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OF FEBRUARY 13, 2007

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February 13, 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, February 13, 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, County Attorney William G. Collins II, and Deputy Clerk Maria I. Suesz.

1. CALL TO ORDER

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

2. INVOCATION

Rev. Kyle “K.C.” Gibson, Senior Pastor, New Bethel African Methodist Episcopal Church delivered the Invocation.

(Clerk’s Note: WPBF News was present for a televised recording of Rev. Gibson during the Invocation and later accepting a Proclamation.)

3. PLEDGE OF ALLEGIANCE

Commissioner Joseph E. Flescher led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman Wheeler requested the following changes to today's Agenda:

1. Add Item 5.F. – Presentation by Kurt Spitzer, initial consultation with BCC regarding his services as Facilitator/Consultant for developing a Charter Government Ordinance.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously made the above changes to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION COMMEMORATING STEP UP, FLORIDA!

Commissioner Flescher read and presented the Proclamation to Jean Kline, County Health Department Administrator.

5.B. PRESENTATION OF PROCLAMATION HONORING AFRICAN AMERICAN PIONEER DAY FEBRUARY 13, 2007

Commissioner Davis read and presented the Proclamation to Rev. Kyle K. C. Gibson.

(Clerk's Note: The Chairman called for a short break at 9:12 a.m., and he reconvened the meeting at 9:23 a.m. with all members present.)

**5.C. PRESENTATION OF PROCLAMATION HONORING 2-1-1 AWARENESS
WEEK FEBRUARY 11 - 18, 2007**

Commissioner O'Bryan read and presented the Proclamation to a representative from the 2-1-1 Palm Beach/Treasure Coast.

**5.D. PRESENTATION OF PROCLAMATION HONORING CARLITA HARVEY
ON HER RETIREMENT FROM INDIAN RIVER COUNTY DEPARTMENT
OF UTILITY SERVICES**

Vice Chair Bowden read and presented the Proclamation and Retirement Award to Utilities Director Erik Olson, who accepted the Proclamation on behalf of Ms. Harvey.

**5.E. PRESENTATION OF PROCLAMATION HONORING THE MEMORY OF
ROBERT "BOB" M. TENBUS FOR HIS MANY YEARS OF SERVICE ON
VARIOUS BOARD AND COMMITTEES**

Chairman Wheeler read and presented the Proclamation to Mr. Tenbus's widow, Mary.

**5.F. PRESENTATION BY CONSULTANT KURT SPITZER, INITIAL
CONSULTATION WITH BCC REGARDING HIS SERVICES AS
FACILITATOR/CONSULTANT FOR DEVELOPING A CHARTER
GOVERNMENT ORDINANCE**

Kurt Spitzer, Kurt Spitzer and Associates, Inc. using a PowerPoint Presentation (copy on file) gave an overview of Charter Government. The most important point was that Charters are adopted, amended or repealed only by voters of the County. He suggested that the Board think about what type of draft they would give the public for input at hearings, prepare a timeline for completion, and establish a date of Special Election.

Chairman Wheeler commented that they should address this, from his perspective, as a “neighborhood” and look at what would be good for the County, and he felt the Charter would help them do that. He said that they needed to have public support, and they needed the opportunity to educate the public. He announced that Thursday at 2:00 p.m. at the City of Vero Beach, Legal Counsel was coming down from the Florida League of Cities, and it would be a good opportunity for people to listen to their side of the argument.

MOTION WAS MADE by Commissioner O’Bryan, SECONDED by Chairman Wheeler, to schedule a workshop where they would review the checklist, and start putting together some components of the ordinance.

Under discussion, Vice Chair Bowden stated that she wanted more time to review this before she made a decision. Chairman Wheeler felt they needed a draft ordinance as a basis to work with.

Mr. Spitzer said he could prepare a document that codifies the current practice, and at the workshop he would go through each section of the document and give the Board direction where they may want to make changes, and advise how they can do that.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved to direct staff to draft an ordinance, schedule workshops and start the process.

6. APPROVAL OF MINUTES

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meetings of December 19, 2007 and January 9, 2007. There were none.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of December 19, 2007, as written and distributed.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of January 9, 2007, as written and distributed.

7. CONSENT AGENDA

Chairman Wheeler asked that Item 7.I be pulled for discussion.

7.A. APPROVAL OF WARRANTS – JANUARY 26 - FEBRUARY 01, 2007

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for January 26 – February 01, 2007, as requested in the memorandum of February 1, 2007.

