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OF BOARD OF COUNTY COMMISSIONERS
OF MARCH 13, 2007

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March 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, March 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

Reverend Dawn Lawton, Christ By the Sea United Methodist Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Wesley S. Davis 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. Deletion: Item 9.B.3. – Request to Speak from P&S Properties, Jerry Swanson regarding concurrency interpretation
2. Addition: Item 12.D. – Authorization for County Attorney to work with local municipalities on Interlocal Agreement.

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

5. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION OF PROCLAMATION DESIGNATING MARCH 12-18, 2007, AS SURVEYORS WEEK

Commissioner Flescher read and presented the Proclamation to Michael O'Brien, County Surveyor, representing the local Surveyor community. Mr. O'Brien spoke of contributions the surveyors provide to the County, and the achievements of Robert Daniel "R.D." Carter and his family, who for 96 years has continued to contribute to the profession and the community. He afforded the Proclamation and granted a Certificate of Achievement to Marvin Carter (grandson of R.D. Carter), who continues to remain involved.

6. APPROVAL OF MINUTES

A. WORKSHOP MEETING OF JANUARY 5, 2007

The Chairman asked if there were any corrections or additions to the Minutes of the Chapter 910 Concurrency Management System Public Workshop - January 5, 2007. There were none.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the Minutes of the January 5, 2007 Public Workshop, as written and distributed.

7. CONSENT AGENDA

The Chairman pulled Item 7.H for discussion.

7.A. APPROVAL OF WARRANTS – FEBRUARY 23 – MARCH 1, 2007

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for February 23 – March 1, 2007, as requested in the memorandum of March 1, 2007.

7.B. RESIGNATION OF DISTRICT 5 APPOINTEE TO UTILITY ADVISORY COMMITTEE

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously accepted the resignation of Mr. Herbert V. Whittal, District 5 Appointee to the Utility Advisory Committee, as recommended in the memorandum of March 5, 2007.

7.C. APPOINTMENT TO THE HISTORIC RESOURCES ADVISORY COMMITTEE

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously appointed Reverend Dr. Kyle C. Gibson to the Citizen at Large position on the Historic Resources Advisory Committee replacing Kathleen Smith, as recommended in the memorandum of March 5, 2007.

7.D. APPROVAL OF BID AWARD AND SAMPLE AGREEMENT FOR IRC BID #2007039 UPGRADES & GENERATORS FOR IRCDUS LIFT STATION NUMBERS 68 & 69 BENT PINE/UTILITIES DEPARTMENT

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Bid be awarded to T.L.C. Diversified, Inc, as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid; approved

the sample agreement and authorized for the Chairman to execute same 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 March 2, 2007.

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

**7.E. FINAL PAYMENT TO J. & H. WATERSTOP, INC. FOR LIFT STATION 166
REHABILITATION UCP #2866**

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved final payment for Bid 20077018 to J&H Waterstop, Inc. for a final payment of \$38,000.00 and authorized the Chairman to execute same, as recommended in the memorandum of February 26, 2007.

**7.F. CR-512, I-95 TO ROSELAND ROAD – IRC PROJECT No. 9611,
ADDENDUM #8, TASK A, REQUEST FOR FINAL RELEASE OF RETAINAGE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved to release the retainage for Addendum No. 8 – Task A in the total amount of \$1,593.90, as recommended in the memorandum of March 6, 2007.

7.G. UNITED INDIAN RIVER PACKERS, LLC REQUEST FOR RELEASE OF AN EASEMENT AT 4310 77TH STREET (HOBART ESTATES UNIT 1)

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved **Resolution 2007-022**, releasing a portion of an easement on the recorded Plat of Hobart Estates Unit 1.

7.H. AQUALAGO, LLC'S REQUEST FOR EXTENSION OF SITE PLAN APPROVAL FOR A MULTI-FAMILY RESIDENTIAL DEVELOPMENT TO BE KNOWN AS TOSCANA (QUASI-JUDICIAL)

Chairman Wheeler saw a lack of progress when he visited the development. Since they have been making changes to the Comprehensive Plan he preferred that staff bring it back when the developer has completed certain requirements. Planning Director Stan Boling advised the Board that the site plan was modified, and the developer has met all the criteria.

Bill McCain, W. F. McCain and Associates, informed the Board they were here today because his client was delayed in getting their site plan released through negotiations for contributions for road improvements on 27th Avenue.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, by a 4-1 vote (Chairman Wheeler opposed) the Board approved Aqualago, LLC's request for a one-year extension of the revised, approved site plan for

Toscana with all original approval conditions to remain in effect, as recommended in the memorandum of March 5, 2007. The new site plan expiration date will be February 23, 2008.

7.I. IRC JAIL EXPANSION PROJECT DEDUCTIVE CHANGE ORDER NUMBER

9

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Deductive Change Order #9 in the deductive amount of \$429,412.28, and authorized the Chairman to execute same, as recommended in the memorandum of March 5, 2007.

