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OF BOARD OF COUNTY COMMISSIONERS
OF JANUARY 9, 2007

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January 9, 2007

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, January 9, 2007, at 9:00 a.m. Present were Chairman Gary C. Wheeler, Vice Chair Sandra L. Bowden, Commissioners Wesley S. Davis, Joseph E. Flescher and Peter D. O'Bryan. Also present were County Administrator Joseph A. Baird, Assistant County Attorney William K. DeBraal, Executive Aide to the Board Kimberly Massung, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

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

2. INVOCATION

Planning Director Stan Boling delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

County Administrator Joseph A. Baird led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

1. Deletion of Item 7. K - Appointment to the Planning and Zoning Commission (at the request of Commissioner O'Bryan)

Vice Chair Bowden asked to add an Item (7.AA) to the Agenda regarding the resignation and appointment of District 5 Appointee to the Utility Advisory Committee.

Chairman Wheeler preferred not to add the item unless it was an emergency. There was consensus for the item to go on next week's Agenda.

There was Consensus to approve the change to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS - NONE

6. APPROVAL OF MINUTES

A. REGULAR MEETING OF OCTOBER 24, 2006

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of October 24, 2006. There were none.

ON MOTION by Commissioner O'Bryan,
SECONDED by Commissioner Davis, the Board
unanimously approved the Minutes of the regular

meeting of October 24, 2006, as written and distributed.

B. REGULAR MEETING OF NOVEMBER 7, 2006

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of November 7, 2006. There were none.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Minutes of the regular meeting of November 7, 2006, as written and distributed.

C. REGULAR MEETING OF NOVEMBER 14, 2006

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of November 14, 2006. There were none.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the regular meeting of November 14, 2006, as written and distributed.

7. CONSENT AGENDA

7.A. REPORTS ON FILE IN THE OFFICE OF CLERK TO THE BOARD:

1. Delta Farms Water Control District Minutes of the Board of Supervisors for the fiscal year ending September 30, 2006.
2. Delta Farms Water Control District 2006 Audit Report and 2006 State of Florida Annual Local Government Financial Report.
3. Indian River Farms Water Control District Minutes of the Board of Supervisors meetings for the period of October 2005 through September 2006.
4. Clerk of Circuit Court – Report of Convictions, Month of September 2006.
5. City of Fellsmere – recorded copy of Ordinance 06-26, voluntarily annexing 78.77 ± acres.
6. City of Fellsmere – recorded copy of Ordinance 06-27, voluntarily annexing 391.84 ± acres.

7.B. APPROVAL OF WARRANTS – DECEMBER 8 – DECEMBER 14, 2006

ON MOTION by Commissioner Davis,
SECONDED by Commissioner Flescher, the
Board unanimously approved the list of Warrants
issued by the Clerk to the Board for the time
period December 8 to December 14, 2006, as
requested in the memorandum of December 14,
2006.

7.C. APPROVAL OF WARRANTS – DECEMBER 15 – DECEMBER 20, 2006

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants issued by the Clerk to the Board for the time period December 15 to December 20, 2006, as requested in the memorandum of December 20, 2006.

7.D. APPROVAL OF WARRANTS – DECEMBER 21 – DECEMBER 28, 2006

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants issued by the Clerk to the Board for the time period December 21 to December 28, 2006, as requested in the memorandum of December 28, 2006.

7.E. 2007 COMMITTEE APPOINTMENTS AND RE-APPOINTMENTS

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the representatives and members up for re-appointment and granted

permission to seek replacements for those positions marked "Vacant" on the listing for Advisory Committees, Boards and Councils for 2007, as requested in the memorandum of December 29, 2006.