**7.B. OUT OF COUNTY TRAVEL FOR COMMISSIONERS TO ATTEND
FLORIDA ASSOCIATION OF COUNTIES LEGISLATIVE DAY MARCH
28, 2007**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously authorized out of county travel for all Commissioners and staff to attend the Florida Association of Counties (FAC) 2007 Legislative Day in Tallahassee on March 28, 2007, as requested in the memorandum of February 1, 2007.

**7.C. APPOINTMENT OF COMMISSIONER SANDRA BOWDEN TO THE
SUSTAINABLE TREASURE COAST, INC. COMMITTEE AS AN EX-
OFFICIO MEMBER**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the appointment of Vice Chair Bowden to the newly formed not-for-profit organization, Sustainable Treasure Coast, Inc. as an ex-officio member of the Board, as requested in the memorandum of February 6, 2007.

**7.D. 2007 ELECTION OF NORTH BARRIER ISLAND ONGOING REVIEW
COMMITTEE (NBIORC) CHAIRMAN AND VICE CHAIRMAN**

The Board noted for the record the re-election of Bill Glynn as Chairman and Bob Johnson as Vice Chairman of the NBIORC.

**7.E. RESIGNATION OF TOURIST INDUSTRY APPOINTEE TO THE
ECONOMIC DEVELOPMENT COUNCIL**

The Board noted for the record the resignation of Tourist Industry Appointee Mr. Robert Tenbus to the Economic Development Council.

**7.F. RESIGNATION OF APPOINTEE INTERESTED IN TOURIST
DEVELOPMENT TO THE TOURIST DEVELOPMENT COUNCIL**

The Board noted for the record the resignation of Appointee interested in Tourist Development to the Tourist Development Council Mr. Robert Tenbus.

**7.G. PROCLAMATION HONORING GARY ALAN JACOBSON ON HIS
RETIREMENT FROM THE INDIAN RIVER COUNTY DEPARTMENT OF
UTILITY SERVICES**

The Board noted the Proclamation for the record.

7.H. MODIFICATION TO MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE UNIVERSITY OF FLORIDA AND INDIAN RIVER
COUNTY

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously authorized the County Attorney's office to draft an amendment to the existing Memorandum of Understanding to allow an addition of funding (\$2,000) to support the salary for the proposed horticultural agent with the cost to come from savings of the County health insurance for that agent; and authorized the County Administrator to execute the amended Memorandum of Understanding once approved by the County Attorney, as recommended in the memorandum of February 6, 2007.

7.I. SOLICITATION OF PROPOSALS FOR PROVIDING FOOD SERVICE

Chairman Wheeler wanted to know if it would be worth their while to set a "target rate" for bidders to lease the concession area in the new County Administration Building. Administrator Baird responded that could be done. He informed the Chairman that they do not charge rent, but they have seen interest from vendors in the past, and they intend to open the request for proposals (RFP) to the public.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Wheeler, the Board unanimously authorized the County Administrator or his designee to find a

low/high range value to lease, and to proceed with the preparation of a request for proposals to provide food services within the new County Administration Building, as recommended in the memorandum of February 7, 2007.

7.J. MISCELLANEOUS BUDGET AMENDMENT 010

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution** 2007-008, amending the fiscal year 2006-2007 Budget.

7.K. APPROVAL OF WORK ORDER NO. 18 FOR SURVEYING SERVICES FROM MASTELLER, MOLER, REED & TAYLOR, INC. TO LOCATE POTENTIAL CONFLICTS BETWEEN EXISTING WATER AND SEWER UTILITIES AND PROPOSED DRAINAGE FACILITIES RELATED WITH THE CR 512 PHASE IV IMPROVEMENTS, PUBLIC WORKS PROJECT No. 9611B

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the project for a total amount of \$4,800.00 and authorized the Chairman to execute Work Order No. 18, as recommended in the memorandum of February 2, 2007.

WORK ORDER NO. 18 IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

**7.L. APPROVAL WORK ORDER NO. 1-3 (ENGINEERING) WITH CTI-
CONSTRUCTION TESTING & INSPECTION, INC. PROVIDING
PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH
THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534,
INDIAN RIVER COUNTY PROJECT NO. 0201, INDIAN RIVER DRIVE
SOUTH SIDEWALK IMPROVEMENTS**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 2 3 (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 \$1,994.00, as recommended in the memorandum of January 31, 2007.