CHANGE ORDER NO. 9 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.J. PROFESSIONAL ENGINEERING SERVICES AGREEMENT, CR 512

CORRIDOR IMPROVEMENTS – IRC PROJECT NO. 9611, ADDENDUM NO. 10

(MASTELLER & MOLER, INC.) RELEASE OF RETAINAGE

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Release of Retainage to Masteller & Moler, Inc. for Addendum No. 10, Tasks I & II for a total of \$1,803.25, with funding as specified as recommended in the memorandum of March 6, 2007.

7.K. WORK ORDER #5, APPLIED TECHNOLOGY AND MANAGEMENT INC.,
SECTOR 7 CONSTRUCTION PHASE SERVICES

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Work Order #5 to the contract with Applied Technology and Management Inc. and authorized the Chairman to execute said work order. The work is subject to 90% cost sharing with the State of Florida under Grant Agreement H51R1., as recommended in the memorandum of March 5, 2007.

WORK ORDER NO. 5 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.L. WORK ORDER #6, APPLIED TECHNOLOGY AND MANAGEMENT INC.,
SECTORS 1 & 2 CONSTRUCTION PHASE SERVICES

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Work Order #6 to the contract with Applied Technology and Management Inc. and authorized the Chairman to execute said work order on behalf of the County. This work is subject to cost sharing with FEMA at a 95% level under FEMA PW: IRC-002-BG., as recommended in the memorandum of March 5, 2007.

WORK ORDER NO. 6 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**7.M. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR
MICHAEL CREEK SUBDIVISION**

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative No. 1 to approve the Cut and Fill Balance Waiver Request, as recommended in the memorandum of March 5, 2007.

**7.N. RELEASE OF RETAINAGE AND FINAL PAYMENT TO INDIAN RIVER
INDUSTRIAL CONTRACTORS FOR THE CENTRAL PLANT EXPANSION UCP
#2347, BID NO. 7029**

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved final payment for Bid 7029 to Indian River Industrial Contractors, Inc. for a final retainage payment of \$10,000.00 and authorized the Chairman to execute same as presented and recommended in the memorandum of February 26, 2007.

BID NO. 7029 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**7.O. JON FICHTELMAN REQUEST FOR RELEASE OF EASEMENTS AT 1086
9TH STREET SW (LOTS 2-7, BLOCK D, OSLO PARK SUBDIVISION
(ADMINISTRATIVE)**

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved **Resolution #2007-023**, releasing certain easements on Lots 2-7, Block D, Oslo Park Subdivision.

7.P. ACCEPTANCE OF CHANGE ORDER NO. 6, NEW COUNTY EMERGENCY OPERATIONS CENTER

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Change Order No. 006, which results with no change to the existing GMP of \$4,187,656.00 and a reduction in the owner's contingency by \$11,734.00 resulting in a revised owner's contingency of \$36,586.00, as recommended in the memorandum of March 7, 2007.

CHANGE ORDER NO. 6 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.Q. WORK ORDER NO. 3 – SURVEYING AND MAPPING/GIS SERVICES FOR THE INDIAN RIVER COUNTY VERTICAL CONTROL NETWORK (IRCVCN)

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Work Order No. 3, under the umbrella of Master Contract No. 0504 in the amount of \$10,400.00, authorizing the scope of services for said Work Order and authorized the Chairperson to execute the Master Contract and Work Order No. 3, as recommended in the memorandum of March 6, 2007.

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

7.R. MISCELLANEOUS BUDGET AMENDMENT 013

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved **Resolution 2007-024**, amending the fiscal year 2006-2007 Budget.

7.S. RIGHT OF WAY ACQUISITION, 74TH AVENUE SOUTH OF STATE RD. 60 AND SOUTH OF 12TH STREET, HAYDN CURTIS AND CYNTHIA A. TREVINO-AVERSA

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative 1, authorizing the \$37,800.00 purchase of right-of-way, and authorized Chairman to execute the

Agreement, as recommended in the memorandum of March 6, 2007.

7.T. RIGHT-OF-WAY ACQUISITION. WHOLE TAKE, NORTH SIDE OF 8TH STREET, WEST OF 66TH AVENUE, EAST OF 74TH AVENUE, EDNA C. FRANKS AND LOIS FRANKS RICE

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative No. 1, the counter offer to the Agreement for the right-of-way purchase in the amount of \$168,300.00, and the payment of the closing costs as requested by the sellers, and authorized the Chairman to execute the Agreement, as recommended in the memorandum of March 06, 2007.

7.U. APPROVAL OF ANNUAL FINANCIAL REPORT BY COUNTY COMMISSIONERS

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Chairman to execute the County's Annual Local Government Financial Report for the fiscal year 2005-2006, as recommended in the memorandum of March 7, 2007.

8. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

9. PUBLIC ITEMS

9.A.1. PUBLIC HEARING

MGC DEVELOPMENT GROUP, LLC'S REQUEST FOR PLANNED DEVELOPMENT (PD) SPECIAL EXCEPTION USE APPROVAL FOR A PROJECT TO BE KNOWN AS BLOOMFIELD (LEGISLATIVE)

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

Planning Director Stan Boling presented this item to the Board, using a map and aerial view of the site to review the various available options and land use densities. He noted that if the conceptual plan were approved, the Planning and Zoning Commission (P&Z) and staff would review a more detailed site plan. P&Z recommended approval of the Conceptual Plan with the conditions outlined in Senior Planner Brian Freeman's memorandum of March 5, 2007.

Mr. Boling invited questions from the Board.

Chairman Wheeler wished they had more Planned Developments with interconnectivity in the project, and he felt the location was good for this project.

The Chairman opened the public hearing.

Dave Woodward, Kimley-Horn and Associates, Inc., representing the project, was available to answer questions.

Commissioner O'Bryan wanted to know what the affordable housing prices would be and Mr. Woodward responded that there were no plans for Affordable Housing at this time.

Bob Johnson, Coral Wind Subdivision, was opposed to the Bloomfield Development.

Ray Scent, 1615 71st Court, spoke in favor of this project, stating that there is no place in the County that would be more fitting for this type of development.

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

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved MGC Development Group, LLC's Request for Planned Development Special Exception Use Approval for a Project to be known as Bloomfield (PD-06-10-08/2006020021-55458), with the following conditions:

- (1) Within five years after special exception approval, the applicant shall obtain final PD plan approval for the entire project. If such final PD plan approval is not obtained, then the PD special exception approval shall automatically expire.

- (2) Prior to issuance of a land development permit for this project (or prior to release of the preliminary PD plan, if applicable), the applicant shall: (a) Obtain approval of the final design for the 12th Avenue SW improvement by the County's Public Works Department and the Indian River Farms Water Control District; (b) Obtain a County wetland resource permit; (c) Obtain Environmental Planning staff approval of a tree protection plan and a tree mitigation replacement plan; (d) Obtain a gopher tortoise incidental take permit from the Florida Fish and Wildlife Conservation Commission (the applicant has agreed to relocate all gopher tortoises to upland preservation areas on the subject site).
- (3) Prior to or via final PD plan approval, the applicant shall: (a) Dedicate without compensation 25 feet of 11th Street SW right-of-way; (b) Establish a conservation easement over the wetland conservation area; (c) Establish a conservation easement over the upland conservation areas.
- (4) Prior to issuance of the first certificate of occupancy for the project, the applicant shall: (a) Complete all improvement of 12th Avenue SW from 9th Street SW to 11th Street SW; (b) Install all required landscape buffers and opaque features.
- (5) Prior to issuance of a certificate of occupancy for each building, the applicant shall: (a) Construct all internal sidewalks in the vicinity of that building; (b) Construct

the pedestrian connection to the 11th Street SW sidewalk in the Southwest corner of the site; (c) Construct both full access connections to 12th Avenue SW.

- (6) Prior to preliminary PD plan approval, the applicant shall propose a plan for coordination of an accelerated construction schedule of the 11th Street SW sidewalk with Habitat for Humanity, the developer of the adjacent Grace Woods subdivision, all as recommended in the memorandum of March 5, 2007.

**9.A.2. ORDINANCE IMPOSING STATE ROAD 60 INTEREST SHARE FEE – AND –
RESOLUTION TO EXECUTE JOINT PARTICIPATION AGREEMENT WITH THE
FLORIDA DEPARTMENT OF TRANSPORTATION TO ADVANCE CONSTRUCTION
OF THE WIDENING OF STATE ROAD 60 BETWEEN I-95 AND 66TH AVENUE
(LEGISLATIVE)**

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

Assistant Public Works Director **Chris Mora**, using a PowerPoint presentation (not on file), presented the proposed State Road 60 Interest Share Fee Ordinance, and introduced David Tucker from the Law Firm of Nabors, Giblin and Nickerson, Tallahassee, who assisted in the preparation of the ordinance. Mr. Mora provided background information on the six-laning of SR60, the recovery efforts of the interest costs, and the proposed joint participation agreement with the Florida Department of

Transportation (FDOT) to advance the 6-laning of SR60. The project would be split into two segments: 66th Avenue to 82nd Avenue (Segment One), and 82nd Avenue to I-95 (Segment Two).

Assistant Director Mora recommended approval of the interest share fee ordinance, and the resolution to execute the joint participation agreement with the Florida Department Of Transportation.

Commissioner Flescher asked staff whether it was possible to accelerate the State's repayment schedule, in order to reduce the amount of lost interest. Administrator Baird noted that the repayment schedule had already been shortened from 2025 to 2017. He disclosed that the State is only able to allocate approximately 10 million a year towards us, and gave his perspective on the importance of this project.