7.F. OUT OF COUNTY TRAVEL FOR CHAIRMAN WHEELER TO SERVE ON THE COMMISSION FOR FLORIDA LAW ENFORCEMENT ACCREDITATION INC.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized reimbursement for travel costs associated with attending an orientation meeting tentatively scheduled in Orlando for February 14, 2007, and three meetings being held February 27 and 28, 2007 in Ocala; June 5 and 6, 2007 in Hutchinson Island, and October 30 and 31, 2007 in Orlando, as requested in the memorandum of January 2, 2007. The Commission for Florida Law Enforcement Accreditation, Inc., will cover the expenses for lodging.

7.G. OUT OF COUNTY TRAVEL TO ATTEND THE TREASURE COAST LEGISLATIVE CONFERENCE FEBRUARY 12-14, 2007

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized out-of-county travel for all Commissioners and staff to attend the Annual Treasure Coast Legislative Conference in Tallahassee from February 12-14, 2007, as requested in the memorandum of January 2, 2007.

7.H. BLANKET AUTHORIZATION FOR COMMISSIONERS TO ATTEND ASSIGNED COMMITTEE MEETINGS OUT OF COUNTY

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved out-of-county travel for all current and any future assigned committee meetings Board members are required to attend in 2007, as recommended in the memorandum of December 15, 2006.

7.I. RESIGNATION AND APPOINTMENT OF DISTRICT 4 APPOINTEE TO THE PLANNING AND ZONING COMMISSION

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the

Board unanimously accepted the resignation of Mr. Scott Chisholm and approved the appointment of Mr. Gregory Smith as the District 4 Appointee to the Planning & Zoning Commission, replacing Mr. Chisholm, as presented in the memorandum of December 26, 2006.

7.J. APPOINTMENT TO THE PLANNING & ZONING COMMISSION

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the appointment of Richard H. Baker as the Member-at-Large appointee on the Planning & Zoning Commission, replacing Mr. George Gross, as presented in the memorandum of January 2, 2007.

7.K. APPOINTMENT TO THE PLANNING AND ZONING COMMISSION

This Item was WITHDRAWN at the request of Commissioner O'Bryan. No Board action taken.

7.L. APPOINTMENT TO THE CHILDREN'S SERVICES ADVISORY COMMITTEE

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the appointment of Ms. Erin K. Grall as the District 1 appointee replacing Mr. Richard S. Smith who resigned, as recommended in the memorandum of January 2, 2007.

7.M. RESIGNATION FROM THE CHILDREN'S SERVICES ADVISORY COMMITTEE

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously accepted the resignation of Mr. Rolf Bibow as the District 4 appointee on the Children's Services Advisory Committee, as submitted in the memorandum of January 2, 2007.

7.N. APPOINTMENT TO THE CHILDREN'S SERVICES ADVISORY COMMITTEE GRANT REVIEW SUBCOMMITTEE

The Board noted the appointment of Carol S. Mahony to the Children's Services Advisory Committee Grant Review Subcommittee.

**7.O. FOSTER IRC L.L.C.'S REQUEST FOR FINAL PLAT APPROVAL
FOR A SUBDIVISION TO BE KNOWN AS HUNTINGTON PLACE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously granted final plat approval for Huntington Place Subdivision, and authorized the Chairman to execute the Lot Clearing and Filling contract, as recommended in the memorandum of December 28, 2006.

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

**7.P. APPROVAL OF AGREEMENT FOR PAYMENT OF COSTS
ASSOCIATED WITH CREATION OF THE WEST WABASSO STREET
LIGHTING MUNICIPAL SERVICE BENEFIT UNIT**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Agreement for reimbursement of costs for West Wabasso Street lighting District Municipal Service Benefit Unit, and authorized staff to proceed with the required public hearings, as recommended in the memorandum of December 15, 2006.

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

7.Q. WORK ORDER NO. 10 (ENGINEERING/SURVEY) MASTELLER, MOLER, REED & TAYLOR, INC., INDIAN RIVER DRIVE PHASE I, RIGHT-OF-WAY MAPPING PROJECT

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 10 (Engineering); authorized the project as outlined in the Scope of Services; and, authorized the Chairman to execute said Work Order, as recommended in the memorandum of December 19, 2006.