WORK ORDER NO. 3 IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

**7.M. APPROVAL WORK ORDER NO. 2 (ENGINEERING) WITH CTI-
CONSTRUCTION TESTING & INSPECTION, INC. PROVIDING
PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH
THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534,
INDIAN RIVER COUNTY PROJECT NO. 0382, FELLSMERE
SIDEWALK PHASE II**

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

Work Order No. 2 (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 \$2,662.29, as recommended in the memorandum of January 31, 2007.

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

7.N. APPROVAL WORK ORDER NO. 1 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC. PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534, 16TH STREET BRIDGE AT 74TH AVENUE (PROJECT NO. 9920B)

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, 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 \$4,724.00, as recommended in the memorandum of January 31, 2007.

WORK ORDER NO. 1 IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

7.O. APPROVAL WORK ORDER NO. 2 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC. PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL

**SERVICES CONTRACT No. 0534, 56TH PLACE BRIDGE NORTH OF
53RD STREET (PROJECT No. 0703)**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 2 (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 \$7,226.50, as recommended in the memorandum of January 31, 2007.

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

**7.P. APPROVAL WORK ORDER No. 3 (ENGINEERING) WITH ARDAMAN &
ASSOCIATES, INC. PROVIDING PROFESSIONAL GEOTECHNICAL
SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL
SERVICES CONTRACT No. 0534, 8TH STREET BRIDGE AT 74TH
AVENUE (PROJECT No. 03107-B)**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 3 (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 \$4,724.00, as recommended in the memorandum of January 31, 2007.

WORK ORDER NO. 3 IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

7.Q. APPROVAL WORK ORDER NO. 4 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC. PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534, 13TH STREET SW BRIDGE AT 58TH AVENUE (PROJECT NO. 0530-B)

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 4 (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 \$4,724.00, as recommended in the memorandum of January 31, 2007.

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

7.R. FINAL RELEASE OF RETAINAGE, APPLIED TECHNOLOGY AND MANAGEMENT, INC., CONTRACT AMENDMENTS #6 AND #7

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the application for final release of retainage, as recommended in the memorandum of January 23, 2007.

**7.S. APPROVAL OF RFP/BID AWARD AND AGREEMENT FOR IRC BID #
2007009 LIBRARY AUTOMATION SYSTEM**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously accepted Polaris Library Systems as the vendor, and authorized the Chairman to execute the contract with Polaris upon final approval by the County Attorney and the County Administrator of the draft contract for an amount not to exceed \$162,084.00, as recommended in the memorandum of February 7, 2007.

**7.T. APPROVAL OF CHANGE ORDER NO. 1 WITH UTILITIES LABOR
CONTRACTOR FOR UTILITY CONFLICT RESOLUTIONS ALONG US1
FROM WABASSO ROAD TO HARRISON STREET**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Change Order No. 1 in the amount of \$35,669.80 for additional labor; approved the total cost of the project as \$289,072.21; and authorized the Chairman to execute Change Order No. 1, as recommended in the memorandum of February 2, 2007.

CHANGE ORDER NO. 1 IS ON FILE IN THE OFFICE OF THE CLERK OF THE BOARD

8. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

A. INDIAN RIVER COUNTY SHERIFF ROY RAYMOND – 2007-2008 VICTIMS OF CRIME ACT (VOCA) GRANT APPLICATION

ON MOTION by Commissioner Flescher, SECONDED by Chairman Wheeler, the Board unanimously authorized the Sheriff to complete the application for the Victims of Crime Act (VOCA) Grant, and the Finance Office grant form, as recommended in the memorandum of February 5, 2007.

9. PUBLIC ITEMS

9.A. PUBLIC HEARING

9.A.1. CHESNUT AND SMITH'S REQUEST TO REZONE ±3.35 ACRES FROM CL TO CG (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 gave his presentation stating that the purpose of the rezoning from CL to CG is so the properties could accommodate a more diverse type of uses. The Planning and Zoning Commission voted (7-0) recommending that the Board approve this rezoning.

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 O'Bryan, the Board unanimously approved **Ordinance 2007-003**, amending the zoning ordinance and the accompanying zoning map for ±3.35 acres located east of U. S. Highway 1 and approx. 1000 ft. south of 77th Street, from CL, Limited Commercial District, to CG, General Commercial District; and providing codification, severability, and effective date.

