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OF BOARD OF COUNTY COMMISSIONERS
OF APRIL 3, 2007

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April 3, 2007

MEETING OF THE BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

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, April 3, 2007. 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 Athena Adams.

1. CALL TO ORDER

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

2. INVOCATION

Reverend Tom Harris, First Presbyterian Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chair Sandra L. Bowden led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA /EMERGENCY ITEMS

1. Correction to Commissioner Davis' Item 13.C. (change CR 510 to CR 512)
2. Move Item 8.B. (Supervisor of Elections Kay Clem) before Item 5.A Proclamations and Presentations

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the above changes to the Agenda.

(Clerk's Note: Item 8.B. (Supervisor of Elections) was heard prior to Item 5.A but is placed in chronological order below for continuity).

5. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION OF PLAQUE OF RECOGNITION TO THE INDIAN RIVER COUNTY HEALTH DEPARTMENT AS PROJECT PUBLIC HEALTH READY

Chairman Wheeler read and presented the Plaque to Ms. Miranda Swanson of the Health Department.

**5.B. PRESENTATION OF PROCLAMATION DESIGNATING APRIL 2 – 8,
2007, AS NATIONAL PUBLIC HEALTH WEEK.**

Chairman Wheeler read and presented the Proclamation to Miranda Swanson of the Health Department.

Ms. Swanson thanked the Board for its support, and had a special mention for Clint Sperber, Public Health Preparedness Coordinator.

**5.C. PRESENTATION OF PROCLAMATION DESIGNATING APRIL 2 – 6,
2007, AS JUVENILE JUSTICE WEEK**

Chairman Wheeler read and presented the Proclamation to representatives of the Juvenile Justice Department who thanked the Board for all its help in the community.

**5.D. PRESENTATION OF PROCLAMATION DESIGNATING APRIL 9 – 14,
2007, AS NATIONAL ARCHITECTURE WEEK**

Vice Chair Bowden read and presented the Proclamation to Mr. Richard Bialosky who, on behalf of Greg Burke, Past President of the Treasure Coast Chapter of AIA, thanked the Board for the Proclamation and invited everyone to attend “An Evening of Architecture” at the Sunrise Theatre, from 6:00 p.m. to 8:00 p.m. on the 11th of April, with author James Kunstler as keynote speaker.

**5.E. PRESENTATION BY MICHAEL J. WALLWORK, P.E., ALTERNATE
STREET DESIGN, P.A., AN OVERVIEW OF MODERN ROUNDABOUTS**

Chairman Wheeler announced that he had asked Michael Wallwork to bring ideas to the Board, as an educational program, regarding roundabouts, how they function, and what were the advantages and disadvantages of having them.

Michael Wallwork, P.E., described roundabouts as another design tool to control traffic. By use of an aerial view map he displayed a roundabout and illustrated its proper use by vehicles and pedestrians. He explained the differences between roundabouts and traffic circles as well as different sizes and structure of roundabouts. He also showed different landscape designs for roundabouts and roundabouts at interchanges. He explained the reasons for the use of roundabouts, and talked about safety and conflicts, as well as, speed control at roundabouts. By survey indication, there is a decrease in the number of crashes at roundabouts. He compared collisions at roundabouts versus intersections showing the number of crashes and the severity of injuries.

Mr. Wallwork also talked about places not to use roundabouts and types of roundabouts to use in certain locations. At the request of Chairman Wheeler he looked at the alternative of 4-laning 43rd Avenue and suggested leaving it as a 2-lane road and putting in a roundabout to save money. He compared 6-lane roads (with traffic signals) to 4-lane roads (with roundabouts), remarking that 4-lane roads are a lot cheaper and prettier. He talked about the cost of maintenance of roundabouts, which he felt was minimal.

Vice Chair Bowden thanked Mr. Wallwork and welcomed the presentation. She talked about the “fear of change” for the public and asked how do we overcome that. **Mr. Wallwork** explained how that fear could be alleviated.

Commissioner O'Bryan inquired what would be the cost for the design, engineering, and construction of about 10 roundabouts, without counting right-of-way costs.

Mr. Wallwork believed it was dependent on the type of infrastructure desired. In his estimation it would be about \$350,000.00 in construction cost, and design cost could be about \$50,000.00. Therefore, the total cost would be about \$400,000 for a roundabout on 43rd Avenue (a total of \$4.Million for 10 intersections improvements).

Chairman Wheeler found very interesting the decrease in crashes at roundabouts. He saw roundabouts as less expensive, safer, handle more traffic, and slow traffic down through neighborhoods. He appreciated the presentation and education provided by Mr. Wallwork and hoped the Board could get with staff and see the potential of pursuing this venture.

Mr. Wallwork provided more information on the cost for building roundabouts.

Vice Chair Bowden asked the Chairman what was the progress from this point on. Chairman Wheeler said this was just for education, to have something to consider, and to have staff look into it to see if it would work for us.

Mr. Wallwork recommended a public meeting be held if the County plans to put a roundabout in a specific place. He suggested they look at the roundabouts in Jensen Beach and the PGA development in Port St. Lucie, and the County may also want to do some low cost evaluations to look at the feasibility of a roundabout at different locations.

Commissioner O'Bryan asked the Chairman if a Motion was required to direct staff to do a feasibility study to identify some of our problem intersections.

