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OF BOARD OF COUNTY COMMISSIONERS
OF APRIL 22, 2008

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April 22, 2008

REGULAR 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, 1801 27th Street, Vero Beach, Florida, on Tuesday, April 22, 2008. Present were Chairman Sandra L. Bowden, Vice Chairman Wesley S. Davis, and Commissioners Joseph E. Flescher, Peter D. O'Bryan and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

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

2. INVOCATION

Reverend Hugh King, First Church of the Nazarene, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Wesley S. Davis, Vice Chairman, led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA / EMERGENCY ITEMS

1. **Addition** to Consent Agenda by Vice Chairman Davis:
8.K. “Out of County Travel for Commissioner Davis and Staff to Travel to Tallahassee.”
2. **Defer Item 8.J.** to the April 29, 2008 BCC meeting.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved the above changes to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION OF PROCLAMATION HONORING WARREN AND VIRGINIA SCHWERIN

Vice Chairman Davis read and presented the Proclamation to Warren Schwerin, who thanked the Board, on behalf of his wife, for the recognition.

B. PRESENTATION OF PROCLAMATION DESIGNATING APRIL 26, 2008, AS ARBOR DAY

Commissioner O’Bryan read and presented the Proclamation to the Sebastian Soccer Association representatives Dave Waynent and Cory Richter. Cory Richter announced

that the Soccer Association would be having Arbor Day celebrations on Saturday, April 26, 2008, at 1:00 p.m., at their new fields in Sebastian.

6. APPROVAL OF MINUTES - NONE

7. INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS NOT REQUIRING ACTION

**A. REPORT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD:
REPORT OF CONVICTIONS FOR THE MONTH OF MARCH 2008**

The above Item was noted for the record.

8. CONSENT AGENDA

Commissioner O'Bryan pulled for discussion, Item 8.F.

ON MOTION by Commissioner Flescher, SECONDED
by Vice Chairman Davis, the Board unanimously
approved the Consent Agenda, as amended.

8.A. APPROVAL OF WARRANTS – APRIL 4, 2008, THRU APRIL 10, 2008

ON MOTION by Commissioner Flescher, SECONDED
by Vice Chairman Davis, the Board unanimously
approved the list of Warrants as issued by the Clerk to the

Board for the time period of April 4, 2008 to April 10, 2008, as requested in the memorandum dated April 10, 2008.

8.B. DORI SLOSBERG DRIVER EDUCATION SAFETY ACT, INDIAN RIVER COUNTY TRAFFIC EDUCATION PROGRAM TRUST FUND

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously accepted the Report of the revenues and expenditures from the inception of \$3 traffic ticket surcharge fee, October 1, 2002, through March 31, 2008, as recommended in the memorandum dated April 9, 2008.

8.C. 26TH STREET 6" FORCE MAIN LOOP FROM BELLA VISTA ISLES TO BELLA ROSA, WORK AUTHORIZATION DIRECTIVE NO. 2007-011, UCP No. 2989, APPROVAL OF FINAL PAYMENT TO LABOR CONTRACTOR DERRICO CONSTRUCTION CORP. AND RELEASE OF RETAINAGE

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Change Order No. 1 for an amount of \$279.00, and approved Application for Payment No. 2 – Final as final payment to the Contractor, Derrico Construction Corp., in the amount of \$7,302.15, as recommended in the memorandum dated April 11, 2008.

8.D. SOUTH COUNTY REVERSE OSMOSIS PLANT – FDEP PERMIT RENEWAL FOR DEMINERALIZED CONCENTRATE DISPOSAL, WORK ORDER NO. 6 – PROFESSIONAL SERVICES TO KIMLEY-HORN & ASSOCIATES, INC., AMENDMENT NO. 3 TO WORK ORDER NO. 6 – FINAL PAY TO CONSULTANT

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved final payment to Kimley-Horn & Associates in the amount of \$1,555,000, as recommended in the memorandum dated April 14, 2008.

8.E. RIGHT-OF-WAY ACQUISITION COUNTY ROAD 510, PROJECT #0610, 85TH STREET, SOUTH SIDE, WEST OF 58TH AVENUE, 4 PARCELS OWNED BY DAVID GODWIN

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Alternative No. 1, the purchase of the four (4) parcels, and authorized the Chairman to execute said Agreement, as recommended in the memorandum dated April 7, 2008.

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

8.F. RIGHT-OF-WAY ACQUISITION, COUNTY ROAD 512 PHASE IV, YUKO MATSUDA AND YOKO OSAWA, REPRESENTED BY: BRIGHAM MOORE, LLP

Commissioner O'Bryan's expressed concern with the County having to pay the seller's attorney's fees and other damages. He was not sure why we were taking on the attorney's fees when we had upped our offer to \$34,000.00, almost 30% above the appraised value.

