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OF BOARD OF COUNTY COMMISSIONERS
OF AUGUST 12, 2008

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August 12, 2008

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, 1801 27th St., Vero Beach, Florida, on Tuesday, August 12, 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 Maureen Gelfo.

1. CALL TO ORDER

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

2. INVOCATION

Pastor Roger Ball, Immanuel Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chairman Davis led the Pledge of Allegiance to the Flag.

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

5. PROCLAMATIONS AND PRESENTATIONS

**5.A. DIAMOND R. LITTY, PUBLIC DEFENDER, 19TH CIRCUIT PUBLIC
DEFENDER'S OFFICE**

Clerk's Note: This item was heard immediately following 10.B.2.

Diamond R. Litty gave a presentation thanking the Board for its support of the Public Defender's proposed 2008/2009 budget, and for its support over the past 16 years.

**5.B. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF
AUGUST 2008 AS CIGARETTE LITTER PREVENTION MONTH**

Clerk's Note: The proclamation was read immediately following Item 3, the Pledge of Allegiance, and is placed here for continuity.

Vice Chairman Davis read and presented the Proclamation to Melanie Neach, Executive Director of Keep Indian River Beautiful (KIRB), who thanked the Board for joining in the nationwide effort to prevent cigarette litter.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF JUNE 10, 2008

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of June 10, 2008. There were none.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of June 10, 2008, as written.

6.B. REGULAR MEETING OF JUNE 17, 2008

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of June 17, 2008. There were none.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of June 17, 2008, as written.

6.C. SPECIAL CALL JOINT MEETING OF JUNE 19, 2008 – INTERLOCAL AGREEMENT/ISBA

The Chairman asked if there were any corrections or additions to the Minutes of the Special Call Joint Meeting of June 19, 2008. There were none.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved the Minutes of the Special Call Meeting of June 19, 2008, as written.

6.D. REGULAR MEETING OF JULY 1, 2008

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of July 1, 2008. There were none.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of July 1, 2008, as written.

6.E. REGULAR MEETING OF JULY 8, 2008

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of July 8, 2008. There were none.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved the Minutes of the Regular Meeting of July 8, 2008, as written.

**7. INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS
NOT REQUIRING BOARD ACTION**

The Chairman read the following informational items into the record.

**7.A. MEMBER-AT-LARGE APPOINTEE VACANCY ON LAND ACQUISITION
ADVISORY COMMITTEE**

**7.B. SEBASTIAN RIVER AREA CHAMBER OF COMMERCE APPOINTMENT TO
THE ECONOMIC DEVELOPMENT COUNCIL**

**7.C. 2008 ELECTION OF SCHOOL PLANNING CITIZENS OVERSIGHT
COMMITTEE CHAIRMAN AND VICE CHAIRMAN**

**7.D. 2008 ELECTION OF AFFORDABLE HOUSING ADVISORY COMMITTEE
(AHAC) CHAIRMAN AND VICE CHAIRMAN**

**7.E. RESIGNATION OF BUSINESS IN ENTERPRISE ZONE APPOINTEE TO
ENTERPRISE ZONE DEVELOPMENT AGENCY**

8. CONSENT AGENDA

Commissioner O'Bryan asked to pull Item 8.FF. for discussion.

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

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

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously accepted the Indian River County Statement of Revenues, Expenditures and Changes in Fund Balance of the Traffic Education Program, as recommended in the memorandum dated July 16, 2008.

8.B. INCREASE CAPITALIZATION THRESHOLD FOR CAPITAL ASSETS

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved amending the capital assets policy to increase the threshold for recording of tangible personal property to \$1,000.00, as recorded in the memorandum of August 1, 2008.

**8.C. INDIAN RIVER COUNTY INVESTMENT ADVISORY COMMITTEE,
QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDING
6/30/08**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously accepted the Investment Advisory Committee Quarterly Report, as recommended in the memorandum of August 1, 2008.

8.D. APPROVAL OF WARRANTS – JULY 3, 2008 THRU JULY 10, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of July 3, 2008 through July 10, 2008, as requested in the memorandum of July 10, 2008.