Administrator Baird pointed out conflicts with State Law. He noted that pursuant to the Competitive Negotiations Act we would be required to send out Requests For Quotes (RFQs) if it is over a certain amount, and we could not just offer a contract to Mr. Wallwork.

Chairman Wheeler agreed that we could do that and have staff look at it and come back with a process so we could decide whether and how to proceed.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Davis, to direct staff to develop a Request For Proposal to do a feasibility study of between 5-10 intersections in the County.

Board members engaged in discussion regarding cost factor envisaged.

Commissioner O'Bryan AMENDED the Motion, SECONDED by Commissioner Davis, to add that staff should come back to the Commission with suggestions of what areas roundabouts would work best and the Board would identify what areas they wanted staff to look at.

There were no further discussions.

The Chairman CALLED THE QUESTION and the Motion, AS AMENDED, carried unanimously. The Board approved to direct staff to develop a Request For Proposal to do a feasibility study of between 5-10 intersections in the County and to come back to the Commission with suggestions of what areas roundabouts

would work best and the Board would thereafter identify what areas they wanted staff to look at.

6. APPROVAL OF MINUTES

A. REGULAR MEETING OF JANUARY 23, 2007

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of January 23, 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 January 23, 2007, as written and distributed.

6.B. REGULAR MEETING OF FEBRUARY 6, 2007

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of February 6, 2007. There were none.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Davis, the Board unanimously approved the Minutes of the Special Call meeting of February 6, 2007, as written and distributed.

6.C. WORKSHOP OF FEBRUARY 9, 2007 – US-1 CONCURRENCY

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Public Workshop of February 9, 2007. There were none.

ON MOTION by Commissioner Davis, SECONDED by Vice Chair Bowden, the Board unanimously approved the Minutes of the public workshop of February 9, 2007, as written and distributed.

6.D. WORKSHOP OF FEBRUARY 19, 2007 – CLOUD GROVE

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Joint Public Workshop (with St. Lucie County) of February 19, 2007. There were none.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the joint public workshop of February 19, 2007, as written and distributed.

7. CONSENT AGENDA

Vice Chair Bowden asked to pull, for discussion, Items 7.F. and 7.M

7.A. REPORTS PLACED ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD: NOTICE OF CONVICTIONS OCTOBER 2006 THROUGH FEBRUARY 2007.

7.B. REPORTS PLACED ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD: AUDITOR GENERAL'S AUDIT REPORT NO. 2007-1444 OF INDIAN RIVER COUNTY DISTRICT SCHOOL BOARD, FOR THE FISCAL YEAR ENDED JUNE 30, 2006.

7.C. APPROVAL OF WARRANTS – MARCH 9, 2007 – MARCH 15, 2007

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of March 9, 2007 to March 15, 2007 as requested.

7.D. APPROVAL OF WARRANTS - MARCH 16, 2007 – MARCH 22, 2007

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of March 16, 2007 to March 22, 2007 as requested.

**7.E. 2007 ELECTION OF EMERGENCY SERVICES DISTRICT ADVISORY
COMMITTEE (ESDAC) CHAIRMAN AND VICE CHAIRMAN**

The Board noted the election of Ms. Toni Teresi as Chairman and Councilwoman Cheryl Hampton as Vice Chairman of the Emergency Services District Advisory Committee for the year 2007.

**7.F. THE LAKES AT SANDRIDGE PHASE 1, DEVELOPER: IRC
DEVELOPMENT, L.L.C., MODIFICATION TO WARRANTY AND
GUARANTY AGREEMENT, AND BILL OF SALE FOR REQUIRED
IMPROVEMENTS AND CASH DEPOSIT AND ESCROW AGREEMENT**

Vice Chair Bowden was concerned with the use of epoxy to seal concrete cracks. Public Works Director Jim Davis explained the difference between structural and hairline cracks. He felt the use of epoxy to seal the crack was appropriate as it was not a structural crack. Vice Chair Bowden noted that there was no indication of the type of crack and wondered if later repairs would be needed again.

Assistant County Attorney Bill DeBraul worked on the Agreement with the Developers and assured her that these are hairline cracks and not structural, and believed the epoxy was being used appropriately. He was told the epoxy was greater or equal in strength to the concrete seal.

Vice Chair Bowden wanted to see, in the future, specific references to types of cracks (hairline or structural).

ON MOTION by Vice Chair Bowden, SECONDED by Vice Chair Wheeler, the Board unanimously approved the Modification to Warranty and Guaranty Agreement, and Bill of Sale for required improvements Contract No. PD-03-07-17-WGPH1 and Modification to Cash Deposit and Escrow Agreement; authorized the Chairman to execute said documents; and authorized the return of \$123,260.00 currently held in escrow to IRC Development, L.L.C., as recommended in the memorandum of March 15, 2007.

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

7.G. ECHO-LAKES RIGHT-OF-WAY CONVEYANCE

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Chairman to execute the Quitclaim Deed in order to clarify the public records, as recommended in the memorandum of March 26, 2007.

COPY OF QUITCLAIM DEED ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**7.H. INDIAN RIVER COUNTY BID # 2007046 EGRET MARSH
STORMWATER PARK, PUBLIC WORKS DEPARTMENT / STORMWATER
DIVISION**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously rejected both Bids from Palm Beach Grading, Inc. and Island Pipeline, as recommended in the memorandum of March 19, 2007. It was determined, after the review process, that neither bidder meets the specifications set forth in the Invitation to Bid and both bids exceeded the budgeted amount.

