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OF JANUARY 23, 2007

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January 23, 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 23, 2006, 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, County Attorney William G. Collins II, Executive Aide to the Board Kimberly Massung, and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

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

2. INVOCATION

Pastor Ray Scent, Gathering of Devoted Servants, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION DESIGNATING FEBRUARY 4, 2007 AS FOUR CHAPLAINS INTERFAITH MEMORIAL DAY

Commissioner O'Bryan read and presented the Proclamation designating February 4, 2007 as Four Chaplains Interfaith Memorial Day to Larry Wapnick, President of the Veteran's Council and Ernest Heaton, a Dorchester.

5.B. PRESENTATION OF PROCLAMATION HONORING ETTA LOPRESTI FOR RECEIVING THE 2006 THOMAS YATABE AWARD FOR OUTSTANDING ACHIEVEMENT

Commissioner Davis read and presented the Proclamation to Etta LoPresti.

5.C. PRESENTATION BY KEN GRUDENS, EXECUTIVE DIRECTOR, INDIAN RIVER LAND TRUST REGARDING THE STATE'S FLORIDA FOREVER PROGRAM

Ken Grudens, Executive Director of the Indian River Land Trust, used a PowerPoint presentation (copy on file) to define the Florida Forever Program and encouraged the Board to support the development of the next "Florida Forever" in 2010.

6. APPROVAL OF MINUTES

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of November 21, 2007. There were none.

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

the Minutes of the Regular Meeting of November 21, 2007, as written and distributed.

7. CONSENT AGENDA

Chairman Wheeler requested Item 7.M. be pulled for discussion.

7.A. REPORTS PLACED ON FILE IN THE OFFICE OF CLERK TO THE BOARD: ANNUAL FINANCIAL REPORT OF UNITS OF LOCAL GOVERNMENT AND THE ANNUAL POST AUDIT REPORT FOR 2005-2006 FISCAL YEAR FOR THE SEBASTIAN INLET DISTRICT COMMISSION

7.B. APPROVAL OF WARRANTS – JANUARY 5 – 11, 2007

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 January 5 - 11, 2007, as requested in the memorandum of January 11, 2007.

7.C. 2007 ELECTION OF PLANNING AND ZONING AGENCY (P&Z) CHAIRMAN AND VICE CHAIRMAN

The Board noted for the record, the election of Robert E. Bruce as Chairman and George Christopher as Vice Chairman of the Planning & Zoning Commission Committee.

**7.D. 2007 ELECTION OF BEACH & SHORES PRESERVATION COMMITTEE
(BEACH) CHAIRMAN AND VICE CHAIRMAN**

The Board noted for the record the election of Mayor Tom White as Chairman and Bob Anderson as Vice Chairman of the Beach and Shores Preservation Committee for 2007.

**7.E. APPOINTMENT OF DISTRICT 4 APPOINTEE TO THE CHILDREN'S
SERVICES ADVISORY COMMITTEE**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Commissioner O'Bryan's request to appoint Mr. Gerald Lamothe as the District 4 Appointee to the Children's Services Advisory Committee until January 2011, as requested in the memorandum of January 16, 2007.

**7.F. 2007 ELECTION OF ECONOMIC DEVELOPMENT COUNCIL (EDC)
CHAIRMAN AND VICE CHAIRMAN**

The Board noted for record the re-election, by the Economic Development Council of William Penney as Chairman and Peter Robinson as Vice Chairman of the Economic Development Council.

7.G. MISCELLANEOUS BUDGET AMENDMENT 008

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution No. 2007-005**, amending the Fiscal Year 2006-2007 Budget.

7.H. REQUEST FOR FINAL PAYMENT AND RELEASE OF RETAINAGE FOR WORK ORDER NO. 2-RR FOR THE ROCKRIDGE SUBDIVISION SURGE PROTECTION PROJECT

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the release of retainage and payment of the entire final invoice (\$9,144.00), as recommended in the memorandum of January 15, 2007.

7.I. CHOOSE LIFE LICENSE PLATE FUNDING – ANNUAL AUDIT

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the Annual Choose Life Specialty License Plate Report and authorized the Chairman to sign the Report for submittal to the Department of Highway Safety and Motor Vehicles, as recommended in the memorandum of January 15, 2007.

7.J. CHOOSE LIFE LICENSE PLATE FUNDING – DISTRIBUTION OF FUNDS TO CARE NET PREGNANCY CENTER OF INDIAN RIVER CO.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the advanced distribution of the Choose Life License Plate funds in the amount of \$17,000.00, to Care Net Pregnancy Center of Indian River County, with the stipulation that all fund expenditures must be in accordance with Florida Statutes, Sections 320.08056 and 320.08058(30). Additionally, all documentation of expenditures and return of unused funds must be received by the Indian River County Budget Office no later than October 12, 2007, as recommended in the memorandum of January 15, 2007.