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

7.R. THIRD AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT AND INDIAN RIVER COUNTY FOR THE SEDIMENT, FLOW REDUCTION & OTHER WATER QUALITY IMPROVEMENTS WITHIN THE INDIAN RIVER FARMS WATER CONTROL DISTRICT

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Third Amendment to the Memorandum of Understanding between St. John's River Water Management District and Indian River County for the sediment, flow reduction and other water

quality improvements within the Indian River Farms Water Control District, and authorized the Chairman to execute same, as recommended in the memorandum of December 28, 2006.

PARTIALLY EXECUTED COPY OF THIRD AMENDMENT IS ON FILE
IN THE OFFICE OF THE CLERK TO THE BOARD

**7.S. INDIAN RIVER COUNTY BID # 2007023 WABASSO FISHING
PIERS REHABILITATION PUBLIC WORKS DEPARTMENT**

ON MOTION by Commissioner Davis,
SECONDED by Commissioner Flescher, the
Board unanimously rejected the sole Bid, and
authorized that the Public Works Department re-
bid the project after review of the design details
and investigation into less expensive alternatives,
as recommended in the memorandum of January
2, 2007.

**7.T. SUPPLEMENTAL SURVEY SERVICES FOR: PHASE ONE, OSLO
ROAD RIGHT-OF-WAY MAPPING PROJECT CONTINUING
PROFESSIONAL SURVEY SERVICES CONTRACT 0390**

ON MOTION by Commissioner Davis,
SECONDED by Commissioner Flescher, the
Board unanimously approved Supplemental No.
2 to Work Order No. 7 (with Kimley-Horn &

Associates, Inc.) allowing for completion of the Phase One right-of-way mapping project, as recommended in the memorandum of December 29, 2006.

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

7.U. SUPPLEMENTAL SURVEY SERVICES FOR: PHASE TWO, OSLO ROAD RIGHT-OF-WAY MAPPING PROJECT CONTINUING PROFESSIONAL SURVEY SERVICES CONTRACT 0390

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Supplemental No. 1 to Work Order No. 8 (with Kimley-Horn & Associates, Inc.) allowing for completion of the Phase Two right-of-way mapping project, as recommended in the memorandum of January 2, 2007.

SUPPLEMENTAL NO. 1 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.V. LAKEWOOD TERRACE SUBDIVISION WATER ASSESSMENT PROJECT, UCP No. 2317 APPROVAL OF FINAL PAYMENT TO CONTRACTOR AND RELEASE OF RETAINAGE, W.I.P. No. 473-169000-03520

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the total project cost of \$264,101.00 and approved application for payment No. 2 – Final as final payment to Tri-Sure Corporation, in the amount of \$13,205.05, as recommended in the memorandum of December 13, 2006.

7.W. CENTURY TOWN CENTER DEVELOPER'S AGREEMENT FOR DEVELOPER CONTRIBUTIONS TO INTERSECTION IMPROVEMENTS AT STATE ROAD 60 AND 58TH AVENUE

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, Century Town Center Developer's Agreement, for Developer contributions to intersection improvements at State Road 60 and 58th Avenue, as recommended in the memorandum of December 27, 2006.

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

7.X. SUNRISE PLAZA DEVELOPER'S AGREEMENT FOR DEVELOPER CONTRIBUTIONS TO INTERSECTION IMPROVEMENTS AT STATE ROAD 60 AND 58TH AVENUE

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, the Sunrise Plaza Developer's Agreement for Developer contributions to intersection improvements at State Road 60 and 58th Avenue, as recommended in the memorandum of December 18, 2006.

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

7.Y. CONSIDERATION OF CDPLUS SOFTWARE SUPPORT AGREEMENT

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute the CDPlus Software Support Agreement with Perconti Data Systems, Inc., and authorized payment of the Invoice, as recommended in the memorandum of January 2, 2007.