**7.I. GIFFORD YOUTH ACTIVITY CENTER, INC., LEASE AGREEMENT –
MAINTENANCE AND REPAIRS, MISCELLANEOUS BUDGET
AMENDMENT 015**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved reimbursement to the Gifford Youth Activity Center to cover roof repair costs in the amount of \$2,735.00 and approved **Resolution 2007-030** amending the fiscal year 2006-2007 budget.

7.J. PROFESSIONAL ENGINEERING SERVICES AGREEMENT, CR 512
CORRIDOR IMPROVEMENTS – IRC PROJECT NO. 9611, ADDENDUM
NO. 13 (MASTELLER & MOLER, INC.)

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O’Bryan, the Board unanimously approved Addendum No. 13 for a total cost of \$55,275.00, as recommended in the memorandum of March 26, 2007.

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

7.K. WINTER BEACH PARK SUBDIVISION, WATER ASSESSMENT
PROJECT, UCP NO. 2633, APPROVAL OF FINAL PAYMENT TO
CONTRACTOR AND RELEASE OF RETAINAGE, W.I.P. NO. 473-
169000-06525 BID NUMBER 2006-104

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O’Bryan, the Board unanimously approved the total project construction cost of \$63,573.00 and approved Application for Payment No. 2 – final as final payment to Underground Utilities, Inc., in the amount of \$3,073.00, as recommended in the memorandum of March 15, 2007.

**7.L. OPERATING HOURS FOR MAIN AND NORTH COUNTY LIBRARIES FOR
EASTER WEEKEND**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the schedule for opening and closings of the Main and North County Libraries as proposed and as recommended in the memorandum of March 28, 2007.

**7.M. ACCEPTANCE OF CHANGE ORDER NO. 9, NEW COUNTY
EMERGENCY OPERATIONS CENTER**

Vice Chair Bowden found the cost description to be confusing and questioned how this would be funded, if we were ahead or behind schedule and when was the move-in date.

Steve Blum, Project Manager, explained that we were ahead, the completion date was June 30 and move-in would be about 30 to 60 days after that.

Administrator Baird felt move-in would be about August, at which time they would also try to move the Emergency Operations Center (EOC).

Commissioner Davis argued that moving in August does not give us a lot of time before we are in the peak of hurricane season. He cautioned about the idea of not having a functioning EOC in the peak hurricane season.

Administrator Baird replied that the new EOC is now being housed at the Sheriff's office, it would be fully operational, and there were no intentions to shut it down.

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved Change Order No. 9 for the new County Operations Center, as recommended in the memorandum of March 28, 2007.

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

7.N. APPROVAL OF REQUEST FOR PROPOSAL (RFP) 2007043

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the issuance of the proposed RFP as approved by the Children's Services Advisory Committee, as recommended in the memorandum of March 26, 2007.

7.O. AGREEMENT WITH INDIAN RIVER COUNTY SCHOOL DISTRICT

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Agreement with the Indian River County School District for Exchange of Use of Facilities and Equipment, and authorized the County Administrator or his designee

to execute the contract, as recommended in the memorandum of March 26, 2007.

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

**7.P. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR
HAMMOCK SHORES SUBDIVISION**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative No. 1, the cut and fill balance waiver request of 0.64 Ac-ft., as recommended in the memorandum of March 14, 2007.

7.Q. ECONOMIC DEVELOPMENT COUNCIL RECRUITMENT TEAM

ON MOTION by Vice Chair Bowden, SECONDED by Chairman O'Bryan, the Board unanimously pre-approved the necessary travel for business and industry recruitment, and approved a budget of up to \$10,000.00 for this travel, as recommended in the memorandum of March 28, 2007.

8.A. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

INDIAN RIVER COUNTY SHERIFF – ROY RAYMOND

FORFEITURE TRUST FUND

ON MOTION by Commissioner Davis, SECONDED by Chairman O'Bryan, the Board unanimously approved the Sheriff's request for \$3,873.98 from their Law Enforcement Trust Fund be used to support the Drug Abuse Resistance Education program (D.A.R.E.), and the Florida Missing Children's Day ceremony, as requested in the letter of March 19, 2007. \$2,873.98 would go to the D.A.R.E. program to purchase program materials, and \$1,000.00 would be used to support the annual Florida Missing Children's Day ceremony, as requested in the letter of March 19, 2007.

8.B. INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS – KAY CLEM

BUDGET AMENDMENT

(Clerk's Note: this Item was heard prior to Item 5.A. and is placed here for continuity).

Kay Clem, Supervisor of Elections, requested that the \$61,462.00 earned by conducting municipal elections be rolled over into the Department's Budget to help cover the costs of installation of their EVID electronic poll registers.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved for the Supervisor of Elections to move the revenues collected for municipal elections (\$61,462.00) into her budget to help cover the costs of installation of the Department's EVID electronic poll registers, as requested in the memorandum of March 15, 2007.

Ms. Clem informed the Board of things that were happening on the "legislative level", which involved changing all their voting equipment to paper ballot for early voting. She argued that they were in the position of having to buy all new equipment, possibly \$2 million worth, with no help from the State.