7.K. FINAL PAYMENT – WORK ORDER NO. 3, CREECH ENGINEERS, INC. FOR: LACONIA STREET EXTENSION FROM CR 510 TO WITHIN THE CITY OF SEBASTIAN, IRC PROJECT NO. 0523

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved payment in the amount of \$4,171.50 for final and full payment for Work Order No. 3 from the Fund 102, Traffic Impact Fees, as recommended in the memorandum of January 15, 2007.

**7.L. APPROVAL WORK ORDER NO. 1 (ENGINEERING) WITH CTI-
CONSTRUCTION TESTING & INSPECTION, INC. PROVIDING PROFESSIONAL
GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL
GEOTECHNICAL SERVICES CONTRACT NO. 0534, 4TH STREET/COOCH DITCH
BRIDGE REPLACEMENT (PROJ. NO. 0209), 11TH STREET SW PAVING AND
DRAINAGE PROJECT (PROJ. NO. 9321)**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Work Order No 1, (Engineering) authorizing the project as outlined in the scope of services and authorized the Chairman to execute the Work Order for fee not-to-exceed \$8,540.54, as recommended in the memorandum of January 8, 2007.

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

**7.M. TOUSA HOMES INC.'S REQUEST FOR FINAL PLAT APPROVAL FOR A
PLAT-OVER-SITE-PLAN SUBDIVISION TO BE KNOWN AS TAMARIND LAKES**

Chairman Wheeler wanted a better understanding to determine if this item needed to be reviewed by the Planning and Zoning Commission (P&Z) before coming to the Board for approval.

Community Development Director Bob Keating explained that P&Z had already approved the preliminary plat and site plan. He further explained that at a previous meeting the Developer's Agreement went to the Board before the actual development project (that created

the impacts) went to P&Z. He also noted that the Developers Agreement does not commit the County to do anything if the project was not approved by P&Z.

Donna Keys, Planning and Zoning Commission, voiced concern because after a certain Developer's Agreement was approved by the Board, then the project went to P&Z, the applicant had asked, "how can you deny this item when the Board of County Commissioners already approved the Developer's Agreement?" Ms. Keys found it to be an intimidating factor and wanted to know what the procedures would be in the future.

Chairman Wheeler said this would be placed on the February Agenda and direction would be given at that point.

ON MOTION by Chairman O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously tabled this item until February 2007 to address the procedures for approving Developer's Agreements.

**7.N. BARKETT WATER SERVICE INSTALLATION AT 2015 OSLO ROAD,
APPROVAL OF FINAL PAYMENT TO CONTRACTOR**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the total labor cost of \$2,937.00, and approved Application for Pay Request No. 1 – Final as final payment to The Danella Companies, Inc., in the amount of \$2,937.00, as recommended in the memorandum of January 9, 2007.

**7.O. ANTILLES SUBDIVISION LINE STOPS ON 16-INCH WATER MAIN,
APPROVAL OF CHANGE ORDER NO. 1 AND FINAL PAYMENT TO CONTRACTOR**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Change Order No. 1 for \$2,322.03, and approved Application for Pay Request No. 1 – Final as final payment to The Danella Companies, Inc., in the amount of \$19,416.65, as recommended in the memorandum of January 15, 2007.

**7.P. 4TH STREET BRIDGE REPLACEMENT OVER COOCH DITCH (35TH
AVENUE) AMENDMENT NO. 2 TO KIMLEY-HORN & ASSOCIATES, INC.
CONTRACT IRC PROJECT NO. 0209**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Amendment No. 2 for \$17,050.00, and authorized the Chairman to execute the contract, as recommended in the memorandum of January 16, 2007.

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

**7.Q. CONTRACT EXECUTION FOR IRC BID NO. 2007020, GIFFORD
HEALTH CENTER GRADING, PAVING, DRAINAGE & BUS SHELTER
IMPROVEMENTS**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously authorized the Chairman to execute the Contract Documents, as recommended in the memorandum of January 16, 2007.

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

7.R. AMENDMENT NUMBER 4 TO CONTRACT BETWEEN OWNER AND ARCHITECT FOR DESIGN OF NEW COUNTY ADMINISTRATION BUILDINGS

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously accepted Amendment No. 4 to the primary Contract with Donadio and Associates in the amount of \$8,500.00, for architectural services, as recommended in the memorandum of January 9, 2007.

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

7.S. ACCEPTANCE OF CHANGE ORDER No. 3, NEW COUNTY EMERGENCY OPERATIONS CENTER (EOC)

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously accepted Change Order No. 3 to the Emergency Operations Center,

with Turner Construction Company, as recommended in the memorandum of January 16, 2007.

CHANGE ORDER NO. 3 ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.T. ACCEPTANCE OF CHANGE ORDER NO. 4, NEW COUNTY EMERGENCY OPERATIONS CENTER (EOC)

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved Change Order No. 4, with Turner Construction, that will result in a decrease to the GMP by \$61,188.00, resulting in a new GMP of \$4,236,004.00, and an increase to the Owner's Contingency by the amount of \$3,771.00, for a total Owner Contingency of \$45,322.00, as recommended in the memorandum of January 16, 2007.