Deputy County Attorney Bill DeBaal explained that this is an action in eminent domain and by Statute, the County as the condemning authority, is required to pay attorney's fees and costs of the opposing party. He felt the fee was justified.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, the purchase of the 0.19 acres, and authorized the Chairman to execute the Purchase Agreement, as recommended in the memorandum of April 10, 2008.

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

8.G. RIGHT-OF-WAY ACQUISITION FOR CR510, COUNTY ROAD PROJECT # 0610, PROPERTY: 5570 85TH STREET (CR 510), NORTH SIDE OF CR 510 BETWEEN 58TH AVENUE AND 55TH AVENUE, OWNED BY VETE DERISSE

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously

approved Alternative No. 1, the purchase of the house and entire property located at 5570 85th Street (CR 510), in the amount of \$150,000.00, as recommended in the memorandum of April 7, 2008.

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

8.H. EXTENSION OF MINING MORATORIUM

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved for the County Attorney's Office to proceed with the process of extending the moratorium prior to the July 8, 2008 expiration, as recommended in the memorandum of April 14, 2008.

8.I. WORK ORDER NO. 9 – RELEASE OF RETAINAGE, MASTELLER, MOLER, REED AND TAYLOR, INC., CR 512 PHASE III RIGHT-OF-WAY MAPPING PROJECT

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved payment of Invoice No. 1906-6519, dated 04/10/08, in the amount of \$1,470.00, to Masteller, Moler, Reed & Taylor, Inc., as recommended in the memorandum dated April 14, 2008.

8.J. APPROVAL TO PURCHASE BIO-DIESEL AT LOWEST AVAILABLE COST

This item was **continued** to next week's meeting.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved that this item *be continued at the April 29, 2008 Commission Meeting*, as requested in the memorandum dated April 21, 2008.

8.K. ADDITION: OUT OF COUNTY TRAVEL FOR COMMISSIONER DAVIS AND STAFF TO TRAVEL TO TALLAHASSEE

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved out-of-County travel for Commissioner Davis and staff to attend a Legislative Hearing with the Cabinet regarding the County Road 512 exchange of property, in Tallahassee, from April 28-29, 2008, as requested in the memorandum of April 21, 2008.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

10. PUBLIC ITEMS

A. PUBLIC HEARINGS

**1. PROPERTY EXCHANGE WITH KEN MCKELLAR FOR
49TH STREET/31ST AVENUE RIGHT-OF-WAY**

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

Deputy County Attorney Bill DeBraul recapped the backup memorandum of April 15, 2005 regarding the County’s need to acquire an additional 20 feet of right-of-way along the north side of 49th Street (Lindsey Lane) near 31st Avenue. It is also the County’s desire to obtain a 40-foot strip for right-of-way and access along the east side of 31st Street just north of 49th Street. Attorney DeBraul provided detailed data on the proposed property exchange with Ken McKellar. He thereafter presented staff’s recommendation for the Board to consider public input, and to adopt the resolution approving the exchange agreement between the County and Ken McKellar.

Commissioner O’Bryan asked whether the deed and property line issues were cleared up with Mr. McKellar. Attorney DeBraul confirmed that they were.

The Chairman opened the Public Hearing. Seeing no one, the Chairman closed the Public Hearing.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved (1) **Resolution 2008-042** approving a Real Estate exchange with Ken McKellar; and (2) authorized the

Chairman to execute the Agreement and any Deeds including the Corrective Deeds necessary to effectuate the exchange, as recommended in the memorandum of April 15, 2008.

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

10.B. PUBLIC DISCUSSION ITEMS

1. REQUEST TO SPEAK FROM DR. STEPHEN J. FAHERTY, SR. REGARDING VERO BEACH ELECTRIC UTILITY

Dr. Stephen Faherty was absent due to illness, and this item was rescheduled for the May 6, 2008 BCC meeting.

10.C. PUBLIC NOTICE ITEMS

**1. NOTICE OF SPECIAL CALL MEETING APRIL 24, 2008:
A SPECIAL CALL MEETING WILL BE HELD ON THURSDAY, APRIL 24, 2008 AT 9:00 A.M. WITH RESPECT TO THE SOURCE (QUASI-JUDICIAL)**

**2. NOTICE OF SCHEDULED PUBLIC HEARINGS APRIL 29, 2008:
A. AMENDMENT INDIAN RIVER COUNTY RIVER COUNTY CODE SECTION A. 913.10(2)(B)3 TO LOWER THE A.M. BEST RATING REQUIREMENT FROM A+VII TO A-VI FOR MAINTENANCE BONDS (LEGISLATIVE)**