Staff responded to further questions from the Board regarding additional specifics of the financial responsibilities and aspects of the project, shortfall dollars, and whether the County could oversee the cost factors.

The Chairman opened the public hearing.

The following people spoke in favor of this proposal:

Ray Scent observed that the project has been under consideration for many years.

Joseph Paladin, Chairman of the Growth Awareness Committee, urged the Board to include future return trips in their calculations.

George Buetell, 5000 16th Street, spoke of improvements to the business community and to evacuation routes.

Jerry Swanson, 3001 Ocean Drive, set forth the urgency of moving ahead at today's prices.

Karen Hall, President of the Realtor's Association, presented her report (copy on file) supporting the project.

Bill Penny, 635 36th Avenue, voiced his support.

Spencer Simmons, Simmons Construction, proposed having his firm do the roadwork for less money than the State.

George Christopher, 945 Painted Bunting Lane, favored the project but was concerned about who would pay for any overruns, and about the 50% of the interest which is not recoverable.

Bruce Barkett, Esquire, revealed that the projects that he represents support paying the fees.

Peter Robinson, 315 Greytwig Road, encouraged Board action.

Nancy Offutt, President of the Builder's Association, voiced support and had several questions for the Board.

John Kurtz, 205 9th Court, applauded the Board and encouraged them to proceed with the project.

Chuck Mechling, 1999 Pointe West Drive, commented that this is a County initiated matter, and urged the Commissioners to proceed with this investment. He introduced Wayne Klinesdiver who gave a PowerPoint Presentation (copy on file) to illustrate how one community (Pointe West) contributes to the overall economic impact in Indian River County.

(Clerk's Note: Chairman Wheeler called for a recess at 10:34 a.m. and he reconvened the meeting at 10:43 a.m. with all members present except Commissioner Davis, who rejoined the meeting at 10:46 a.m.)

The following two speakers opposed the project:

Bob Johnson, Coral Winds Subdivision, who wanted road improvements to the east-west corridors, rather than the continuation of traffic moving north-south.

Rene Renzi, Waverly Place, cited the hazardous driving conditions which may occur with road projects. She suggested the Board contact Tallahassee about getting I-95 access at Oslo Road, rather than SR60.

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

Discussion ensued among the Commissioners regarding the re-payment schedule, and reducing the initial cost of the project.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Wheeler, the Board, by a 4-0 vote (Commissioner Flescher opposed), adopted **Ordinance**

2007-025, Imposing a State Road 60 Interest Share Fee to Recover the Interest Loss Incurred Under the Advance Construction of Segment Improvements to State Road 60 Pursuant to Advance Construction Agreements with the Florida Department of Transportation; Providing that New Development Occurring Within the State Road 60 Radius of Influence Shall Pay a State Road 60 Interest Share Fee as a Condition of Development Approval; Approving a Technical Memorandum Calculating the State Road 60 Interest Share Fee based upon the New Trips Provided Within the State Road 60 Radius of Influence as a Consequence of the Construction of Segment Improvements to State Road 60; Defining Certain Terms; and Providing an Effective Date.

The Board also approved **Resolution 2007-011**, Executing Joint Participation Agreement with the Florida Department of Transportation to Advance Construction of the Widening of State Road 60 between I-95 and 66th Avenue.

(Clerk's Note: Chairman Wheeler called for a recess at 11:45 a.m. and he reconvened the meeting at 11:55 a.m. with all members present).

9.B. PUBLIC DISCUSSION ITEMS

9.B.1. REQUEST TO SPEAK FROM BW TREASURE, INC., RENNE HAMBLIN REGARDING CODE ENFORCEMENT LIEN

Renne Hamblin, 849 20th St., (Property Manager of Winn Dixie), relayed that she had been fined with an order of lien for a non-conforming landscape site. She provided the Board a timeline to demonstrate her efforts to comply with code enforcement, stating that due to the location of the drains, oak trees do not grow well on the property. Ms. Hamblin showed some slides of the property, before and after her landscaping work, and stated that although she had upgraded the property, her revision was denied. She requested that the Board remove the lien.

Roland DeBlois, Chief of Environmental Planning and Code Enforcement, conveyed that Ms. Hamblin had been given seven extensions, and was presented with two options – to come into compliance with the existing plan and/or comply with the revised landscape plan. Neither of those two things ever occurred, and eventually after almost a year, the Board imposed the fine. Mr. DeBlois said there are some basic non-compliance issues.

Upon Commissioner Flescher's inquiry, Attorney Collins advised that if there was an appeal of a Code Enforcement order, it would be filed in Circuit Court within 30 days. Mr. DeBlois said that once a respondent comes into compliance, the Board inspects the property and has another hearing to acknowledge the compliance and set the fine. Mitigating circumstances are taken into consideration at that time. Mr. DeBlois declared that this case cannot go back to the Board yet, because it is not yet in compliance.