8.E. APPROVAL OF WARRANTS – JULY 11, 2008 THRU JULY 17, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of July 11, 2008 through July 17, 2008, as requested in the memorandum of July 17, 2008.

8.F. APPROVAL OF WARRANTS – JULY 18, 2008 THRU JULY 24, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of July 18, 2008 through July 24, 2008, as requested in the memorandum of July 24, 2008.

8.G. APPROVAL OF WARRANTS – JULY 25, 2008 THRU JULY 31, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants as issued by the Clerk to the Board for the time period of July 25, 2008 through July 31, 2008, as requested in the memorandum of July 31, 2008.

8.H. APPROVAL OF BID AWARD FOR IRC BID # 2005051 IRC ANIMAL CONTROL CASE MANAGEMENT SOFTWARE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Bid Award to HLP, Inc., as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid, as recommended in the memorandum of July 24, 2008.

8.I. APPROVAL OF RENEWAL OF THE 800 MHZ COMMUNICATIONS SYSTEM INFRASTRUCTURE MAINTENANCE CONTRACT WITH COMMUNICATIONS INTERNATIONAL, INC.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved renewal of the contract with Communications International Incorporated, with funding provided from the

Communications/Emergency Services budget, as recommended in the memorandum of July 29, 2008.

8.J. WORK ORDER NO. 11 (ENGINEERING/SURVEY) FULL & FINAL PAY, CR510 & US HIGHWAY NO. 1 INTERSECTION IMPROVEMENTS PROJECT RIGHT-OF-WAY & LAND ACQUISITION "ELDELL: PARCEL BOUNDARY SURVEY, CARTER ASSOCIATES, INC., IRC PROJECT NO. 0610, CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES CONTRACT 0725

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved payment of Invoice No. 08370-1, dated July 2, 2008 in the amount of \$1,400.00 for full and final payment, as recommended in the memorandum of July 8, 2008.

8.K. EAGLE TRACE SUBDIVISION – PHASE 2 – PROJECT #0813, DUNKELBERGER ENGINEERING & TESTING, INC., WORK ORDER #4 – RELEASE OF RETAINAGE & FINAL PAY

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved payment of Invoice No. 36895, dated June 30, 2008, in the amount of \$862.00 for final payment of \$680.00 and release of retainage in the amount of \$182.00 for a total

payment of \$2,500.00, as recommended in the memorandum of July 15, 2008.

8.L. MISCELLANEOUS BUDGET AMENDMENT 017

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-106**, amending the Fiscal Year 2007-2008 budget.

**8.M. RESOLUTION REQUESTING ASSISTANCE FROM STATE OF FLORIDA
BEACH EROSION CONTROL PROGRAM**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-107**, requesting assistance from the State of Florida Beach Erosion Control Program.

8.N. LOCAL OPTION GAS TAX DISTRIBUTION PERCENTAGES

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the revised table of the Local Option Gas Tax Distribution Formula May 2008, to be forwarded to the State, and as recommended in the memorandum of July 10, 2008.

**8.O. APPROVAL OF BID AWARD FOR IRC BID NO. 2008058, DEMOLITION
OF FIVE (5) CONDEMNED STRUCTURES**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved the Bid Award to SRD Construction & Development Corporation as the lowest most responsive and responsible bidder, meeting the specifications as set forth in the Invitation to Bid; and (2) approved the issuance of a Purchase Order after receipt of the appropriate Certificate of Insurance, as recommended in the memorandum of July 22, 2008.

**8.P. APPROVAL OF RENEWAL FOR A CLASS "A" CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR INDIAN RIVER COUNTY
DEPARTMENT OF EMERGENCY SERVICES**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved renewal of the Class "A" Certificate of Public Convenience and Necessity for the Indian River County Department of Emergency Services, to be effective for a period of two (2) years from October 15, 2008, to October 15, 2010, as recommended in the memorandum of July 14, 2008.