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

7.Z. ACCEPTANCE OF CHANGE ORDER No. 21 FOR THE NEW COUNTY ADMINISTRATION BUILDINGS

ON MOTION by Commissioner Davis,
SECONDED by Commissioner Flescher, the
Board unanimously approved and accepted
Change Order No. 021 for the New County
Administration Buildings, as recommended in
the memorandum of January 3, 2007.

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

8. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES – NONE

9. PUBLIC ITEMS

A. PUBLIC HEARINGS - NONE

9.B. PUBLIC DISCUSSION ITEMS - NONE

9.C. PUBLIC NOTICE ITEMS

1. NOTICE OF SCHEDULED PUBLIC HEARINGS FOR UPCOMING BOARD MEETING :

A. JANUARY 16, 2007 MEETING:
BOARD CONSIDERATION TO APPROVE PURCHASE OF
AGRICULTURAL CONSERVATION EASEMENTS ON THE SEXTON
RANCH UNDER THE COUNTY ENVIRONMENTAL LAND ACQUISITION
PROGRAM (ADMINISTRATIVE)

B. JANUARY 23, 2007 MEETING:
BOARD CONSIDERATION TO APPROVE PURCHASE OF THE
“SEBASTIAN HARBOR PRESERVE” SITE UNDER THE COUNTY
ENVIRONMENTAL LAND ACQUISITION PROGRAM ADMINISTRATIVE)

Executive Aide Kimberly Massung read the Notices into the record.

10. COUNTY ADMINISTRATOR’S MATTERS - NONE

11. DEPARTMENTAL MATTERS

A. COMMUNITY DEVELOPMENT

I. CONSIDERATION OF THE STATUS OF WATERWAY VILLAGE’S
(DiVOSTA) PRIOR VESTED UNITS

(Clerk’s Note: Court Reporter Debra McManus was in attendance representing DiVosta)

Community Development Director Stan Boling presented this item to the Board for consideration. He recapped his memorandum of January 3, 2007 reminding the Board of prior actions on this matter. He asked the Board to approve staff’s recommendation that the Board

determine that the 733 Waterway Village units that have been vested remain vested on the County's concurrency management system.

Vice Chair Bowden was uncomfortable going forward with this without total legal representation. Chairman Wheeler agreed.

County Administrator Joseph Baird discussed the only problem staff has with this. He said staff would remain consistent and leave the 733 trips on the model.

Chairman Wheeler reiterated Vice Chair Bowden's point of concern and felt another week's delay would not make a difference.

Motion WAS MADE by Commissioner Flescher, SECONDED by Vice Chair Bowden, to postpone this issue to a time certain and direct the legal staff to coordinate with Attorney Shubin to schedule a time when they all would be available to meet with the Board

There was no further discussion.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

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. PUBLIC WORKS

1. WORK ORDER NO. 1 TO THE PROFESSIONAL CIVIL ENGINEERING SERVICES AGREEMENT WITH CARTER ASSOCIATES, INC., FOR SITE ENGINEERING AND PERMITTING FOR INDIAN RIVER COUNTY PARKS MAINTENANCE COMPLEX IRC PROJECT NO. 0701

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Alternative No. 1, authorizing the Chairman to execute Work Order No. 1 with Carter Associates, Inc., for a lump sum \$44,025.00, plus N.T.E. \$2,000.00 for reimbursable expenses, as recommended in the memorandum of January 2, 2007.

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

11.I.2. AWARD OF BID # 2007027 INDIAN RIVER DRIVE SOUTH SIDEWALK IMPROVEMENTS, IRC PROJECT # 0201, LAP AGREEMENT

Public Works Director Jim Davis recapped his memorandum of December 27, 2006 informing the Board that his Department has completed the bidding process for the Indian River south sidewalk project, which is partially funded by a LAP agreement from the Department of Transportation (DOT) in the amount of \$207,000.00. He asked the Board to approve staff's recommendation to award the Bid to L.H. Tanner Construction Corp.

Commissioner O'Bryan had comments from citizens who questioned why there were no sidewalks on the west side.