Chairman Wheeler said legal was advising them that this item needs to follow the correct process, and he felt that the Board should not continue with this discussion.

Commissioner O'Bryan asked staff if it has been spelled out to the applicant what she needs to do to come into compliance. Mr. DeBlois replied that Code Enforcement has gone over the approved site plan, which is specific.

Joseph Montanto, the Landscape Architect who was retained by Renne Hamblin, stated that he has presented a plan to Mr. Freeman, but he had added some technical aspects that were requested by Mr. Freeman, and was going to resubmit the plan. He had also, in the meantime, asked his client to stop doing anything on her property until the site plan receives approval.

Renne Hamblin said the original plan that was signed off on is not the one that is presently in place.

Commissioner Davis asked Ms. Hamblin to proceed with the landscaping, and provide the language requested by Mr. Freeman, and once the property is in compliance, the item could go back to Code Enforcement.

NO BOARD ACTION REQUIRED OR TAKEN

**9.B.2. REQUEST TO SPEAK FROM SPENCER SIMMONS REGARDING
COMMISSION VOTE TO REHEAR OR REVERSE PREVIOUS DECISION ON
TRANSITIONAL HOUSING CENTER ON 37TH STREET (THE SOURCE)**

Spencer Simmons, Simmons Construction, announced that he would defer his discussion until later in the meeting, when Administrator Baird speaks about the item.

NO BOARD ACTION REQUIRED OR TAKEN

**9.B.3. REQUEST TO SPEAK FROM P&S PROPERTIES, JERRY SWANSON,
REGARDING CONCURRENCY INTERPRETATION**

Chairman Wheeler announced that this item would be deleted from the Agenda.

NO BOARD ACTION REQUIRED OR TAKEN

9.C. PUBLIC NOTICE ITEMS

**9.C.1. NOTICE OF SCHEDULED PUBLIC HEARING FOR MARCH 20, 2007:
CONSIDERATION OF PROPOSED AMENDMENTS TO THE LANDSCAPE AND
BUFFER REGULATIONS OF LDR CHAPTER 926, THE CORRIDOR LANDSCAPE
REGULATIONS AND THE MULTI-FAMILY GREEN SPACE REGULATIONS OF
LDR CHAPTER 911, THE SUBDIVISION GREEN SPACE REQUIREMENTS OF
CHAPTER 913, THE STORMWATER MAINTENANCE AREA REGULATIONS OF**

LDR CHAPTER 930, THE LITTORAL ZONE REGULATIONS OF LDR CHAPTER 934, AND THE DEFINITIONS OF LDR CHAPTER 901 (LEGISLATIVE)

**9.C.2. NOTICE OF SCHEDULED PUBLIC HEARING FOR MARCH 20, 2007:
ADOPT AMENDMENTS TO THE COUNTY'S EXISTING INDUSTRIAL
PRETREATMENT ORDINANCE (LEGISLATIVE)**

The Chairman read the notices into the record.

10. COUNTY ADMINISTRATOR'S MATTERS

10.A. SPECIAL CALL MEETING

Administrator Baird and Mr. Keith Hedin had discussed available dates and settled on April 20, 2007 to hold a special call meeting regarding the Source Project. Mr. Hedin stated that Steve Henderson (the other Counsel) could not be available until then, and he was fine with the proposed date.

Douglas Vitunac, Esq., reported that he had not received notice that there was going to be a decision on the request for the rehearing at the last meeting. He thought that deciding to rehear on the merits was a reversal of a previous decision made by the Board.

Chairman Wheeler asked if the meeting could be held on April 18, and Mr. Vitunac agreed, observing that Mr. Henderson would be available then. Mr. Vitunac reported that he would be filing a judicial appeal before the meeting.

The CONSENSUS was to hold the Special Call meeting,
between the Indian River County Board of Commissioners

and The Source, on April 18, 2007 at the County Commission Chambers.

Spencer Simmons opined that the Board was being one-sided on this issue, and felt that the appeal should never have been heard. He declared that the Board was willing to burden the County with expensive lawsuits for an issue they were going to lose.

10.B. JOINT MEETING WITH CITY OF PALM BAY

Administrator Baird provided the following potential dates to hold the joint meeting with the City of Palm Bay: Tuesday, April 10; Wednesday, April 11; Tuesday, April 17, Tuesday, April 24, and Wednesday, April 25. Administrator Baird will provide a list of the dates to the Board, and then finalize a date with the City Manager's office.

10.C COMMITTEE VOLUNTEER BANQUET

Administrator Baird explained that it is very hard to find a venue that will hold such a large number (over 300) of people. He was going to see about the feasibility of having the event in the new complex.

Commissioner Davis suggested, if the weather permits, the event could take place outdoors. Commissioner Flescher added that the Board could erect tents.