9.A.2. UNITED INDIAN RIVER PACKERS LLC'S REQUEST FOR APPROVAL OF A SMALL SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT TO REDESIGNATE 8.36 ACRES FROM L-2 TO C/I, AND TO REZONE THOSE 8.36 ACRES FROM RM-6 TO IL; AND HIGHPOINTE LLC'S REQUEST TO REDESIGNATE 8.36 ACRES FROM C/I TO L-1 (LEGISLATIVE)

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

Community Development Director Bob Keating made his presentation stating that the proposal includes a small scale land use amendment and rezoning by re-designating 8.36 acres on subject property 1 from L-2 to C/I, rezoning those 8.36 acres from RM-6 to IL; and re-designating 8.6 acres on subject property 2 from C/I to L-1.

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 O'Bryan, the Board unanimously approved and adopted the following Ordinances:

Ordinance 2007-004, amending the Future Land Use Element of the Comprehensive Plan by Changing the Land Use Designation for ±8.36 acres located west of Old Dixie Hwy and north of 77th Street, from L-2, low-density residential-2 (up to 6 units/acre), to C/I, Commercial Industrial; and providing codification, severability, and effective date.

Ordinance 2007-005, amending the Future Land Use Element of the Comprehensive Plan by changing the land use designation for ±8.36 acres located approximately 1700 feet south of 65th Street and 800 feet west of Old Dixie Hwy, from C/I, commercial industrial, to L-1, low-density residential-1 (up to 3 units/acre); and providing codification, severability, and effective date.

Ordinance 2007-006, amending the zoning ordinance and zoning map for ±8.36 acres located west of Old Dixie Hwy and north of 77th Street, from RM-6, multiply family residential district (up to 6 units/acre), to IL, light industrial district; and providing codification, severability, and effective date.

9.B. PUBLIC DISCUSSION ITEMS

9.B.1. REQUEST TO SPEAK FROM JOSEPH PALADIN, CHAIRMAN, GROWTH AWARENESS COMMITTEE REGARDING BONDING OUT FOR MAINTENANCE BONDS, SITE OVER SITE PLAN MULTI-FAMILY, AND LEVEL OF BOND

Joseph Paladin, President of the Growth Awareness Committee, wanted to discuss bonding out for maintenance bonds and to ask the Board to revise the Ordinance changing the A plus XI rating to A plus VII. After he conducted research, he found that you cannot get a rating of A plus XI. He addressed this with Administrator Baird and he recommended it be brought back to the Board to make sure that it is correct.

County Attorney Collins said they could go as low as A plus VII, provided it is consistent with the County Administrator's policy standards.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously authorized County Attorney Collins to draft a revision to the maintenance bonding Ordinance 2005-032, to reflect a target of A plus VII.

9.B.2. REQUEST TO SPEAK FROM VICTOR HART REGARDING GIFFORD PARK SECURITY HOUSE

Victor Hart spoke to the Board regarding their action taken February 5, 2006 to deny the Gifford Park Security House project. He asked the Board to reconsider awarding the

project to the lowest bidder and put the Gifford Park Security House project back on schedule because the building belongs to the County.

Commissioner Flescher said he was looking at other options, but the option to spend \$127,000 to build the home and then maintain the home would not be in the best interest of the taxpayer. He was looking at the additional \$77,000.00 and did not know where the funds would be coming from.

Commissioner Davis showed concern that this was set in place by the former Commissioners, and he felt they needed to follow through with it.

MOTION WAS MADE by Vice Chair Bowden,
SECONDED by Commissioner Davis, for discussion, to
put the project back on target.

Commissioner Davis asked the Board to allow him 30 days to reorganize the project so it could be built, should they vote to deny this request.

The Board accepted input from former Commissioner Lowther who provided the project's history, and stressed it was wrong for the Board to deny.

Commissioner Flescher made Mr. Hart aware that on February 5th the reason for his dissenting vote was that \$127,000.00 of taxpayer funds would set precedence, and that it would happen at other locations. He wanted to see a developer's agreement, or a developer's cooperative, and to look at a different type of structure. He did not believe the ultimate goal of security was being achieved by that building.

Freddie Woolfork, 4590 57th Avenue, wanted to be a sounding board for the Commissioners and wished they talked to him before they got to this juncture. He suggested they lay out a format where they could discuss issues.

Commissioner O'Bryan clarified that the intent of the motion was to award the low bidder (Passage Island Homes, Inc.) as staff recommended in their memorandum dated January 29, 2007 (on file with the backup of February 5, 2007 meeting) and move forward.

Discussion ensued and Chairman Wheeler stated he wanted to give Commissioner Davis 30 days to fund the project. Vice Chair Bowden said if Commissioner Davis raised the funds he could donate it to this project. Attorney Collins confirmed that she was correct.