CHANGE ORDER NO. 4 ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.U. ACCEPTANCE OF CHANGE ORDER NO. 22, FOR THE NEW COUNTY ADMINISTRATION BUILDINGS

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously accepted Change Order No. 22, as recommended in the memorandum of January 16, 2007.

8. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

9. PUBLIC ITEM

9.A.1. CONSIDERATION OF PROPOSED AMENDMENTS TO LDR CHAPTER 910 CONCURRENCY MANAGEMENT SYSTEM; TITLE X, IMPACT FEES; AND LDR CHAPTER 912, SINGLE-FAMILY DEVELOPMENT (CONTINUATION OF DECEMBER 5, 2006 PUBLIC HEARING)

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

Planning Director Stan Boling provided a hand-out and displayed a summary sheet (copy on file) defining Chapter 910, Title X and Chapter 912 Amendments that resulted from the workshop of January 5, 2007. He explained the process of how to determine the cost of impact fees.

Commissioner O'Bryan wondered if a project needed three (3) or four (4) trips, and if it would be financially feasible to enter into a proportionate share agreement. Director Keating gave an explanation regarding trip and proportionate share amounts.

Chairman Wheeler opened the public hearing.

Joseph Paladin, Chairman of the Growth Awareness Committee, voiced concerns regarding conservation and traffic decisions being made within the County. He said analyzations

needed more clarification so that people would know what the information is based on and where it came from. Mr. Paladin felt that when capturing trips commercial and residential developments needed to be looked at differently and he wanted to see two separate traffic studies. He wanted to see the Board adopt the “pending ordinance”.

Spencer Simmons, 118 43rd Avenue, Simmons Homes, agreed with Mr. Paladin regarding vesting by commercial developers and did not feel there was enough vesting since WCI Communities, Inc. took all the trips on US 1. He agreed with Mr. Paladin that commercial development needed to be looked at differently.

There was a brief discussion between Director Keating and the Commissioners regarding vesting by WCI Communities, Inc.

Chris Mora, Assistant Public Works Director said as a result of the January 5th workshop, staff had looked at three scenarios (small, medium and large subdivisions). Staff took the changes that were proposed in Chapter 910, applied them to the trip thresholds and they all significantly dropped links. He concluded that each of the thresholds had a substantial number of links but the smaller projects benefited more.

Discussion continued as Vice Chair Bowden requested clarification on “conservative” numbers regarding threshold, links and trips.

Commissioner Davis commented that vesting and traffic counting should be discussed separately. He thought “what and when” to invest should be looked at first.

Jerry Swanson, 3001 Ocean Drive, believed that once the commercial situation was worked-out, the traffic and residential trips would improve. He did not want the Board to take action until they reviewed it again and he supported staff’s recommendation.

A lengthy discussion ensued regarding de minimis trips, impacts, counting, and five-year vesting.

Mark Brackett, 1915 34th Avenue, felt that the consultant's report provided a de minimis number that laid out what was appropriate and he suggested using it. He did not want the Board to vote yet and expressed how important it was for them to review the recommendation before they did so.

Chuck Mechling, 1999 Pointe West Drive, did not want the Board to vote yet. He wanted to see one more workshop before they voted and hoped they would take the consultant's concepts into consideration.

Bruce Barkett, 3011 Nassau Drive, thought the Board should support staff's recommendation as it was presented. He said they will never get anything that is "perfect" so he wanted them to vote today then tweak it as needed.

Andrew Kennedy 535 Eugenia Road, agreed with Mr. Barkett and supported staff's recommendation.

Richard Bialoski, 940 Oyster Shell Lane, voiced that he stood on the side of staff's recommendation and he wanted the Board to vote.

The Chairman called a recess at 10:34 a.m. and he reconvened the meeting at 10:48 a.m. with all members present.

Henry Muller, 7355 35th Court, asked if he could get building permits to build on his fourteen (14) lots. He emphasized that an individual's lot should have as much consideration as the major builders' lots.

Discussion ensued as the Board questioned Mr. Muller about his concerns regarding lots, vesting, concurrency, building permits and the pending ordinance.

Chairman Wheeler announced that the Board would make their decision today. He also expressed that the Board was very interested in getting the roads built as they were looking at three years to solve the problem and four years to see their improvements.

Gene Lessard felt that vesting should be at the time of permit and wanted the Board to know that "the smaller builder has a right to exist".

Peter Robinson, 315 Greytwig Road, felt that the Board needed to keep the impact fee payment due at building permit application.

Nancy Offutt, Vero Beach, representing the Treasure Coast Builders Association, said building wider and faster roads was not the solution, and hoped the Board would take a creative approach toward mitigating instead of "paving over" She suggested capturing traffic instead of generating it.

John Blum, 638 Tulip Lane, said since there was no fix for US 1 and the Department of Transportation had no plans to fix it, he thought this would be a "measure to let some of the smaller projects move forward".

David Ederer, 1351 Seahawk Lane, urged the Board to go with Chapter 910 and staff's recommendation but wanted them to drop the pending ordinance.

