK FROM MARIE TERRANOVA REGARDING DENIAL OF IMPACT FEE INCREASE EXEMPTION

Marie Terranova, 180 S. Hickory Street, spoke to the Board regarding the denial of her affidavit for an Impact Fee Increase Exemption that she filed in June 21, 2005.

Director Bob Keating briefed the Board of the process taken that lead up to this denial. Ms. Terranova's application was logged in and sent to the attorney's office for review of her contract to determine whether the contract would be impaired by the impact fees and it was determined that it would not be impaired.

Attorney Collins added that later in December 2006, the Board deleted the requirement that the contract be impaired.

Administrator Baird stated that staff does not have the ability to act on impact fees and that is why this item came to the Board.

ON MOTION by Commissioner Davis, SECONDED
by Chairman Wheeler, the Board unanimously
approved an impact fee increase exemption for Marie
Terranova.

Chairman Wheeler called for a recess at 10:34 a.m. and he reconvened the meeting at 10:38 a.m.

9.C. PUBLIC NOTICE ITEMS- NONE

10. COUNTY ADMINISTRATOR MATTERS

10.A. PROPOSED LEGISLATIVE NEEDS 2007

Administrator Baird referenced the proposed 2007 Legislative Needs (page 372 of the backup) and asked for input of additions and/or changes.

Chairman Wheeler was attending this session and invited anyone to attend.

Administrator Baird mentioned that the Board needed to add water supply to the list.

There was a CONSENSUS to approve the proposed 2007 Legislative Needs with the addition of “water supply.”

John Clinton, Mockingbird Drive, referenced an article in the Press Journal about the Dodgertown property. He felt it was inappropriate to ask for funding to market the Dodgertown property in light that the County has no control over that property.

Chairman Wheeler suggested Mr. Clinton and Mr. Baird get together and discuss this item, and if necessary, it could be put on the agenda later.

Administrator Baird admitted that Mr. Clinton was correct and that it may be the best deal available to the County. He explained they are asking for an option now where they can keep it from being developed. Another issue he clarified was that the City of Vero Beach controls the rezoning in the City, not the County Administrator Joe Baird, as was printed in the paper. Another thing the County is asking the State, he added, is help to bring teams to Florida.

11. DEPARTMENTAL MATTERS

11.A. COMMUNITY DEVELOPMENT

11.A.1. RECONSIDERATION OF DIVOSTA SLAB REMOVAL AGREEMENT

The Board noted the updated report for the record.

No Board action required or taken.

11.B. EMERGENCY SERVICES – NONE

11.C. GENERAL SERVICES

11.C.1. REQUEST FOR ADDITIONAL SPACE FROM THE CLERK OF CIRCUIT COURT AND THE COUNTY HEALTH DEPARTMENT

General Services Director Thomas Frame reviewed the memorandum from the Clerk of Circuit Court regarding the request by the Clerk and the County Health Department for additional space in the New County Administration Building. He advised that County Health Administrator Jean Kline indicated to him that her need for space could wait until sometime after the building is completed. Within the last six months, Circuit Court Judge Paul Kanarek indicated to the Clerk that he anticipates the need for space for another courtroom in the Courthouse sometime in 3-5 years. Director Frame suggested that the Board wait until they complete construction of the building before they make a decision. He also suggested they look at some type of plan of how they are going to deal with adding courtroom space, and whether it is appropriate to put a courtroom on the second floor of that building.

ON MOTION by Commissioner O'Bryan,
SECONDED by Chairman Wheeler, the Board
unanimously approved to wait until the new County
Administration Buildings are finished before they add
any additional expansion of offices in the
“shelled/unfinished” areas of the buildings, as
recommended in the memorandum of November 28,
2006.

Director Frame provided an update on the new Supervisor of Elections
building.