B. AMEND SECTION 303.33 AND 303.35 OF THE INDIAN RIVER COUNTY CODE TO ALLOW DEMOLITION INSPECTION AND RE-

**INSPECTION FEES TO BE SET BY COUNTY RESOLUTION
(LEGISLATIVE)**

**C. IMAGINE SCHOOLS: REQUEST FOR SPECIAL EXCEPTION USE
APPROVAL FOR A K-8 CHARTER SCHOOL FACILITY. LOW KEY,
INC., OWNER. IMAGINE SCHOOLS AND MBV ENGINEERING, INC.,
AGENTS. LOCATED AT 6000 4TH STREET. ZONING
CLASSIFICATION: RS-3 RESIDENTIAL SINGLE FAMILY (UP TO 3
UNITS/ACRE). LAND USE DESIGNATION: L-2, LOW DENSITY
RESIDENTIAL (QUASI-JUDICIAL)**

**D. BOARD CONSIDERATION TO FORMALLY DESIGNATE A 1.3 MILE
SEGMENT OF OLD DIXIE HIGHWAY SOUTH OF CR 512 AS A
HISTORIC ROAD (ADMINISTRATIVE)**

The Chairman read the Notices into the record.

11. COUNTY ADMINISTRATOR'S MATTERS

A. BOYS AND GIRLS CLUB REQUEST

County Administrator Joe Baird informed the Board that the Boys and Girls Club would like to lease the 17th Avenue property (the old ambulance squad right across from the Freshman Learning Center) to build their new clubhouse.

Vice Chairman Davis thought we were on the right track; it is a good collaborate partnership; but wanted the Board to keep in mind the conversation they had with the School District at their last joint workshop, which relates to the subject property. He hoped that staff would include the School District in the scope of programs when negotiations are entered into. Chairman Bowden agreed that they were on the right track and should proceed.

ON MOTION by Vice Chairman Davis, SECONDED by Chairman Bowden, the Board unanimously approved for the County Administrator to move forward with drafting an Agreement for the lease of the 17th Avenue property to the Boys and Girls Club, as requested.

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT - NONE

12.B. EMERGENCY SERVICES - NONE

12.C. GENERAL SERVICES - NONE

12.D. HUMAN RESOURCES - NONE

12.E. HUMAN SERVICES - NONE

12.F. LEISURE SERVICES – NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET - NONE

12.H. RECREATION – NONE

12.I. PUBLIC WORKS - NONE

12.J. UTILITIES SERVICES

I. APPROVAL OF BID AWARD FOR IRC BID NO. 2008034, 16" BRINE FORCE MAIN TO SPOONBILL MARSH WETLAND DISPOSAL SITE AND 12" REUSE WATER MAIN EXTENSION FROM LATERAL "G" TO US HWY 1

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved that the Bid be awarded to B&B Underground Contractors, Inc., for the amount of \$849,965.00 as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid. The Board also approved the Sample Agreement and authorized 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 April 14, 2008.

13. COUNTY ATTORNEY

A. C.N. KIRRIE REQUEST FOR RESOLUTION ACCEPTING IMPLIED DEDICATION OF A 60-FOOT STRIP OF LAND IN SECTION 30 SHOWN ON THE FLEMING GRANT PLAT OF 1888 (RECORDED IN BREVARD COUNTY IN PLAT BOOK 1, PAGE 72) BY S.B. CARTER, NOW LYING AND BEING IN INDIAN RIVER COUNTY

County Attorney William Collins recapped the backup memorandum of April 15, 2005 and recalled how in 2007 two lawsuits were filed against Sheriff Roy Raymond requesting

the court to declare a 60-foot strip of land (in Roseland) a public right-of-way and to order the Sheriff to cause clearing of vehicles, trash, debris, fences, gates, or any other encroachments, as well as, to compel the Sheriff to prevent trespassing on the 60-foot strip. The court subsequently dismissed both cases because it found neither plaintiff had a clear legal right to the relief requested.

Attorney Collins informed the Board of Mr. Kirrie's request for a resolution to be adopted, accepting the 60-foot strip of land on the Fleming Grant Plat. He provided background history of the subject land, and pointed out the advantages of accepting the offer. He thereafter recommended that the County adopt the resolution accepting the 60-foot strip of land, as it could facilitate a future emergency connection between the southerly termini of 129th and 130th Avenues.

Mr. Fred Mensing said he had requested that this matter be continued until he has an attorney present, because he did not receive the packet until Friday afternoon (April 18, 2008).

Attorney Collins noted that this matter was on the March 18, 2008 Agenda, and at Mr. Mensing's request it was extended to today.