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

Vice Chair Bowden asked Attorney Collins when the pending ordinance was adopted. Attorney Collins said it had been since October 4, 2005. He summarized the idea of a pending ordinance and why it had been held-up. He did not feel that the pending ordinance should be dragged-out any longer and thought the staff report should be adopted, then tweaked as needed.

Commissioner Davis voiced how important it was to keep “vesting at building permit” on the table.

Commissioner O’Bryan questioned Directing Keating for clarification regarding the proposed wording of rationing and wanted to ensure that small sites would still allow remaining capacity on that link. Director Keating said that it would, as long as the capacity remained. Commissioner O’Bryan thought the traffic situation still needed work and suggested the Board support the recommendation of the traffic consultant.

Vice Chair Bowden commented that traffic in the community was a quality of life issue and asked if the Highway Capacity Software (HCS) should be used since it was so old, or if there was something easier and better that could be utilized. Discussion ensued and Mr. Mora explained that even though the HCS was old, it was continually updated.

Chairman Wheeler summarized what had been said then voiced that he did not think it was necessary to have another workshop. He favored vesting at building permit and wanted to see the pending ordinance become permanent, then critique as needed.

Commissioner Davis agreed, however, he felt that the pending ordinance should also allow for proportionate share or other guaranteed agreements for major road improvements.

Discussion ensued regarding Senate Bill 360 and whether it would serve the pending ordinance. Director Keating advised Commissioner Davis that the County had already adopted the proportionate share ordinance and that it was a requirement of the State. He explained that the biggest challenge would be for the developers, because they probably would not get financing for their infrastructure improvements.

A lengthy question and answer period continued as the Commissioners sought details from staff.

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Vice Chair Bowden, to accept staff's
recommendation as presented.

Chairman Wheeler, Commissioners Davis and Flescher said they could not support the motion.

The Chairman CALLED THE QUESTION and by a vote of 2-3, (Chairman Wheeler, Commissioners Davis and Flescher opposed), the MOTION FAILED.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Commissioner Flescher, to adopt the current Land Development Regulations Chapter 910 "pending" ordinance, with revision allowing vesting only at time of building permit issuance, except for

proportionate share agreements and other types of guaranteed improvement situations.

Discussion ensued regarding setting a threshold for a timeframe for certification. Director Boling defined the changes to clarify the motion.

MOTION WAS AMENDED by Commissioner Davis, SECONDED by Vice Chair Bowden, to include a threshold of 7-years for proportionate share to other guaranteed agreements.

The Chairman CALLED THE QUESTION and by a vote of 4-1, (Commissioner O'Bryan opposed) the Motion carried. The Board adopted Ordinance 2007-001, concerning amendments to Land Development Regulations (LDRs); Chapter 910, Concurrency Management System, by amending Section 910.07(1)(A) through (F) to change initial development order classifications and update terminology for charges and fees; by amending Section 910.07(2) to establish de minimis exemption for certain single-family lots and parcels lawfully created prior to June 18, 1991; by amending section 910.08(2) to update terminology and change 5 year initial concurrency to 7 years for projects with special Developer's Agreements; by amending Section 910.09(4)(B) to change trip assignment thresholds for 2-lane and multi-lane roadways, and establish use of fractional trips to track single-family road impacts;

providing for Amendments to Chapter 1000, Title X, Impact fees, to update concurrency references; providing for amendments to LDR Chapter 912, single-family development, to update concurrency and Impact Fee References; providing for repeal of conflicting provisions; codification; severability; and effective date.

The Chairman called a recess at 11:49 a.m. and he reconvened the meeting at 12:02 p.m.

**9.A.2. BOARD CONSIDERATION TO APPROVE PURCHASE OF THE
“SEBASTIAN HARBOR PRESERVE” SITE UNDER THE COUNTY
ENVIRONMENTAL LAND ACQUISITION PROGRAM**

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

Roland DeBlois, Environmental and Code Enforcement Chief, using a PowerPoint presentation provided a brief history of the Sebastian Harbor Preserve. He requested the Board approve the purchase of environmental property under the terms of the option agreement and the City and County not proceed with extending Fleming Street through the north portion of the property.

Vice Chair Bowden wanted to know how much shared-funding was anticipated.

Mr. DeBlois felt very confident that it could be fifty percent.

Chairman Wheeler opened the public hearing.

Graham Cox, 1213 George Street, Sebastian, is a close neighbor of the property under consideration and works with the Audubon Society in New York. He supported the proposal but cautioned the Board to make sure there would be money allotted for stewardship (damage from vehicles, hikers, mountain bikers, etc).

Bob Johnson, Coral Winds Subdivision, wanted to see the preserve renamed to the “Indian River County Preserve” since it was a County bond issue. He wanted to see this move forward.

Dale Simchick, 766 S. Easy Street, said she had been working a long time to preserve this property from development and was pleased the County was now taking-over the process. She informed the Board that this area was saturated with wild life and emphasized how it was a high threat to be developed into a site of 301 homes. She said the share-funding meets the criteria of the bond money which exists. The Fleming Street Extension was not on the City’s Comprehensive Plan or wish list and she wanted to see the purchase go forward.