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. PUBLIC WORKS

**11.I.1. CR 512, PHASE III, CR 510 – PROJECT #9611 AND 001, BID
NUMBER 2006065, CHANGE ORDER # 6**

Public Works Director Jim Davis explained that this Change Order incorporates the traffic signal improvements at the Sebastian River Middle School.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved Change Order #6 increasing the contract amount by \$129,876.90, as recommended in the memorandum of November 28, 2006.

**11.1.2. FLORIDA DEPARTMENT OF TRANSPORTATION MAINTENANCE
MEMORANDUM OF AGREEMENT (MOA) FOR US1 FROM OSLO ROAD TO
SOUTH RELIEF CANAL FOR LANDSCAPE MAINTENANCE**

Public Works Director Jim Davis advised that the Department of Transportation is willing to landscape the median and along the borders and replace any landscaping that was damaged. Staff recommends the Board approve the MOA.

Vice Chair Bowden asked that they do not plant cactus because it looks terrible and is difficult to weed.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative No. 1, the Memorandum of Agreement and authorized the Chairman to execute same, allowing DOT to furnish and install the landscaping, as recommended in the memorandum of November 20, 2006.

11.J. UTILITIES SERVICES

**11.J.1. CONSULTING SERVICES WORK ORDER NO. 4 AMENDMENT 2
WITH KIMLEY-HORN FOR PERMITTING, DESIGN AND CONSTRUCTION
SERVICES FOR REPLACEMENT OF WABASSO CAUSEWAY WATER AND
SEWER MAIN**

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Amendment 2 to Work Order No. 4 with Kimley-Horn in the amount of \$39,400.00 for additional work associated with this project, and authorized the Chairman to execute same, as presented and recommended in the memorandum of November 4, 2006.

WORK ORDER NO. 4 AMENDMENT 2 IS ON FILE IN
THE OFFICE OF THE CLERK OF THE BOARD

12. COUNTY ATTORNEY MATTERS

A. WATERWAY VILLAGE – DRI VESTING

Attorney Collins reviewed his memorandum of November 28, 2006 stating that it is his opinion Waterway Village is vested and the trips should be loaded, but he wanted the Board to hear other opinions on this matter.

John Shubin, Esq., Shubin and Bass Professional Association, representing the County in respect to this issue, said it was his understanding that at the time of the initial approval of the DRI, there was no reservation of concurrency of this project, no

reservation of the trips onto the network, and there was no concurrency certificate in place. It was his opinion that the mere initial approval of the application of a DRI under the facts and circumstances does not provide the applicant with a blanket exemption. Also, he advised the Board has the discretion to determine that Waterway Village is not vested by virtue of their approval of the DRI.

E. Lee Worsham, Ruden, McClosky, Smith, Schuster & Russell, P.A., representing DiVosta, the developer of Waterway Village, read Chapter 952.07(5)(e) of the Comprehensive Plan explaining the methodology used by DiVosta. He argued that his client complies with the Comprehensive Plan and that the developer is not in breach of their contract. He explained how DiVosta chose a DRI to set the ultimate cost of the work and other support facilities for that project. He did not think it was a question of vesting or not vesting, but a question of on-going compliance with concurrency pursuant to the County ordinances.

Attorney Shubin said nothing has changed his mind and asked the question, “Was the application at the time concurrent or not?” To him, the argument appeared to be to comply with Chapter 910, or Chapter 952, which is the alternate methodology system.

Director Bob Keating reviewed portions of Chapter 952 that states an alternative methodology can be used to determine the impacts.

Assistant County Public Works Director Chris Mora explained that the reason that Section of Chapter 952 is in the Comprehensive Plan was because they have different levels of service, and it was used only as how to prepare the traffic study. He made it clear that they have not used it to determine capacity or concurrency.

Discussion ensued by **Mr. Worhsam** continued to argued his position and read the developer's agreement regarding the conditions that have been met.

Bruce Barkett, Esq., representing the applicant, told the Board they are not being asked to make policy, but to decide what was actually done. He read provisions of Chapter 380 stating thatnothing can limit or modify the rights of any person to complete the development of a DRI.