Director Davis explained that on the west side there is a fairly deep drainage ditch west of Indian River Drive, and it is not safe for pedestrians to cross at a mid-block crossing without a traffic signal. Discussion ensued regarding compliance with the "tree ordinance".

Commissioner Davis reported that he met with Director Davis and some concerned residents (the "Shoreliners") whose main concern was when the sidewalk would be put in, and their preference that it be on the west side of the road.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, awarding the Bid to the low bidder, L.H. Tanner Construction Corp., in the amount of \$463,461.39, and directed the Chairman to sign the Agreement, as recommended in the memorandum of December 27, 2006.

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

11.J. UTILITIES SERVICES

1. FALCON TRACE SUBDIVISION WATER MAIN EXTENSION DEVELOPER'S AGREEMENT FINAL PAY REQUEST AND RELEASE OF RETAINAGE, INDIAN RIVER COUNTY PROJECT NO. CDS/CCS 2087

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved an initial payment to Indian River Associates II, LLLP, in the amount of \$183,632.35 and subsequent payments of \$44,501.52 and \$7,329.42 as described and as recommended in the memorandum of December 12, 2006.

11.J.2 CLOUD GROVE WATER APPLICATION

Utilities Director Erik Olson recapped his memorandum of January 3, 2007 updating the Board on Cloud Grove's water application. He outlined staff's concern, expressing that with any of the future development areas, it is important for us to be aware of any potential impact that may or may not exist on our water supply system. He asked the Board to approve staff's recommendation that a letter of objection be submitted to the Public Service Commission on the potential of its impact on the water supply system in Indian River County, not only for the municipal supply system but also the agricultural supply. He also recommended that as part of the letter of objection, the applicant of Cloud Grove be in a position to demonstrate through the appropriate engineering technology that in fact there would not be an impact associated with the neighboring users.

Commissioner O'Bryan asked how many wells it would take to deliver that amount of water. Director Olson said about three (3) wells.

MOTION WAS Made by Vice Chair Bowden,
SECONDED by Commissioner O'Bryan for discussion, to
approve staff's recommendation.

Assistant County Attorney DeBaal opined that a letter of objection would trigger a proceeding before the Public Service Commission which would be held here locally and at that time we would be able to put on any evidence along with any other substantially affected party. It would be a proceeding under Chapter 120 of the Administrative Law section. He suggested the Board use outside counsel that specialized in that form of law.

Vice Chair Bowden AMENDED the Motion,
SECONDED by Commissioner O'Bryan, to include the
use of outside legal counsel specialized in the areas of
utilities.

Chairman Wheeler agreed with staff and would like the letter to be as strong as possible. He also requested that a joint meeting with the St. Lucie County Commission be scheduled to discuss the problem with Cloud Grove. He read excerpts from a letter he received from St. John's River Water Management District acknowledging there is a problem and airing their concerns.

Motion WAS AMENDED by Vice Chair Bowden,
SECONDED by Commissioner O'Bryan, to request a joint
meeting with the St. Lucie County Commission.

Administrator Baird informed the Board that Cloud Grove has asked to be on next week's Agenda to make a presentation.

Chairman Wheeler encouraged everyone watching on television and those who contacted him yesterday requesting to air their concerns, to also write letters to the St. John's River Water Management District expressing their displeasure about the potential use of our water for another county's project.

Director Olson clarified that Cloud Grove would fall under the South Florida Water Management District (SFWMD).

Commissioner Davis informed the Board that he has a meeting tomorrow with Bob Yulevich who is in charge of the Sebastian River Drainage District, in the St. John's Water Control District, to discuss the 1400 acres in Indian River County the plans for which have concerned him for a while.

Chairman Wheeler felt it would also be a good idea to invite St. John's River and The South Florida Water Management District (SFWMD) to the joint meeting.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved: (1) for staff to send to the Florida Legislative Delegation a strongly worded letter of objection to Cloud Grove's Water Application on the basis of its impact to the Indian River County water supply system; (2) the retention of outside legal counsel with expertise in these issues to represent the County in said matter; and (3) that staff schedule a joint meeting with the St. Lucie County Board

of County Commissioners et al, to discuss the County's concerns.