Chairman Wheeler CALLED THE QUESTION and the Motion carried unanimously. The Board approved to put the project back on target, awarding the bid to Passage Island Homes, Inc. in the amount of \$137,680.00, as the lowest most responsive and responsible bidder meeting the specifications, including the exceptions approved by the Public Works Department, as set forth in the Invitation to Bid. In addition, the Board approved the agreement and authorized the Chairman to execute same, including the exceptions noted, when required performance and payment bonds have been submitted along with appropriate certificate of insurance and the County Attorney has approved the agreement as to form and legal sufficiency.

The Chairman called for a recess at 11:01 a.m. and he reconvened the meeting at 11:21 a.m. with all members present.

9.C. PUBLIC NOTICE ITEMS

9.C.1. SCHEDULED FOR PUBLIC HEARING ON FEBRUARY 20, 2007

PUBLIC HEARING TO RECONSIDER THE GRANTING OF SPECIAL EXCEPTION USE APPROVAL FOR A 100-FOOT MONOPOLE WIRELESS COMMUNICATIONS TOWER TO BE LOCATION AT 8000 26TH STREET AS PART OF A PROPOSED SETTLEMENT IN THE CASE OF NEXTEL SOUTH, CORP. VS. INDIAN RIVER COUNTY (U.S. DISTRICT COURT, SOUTHERN DISTRICT) – (QUASI-JUDICIAL)

9.C.2. NOTICE OF SCHEDULED PUBLIC HEARING FOR FEBRUARY 20, 2007:

BOARD CONSIDERATION TO APPROVE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS ON THE SEXTON RANCH UNDER THE COUNTY ENVIRONMENTAL LAND ACQUISITION PROGRAM (CONTINUED FROM JANUARY 16, 2007) – (ADMINISTRATIVE)

9.C.3. NOTICE OF SCHEDULED PUBLIC HEARING FOR FEBRUARY 20, 2007:

**ESTABLISHMENT OF THE WEST WABASSO STREETLIGHTING
MUNICIPAL SERVICES BENEFIT UNIT AND AMENDMENT TO INDIAN
RIVER COUNTY CODE SECTION 200.07 (LEGISLATIVE)**

**9.C.4. NOTICE OF SCHEDULED PUBLIC HEARING FOR FEBRUARY 20,
2007:
AMEND CHAPTER 307, OF THE INDIAN RIVER COUNTY CODE BY
CREATING SECTION 307.13, PROHIBITION OF ALL TERRAIN
VEHICLE OPERATION ON UNPAVED ROADWAYS (LEGISLATIVE)**

The Chairman read the notices into the record.

10. COUNTY ADMINISTRATOR'S MATTERS - NONE

11. DEPARTMENTAL MATTERS

11.A. COMMUNITY DEVELOPMENT

**11.A.1. APPEAL BY I AM MINISTRIES (THE SOURCE) OF A DECISION BY
THE PLANNING & ZONING COMMISSION TO UPHOLD AN APPEAL BY
STEVEN & ERIN METZ AND OVERTURN A DECISION BY
COMMUNITY DEVELOPMENT STAFF THAT THE NON-CONFORMING
RESIDENTIAL TREATMENT CENTER USE AT 5925 37TH STREET DID**

**NOT CEASE FOR MORE THAN ONE YEAR AND THAT THE USE MAY
CONTINUE UNDER DIFFERENT OWNERSHIP – (QUASI-JUDICIAL)**

The Clerk swore in the speakers.

Planning Director Stan Boling presented this matter as written in his memorandum of February 7, 2007, asking the Board to look at two issues: (1) was the Metz appeal timely; and (2) how does the non-conformity regulations apply in this particular case. This appeal is from The Source and they listed several contentions. It was staff's opinion that the Planning & Zoning Commission (P&Z) did fail in their analysis on how they applied the non-conformity regulations. Staff recommended that the Board grant the appeal, overturn P&Z's decision, and allow the The Source to proceed on the site as a residential treatment center, based on the post disaster criteria. He asked the Board to focus on: (1) whether the Metz appeal was timely; (2) did the use cease for a continued period of one year; and (3) does the post disaster reconstruction provision apply to the repair, reconstruction and reuse of this facility. He asked Attorney Collins to make a presentation on the "timeliness of the appeal" issue, when appropriate. He responded to questions from the Board.

Attorney Michael O'Haire interrupted Mr. Boling objecting to any reference being made to the chronology evidence, because according to him it was inaccurate.