Attorney Shubin does not believed that the intent of the Florida Legislature or the County was for there to be a development order that would allow exemption from concurrency requirements and that would apply to everyone.

Commissioner O'Bryan agreed with Mr. Worsham.

Chairman Wheeler commented that approving this request meant treating this DRI differently than other developments. He wanted to try to treat everybody equally, regardless of whether they are a DRI, or a PD. He felt they should vest the same way as a PD, and he said he did not believe Waterway Village was vested.

Bruce Barkett, Esq., said his applicant was not trying to become exempt from concurrency. He asked what improvements they needed to satisfy concurrency and if they needed to sign a developer's agreement.

Vice Chair Bowden agreed with Chairman Wheeler stating that she was trying to make a fair decision, but she did not believe concurrency was met.

ON MOTION by Commissioner Davis, SECONDED
by Vice Chair Bowden, the Board unanimously found

that the final development order for Waterway Village did not meet concurrency and is not vested.

County Attorney Collins assured the Board that in the future staff would determine whether further concurrency testing was required or not.

13. COMMISSIONER ITEMS

13.A. COMMISSIONER GARY C. WHEELER, CHAIRMAN - NONE

13.B. COMMISSIONER SANDRA L. BOWDEN, VICE CHAIR - NONE

13.C. COMMISSIONER WESLEY S. DAVIS

13.C.1. RESOLUTION OF SUPPORT FOR A PROPOSED NATIONAL SCULLING TRAINING AND COMPETITION SITE ALONG THE SOUTH END OF THE C-54 CANAL

Commissioner Davis brought this item to the Board to place some infrastructure and amenities at a site that is currently being used for practice and sculling competition. He advised that Brevard County Commissioner Jackie Colon also was bringing this to her Board.

ON MOTION by Commissioner O'Bryan,
SECONDED by Chairman Wheeler, the Board
unanimously approved to direct the County Attorney
to prepare a Resolution of support for a national
sculling training and competition site to be funded by

the State Legislature through the St. Johns River Water Management District's budget and approved that this Resolution be presented to the Legislative Delegation at the Indian River County meeting on December 14, 2006, as recommended in the memorandum of November 28, 2006.

Joel Tyson, former Mayor of the City of Fellsmere, said he asked the legislature if anything could be done in the name of Governor Tom Brown, and Representative L. Ralph Poppell suggested this park be designated as a State park because if it was, it would make it a lot easier to fund.

George Bushinsky, 1825 21st Avenue, "heartily" endorsed this proposal. His only suggestion was to have accessible rowing facilities to the public, since this is going to be funded by public monies.

13.E. COMMISSIONER JOSEPH E. FLESCHER - NONE

13.F. COMMISSIONER PETER D. O'BRYAN - NONE

14. SPECIAL DISTRICT AND BOARDS

14.A. EMERGENCY SERVICES DISTRICT - NONE

14.B. SOLID WASTE DISPOSAL DISTRICT

The Chairman announced that immediately upon adjournment of the Board of County Commission Meeting, the Board would reconvene as the Board of

Commissioners of the Solid Waste Disposal District. Those Minutes are being prepared separately and appended to this document.

14.B.1. APPROVAL OF MINUTES MEETING OF OCTOBER 10, 2006

14.B.2. APPROVAL OF BID AWARD FOR IRC BID #2006105, FRONT END WHEELED LOADER WITH TRASH HANDLER AND GUARD PACKAGE, UTILITIES DEPARTMENT/SOLID WASTE DISPOSAL DISTRICT

14.B.3. RECYCLING SERVICES FOR SCHOOLS/GOVERNMENT FACILITIES

14.B.4. FLORIDA TIRE RECYCLING, INC. (FTR) WASTE TIRE AGREEMENT

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

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 12:12 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/MIS/2006Minutes