11. DEPARTMENTAL MATTERS

11.A. COMMUNITY DEVELOPMENT - NONE

11.B. EMERGENCY SERVICES - NONE

11.C. GENERAL SERVICES - NONE

11.D. HUMAN RESOURCES

**1. APPROVAL TO ENTER INTO A CONSULTANT AGREEMENT TO CONDUCT
A CLASSIFICATION AND PAY STUDY**

James Sexton, Director of Human Resources, presented two quotes from Cody & Associates. The first quote (\$71,000.00) is the cost to conduct a comprehensive classification and compensation study for all BOCC and Constitutional Officers. The second quote (\$60,000.00) is the cost to study only compensation. He informed everyone that the results of the pay study should be available by budget hearing time.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved to waive the RFQ process and enter into a Comprehensive Classification and Compensation Study for all Board of County Commissioner employees and Constitutional Officers, as recommended in the memorandum of March 7, 2007.

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

(Clerk's note - Item 11.I.1 was moved to Public Hearings, Item 9.A.2. Item 11.I.2. became Item 11.I.1.)

1. FLORIDA INLAND NAVIGATION DISTRICT 2007-2008 WATERWAYS ASSISTANCE PROGRAM AUTHORIZING RESOLUTION FOR THE OSLO ROAD PUBLIC BOAT RAMP

Chris Mora introduced Project Manager Mike Nixon, who presented this item to the Board. Mr. Nixon stated that the new ramp would consist of a canoe and kayak launch, wooden docks, an observation deck, and a paved parking area. Small powerboats would also be accommodated.

Commissioner O'Bryan (referring to Dr. Gilmore's letter on fish populations in the Indian River Lagoon) voiced his concerns about minimizing environmental impact to the region.

Mr. Nixon stated that meetings had been held with other environmental groups, and before the plans are finalized, one additional meeting would be held. He also disclosed that a grant for the project is available from the Department of Environmental Protection (DEP) and the projected completion date is April 2009.

Commissioner Davis wondered if the project would be stopped if the funding were not appropriated. Administrator Baird replied that the item would be returned to the Board for reprioritization. Commissioner Davis surmised that channeling (for small boats) might be a better direction to take, environmentally.

Dr. Richard Baker, President of the Audubon Society, expressed his concerns regarding the omission of plans for stormwater facilities in this project, and possible damage to sea grasses and fish. He was also concerned about dredging, which heretofore had not been included in any of the project plans.

The Board and Dr. Baker discussed the pros and cons of dredging, and Dr. Baker reminded everyone there is an alternate site for a boat dock on 45th Street, Gifford Docks. The advantages to using this site include cheaper cost, close proximity to the intercoastal, a lack of sea grass, and the increased depth of the water.

Vice Chair Bowden suggested that the Board re-examine this plan. Commissioner O'Bryan agreed and communicated the importance of proceeding with the application (due by the end of March) for the grant money. It was noted that the grant money is site specific.

Chairman Wheeler wanted to research the Gifford Dock project and felt there could be two boat ramps.

Bob Johnson voiced his impatience with the delays on this item, and encouraged the board to make the decision to build the ramp.

Dr. Baker cautioned the Board that they would be spending 1.3 million dollars and end up with a non-functioning dock, unless dredging is done, which is a whole different issue.

ON MOTION by Commissioner Davis, SECONDED by
Commissioner O'Bryan, the Board unanimously approved
Resolution 2007-026, under the Florida Inland Navigation

District Waterways Assistance Program, for the Oslo Road Public Boat Ramp. Staff was directed to bring back a presentation of their plan for further discussion.

11.J. UTILITIES SERVICES

11.J.1. PAYMENT OF OUTSTANDING UTILITY ASSESSMENT

Erik Olson, Utilities Director, gave a brief history of a very large water assessment project back in 1992 as it impacted Mr. & Mrs. Willie Brown. He requested limiting the amount of calculated interest over a 10-year period of time, waiving the penalties and interest which have occurred beyond the original window. Director Olson asked the Board to allow the Utilities Department to charge Mr. Brown and his wife, \$6,023.99 (the 10 year principal and interest @ 8 percent).

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved staff's request to limit the amount owed by Mr. And Mrs. Willie Brown, in the amount of \$6,023.99, the 10-year principal and interest at 8% interest only, for outstanding fees, as recommended in the memorandum of March 4, 2007.

11.J.2. EMERGENCY OPERATIONS CENTER WATER MAIN EXTENSION

WORK AUTHORIZATION DIRECTIVE No. 2007-001, UCP No. 2938

Erik Olson declared that the Utilities Department is ready to move forward with this project.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the project at a total cost of \$38,516.44 and authorized the Chairman to execute Work Authorization Directive No. 2007-001 to the Utilities Department Labor Contractor authorizing payment up to \$22,378.00, as recommended in the memorandum of February 27, 2007.