Chairman Wheeler inquired if Ms. Clem was saying the State sent mandates down that they do not fund. Ms. Clem and Board members engaged in discussion regarding unfunded mandates.

9. PUBLIC ITEMS -

A. PUBLIC HEARINGS - NONE

9.B. PUBLIC DISCUSSION ITEMS

1. Request to Speak From CHARLES R. WILSON, MEDIA ARTS GROUP, REGARDING TOURIST DEVELOPMENT TAX

Charles Wilson, 1057 6th Avenue, and President of Media Arts Group Advertising, wanted to present options to the Board to help save tourist related jobs in the County. His purpose was to discuss some history of tourism in Indian River County, the current

situation, some problems he found, the current plan, some alternative plans, and some changes that are needed. He wanted to correct the record that this Report is about creating jobs, about improving tourism, and not about making any charges that the Chamber of Commerce has done anything wrong, contrary to Press reports. It was also not about the Indian River Neighborhood Association.

Mr. Wilson urged the Board to invest in a website (www.visitindianriver.com) which he purchased for the County (at a cost of \$9.20). He felt they were losing reservations because there was no direct link to the County and reservations could not be made directly from the Chamber of Commerce's website. Mr. Wilson offered the following compromises to the Board:

(1) To change the current allocation from 70% to 35% to the Chamber of Commerce guaranteed, which would give them their \$218,000.00 that would cover their entire overhead including employees. The Chamber would be able to continue all of its activities and take 35% and set aside for competitive advertising review.

(2) To change current allocations for grants from 30% to 20%.

He proposed that the County, (1) institute a Tourism Bureau with options that meet legal requirements; (2) authorize an RFP for consultant to study the current system and recommend possible alternatives; and (3) authorize an immediate RFP for advertising services in a procedure that meets those legal requirements. He concluded by restating his high regard for the Chamber of Commerce but felt the County needed to look at other smart options and whether we were doing the best we can for the people of Indian River County.

Chairman Wheeler called a break at 10:26 a.m. and reconvened the Meeting at 10:41 a.m. with Commissioner Davis absent.

John Higgs, President of Indian River Neighborhood Association (IRNA), declared that the IRNA has no position at all on this subject, has never discussed the subject, and had never discussed the matter with Mr. Wilson.

(Clerk's Note: Commissioner Davis rejoined the Meeting at 10:42 a.m.)

Administrator Baird and Commissioners spoke to the credibility of the Chamber of Commerce, were satisfied with the job the Chamber was doing, had not heard any complaints from hotels, restaurant or people immediately impacted by tourism, and had no objections to what is currently being done. Commissioner Davis asked if we could do better and where.

Penny Chandler, Indian River County Chamber of Commerce, speaking on behalf of the Sebastian Chamber of Commerce, agreed with Commissioner Davis that there is always room for improvement on any plan. She thought it was inappropriate to allude to the fact that there was misappropriation of funds or funding not used wisely. She talked about bed tax money that does not come out of general revenue funds but is a special tax that the Florida Statutes has enabled counties to impose (the "Bed Tax"), and the monies that are used for tourism development come from that bed tax. She believed that the plans they have implemented and proposed over the years, to bring people in, could provide for the visitors.

No Board action taken.

**9.B.2. REQUEST TO SPEAK FROM GEORGE BLYTHE REGARDING MOVING
SEBASTIAN FREIGHT STATION FROM FIND PROPERTY (OLD
VICKERS GROVE PROPERTY) TO THE ARCHIE SMITH PROPERTY**

George Blythe, 825 90th Avenue, a member of the Land Acquisition Advisory (LAAC) was alerted to the Sebastian Station by an article in the Newspaper. He had heard suggestions of where the Station would work best, but as a LAAC member felt it would be nice to have it at the Archie Smith site, to be used as an information/learning center. He suggested

that with the County's support they could go to Florida Inland Navigational District (FIND) and seek help with funds to move the station to a desired location.

Commissioner Davis would not say the Archie Smith site was not the proper place, but thought they could probably rely on the Committees like the Historical Resources Advisory Committee (HRAC) for assistance. He suggested this be placed on the Agenda for another meeting and possibly try to work with the City of Sebastian, if they are interested, to address this.

Commissioner O'Bryan believed the City of Sebastian was working on some plans for this and he wanted to wait until they come up with a plan that everyone has agreed to. He would also support an application to FIND for grant funding to move the Station but thought the appropriate time would be once the City and other groups have decided where they want to go.

Mr. Blythe asked if there was some way to alert FIND officially that we support saving the structure and moving it to an appropriate location.

Commissioner Davis felt the best thing to do was probably have the HRAC draft a Resolution indicating an interest in the matter and have them send it off to FIND. He suggested Mr. Blythe get with Chris Crawford, Chairman of the HRAC, to discuss the matter further. Mr. Blythe agreed.

No Board action taken.

9.C. PUBLIC NOTICE ITEMS - NONE

10. COUNTY ADMINISTRATOR MATTERS

A. SOCCER ASSOCIATION LIGHTING

Administrator Baird reminded the Board of past actions on the matter noting that on March 6, 2007 the Board approved an appropriation of \$600,000.00 for installation of lights for the soccer fields at Hobart Park and this was the final stage of the process. He was now asking for the Board's "blessing" of the Bid from Techline Sports Lighting, LP in the amount of \$606,700.00 before they move forward.