Chairman Wheeler announced that it was not a public hearing, however, everyone would be heard. He asked the public not to applaud, be polite and courteous, and to direct their comments only on the subject matter as defined by staff.

Steve Henderson, Esq. Collins, Brown, Caldwell, Barkett & Garavaglia, Chartered, had a fourth element that had been raised in the appeal. It was what the Law would call "estopped" from revoking the approval that was granted by the Community Development

Director on July 10, 2006. There was “estoppel” because The Source relied on that letter in taking certain actions, including the purchase of the property.

Attorney Collins thought their argument on “estoppel” needed to be focused on the period between July, when they purchased the property, and the end of October. When the appeal was filed November 1, 2006, he thought they were put on notice of any appeals ongoing, and any action subsequent to that would be at their own risk.

Douglas Vitunac, Esq., also from Collins, Brown, Caldwell, Barkett & Garavaglia, Chartered, did not think that would be a problem. He stated they could show detrimental reliance before November 1, 2006. He proceeded using a PowerPoint presentation covering the timeline of important dates, and the timeliness of the Appeal. Their position was that the appeal was filed two days late with the County.

Michael O’Haire, Esq., argued that his letter was filed on time.

Attorney Collins agreed with Attorney O’Haire that the appeal was filed timely, but technically it was a deficient appeal, based on fact that it was filed without the filing fee. He advised the Board not to hear the appeal.

Discussion ensued regarding the argument The Source was making, that it is jurisdictional and the Board does not have the power to hear the appeal.

Chairman Wheeler felt this issue failed because people were not properly notified. He said they need to change their rules to correct this deficiency, and when the grandfather clause is in effect and people are notified.

Vice Chair Bowden wanted to know what their legal position was at this moment.

Craig Kobeloski, a resident who lives behind the subject property, argued the unfairness to the matter of not hearing the public's input.

Commissioner Davis recognized that one side was going to win on a technicality, and Commissioner Wheeler agreed. Based on this being a legal action, Chairman Wheeler felt that the Board needed to take the advise of their legal counsel and not hear the appeal.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Vice Chair Bowden, to not hear the
appeal.

Under discussion, Commissioner O'Bryan expressed a desire to proceed with hearing additional testimony and then letting the Courts decide. Commissioner Flescher agreed.

The Chairman CALLED THE QUESTION, and the Motion carried, by a 3-2 vote (Commissioner O'Bryan and Flescher opposed). The Board agreed not to hear the appeal based on the County Attorney's advice that the appeal was a deficient appeal because it was filed without the appropriate filing fee.

Clerk's note: The Chairman called for a recess at 12:57 p.m. and he reconvened the meeting at 1:11 p.m. with all members present.

**11.A.2. CENTURY REALTY FUNDS PANTHER IX, LLC'S APPEAL OF A
PLANNING AND ZONING COMMISSION DECISION TO DENY A
MAJOR SITE PLAN APPLICATION TO CONSTRUCT A COMMERCIAL**

SHOPPING CENTER TO BE KNOWN AS CENTURY TOWN CENTER –

QUASI-JUDICIAL

The Clerk swore in the speakers.

Planning Director Stan Boling presented this item to the Board. The Planning and Zoning Commission denied the site plan application because of concerns with the SR-60 and 58th Avenue intersection impact requirements. Staff recommended the Board overturn the decision of P&Z, with conditions, and to grant the appeal. He responded to questions from the Board.

Bruce Barkett, Esq., representing Century Realty Funds Panther IX, LLC, brought a court reporter to record his presentation. He thought there was confusion or perhaps a lack of information on the part of the applicant at the P&Z meeting, because they did not know what information was going to be required, since they did have a signed developer's agreement. He asked questions on this issue of the Community Development Director Bob Keating and Assistant Public Works Director Chris Mora, in an effort to clear up the confusion, and prove that the application satisfies all the standards in the Code, including the standards for concurrency and for the intersection.

*Clerk's Note: **Mr. Barkett** handed the Clerk copies of the Developers' Agreements (Equity Investments, LLC, RJP Development Company Stoneybrook Farm Group, LLC, Lennar Homes, Inc., Odyssey (II) DP V LLC, DiVosta Homes and L.P. for Waterway Village.*

Upon the request of **Mr. Barkett**, Attorney Collins related that he felt the Commission did not receive a good answer as to when the intersection improvements would be in place. Based on that, he advised the P&Z Commission (at its meeting) that they would have a reason to turn down the application. Since that meeting, he changed his opinion based on the fact that the improvements are scheduled in the first three years of the Capital Improvement Plan,

and to some extent are funded. **Mr. Barkett** introduced Neil Comby, Century Realty Funds Panther IX, LLC, who advocated the applicant's interest in the Board's decision.