Robin Myers, 739 S. Easy Street, said her property “backed-up” to said land and that she was a steward for the property. She said she would support whatever they decided to name it.

Peter Robinson with Laurel Homes, said he was the developer next door to this property and was amazed with all the wildlife on this property. He informed the Board that if they did not buy it, they would be missing a real opportunity and he supported the program.

Eugene Wolff, 757 Wimbrow Drive, Sebastian, was concerned that the purchase of the property would jeopardize the entire Land Act Acquisition Program in the County. He

wanted the Board to show due diligence when spending such a “huge chunk” of taxpayer’s money.

Discussion ensued as Commissioner Flescher asked Mr. DeBlois about the timelines for appraisals and how much money he anticipated for a matching grant.

Jens Tripson, 2525 14th St., spoke on behalf of the Pelican Island Audubon Society. He said that “raw land” had not gone down in price and felt that if the County did not purchase it now, it would cost more later or be built upon so he urged the Board to go through with the purchase.

Robert Johnson, Sebastian, said he lived adjacent to the property and he reflected how close the property had come to being developed, so he wanted the County to purchase the property so the wildlife would be preserved.

Joseph Paladin, 6450 Tropical Way, a local developer, thought the property was valuable, felt it to be a good deal, and supported the purchase. He wanted to know what would happen to the development rights on the property. Staff said it would be a full fee simple purchase, with the County being the full titleholder.

Director Keating added that the development rights would be extinguished.

David Cox, Periwinkle Drive, wanted the Board to take staff’s recommendation to add this property to the list of the County’s fully-owned environmental lands. He also wanted the Board to continue fostering the civic care of our treasures.

Joseph Kazari, 1401 Thornhill Lane, spoke on behalf of his wife, Julie. He said she wanted the Board to purchase the property and to use it as a transporting station (for tortoise being moved from developing locations) or consider putting a winding bike path on it.

Cathy Thomas, 2109 SE 2nd Ave. supported the purchase of the property.

Damien Gilliams, 1623 US 1, was in favor of purchasing the property, however he also wanted to see matching funds for the homeless.

Chairman Wheeler explained that this was a Bond Referendum and the money was to be used specifically for this area's agriculture, conservation or historical lands, and it is not allowed to be used for anything else. He felt it necessary to explain that over one million dollars were given to various organizations every year to help people. He did not want anyone to think that certain areas within the community were being neglected.

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

There was a brief question and answer period between the Board and Mr. DeBlois regarding matching funds, and Commissioner Davis suggested giving the Sebastian Environmental Lands Advisory Committee (if permitted) an opportunity to maintain the preserve property. Chairman Wheeler agreed and thought it needed to be explored.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board unanimously approved to exercise the "Sebastian Harbor Preserve" parcel option agreement, and authorized staff to proceed with due diligence and close the purchase, as recommended in the memorandum of January 15, 2007.

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

Clerk's Note: This item was heard after Item 11.A.3. and is placed here for continuity.

Mr. Paladin once again sought approval from the Board for his Proposed County Policy on Right-of-Way Acquisition which he submitted on December 5, 2006. He wanted to achieve timely acquisitions of necessary right-of-way for road expansion and improvement.

Commissioners Davis and Bowden wanted to hear input from staff before voting on the policy.

Discussion ensued as Jim Davis, Public Works Director, informed the Board that many of the suggestions were currently being implemented, and he informed the Board of some possible problems.

Mr. Paladin further added that the Policy would put everything in “black and white”, which would help to alleviate the “gray area” He specified that occasionally it might not work but overall it would lay down a guideline. He thought the principles of resolutions might be better than an ordinance.

County Attorney Collins remarked on a couple bulleted items, then said as long as it was a “policy”, and there would be leeway to depart from it when circumstances dictated, then he did not see a problem.

The Commissioners voiced various concerns to Director Davis regarding completion timeframes and flexibility.

Vice Chair Bowden wanted to know if the Legal Department and staff had signed-off on the proposed policy. Director Davis informed her that staff found no problem with the general policy guideline because it was not a rigid policy.

County Attorney Collins informed the Board that if it was going to be implemented as a Policy, then it should be re-drafted as a Resolution, which would be a general policy, then it would not be binding in every case.

Assistant County Attorney William Debraal acknowledged reviewing the proposal and asked the Board to give staff direction.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously directed staff to draft a Resolution of Mr. Paladin’s proposed Policy of Right-of-Way Acquisition for Road Improvement Projects and bring it back to the Board on February 6, 2007.

The Chairman called a recess at 1:32 p.m. and he reconvened the meeting at 1:43 p.m. with all members present.

(Clerk's Note: Item No. 12.A. was heard following the recess.)