This matter was for information only. No Board action required or taken.

11.A COMMUNITY DEVELOPMENT

1. DEMOLITION OF VARIOUS STRUCTURES LOCATED AT 5900 5TH STREET SW

Community Development Director Bob Keating recapped his memorandum of March 27, 2007 and presented staff's recommendation that the Board direct staff to obtain a Court Order to enter the premises and proceed with the demolition of the structures located at 5900 5th Street SW.

Glen Legwen, 5900 5th Street SW, disclosed that he had spoken with the Building Division's Director, James "Buddy" Akins, about getting the structural permits, and he had drawn up some information, which he called a "Level 1 Alteration" but Mr. Akins informed him that it was not a Level 1 Alteration. Based on the foregoing, he felt he was thrown a curve ball. He pointed out (via slide show) structures on the property that have been removed entirely or partially. He noted that the retail center building was the only one under discussion, which, under the current code, he was not allowed to repair. He inquired of staff whether he would be permitted to put the structure back in the same location if he takes it down for repairs.

Director Keating thought the issue was whether the structure sustained significant damage before or during the hurricane. He explained the rule, that if a structure is not consistent with the setbacks and it is substantially damaged or destroyed, normally it cannot be put back, but if it is by a hurricane or an event that was declared an emergency, then it could, so there was a fact issue that has to be first established.

(Clerk's Note: Administrator Baird exited the Meeting at 11:07 a.m.)

Mr. Legwen continued to give a history of the structures and the date the damage occurred. He expressed his desire to save the structure if it were at all possible and within the framework of cost. Mr. Legwen debated and tried to impress upon the Board reasons to save the buildings.

Chairman Wheeler clarified that the discussion was about demolition and not permit requirements. Discussion ensued between Mr. Legwen and Board members about pulling a building permit, and removal and replacement of the structure.

(Clerk's Note: Administrator Baird rejoined the Meeting at 11:13 a.m.)

Mr. Legwen restated his desire not to have the structures demolished and to be allowed to bring them up to County Code.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously directed staff to obtain a Court Order and proceed with the demolition of the structures located at 5900 5th Street SW, as recommended in the memorandum of March 27, 2007.

**11.A.2 MERCER BECK ENTERPRISES, LLC'S APPEAL OF A PLANNING
AND ZONING COMMISSION DECISION TO DENY ADMINISTRATIVE
PERMIT AND MAJOR SITE PLAN APPROVAL TO CONSTRUCT A
COMMERCIAL KENNEL TO BE KNOWN AS TOP HAT AND TAILS PET
BOARDING FACILITY (QUASI-JUDICIAL)**

(Clerk's Note: Court Reporter Debra McManus was present for the Applicant's Attorney, Douglas Vitunac)

Planning Director Stan Boling recapped the memorandum of March 27, 2007 and provided background on the matter, noting that this is an appeal of the Planning & Zoning Commission's (P&Z) decision. This is an application for site plan and administrative permit use on property that is just under 8 acres, located on the east side of 66th Avenue, north of 77th Street and currently zoned A-1, Agricultural-1. Director Boling informed the Board that P&Z determined that there was adequate mitigation to noise and voted against it 4-2. Staff felt P&Z did not fail in its determination and he asked the Board to consider the recommendations outlined at pages 190-191 of the backup.

Commissioner O'Bryan inquired if the applicant had agreed to all of staff's proposals. He was told, "Yes."

Doug Vitunac, Esquire, representing Mercer Beck Enterprises, LLC, had legal issues with some of the criteria in Ordinance 97- 1087 (C)(1) where the Ordinance purports to give the Planning and Zoning Commission discretion and power to impose conditions "to ensure adequate mitigation or attenuation of noise impacts." His main concern was how does P&Z know when they have met adequate attenuation of noise.

Mr. Vitunac believed the applicant had done everything in their power to abide by the criteria and defended his client's position of following the rules and meeting all the requirements of the County. He felt the concern was not the noise at nights because of the foam-

insulated concrete block walls in which the dogs would be housed. To speak to the credibility of the proposed kennels, he announced that Heather Mercer, who has been in the business for four years, would operate the kennels. He urged the Board to approve the request.

Keith Pelan, Engineer for the Project, talked about the design of the building, separation of the animals, and a proposed buffer designed to lessen the noise. He also defended the design of the building for its ability to alleviate noise.

Mr. Pelan explained to Vice Chair Bowden that the dog pool was an option on the plan, which could be small, shallow and in-ground, and intended mainly for training or cooling off the dogs. He clarified that the kennel facility is designed to accommodate a maximum of eighty (80) animals.

Director Boling interjected that the Board could set a limit or include a condition limiting the number of animals.

Mr. Pelan read into record a letter from Dr. Erik Wilson (the Mercer's Veterinarian) who could not be present. Dr. Wilson's letter provided attestation to the Mercer's "dedication to the health and wellbeing of pets ...", and urged the Board to give consideration to the request.

Mr. Pelan responded to a question from Commissioner O'Bryan pertaining to the distance of buffers.

Ruth Meeko, owner of the adjoining property to the south, wanted to keep noise limited to birds at nights, did not want her property value dropped because of the dogs and did not believe the request was compatible with the uses of the surrounding areas. She was also concerned for the safety of her horses and students taking riding lessons, in the event the dogs bark and spook the horses.