12. COUNTY ATTORNEY - NONE

13. COMMISSIONERS' ITEMS

A. COMMISSIONER GARY C. WHEELER, CHAIRMAN

1. Amendment to County Code 102.06 to Allow the Chairman to Make a Motion.

Chairman Wheeler drew reference to Section 102.06 of the Indian River County Code, which provides direction for the "Presiding officer" during debates and the making of Motions. Chairman Wheeler argued that he does not intend to make motions without input from other Commissioners and could not see a reason why he should not be allowed to make a motion just because he is the Chairman. He then assured the Board that he would accept whatever decision they make and would not have a problem with it.

Attorney DeBral disclosed that his office had contacted other counties that use the Chairman's Rules and asked what they did in situations where the Chairman wants to make a motion. The response was that the Chairman simply passes the gavel to the Vice Chair, makes his motion, participates in the discussion, votes and then has the gavel passed back to him. He thinks that correlates with that section of the Ordinance which states, "... and shall not be deprived of any of the rights and privileges of a commissioner by reason of acting as presiding officer."

Chairman Wheeler felt we do not have that provision and option and we need to do something to correct that to make it an option.

Commissioner Davis understood how this, if granted, could be abused and felt there would be public scrutiny as well. He however, did not have a problem with Chairman Wheeler's request.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Commissioner O'Bryan, for discussion,
to allow the Chairman make a motion.

Vice Chair Bowden was not in favor of this action because of the potential for "abuse of power". She was however, in favor of the Chairman passing the gavel.

Discussion ensued regarding how to word the ordinance, using Roberts' Rules of Order, and why it was crucial for the Chairman to make a motion.

Commissioner Flescher believed that, as the Chairman, making motions might cloud that authority and responsibility of the public's trust and for anyone who holds that position of authority.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Commissioner O'Bryan, to amend the
Ordinance to give the Chairman the ability to pass the
gavel and make a motion.

Commissioners Bowden and Flescher believed this was a mistake.

The Chairman CALLED THE QUESTION and the Motion carried 3-2 (Commissioners Bowden and Flescher opposed).

13.A.2. RESOLUTION OF SUPPORT URGING THE FLORIDA STATE LEGISLATURE TO ADDRESS IN THE SPECIAL SESSION BEGINNING JANUARY 16, 2007, THE EXTREME INSURANCE RATE INCREASES IMPOSED UPON THE RESIDENTS AND BUSINESS OWNERS IN FLORIDA.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2007-001** urging the Florida State Legislature to address in the Special Session beginning January 16, 2007, the extreme insurance rate increases imposed upon the residents and business owners in Florida.

13.B. COMMISSIONER SANDRA L. BOWDEN, VICE CHAIRMAN

1. Update on Legal Services

Vice Chair Bowden discussed legal concerns that resulted from the County Attorney taking a leave of absence. She read and handed out copies of a Scope of Services she had prepared for the retention of an interim County Attorney. She advised that our County Attorney has since returned to work.

Commissioner Flescher asked if this was initiated through workload or skills and expertise.

County Attorney William Collins believed it was initiated because of his absence for two weeks and there was concern about how long he would have been gone. He discussed his handling of planning and land use matters, and did not think they needed to get a regular counsel for that purpose. He defended his expertise on planning and land use by briefly describing his education and qualifications in that area.

Donna Keys, Chairperson of the Planning and Zoning Commission (P&Z), was concerned that without proper legal representation from the County Attorney's office P&Z was setting itself up for a lawsuit if they go against staff's recommendation. Her arguments were that P&Z should be given the capability to discern the reasons a project should or should not be approved. She felt P&Z should not have to make decisions based solely on staff's recommendation.