Commissioner Davis expressed concern about the plans for improvement at intersection SR-60 and 58th Avenue. Assistant Public Works Director Chris Mora displayed a spreadsheet displaying the Capital Improvement Element (see page 397.B.).

The Board heard input from **Bob Bruce**, Chair of P&Z, who confirmed the Commission's position stating that they did rely on the three years in the construction plan, and they did not have a "warm fuzzy feeling" that it was going to occur. He said they were told that the construction cost was around \$50 million dollars, and he did not see those figures displayed today.

Chuck Mechling, Pointe West, addressed the concept of the Towne Centre element of Pointe West that was approved back in 1998, and he assumed staff would not approve the impact fees now, because as they move forward concurrency becomes an issue. He mentioned he was waiting until the Board works through the SR-60 improvements issue before he brought this item forward, hoping it to be non-controversial.

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Commissioner Davis, to deny the
decision of the Planning and Zoning Commission, and
accept staff's recommendation.

Under discussion, Chairman Wheeler thought the increase in traffic at this intersection is going to come from persistent and continuous growth in the County. He did not see the project actually increasing traffic.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board found that the Planning and Zoning Commission failed to adequately evaluate the site plan application with respect to the County's intersection impact requirements; overturned the Planning and Zoning Commission's decision to deny the major site plan application; and approved the application with the conditions recommended by staff in its report to the Planning and Zoning Commission, as recommended in the memorandum dated February 7, 2007.

Mr. Barkett mentioned that Kimley-Horn and Associates is also doing an alternative corridor study to see how to take traffic outside of the intersection.

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

**11.I.1. CONSIDERATION OF INTERSECTION IMPROVEMENTS TO
SCHUMANN DRIVE AND BARBER STREET**

Public Works Director Jim Davis presented this matter to the Board as defined in his memorandum dated January 31, 2007. Staff's recommendation is to expand the intersection of Schumann Drive and Barber Street as a separate project as to not delay portions of CR-510 and 66th Avenue construction.

Sebastian City Manager **Al Minner** concurred with staff's recommendation Alternative #1, with the caveat that the construction and refurbishment of Schumann and Barber Street continue to move forward. He wanted it on record that the City of Sebastian feels that this project should be a fully funded MPO project. **Mr. Minner** responded to questions from the Commissioners (copy on file).

Administrator Baird understood Mr. Minner's opinion, but showed concern should the State Legislature limits their budget. He felt they should move ahead with the project design and make a decision later.

Discussion ensued regarding funding of this project.

ON MOTION by Commissioner Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative No. 1, expanding intersection of Schumann Drive and Barber Street with separate project

as to not delay portions of CR 510 and 66th Avenue construction, as recommended in the memorandum of January 31, 2007.

11.I.2. WORK ORDER NO. 2 TO THE PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH ARCADIS G & M, INC. FOR LANE WIDENING OF 43RD AVENUE FROM 25TH STREET S.W. TO OSLO ROAD (9TH STREET S.W.) INDIAN RIVER COUNTY PROJECT NO. 0702

Public Works Director Jim Davis responded to questions from the Commissioners regarding the grid system.

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. 2 with Arcadis G & M, Inc. and directed staff to pursue purchase of right-of-way on west side of 43rd Avenue, as recommended in the memorandum of February 6, 2007.

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

11.J. UTILITIES SERVICES

**1. WEST WABASSO COMMUNITY WATER PROJECT, PHASE I SHELTRA & SON,
INC. CHANGE ORDER NO. 1 TO CONTRACT 2006051**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Wheeler, the Board unanimously approved Change Order No. 1 to Sheltra and Son Construction Co., Inc. in the total amount of \$30,370.00; and authorized the Chairman to execute approved Change Order No. 1 to IRC Contract 2006051, as recommended in the memorandum of January 26, 2007.

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

**11.J.2. APPROVAL OF BID AWARD AND SAMPLE AGREEMENT FOR IRC BID
2007029 PHASE II FORCE MAIN WEST WASTEWATER
TRANSMISSION SYSTEM – UTILITIES DEPARTMENT**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the bid be awarded to SPS Contracting, Inc., as the lowest most responsive and responsible bidder meeting the specification as set forth in the Invitation to Bid; approved the sample agreement; and authorized the Chairman to execute said agreement when required performance and payment bonds have been submitted along with appropriate certificate of insurance and the County attorney has approved the agreement as to form and legal

sufficiency, as recommended in the memorandum of January 31, 2007.