8.O. RATIFICATION OF DOCUMENTS EXECUTED BY THE COUNTY ADMINISTRATOR OR DESIGNEE, ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS, UNDER AUTHORITY OF RESOLUTION NO. 2008-096, BETWEEN JULY 16, 2008, AND AUGUST 11, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the following document executed by the County Administrator or Designee: *BellSouth Telecommunications, Inc., d/b/a AT&T Florida Easement at 5th Street SW and 43rd Avenue*

8.R. PETER R. TYSON AND JEANNE MYERS TYSON'S REQUEST FOR RELEASE OF AN EASEMENT AT 2105 ISLAND DRIVE (LOT 12, REPLAT OF ST. CHRISTOPHER HARBOR)

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-108**, releasing an easement on Lot 12, replat of St. Christopher Harbor.

8.S. UPDATED INVESTMENT POLICY – TWO MINOR CHANGES

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

the Investment Policy changes, as presented, and as recommended in the memorandum of August 1, 2008.

**8.T. CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR CR 510
FROM 61ST DRIVE TO SHORE LANE – AMENDMENT NO. 4**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Amendment No. 4 to the Agreement with McMahon Associates, Inc. as recommended in the memorandum of July 11, 2008.

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

**8.U. CR 512 PHASE IV, IRC PROJECT NO. 9611B, BID NUMBER 2008012,
CHANGE ORDER NO. 1**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Change Order #1 increasing the contract amount by \$95,136.38, with the new contract amount to be \$8,679,176.96, as recommended in the memorandum of August 5, 2008.

**8.V. RESOLUTION CANCELLING TAXES ON PROPERTY ACQUIRED BY THE
CITY OF FELLSMERE FOR ALTERNATE ACCESS TO FELLSMERE
TRAILHEAD PRESERVE**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution-2008-109**, cancelling certain taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.

(From Fellsmere Development Corporation, Inc. a/k/a Fellsmere Development Corp. to City of Fellsmere for alternate access to Fellsmere Trailhead Preserve).

8.W. SCRIVENER'S ERROR IN RESOLUTION NO. 90-160

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-110**, correcting a scrivener's error in the title of Resolution No. 90-160, recorded in O.R. Book 886, pages 1379-1382 of the public records of Indian River County, Florida to accurately recite the closing, abandonment and vacation of 88th Court South of 22nd Street (rather than South of 22nd Avenue).

**8.X. DEDICATION OF SUBMERGED LANDS LOCATED IN PORPOISE BAY, UNIT
3, MOORINGS SUBDIVISION**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-111**, accepting the dedication of submerged lands in the Moorings Subdivision, Unit 3.

(Porpoise Bay, William Caldwell)

**8.Y. RESOLUTION FOR APPOINTMENT OF “AT LARGE” MEMBERS TO
ADVISORY COMMITTEES**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-112**, setting forth the policy for appointing “at large” members to Advisory Committees.

**8.Z. RELEASE OF RETAINAGE AND FINAL PAYMENT TO S.P.S.
CONTRACTING, INC. CR510 FORCE MAIN REPLACEMENT UCP-2871**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved final payment for Bid 2007060 to S.P.S. Contracting, Inc. for a final payment of \$17,888.86, and authorized the Chairman to execute same, as recommended in the memorandum of July 25, 2008.

8.AA. WORK ORDER NO. 4 FOR PROFESSIONAL SERVICES WITH G.K. ENVIRONMENTAL, INC. FOR CR510 FROM 61ST DRIVE TO SHORE LANE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 4 with G.K. Environmental, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute same, as recommended in the memorandum of July 28, 2008.

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

8.BB. APPROVAL OF LEASE WITH BOYS AND GIRLS CLUB OF INDIAN RIVER COUNTY, INC. FOR COUNTY PROPERTY ON 17TH AVENUE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-113**, approving a community interest Lease Agreement with the Boys and Girls Club of Indian River County, Inc., for Indian River County Property at 17th Avenue.