Assistant County Attorney William DeBraal understood Ms. Keys concern, but felt P&Z needed to view staff as another opinion and should not be tied to staff's recommendations if they find substantial evidence that goes against such recommendations.

George Christopher, Planning & Zoning Commission, recapped Ms. Keys comments expressing that P&Z was not getting adequate legal advice at its meetings.

Commissioner Flescher asked Ms. Keys if his interpretation was correct that P&Z was looking for more proactive-pre-emptive stance from the Attorneys and whether she was looking for written interpretation on all matters.

Ms. Keys replied, “Yes”, remarking that they have an opinion from the Attorneys in addition to staff’s.

County Attorney Collins did not think it was the legal staff’s role to say whether things should be approved or not but to offer legal opinion on the issues. Further, they should not be the basis for P&Z’s decisions; it should be the facts and evidence presented at the hearings.

Mr. Christopher, Ms. Keys and the Board debated P&Z’s need for its own attorney and legal guidance on all issues, and the legal staff’s ability to handle the workload.

Chairman Wheeler agreed that the legal staff has more work now than it did in the past, and believed they need more legal staff.

Attorney Collins argued that it would be counter productive to have a special counsel for every meeting, but agreed that they could be called as needed.

Fred Mensing, 7580 129th Street, lauded the Attorneys ability and was insulted by comments questioning such abilities.

Joseph Paladin, Chairman of the Growth Awareness Committee and a local developer, resented implications about the legal staff being overburdened because of researching the pending ordinances that the Growth Awareness Committee brought forth. He agreed that P&Z needed an attorney to point out the negatives that could result in a lawsuit, and believed the more credibility P&Z staff has would be better.

Commissioner Davis felt they should go with Administrator Baird’s suggestion to add alternatives and options to the recommendation and see how that works before they go out and hire another attorney.

Chairman Wheeler suggested they start looking for another attorney now and get someone on Board. He lauded Attorney Collins character and work, but agreed Attorney Collins needed some help.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved for the County Attorney's Office to advertise and retain the services of an additional attorney.

13.B.2. REPRESENTING INDIAN RIVER COUNTY WITH TREASURE COAST COUNCIL OF LOCAL GOVERNMENTS TO LOBBY IN WASHINGTON, D.C.

Vice Chair Bowden attended a meeting in Fort Pierce regarding the above subject, which involved Martin, St. Lucie, Indian River and Okeechobee Counties plus all the municipalities in those towns. She explained that Martin and St. Lucie counties are heavily lobbying Washington on water and other issues. She would like to join in on that effort if her scheduled is arranged to do that.

Administrator Baird disclosed that Martin and St. Lucie Counties have already authorized for one or two of their commissioners to go to Washington and they would like us to go up as a group in February.

Commissioner Davis thought it was a great idea.

On MOTION by Commissioner Davis, SECONDED by Vice Chair Bowden, the Board unanimously approved for

Vice Chair Bowden to travel to Washington, D.C., representing Indian River County, to lobby as a group on water and utility issues, from February 14-17, 2007.

13.C. COMMISSIONER WESLEY S. DAVIS

Commissioner Davis informed the Board that although it is a tedious task, things were moving forward regarding improvements on CR 512 in Sebastian.

13.D. COMMISSIONER JOSEPH E. FLESCHER- NONE

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

14. SPECIAL DISTRICTS AND BOARDS

A. EMERGENCY SERVICES DISTRICT - NONE

B. SOLID WASTE DISPOSAL DISTRICT

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

14.B.1. APPROVAL OF MINUTES:

A. Meeting of November 7, 2006

B. Meeting of November 14, 2006

14.B.2. PAYMENT REQUEST BY FLORIDA POWER & LIGHT TO RELOCATE A SEGMENT OF ITS POWER LINE AT THE COUNTY LANDFILL SITE

14.B.3. ANNUAL FINANCIAL REPORTS

14.C. ENVIRONMENTAL CONTROL BOARD – NONE

15. ADJOURNMENT

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 10:38 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____
BCC/aa/2007Minutes