WORK AUTHORIZATION NO. 2007-001 IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

12. COUNTY ATTORNEY MATTERS

12.A. ATTORNEY-CLIENT SESSION: DIVOSTA HOMES, L.P. AND DIVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER COUNTY, CASE NO. 20070109-CA-19

(Clerk's Note: This item was heard after Item 12.C. At 1:39 p.m., the Chairman announced that the Board would retreat to the County Administrator's Conference Room to conduct the Attorney-Client Session).

Chairman Wheeler read into the record the Attorney-Client Session scheduled for 1:30 p.m. (which commenced at 1:40 p.m.). It was estimated that the session would last one half-hour. Those in attendance were Commissioners Wesley S. Davis, Joseph E. Flescher, Gary C. Wheeler, Peter D. O'Bryan, Sandra L. Bowden, Administrator Joseph A. Baird, County Attorney William G. Collins II, John Shubin, Esquire (outside Counsel), and a certified court reporter.

The Board returned to the Chambers at 2:37 p.m., and the Chairman closed the Attorney-Client Session.

12.B. RESOLUTION CONCERNING RIGHT-OF-WAY ACQUISITION FOR ROAD IMPROVEMENT PROJECTS

Attorney Collins recommended that the Board adopt the resolution.

Joseph Paladin, Chairman of Growth Awareness Committee, was in favor of the Resolution. There were three points that he asked the Board to consider: (1) Referring to Item 4(b.), whether language should be incorporated into the resolution about advising property owners of their rights; (2) referring to Item 4(f.), whether the wording should include that the offer supported by the appraisal must be declined within 30 days, and (3) referring to Item 4(g.), whether the area about subdivisions should be placed as Item No. 5.

Attorney Collins responded to Mr. Paladin's concerns. To the first, he did not feel it was necessary; to the second, he said that this is a general policy, but the wording could be included; and to Mr. Paladin's third concern, Attorney Collins felt the item could remain in the negotiations section of the document.

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

Bob Johnson, Coral Wind Subdivision, voiced concern about ensuring that the property owners receive their letters. Chairman Wheeler commented that the notices would be sent via registered mail.

There was discussion about including provisions in the Resolution for property that has already been sold.

Michael Zito, Assistant County Administrator, suggested that the Board leave the Resolution general, and follow Chapter 73 of the Florida Statutes.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved **Resolution 2007-027**, setting forth policies for acquisition of Right-of-Way for Road Expansion and Improvement Projects.

12.C. EXECUTIVE AIDE – MUTUAL RELEASE AND COVENANT NOT TO SUE
(DEFERRED FROM MEETING OF MARCH 6, 2007)

(Clerk's note: This item was heard prior to 12.A and is placed here for continuity.)

Attorney Collins stated that this matter was deferred from last week; at which he had presented a Mutual Release and Covenant Not To Sue, which the Board had requested on January 23, 2007. On said date, the Board approved a severance package with Ms. Massung that was conditioned upon getting a satisfactory release.

Attorney Collins advised the Board there had been some unfruitful discussion on getting a release on an age discrimination claim, because at last week's meeting there were only three board members present so the Board could not proceed. Mr. Collins related that Attorney Peterson stated that the age release (which requires separate consideration from a severance package) would be executed and the amount would be reduced from \$1,000.00 to \$100.00.

Attorney Collins agreed with the other attorneys involved that the age discrimination release was unnecessary. Ms. Massung requested that her contract be terminated based on some provisions in it that dealt with pressure from one or more of the Commissioners who suggested a constructive discharge.

Attorney Collins recommended authorizing the Chairman to execute the Mutual Consideration Release, which Ms. Massung signed on February 5, 2007. Her severance package (which totals \$105,000 including accrued vacation and sick time) comes to \$71,747.00 after taxes.

Commissioner Flescher believed that the Executive Aide contract itself is part of the concern, and inquired as to how long the position has been under contract. Attorney Collins thought that the Executive Aide had been a county officer at least since 1990, and believed that the job became a contract position when it went to Senior Management (possibly since 2000).

Commissioner Flescher referred to a meeting where Mr. Peterson (Ms. Massung's Attorney) had referred to some incidents that occurred in 2005, and told the Board that they "did not want to go there". Commissioner Flescher felt that the invoking of Ms. Massung's contract seemed without cause and that with no explanation, the Board has allowed \$70,000 to go to an escrow account at the Attorney's office. Further, no elements of any

harassment were revealed, and the Board has not heard any elements of constructive discharge. Attorney Collins explained that a constructive discharge occurs when working conditions are made so intolerable, a reasonable person in the employee's position would resign.

Commissioner Flescher had strong concerns about the allegations of harassment that caused the Executive Aide to invoke the contract because there were unanswered questions, and without knowing what has gone wrong, the Board would never know how to make it right. Commissioner Flescher emphasized that the County Commission has an obligation to all other employees to ensure that the alleged problem is identified.

MOTION WAS MADE by Commissioner Flescher to deny the request today, and to request that the monies that have been placed in escrow in the attorney's office be brought forward into an account to be held in escrow while any civil action is instituted to identify the problem. MOTION DIED for lack of a second.