9.C. PUBLIC NOTICE ITEMS

**9.C.1. NOTICE OF SCHEDULED PUBLIC HEARING FOR FEBRUARY 6, 2007;
AMENDMENT TO INDIAN RIVER COUNTY CODE SECTION 102.06. RULES OF
DEBATE (LEGISLATIVE)**

Executive Aide Kimberly Massung read the Public Notice into the record.

10. COUNTY ADMINISTRATOR'S MATTERS - NONE

11. DEPARTMENTAL MATTERS

11.A. COMMUNITY DEVELOPMENT

**11.A.1. CONSIDERATION OF THE STATUS OF WATERWAY VILLAGE'S
(DiVOSTA) PRIOR VESTED UNITS**

Director Boling informed the Board that since the meeting of December 5, 2006, staff had not vested any additional Waterway Village units, and had continued to keep the 733 previously vested units in the concurrency management system. He said that staff requested the Board to either confirm staff's decision to continue to vest the units or direct staff to make appropriate changes. Director Boling gave a PowerPoint presentation (copy on file) which summarized vesting for Waterway Village. He stated that staff recommended there be no changes to the vesting of the 733 units at this time.

Attorney John Shubin, from Shubin and Bass, Special Counsel to the County, agreed with staff, that 234 units must be vested and all impact fees must be paid, however, he did not think the 733-units required vesting.

MOTION was made by Vice Chair Bowden, SECONDED by Commissioner Davis, to table this item to allow Attorney Shubin and staff to work out the problems and provide a recommendation to the Board.

There was a brief discussion regarding the units already vested.

The Chairman CALLED THE QUESTION. The Board unanimously approved to table this item and directed staff to work with Attorney Shubin to prepare a recommendation to the Board.

11.A.2. DEMOLITION OF STRUCTURE LOCATED AT 2133 1ST COURT SE

James “Buddy” Akins, Director of the Building Division, used a PowerPoint presentation to provide updated status on the demolition of the structure located at the subject address. He showed the Board pictures of how the owner had resolved outstanding code issues with the building and improved its appearance. He requested the Board rescind the condemnation action and allow the owner to acquire a Certificate of Occupancy.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved to rescind the condemnation action of November 14, 2006,

for the structure located at 2133 1st Court SE, and allow the owner up to 60-days additional time to acquire a Certificate of Occupancy for this residence, as recommended in the memorandum of January 10, 2007.

11.A.3. CONSIDERATION OF REVISIONS TO THE BUILDING DIVISION FEE SCHEDULE

James “Buddy” Akins, Director of Building Division, wanted the Board to approve the proposed permit fee schedule (copy in backup). He recapped the various fees and said everything was based on evaluation.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2007-006**, amending the fees for the various building permits and related inspections.

11.B. EMERGENCY SERVICES – NONE

11.C. GENERAL SERVICES

11.C.1. REVIEW AND APPROVAL OF BOARD OF COUNTY COMMISSIONERS OFFICE

Clerk’s Note: This Item was heard after Item No. 11.1.1. and placed here for continuity.

Tom Frame, General Services Director, directed the Board to review Drawing E (Copy on file) and felt it would be the drawing that would work best, based on suggestions from the architect, plus it would give additional privacy. He wanted the Board to review and confirm said drawings before staff ordered the furniture.

There was a brief question and answer period regarding wall extensions, workstations, and the reception area.

ON MOTION by Commissioner Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the layout depicted with an E, since it would appear that the Board would ultimately move towards the use of aides, and that the close arrangement of the workstations to the individual Commissioners would also benefit the Commissioners by having the current Administrative Assistants closer to address their individual and specific needs, as recommended in the memorandum of January 17, 2007.

Discussion ensued regarding the extension of specific walls for further privacy, to comply with the "Sunshine Law". Vice Chair Bowden wanted to amend her Motion to extend specific walls for further privacy.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved to extend specific walls for further privacy.

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. AMENDMENT NO. 5 TO THE PROFESSIONAL SERVICES AGREEMENT
WITH CARTER ASSOCIATES, INC. FOR ROADWAY IMPROVEMENTS, 66TH
AVENUE FROM 4TH STREET TO SR 60 – IRC PROJECT NO. 9810**

Clerk's Note: This Item was heard after Item 11.J.1. and placed here for continuity.

Jim Davis, Public Works Director, informed the Board that Amendment No. 5 was to provide for the connection of College Lane at 16th Street to the 66th Avenue intersection. Originally the intersection was to be north of the 16th Street alignment but it made more sense to construct the connection at 16th Street which would allow the communities to the west of 66th Avenue direct access to the Community College and 66th Avenue. Director Davis mentioned that this would change the engineering drawings (which had already been completed). He also noted that the grade would need to be raised which would increase the Carter Associates, Inc. contract for a lump sum of \$21,460.00

ON MOTION by Commissioner Davis, SECONDED by Chairman Wheeler, the Board unanimously approved Alternative No. 1, Amendment No. 5 to the Professional Services Agreement with Carter Associates, Inc. for road improvements, 66th Avenue from 4th Street to SR 60, as recommended in the memorandum of January 16, 2007.