John Maroney who lives across the Street from the proposed site, was opposed to the project.

Marshall Hale, 7760 66th Avenue, (building a house south of the proposed project) was also concerned with his property value and the noise factor. He opposed the project.

Bubba Haffield, 6760 73rd Street, speaking on behalf of Sea Breeze Farms, was concerned with noise and disturbance of the horses. He was opposed to the project based on safety issues.

Joseph Paladin, Chairman, Growth Awareness Committee (a Private Sector Organization), felt they needed to talk about compatibility and obligation to conform because the horse farm and people were there first. He was most concerned with the noise factor and the safety of children taking riding lessons. He suggested that a berm buffer with landscaping (which would provide more soundproofing on the south side) be put in, as well as on-site drainage be captured in a lake process and to have a water treatment (like a fountain or waterfall) put in. He believed the water effect would be calming to the animals.

Betty Hicks, 7790 66th Avenue, who lives close to the proposed project site, felt her property would be devalued and noise from the barking of dogs would be a problem.

Marilyn Haley, 7760 66th Avenue, was also concerned with noise from the dogs. She opposed the project.

Ruth Stanbridge, 4835 66th Avenue, argued that she was probably a member of the Planning and Zoning Board when it was decided that kennels could go on agricultural lands but they never conceived of that many dogs on that small property. She was concerned for the area in question being zoned Agriculture (1 unit per 5 acres) and the current intent to have a

facility for eighty dogs on less than 5 acres. She thought it was a zoning flaw that should be corrected in the ordinance. She urged the Board to deny application.

Mr. Vitunac offered to address some of the concerns of the neighbors. He presented testimony from Gary Steel, “principals at the Kennel”, who talked about the need for a kennel in the area and the desire to satisfy a demand. Mr. Vitunac also invited Mandy Kerr, Riding Instructor, to present evidence to refute opinions/claims that barking dogs would frighten the horses and become a noise factor.

Mr. Vitunac asked Director Boling to expand on prior comments (made at P&Z meeting) that this applicant had done more than some commercial kennels. He again defended his Client’s right to have the kennels in the subject area and urged the Board to think before they deny this application because of unfounded speculations. He addressed legal arguments regarding a condition in the Ordinance (that allows P&Z to deny an application because of lack of adequate mitigation of noise) and felt the Courts could consider that portion of the ordinance unconstitutional. He presented case law in support of his arguments. He concluded his arguments stating that to be denied without guidance from the ordinance seems unfair when they have met all the criteria required.

Chairman Wheeler wondered why they had to readdress this matter that was already decided at P&Z.

Mr. Vitunac replied that even this body is held to a quasi-judicial standard. He did not see any real evidence that their property would spook horses or create noises and hoped the Board would see they have met adequate mitigation of noise. He felt this was an Agricultural area, the use was appropriate, and it would be a benefit to the community.

Ms. Meeko rebutted and again voiced her opposition to the project. She did not feel the project was “necessarily progress” for her area.

Commissioner Davis talked about non-conforming uses and properties adjacent to the subject site. He could not favor overturning P&Z's decision.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Vice Chair Bowden, under discussion,
not to overturn Planning & Zoning's decision.

Vice Chair Bowden felt the project was not compatible with the area.

Commissioner O'Bryan sympathized with adjacent residents but believed the applicants have done above and beyond what is required to mitigate the impacts. He supported the use of the property.

Commissioner Flescher did not believe there has been sufficient mitigation to protect the existing residents from noises of additional visiting pets. He could not support the request.

Chairman Wheeler thought the buffering has been done adequately and would keep the noise level low. He favored allowing the kennels.

Mr. Vitunac announced that they were willing to agree to another condition. They proposed that instead of putting the dogs outside all at once, they would stagger the way they are let out. He did not see denial as an option but maybe imposition of conditions.

The Chairman CALLED THE QUESTION and the Motion carried 3-2 (Chairman Wheeler and Commissioner O'Bryan opposed). The Board upheld the Planning & Zoning Commission's decision and DENIED the request.

Chairman Wheeler called a break at 12:48 a.m. and reconvened the Meeting at 1:02 pm. with Commissioner O'Bryan absent.

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.1 PUBLIC WORKS – HERITAGE GROVE SUBDIVISION
DEVELOPER'S AGREEMENT BETWEEN TOUSA HOMES,
INC. AND INDIAN RIVER COUNTY**

Public Works Director Jim Davis informed the Board that Touse Homes, Inc. was developing a residential subdivision (Heritage Grove) along the south side of Oslo Road east of 27th Avenue, and instead of the Developer putting in a left turn lane at this time, staff was of the

opinion that it would be better to have the Developer escrow the funds for the turn lane and the County use that money as they 4-lane Oslo Road and put the turn lane in at that time.

(Clerk's Note: Commissioner O'Bryan rejoined the Meeting at 1.03 p.m.)

ON MOTION by Commissioner Davis, SECONDED by Chairman Wheeler, the Board unanimously approved Alternative No. 1, the Developer's Agreement whereby the Developer will escrow with the County the \$53,397.00 cost of the turn lane and the County will construct it with the County project, and authorized the Chairman to execute the Agreement, as recommended in the memorandum of March 27, 2007.