Mr. Mensing presented arguments along with supporting data (copies on file) to aid his case of opposition to staff's recommendation and to support his claim to ownership of the subject strip of land. He referenced the survey of 1990 when he purchased the property from "Sembler," and briefly described the property as it was at the time of purchase. Mr. Mensing claimed he possesses free and clear title to the subject strip of land from the center of 129th Street for a distance of 660 feet to the east. He thought it would be wise for the Board to reject Attorney Collins's efforts because there are other issues that needed to be addressed.

Attorney Collins responded to questions from the Board of whether the Sheriff's attorney has different views (from the County Attorney) on this matter.

James Harpring, General Counsel, IRC Sheriff's Office, reported that the Sheriff has had to litigate a couple of issues in regard to this matter: First, dealing with whether or not they should be required to enforce public access rights on whether or not it is a public road, and in the alternative, defending a Writ of Mandamus, (filed by Mr. Mensing) requesting the Circuit Court to require the Sheriff's Office to issue a trespass warning against Mr. Kirrie in regards to the property. He said the Sheriff's interest is only in resolving the issue as to who actually has a proprietary interest in this, because they are obligated at some level to enforce the laws, especially since the history of this is not particularly clear as to possessory ownership. He said the Sheriff's Office would follow the lead of what the Board accepts, and would enforce the law accordingly.

Vice Chairman Davis asked if the Sheriff was agreeable to the Board passing the resolution, and **Attorney Harpring** reiterated that the Sheriff did not have an interest in it, and would proceed in accordance with the Board's decision.

Mr. C.N. Kirrie addressed several points: He talked about ownership of certain lots and strips of land in the subject area, sale of land to the Kirchoffs, and access to properties. He gave a history of ownership including purchase and sale of the subject property, and stated that this is an issue that would resolve a lot of problems at one time. A couple years ago, he recognized that his request for abandonment was out-of-place, because that roadway should be a public roadway (providing emergency access and access to the internal lots), and he did not continue with the request. He argued that it is simply an issue of clearing the matter and what he felt was a necessary second access to a large parcel. He thereafter invited questions from the Board.

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

There were no further discussions.

The Chairman CALLED THE QUESTION and the Board
unanimously approved **Resolution 2007-043** formally
accepting the implied dedication of a 60-foot strip of land
in section 30 shown on the Fleming Grant Plat of 1888
which predates statutory laws of platting set out in Chapter
177, Part 1, Florida Statutes.

14. COMMISSIONERS ITEMS

**A. COMMISSIONER SANDRA L. BOWDEN, CHAIRMAN -
NONE**

**B. COMMISSIONER WESLEY S. DAVIS, VICE
CHAIRMAN - NONE**

C. COMMISSIONER JOSEPH E. FLESCHER- NONE

D. COMMISSIONER PETER D. O'BRYAN

1. FLORIDA FOREVER FUNDING AND FUTURE FCT FUNDING

Commissioner O'Bryan informed the Board that when this item was placed on the Agenda last week, it appeared that the Florida State Legislature was not going to fund Florida Forever this year, however, that has subsequently changed. He pointed out that there was a proposal to move the funding from the Florida Communities Trust (FCT) within the Department of Community Affairs (DCA) to the Department of Environmental Protection (DEP). He stated that no action was required; he just wanted to bring it to their attention, and to note that they would be watching this.

Vice Chairman Davis thought the best thing was to have a resolution urging the Governor to sign the Proposal once it gets out of Committee and is on his desk.

Assistant County Attorney George Glenn reported that he called House Representative Stan Mayfield's office this morning and apparently it was still on the table to remove the FCT from DCA to DEP. He understood that they would be putting that language in the successor program to Florida Forever, and thought it would be a difficult issue for the Governor to veto because it meant he would have to veto the entire successor program for Florida Forever. Attorney Glenn also understood the bill would go to the full House for consideration probably at the end of this week, and felt it might be worthwhile to write a letter to the Delegation before it goes to a full vote of the House and the Senate, informing them of our good relationship with DCA and our desire to not have the program moved.

Commissioner O'Bryan Moved, Seconded by Commissioner Flescher, for a letter or resolution of support to be sent to the State Legislature to continue the funding and to keep the Florida communities Trust as part of the Department of Community Affairs program.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-044** requesting that the State retain the Florida Communities Trust program within the Department of Community Affairs.

E. COMMISSIONER GARY C. WHEELER - NONE

15. SPECIAL DISTRICTS AND BOARDS

A. EMERGENCY SERVICES DISTRICT - NONE

15.B. SOLID WASTE DISPOSAL DISTRICT

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

1. APPROVAL OF MINUTES - MEETING OF MARCH 18, 2008

2. APPROVAL OF BID AWARD FOR IRC BID No. 2008017, FELLSMERE CUSTOMER CONVENIENCE CENTER

15.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.

16. ADJOURNMENT

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 9:56 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Sandra L. Bowden, Chairman

Minutes Approved: _____

BCC/AA/2008 Minutes