CHANGE ORDER NO. 022 ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

11.J. UTILITIES SERVICES

**11.J.1. SOUTH COUNTY REVERSE OSMOSIS PLANT – FDEP PERMIT
RENEWAL FOR DEMINERALIZED CONCENTRATE DISPOSAL WORK ORDER NO.
6 – PROFESSIONAL SERVICES TO KIMLEY-HORN & ASSOCIATES, INC.
AMENDMENT NO. 2 TO WORK ORDER NO. 6**

Clerk's Note: This Item was heard prior to Item 11.I.1. and is placed here for continuity.

Erik Olson, Director of Utility Services said the Florida Department of Environmental Protection (FDEP) requested additional testing and analysis before a renewal permit could be obtained. He requested the Board approve an allowance and additional authorization for Kimberly-Horn & Associates, in the amount of \$42,100.00, to include sampling, testing and engineering associated with it; however there was money left over from a previous authorization so the actual amount would be \$31,100.00.

ON MOTION by Commissioner Bowden, SECONDED by Chairman Wheeler, the Board unanimously approved (a) Amendment No. 2 to Work Order No. 6 to Kimberly – Horn, Inc. in the amount of \$31,100.00 for additional coordination, sampling, evaluation and lab cost, and (b) Authorized the Chairman to execute Agreement for Professional Services.

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

11.J.2. WEST WAABASSO COMMUNITY WATER PROJECT – PHASE I STATUS, IMPACT FEE FUNDING UPDATE AND PHASE II EXPANSION

Clerk's Note: This Item was heard after Item No. 12.A. and placed here for continuity.

Erik Olson, Director of Utility Services, notified the Board that Phase I of the Project had successfully come to a conclusion. He explained how the funding was supplied and requested approval: (1) to utilize funds from the General Contingency Fund for \$61,100.00, (2) to move forward into Phase II, and (3) to allow the General Contingency Fund to cover \$32,500.00 in impact fees for Phase II.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved (a) using the General Contingency Fund to cover \$61,100.00 in impact fees for Phase I, (b) Phase II expansion to serve an additional 25 residences, and (c) the

use of the General Contingency Fund to cover an additional \$32,500.00 in impact fees for Phase II, as recommended in the memorandum of January 17, 2007.

12. COUNTY ATTORNEY MATTERS

12.A. EXECUTIVE AIDE CONTRACT

Clerk's Note: This item was heard prior to Item No.11.J.2.

Assistant County Attorney William Collins informed the Board that Executive Aide Kimberly Massung desired to invoke Section 9 of the Severance Provisions of her contract.

Attorney Russ Petersen, representing Kim Massung referred the Board to the 12-month Severance Estimate Spreadsheet (on file) which he handed out, then he reviewed each column. He informed the Board that there were issues of entitlement, namely: (1) deferred compensation over 12-months (as part of her severance package), (2) whether she was entitled to be compensated for the 5-months remaining on her contract, or (3) whether Mrs. Massung was limited to 12-months severance only. He said rather than contest the issues through a declaratory action in court to determine the parties' respective rights under the contract, he and Attorney Collins recommended a compromise. Attorney Petersen suggested the 12-month severance package (without deferred compensation), and pay one-half the balance on Mrs. Massung's contract (2-1/2 months) to include accruals of annual leave, sick leave and deferred compensation. Attorney Petersen further suggested the Board take this opportunity to end the contract for all subsequent employees who would fill this position.

Attorney Collins mentioned that the numbers were preliminary, the package was taxable, and there could be no deferment.

Commissioners Flescher, Davis and O'Bryan voiced their concerns and asked questions of Attorney Petersen for a better understanding of the contract and the resignation.

Attorney Collins informed the Board that if the contract could not be terminated as requested, then it would be up to Mrs. Massung to resign, walk-away, or assert that she was resigning "under pressure" or "circumstances suggesting constructive discharge".

There was a brief question and answer period between the Board and Attorney Collins regarding Mrs. Massung's severance package.

Chairman Wheeler voiced that he could only support what the contract stated (12-months, not the additional 2-1/2 months) and that it had nothing to do with Mrs. Massung's job performance. He wanted to see her stay until June without renewing her contract as it was before.

Commissioner O'Bryan felt that Mrs. Massung "must have felt pressured" since she voiced concerns of "walking away". He wanted to see her stay until the end of her contract (June 20, 2007) then execute the severance pay, but he did not agree with the 2-1/2 month settlement nor the automobile allowance.

Attorney Peterson informed the Board that due to the anticipated move into the new building, Mrs. Massung would be willing to work for a few more months to allow for a smooth transition.

There was a brief question and answer period between the Board and Attorney Collins regarding the automobile allowance and not implementing future employment contracts.

Clerk's Note: The Chairman released Attorney Petersen and Mrs. Massung at 2:15 p.m. for an Attorney/Client consultation. They returned at 2:43 p.m.

Upon returning, Attorney Petersen informed the Board that Mrs. Massung expressed a desire to: (1) leave immediately, (2) receive the 12-months severance package, and if needed she would (3) be willing to work 30 more days.