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

11.J. UTILITIES SERVICES –

**1. 27TH DRIVE PETITION WATER SERVICE (NORTH OF 4TH STREET),
INDIAN RIVER COUNTY PROJECT NO. UCO – 2906, PRELIMINARY
ASSESSMENT RESOLUTIONS I AND II**

ON MOTION by Commissioner Davis, SECONDED by Chairman Wheeler, the Board unanimously approved

Resolution 2007-031 providing for water main expansion along 27th Drive north of 4th Street in Indian River County, Florida; providing the total estimated cost, method of payment of assessments, number of annual installments, and description of the area to be served.

ON MOTION by Commissioner Davis, SECONDED by Vice Chair Wheeler, the Board unanimously approved **Resolution 2007-032** setting a time and place at which the owners of properties located along 27th Drive north of 4th Street in Indian River County, Florida, and other interested persons, may appear before the Board of County Commissioners of Indian River County and be heard as to the propriety and advisability of constructing the water main extension, as to the cost thereof, as to the manner of payment therefore, and as to the amount thereof to be specially assessed against each property benefited thereby.

**11.J.2. PRE-PURCHASE EQUIPMENT FOR REPLACEMENT OF THE
ROCKRIDGE SEWER SYSTEM – UCP #2521**

ON MOTION by Vice Chair Bowden, SECONDED by Commissioner Flescher, the Board unanimously approved the sole source purchase of AIRVAC equipment and authorized the Chairman to execute the Purchase Order contract with AIRVAC after final approval by the County

Attorney and the County Administrator, as recommended in the memorandum of March 19, 2007.

11.J.3 APPROVAL OF CHANGE ORDER No. 1 FOR UTILITY CONFLICT RESOLUTIONS BY UTILITIES DEPARTMENT LABOR CONTRACTOR FOR PUBLIC WORKS DEPARTMENT BID No. 2006-065, PROJECT No. 9611 & 0001, CR 510 AND CR 512 PHASE III IMPROVEMENTS

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Change Order No. 1 with The Danella Companies, in the amount of \$94,926.53 for additional labor and authorized the Chairman to execute same, as recommended in the memorandum of March 2, 2007.

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

11.J.4 CONSULTING SERVICES WORK ORDER No. 17 WITH KIMLEY-HORN FOR PERMITTING, DESIGN AND CONSTRUCTION SERVICES FOR THE INSTALLATION OF A NEW-IN-LINE LIFT STATION AT 90TH AVENUE & CR 510 – UCP#2669

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

Commissioner Davis asked for clarification of the specific location.

Utilities Director Erik Olson explained that it is by Liberty Magnet. He also explained how they were rerouting the sewer.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved Work Order No. 17 with Kimley-Horn & Associates, Inc. in the amount of \$88,700.00 for design work associated with this project, and authorized the Chairman to execute same, as recommended in the memorandum of February 13, 2007.

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

12. COUNTY ATTORNEY

A. APRIL 12TH MEETINGS REGARDING CHARTER GOVERNMENT

Attorney Collins reminded the Board of upcoming Charter Government Workshops and asked if the Board wanted to advertise so they could make decisions and take actions at those meetings.

Commissioner Davis thought the workshops were designed to be informational and should remain so. Vice Chair Bowden wanted to keep them as workshops.

There was CONSENSUS to keep the Workshops as originally planned.

12.B.STONEY BROOK FARMS, REQUEST FROM DEVELOPER, STONEYBROOK FARMS GROUP, L.L.C. (CHAD KELLY, MANAGER AND J. KEVIN BYNUM, MANAGER) FOR AN EXTENSION TO COMPLETE REQUIRED 8TH STREET TURN LANE IMPROVEMENTS

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Third Modification to Contract for Construction of Required Improvements No. SD-04-05-17-CFC (2003110240-46697), which extends the date for completion of the required 8th Street turn lane improvements to August 27, 2007 so long as the security supporting the contract is extended to November 27, 2007. If acceptable security is not in place by 5:00 p.m. on Monday, April 9, 2007, then the Third Modification will become null and void and staff is to proceed to call the existing AmSouth Bank Irrevocable Letter of Credit #79531596 on April 10, 2007. The Board also authorized the Chairman to execute the Third Modification to Contract, all as recommended in the memorandum of March 28, 2007.

THIRD MODIFICATION ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

13. COMMISSIONERS ITEMS

A. CHAIRMAN GARY C. WHEELER

**I. DISCUSSION OF APPLICATION FOR LAND ANNEXATION FROM THE
CITY OF FELLSMERE**

Chairman Wheeler recapped his memorandum to the Board dated March 30, 2007 (copy on file) regarding the City of Fellsmere's intent to annex 17,000 – 18,000 acres of land, which could see an increase of about 110,000 new residents in an area that the County has planned at 1-unit per ten acres in the unincorporated area. He asked for authorization to work with County staff and the City of Fellsmere to discuss the potential consequences of proposed annexations and the proper County response to such proposals.

Commissioner Davis was not sure the responsibility for issues of this important nature should fall in one person's hands. Chairman Wheeler explained the intent.

It seemed to Commissioner O'Bryan that the proposed annexation could go through very quickly and he would feel remiss if it went through and they did not address it. He supported granting the Chairman's request.