Commissioner Davis stated that he is ready to move on, and was unwilling to spend any more money than what the contract stipulates. His concern was how the contract escalated with deferred compensation, and believes that this has cost the taxpayers a lot of money.

Chairman Wheeler asked if the Board would have to pay Ms. Massung's legal fees if the contract is denied and she wins a suit against the Board. Attorney Collins responded that generally, in civil matters, each side bears their own attorney's fees absent some Statute that shifts the attorney fee to the prevailing party.

Commissioner Flescher reiterated that the Board needs to identify what the situation was which caused the Executive Aide to leave the building. Commissioner Davis agreed that we still do not know the reason, but noted that the Board would still be in this same position. Chairman Wheeler added that it would be nice to have everything placed on the table but noted that this was not the situation.

Kim Massung informed the Board that she would speak to the Board only after they approved the release.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, by a 3-2 vote (Vice Chair Bowden and Commissioner Flescher opposed) the Board approved to authorize the Chairman to execute the Mutual Release and Covenant Not to Sue with the severance package, which was executed by Ms. Massung on February 5, 2007, as recommended in the memorandum of March 7, 2007.

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

Kim Massung spoke about the financial loss that has resulted from her having to leave her job as Executive Aide due to conflict between her and Vice Chair Sandra Bowden.

Ms. Massung stated that she had signed the Mutual Release and Covenant Not To Sue on February 5, 2007, but before Attorney Collins could place the agreement on the next agenda, Vice Chair Bowden had Helen Scott, her attorney, submit a different version of the contract, which contained additional verbiage relating to older workers and to

mutual non-disparagement. Attorneys Collins, Peterson, and Mendel all agreed that the original signed agreement would suffice.

Ms. Massung mentioned that she had known that Ms. Bowden had wanted to have her own aide, but she objected to the tactics employed by the Commissioner. Ms. Massung read from her notes (copy not on file) to detail the reasons and list the incidents that resulted in her requesting termination of her employment contract.

Vice Chair Bowden found the allegations about her outrageous, and declared that they were unfounded rumors.

12.D. AUTHORIZATION REQUESTED FROM ATTORNEY COLLINS TO WORK ON A DRAFT INTERLOCAL AGREEMENT WITH THE LEGAL STAFF OF VARIOUS MUNICIPALITIES

Commissioner O'Bryan related that several of the Commissioners and Attorney Collins had attended a meeting at Vero Beach City Hall, where the discussion centered on working on an Interlocal Agreement (ILA) on annexations, among the five municipalities in the County. He felt that Attorney Collins should be given some direction/approval to work on this item with the legal staff of the other municipalities.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chair Bowden, the Board unanimously approved giving Attorney Collins the authority to work with the municipal attorneys to draft an Interlocal Agreement.

13. COMMISSIONER ITEMS

13.A. COMMISSIONER GARY C. WHEELER, CHAIRMAN

1. UPDATE ON THE DISCUSSION REGARDING THE FORMATION OF AN ARCHITECTURAL REVIEW COMMITTEE FROM THE APRIL 11, 2006 BCC MEETING

Chairman Wheeler remarked that staff had been directed at the meeting of April 11, 2006 to come up with the pros and cons of establishing an Architectural Review Committee (ARC). To date, nothing has been provided, and he would like to re-direct staff to come back with this information.

Administrator Baird informed the Chairman that a chronology of what had been done so far had been distributed to the Board, but apparently Chairman Wheeler had not received it. Mr. Baird stated that Planning and Zoning (P & Z) has also set up a committee for better-improved development, which also encompasses the ARC. Administrator Baird would re-deliver the chronology.

Chairman Davis disclosed that the committee would be called the Indian River Homeowner's Association

13.B. COMMISSIONER SANDRA L. BOWDE, VICE CHAIR

1. DISCUSSION OF LUNCH BREAKS ON BOARD OF COUNTY COMMISSION MEETING DAYS

There was a CONSENSUS of the Board regarding the necessity for lunch breaks at County Commission meetings to make those determinations on an individual basis.

13.C. COMMISSIONER WESLEY S. DAVIS-NONE

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

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

14.A.1. APPROVAL OF MINUTES FOR NOVEMBER 7, 2006, NOVEMBER 21, 2006, AND DECEMBER 12, 2006

**14.A.2. APPROVAL OF FY 2006/07 EMS COUNTY AWARDS GRANT:
PURCHASE OF CAPITAL/OPERATING EQUIPMENT USING NON-MATCHING
EMS GRANT FUNDS AND GRANT RESOLUTION**

**14.A.3. APPROVAL TO PURCHASE TWO (2) CHEVROLET TYPE III
AMBULANCES FROM TEN-8 FIRE EQUIPMENT, INC.**

14.A.4. FIRE RESCUE UPDATE

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 2:59 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/MIS/2007Minutes