Discussion ensued by the Board to obtain a clearer understanding of Mrs. Massung's contract, severance package, and desires.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Commissioner O'Bryan, to terminate
Mrs. Massung's contract as written (with a 30-day notice).

Chairman Wheeler suggested appointing Darcy Vasilas to the position in the interim.

Attorney Collins explained and confirmed the components of the severance pay.

The Board accepted input from former Commissioner and Chairman Arthur Neuberger. He informed the Board that he was the Chairman when Mrs. Massung's contract was implemented. He said the harassment clause was put in the contract at that time for a specific reason, and he felt that she was leaving due to the harassment from one of the Commissioners.

Chairman Wheeler felt that Mrs. Massung needed to work closely with Mrs. Vasilas through the transition period over the next 30-days. Attorney Petersen confirmed that Mrs. Massung would agree to do that.

MOTION WAS AMENDED by Commissioner Davis to remove the 30-day notice and terminate the contract immediately. Commissioner O'Bryan RESCINDED his SECOND and the MOTION DIED.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Chairman Wheeler, the Board by a 2-3 vote (Vice Chair Bowden and Commissioners Davis and Flescher opposed) to accept a 30-day termination notice from Mrs. Massung and provide her with a severance package that covers Section 9 severance as presented in the spreadsheet. MOTION FAILED.

Commissioner Flescher felt \$130,000.00 was a lot of money and he wanted more answers before proceeding.

Vice Chair Bowden did not wish to terminate the contract.

Discussion continued among the Commissioners and Commissioner Davis expressed he did not want to take further action without a reason. The Board questioned Mrs. Massung's termination after she just received a strong vote of confidence at a prior meeting.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Flescher, not to take action on this item.

Discussion continued as to why this was taking place.

Attorney Petersen asked the Board how much detail the Board wanted to take a political action.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved to take no action on this item.

Attorney Petersen announced that one of the reasons that Mrs. Massung wanted to terminate the contract was due to pressure from one or more commissioners. After hearing his comment, Commissioner Davis announced that he wanted to go with his original motion to terminate the contract immediately.

Chairman Wheeler said he would support Commissioner Davis if the 30-days were added because he felt the transition period was very important.

There was more discussion regarding the perception of “undue pressure” and the explanation of why Chairman Wheeler added the vote of confidence to the agenda.

MOTION WAS MADE by Commissioner Davis, to remove the 30-day notice and terminate the contract immediately. There was no SECOND. MOTION DIED.

Commissioner Davis felt that Mrs. Massung had obviously found “something so bad” that she did not want to stay until the end of her contract so he suggested giving her what she wanted.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Commissioner O'Bryan, to terminate the
contract immediately.

Discussion ensued whereby Commissioner Flescher pursued obtaining a reason for
this item.

Vice Chair Bowden and Commissioner Davis wanted to move forward.

The Chairman CALLED THE QUESTION. By a 3-2 vote
(Vice Chair Bowden and Commissioner Flescher opposed)
the Board terminated the contract of Executive Aid
Kimberly Massung, effective immediately.

*The Chairman called a recess at 2:43 p.m. and he reconvened the meeting at 3:31
p.m. with all members present.*

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 - NONE

13.D. COMMISSIONER JOSEPH E. FLESCHER - NONE

13.E. COMMISSIONER PETER D. O'BRYAN

13.E.1. DISCUSSION OF COUNTY CHARTER GOVERNMENT

Commissioner O'Bryan wanted to protect and preserve Indian River County's quality of life and was convinced that a Charter Government process would do that.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Chairman Wheeler, to direct the County Attorney and appropriate staff to prepare a simple Charter Ordinance pursuant to the optional County Charter Law that contains the concepts that were discussed at the January 17, 2007 workshop. The Board also permitted staff to proceed in holding public hearings, take public comments, and write-up Charter Ordinances.

Under discussion, Vice Chair Bowden wanted to see more workshops before requesting staff to draft an ordinance on Charter Government.

Commissioner O'Bryan said he had planned to have four to six more workshops spread throughout the County to ensure dissemination of the information. He felt that drafting an ordinance would help the workshops to stay "more focused".

Chairman Wheeler suggested hiring a consultant for direction. He wanted to implement a draft ordinance so the workshops could use it for discussion, debate, and then change as needed.

The Chairman CALLED THE QUESTION and the Motion carried unanimously The Board directed the County Administrator to authorize an expenditure up to \$25,000.00, to hire a Consultant/Facilitator to assist the Board and staff with developing the Charter Ordinance and schedule and facilitate a series of public workshops and public hearings.

Discussion ensued between Commissioners O'Bryan and Flescher regarding the \$25,000.00 figure. Commissioner O'Bryan said he would provide back-up and the Board could decide who they want to hire as early as next week.

14. SPECIAL DISTRICTS AND BOARDS

14.A. EMERGENCY SERVICES DISTRICT - NONE

14.B. SOLID WASTE DISPOSAL DISTRICT - NONE

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 3:38 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/LAA/2007Minutes