MOTION WAS MADE BY Commissioner O'Bryan,
SECONDED by Chairman Wheeler, under discussion, to
approve the Chairman's request for authorization to work
with County staff and the City of Fellsmere to discuss the
potential consequences of proposed annexations and the
proper County response to such proposals.

Vice Chair Bowden and Commissioner Davis thought it was inappropriate and unfair to delegate this responsibility to any one person, and that the situation warranted all the Commissioners being present at the meeting with Fellsmere.

Chairman Wheeler explained that it was not his intent to exclude other Commissioners, but to have dialogue, bring back information to the Board and thereafter they could meet with staff.

The Board continued to discuss the appropriateness of the Chairman undertaking this process by himself and without staff's assistance. They also discussed annexation, how it affects the Charter, and the need to act immediately to prevent certain impacts on the County. Commissioner O'Bryan clarified (for his Motion) that this has nothing to do with the Charter process and was strictly related to the recent annexation application from Fellsmere.

Attorney Collins responded to Commissioner Flescher's question of whether staff had met with the Attorneys regarding the Interlocal Agreements (ILA). Attorney Collins and Board members engaged in further discussion and they all agreed with Commissioner Flescher that it is time to move forward with the joint Resolution.

Administrator Baird thought staff needed direction from the Board to aggressively look at these annexations and staff would work with any Commissioner if the Policy were set for them. He suggested the Board schedule a joint meeting with the City of Fellsmere and felt Attorney Collins may need additional assistance in the form of outside Counsel.

During discussion, Chairman Wheeler acknowledged that they have a serious situation that needs to be addressed. He had said at a Legislative Delegation meeting that however they could come up with an ILA that would work, Charter could go away, so could the Special Act. He believed the pressure for growth was here and they either could do something about it or ignore it.

Commissioners Davis and Bowden restated their opposition to the Chairman's request to handle the matter by himself. Chairman Wheeler, at the request of Commissioner Flescher, restated his intentions for making the request. He also expressed his desire to have the contract with Mr. C. Allen Watts, Esquire, expanded so he could work with us on this annexation along with the Charter. *(Clerk's Note: Mr. Watt's assistance was sought by the County Attorney's Office, for completion of the work on a proposed Home Rule Charter for the County.)*

The Chairman CALLED THE QUESTION and by a 3-2 vote (Commissioners Davis and Bowden opposed), the Board authorized Chairman Wheeler to work with County staff and the City of Fellsmere to discuss the potential consequences of proposed annexation and the proper County response to such proposals, as recommended in the memorandum of March 30, 2007.

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

13.C. COMMISSIONER WESLEY S. DAVIS

1. DISCUSSION OF COUNTY ROAD (CR) 510 512 TRAFFIC ISSUES

Commissioner Davis reminded the Board of prior actions on these issues and provided a status report of things that went wrong and corrective actions that were taken. He wanted to make sure there was a current environmental survey, a checklist be put together, and have our environmental staff walk the property and look for "glaring items" as far as gopher tortoises. He suggested the relocation of gopher tortoises and that the Humane Society's help be

sought. He also suggested they donate money (about \$2,000.00) to a program to enhance a relocation program or to enhance any relocation program we currently have in the county.

Administrator Baird said staff did not have a problem with the \$2,000.00 but noted that they did go out and set up with the Humane Society in a new area.

Commissioner Flescher suggested accommodation at the newly acquired 163 acres in Sebastian. Discussion ensued on whether that area is habitable. Administrator Baird would get with staff and come back with a plan.

Commissioner Davis also reported that staff was working on the implementation procedure for the Denton property. He thanked the Friends of St. Sebastian River and appreciated their time as well as staff's efforts.

Tim Glover, Friends of St. Sebastian River, appreciated Commissioner Davis' efforts. Board members also acknowledged the efforts put in by Commissioner Davis and applauded the great job he is doing.

Commissioner Davis wanted staff to come back with an implementation policy or a plan of his suggestions for the tortoise improvement.

There was CONSENSUS for staff to provide the Board with a plan encompassing Commissioner Davis' suggestions for relocation of gopher tortoises.

Mr. Paladin asked for clarity on the last Motion under Chairman Wheeler's Matters (authorization to work with Fellsmere). He also had questions about Attorney Watts contract and the overseeing of annexation issues.

Discussion ensued among Board members regarding attaining the services of Attorney Watts. Administrator Baird felt the cost would exceed 5,000.00 and asked for a limit of \$15,000.00.

Vice Chair Bowden reiterated her adamant opposition to having one person as a point person handling this issue.

Attorney Collins addressed the “letter of engagement” from Mr. Watts and the need to increase the \$5,000.00 amount. More discussion ensued regarding the engagement of Mr. Watts and Board members agreed that there would be no change in the cost and Administrator Baird would return to the Board when they are nearing the \$5,000.00 limit.

D. COMMISSIONER JOSEPH E. FLESCHER- NONE

E. COMMISSIONER PETER D. O'BRYAN - NONE

14. SPECIAL DISTRICT AND BOARDS

A. EMERGENCY SERVICES DISTRICT - NONE

14.B. SOLID WASTE DISPOSAL DISTRICT - NONE

**1. INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT MASTER
PLAN UPDATE**

C. ENVIRONMENTAL CONTROL BOARD - NONE

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES.

15. ADJOURNMENT

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 2:04 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/AA/2007 Minutes