12. COUNTY ATTORNEY MATTERS

A. PROPOSED PROPERTY EXCHANGE, ABANDONMENT OF RIGHT-OF-WAY AT 1896 MOORING LINE DRIVE

Assistant County Attorney Bill DeBral presented this item to the Board as outlined in his memorandum dated February 7, 2007. Basil and Donna Keller found that after completing renovations to their house they were three (3) feet into the easement in their front yard. The County is going to abandon 3 feet through the right-of-way process; in exchange the Kellers would dedicate this property to the County for the expansion of 74th Avenue. Also, he would like direction to proceed with the abandonment in the property swap, also recommending to the building department issuance of a temporary certificate of occupancy.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved for staff to proceed with the abandonment of the right-of-way and acquisition of the 74th Avenue right-of-way; directed the Building Department to issue a conditional or temporary certificate of occupancy to permit the Kellers to move into their residence during the pendency of their right-of-way abandonment process, as recommended in the memorandum of February 7, 2007.

13. COMMISSIONER ITEMS

13.A COMMISSIONER GARY C. WHEELER, CHAIRMAN

1. REQUEST FOR DISCUSSION REGARDING DECISION ON BOARD OF COUNTY COMMISSION OFFICE STAFFING

Chairman Wheeler wanted direction from the Board to put the staffing matter “to rest” so people will feel comfortable taking a position with the County.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Davis, to direct Administrator Baird, who in turn would direct the Human Resources Director Jim Sexton to perform an in-depth feasibility study, which would include the adjoining Counties, as well as ours, and bring back options to the Board within 60 days.

Under discussion, Chairman Wheeler agreed staff should come back with an objective point of view about how to efficiently operate the office by looking at other systems and see if there is something that they could improve on. He wanted the Commission to discuss pros and cons, and likes and dislikes, at that time. He did not want the Commissioners to give Mr. Sexton direction of what they would want. He also wanted to see different plans and different office management styles.

Vice Chair Bowden wanted the responsibility of minutes taken at Committee meetings by the Commission office staff disseminated elsewhere.

Human Resources Director Jim Sexton said in order for him to come back to the Board, he needed to know what they wanted and needed, and he said he would meet with the Board, study other Counties, including salaries, and would come back with options.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved direction to Administrator Baird, who in turn would direct the Human Resources Director Jim Sexton to perform an in-depth feasibility study, which would include the adjoining Counties, as well as ours, and bring back options to the Board within 60 days.

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

13.C. COMMISSIONER WESLEY S. DAVIS

**1. REQUEST FROM THE CITIZEN'S COALITION OF SOUTH MAINLAND
TO PRESENT THEIR CONCERNS REGARDING PROPOSED
COMPREHENSIVE PLAN CHANGES BY THE CITY OF PALM BAY**

Commissioner Davis presented concerns of the Citizens' Coalition of South Mainland regarding the City of Palm Bay's 20 proposed Comprehensive Plan Amendments which were submitted to DCA, affecting density and land use changes, and the effect that the changes would have on Indian River County.

Clerk's Note: The Chairman called for a recess at 2:44 p.m. and he reconvened the meeting at 2:57 p.m. with all members present.

Vicki Benoit, President of Citizens Coalition of South Mainland, using a PowerPoint presentation (copy on file) summarized the amendments and the affect on surrounding communities, focusing on Indian River County. Their concerns are on the impact of

the environmental lands and traffic. There are 8 amendments of critical concern to the Coalition and Indian River County.

Discussion ensued by the Commissioners regarding communication from Brevard County, and St. Lucie County. Chairman Wheeler suggested sending a letter to the City of Palm Bay telling them their interest in keeping apprised of growth in their City.

Diane McCauley, President of Micco Homeowners Association, continued the presentation regarding the water supply. She stated the total proposed units is 22,550 and that is another 5 million gallons of water a day.

Commissioner Davis believed the water sources Palm Bay was looking at are across from their jurisdictional boundaries, using a reservoir in Indian River as their water supply. This was the reason he wanted to bring this to the Board's attention, and felt it was time they sat down with Palm Bay as they have done with the other surrounding counties.

The CONSENSUS was to schedule a joint meeting with the City of Palm Bay within the next 30 days, to become apprised of their growth plans.

13.D. COMMISSIONER JOSEPH E. FLESCHER - NONE

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

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

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 3:19 p.m.

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

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/MIS/2007Minutes