**8.CC. THE MOORINGS CLUB REQUEST FOR COUNTY 25% COST SHARE TO
CONSTRUCT HARBOUR DRIVE SIDEWALK**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, whereby a Joint Project Agreement with The Moorings Club will be prepared for future Board approval to establish the 25% County cost share, as recommended in the memorandum of July 31, 2008.

**8.DD. APPROVAL OF RENEWAL FOR A CLASS E1 CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR THE PLACE AT VERO BEACH,
INC. TO PROVIDE NON-EMERGENCY WHEELCHAIR SERVICES**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved renewal of the Class E1 Certificate of Public Convenience and Necessity for The Place at Vero Beach, Inc., to be effective for a period of two (2) years from August 10, 2008, to August 10, 2010, as recommended in the memorandum of August 4, 2008.

**8.EE. ADDENDUM NO. 1 TO THE PROFESSIONAL ENGINEERING AGREEMENT
WITH MASTELLER & MOLER, INC. – SERVICES FOR DESIGN AND
PERMITTING OF 17TH LANE S.W. FROM 27TH AVENUE EAST
APPROXIMATELY 900 LF – IRC PROJECT NO. 0803**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher the Board unanimously approved the Lump Sum fee of \$2,720.00 to Masteller and Moler, Inc., for Amendment No. 1 to the Professional Engineering Services Agreement for modifications for 17th Lane S.W., from 27th Avenue to approximately 900LF east of 27th Avenue, and authorized the Chairman to execute the Agreement, as recommended in the memorandum of August 5, 2008.

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

**8.FF. FELLSMERE 392 DEVELOPER'S AGREEMENT FOR DEVELOPER
CONTRIBUTIONS TO ROADWAY IMPROVEMENTS ON COUNTY ROAD 512**

Assistant Public Works Director Chris Mora addressed Commissioner O'Bryan's concerns about maintaining a smooth flow of traffic with the additional signals that would be placed on County Road 512.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously

approved Alternative No. 1, the Developer's Agreement with Fellsmere 392 LLC, as recommended in the memorandum of August 7, 2008.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARING

10.A.1. PLC LLC'S REQUEST TO REZONE ± 2.61 ACRES FROM CH TO CG

(QUASI-JUDICIAL)

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

Community Development Director Robert Keating recapped the backup memorandum of July 15, 2008, to provide background description and conditions of PLC, LLC's request to rezone property currently zoned CH, Heavy Commercial, to CG, General Commercial. He explained that PLC, LLC wants to put a convenience store and gas station on the property. He provided details on the existing and future land use patterns in this area, and asked for Board approval of staff's recommendation to rezone the property from CH to CG, based on the conditions outlined on pages 279-283 of the backup.

Director Keating thereafter responded to questions from the Board regarding buffering the subject property from the abutting shooting range.

Assistant Public Works Director Christopher Mora responded to Commissioner O'Bryan's question on how the heavier traffic flow (generated by the zoning change) would be handled.

The Chairman opened the public hearing.

Douglas Vitunac, Esquire, representing PLC LLC, felt that retail business was needed in this area, and hoped that the Board would approve the zoning change.

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

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously adopted **Ordinance 2008-007**, amending the Zoning Ordinance and the accompanying zoning map for ± 2.61 acres located at the southwest corner of 41st Street and 43rd Avenue from CH, Heavy Commercial District, to CG, General Commercial District; and providing codification, severability, and effective date.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM ARDRA RIGBY REGARDING RECYCLING

DECISION

Clerk's Note: Ardra Rigby presented his comments conjointly with William Rigby. Please see Item 10.B.2. below.

NO ACTION REQUIRED OR TAKEN

**10.B.2. REQUEST TO SPEAK FROM WILLIAM RIGBY REGARDING DECISION
MADE ON RECYCLE AND WASTE ON JULY 15, 2008**

Clerk's Note: This item was heard immediately following 10.A.

William Rigby, 8465 59th Avenue, General Manager of Capital Sanitation, read a statement regarding Capital Sanitation's efforts to secure work in the Enterprise Zone, based on the Title VI Civil Rights Act of 1964, which mandates participation of minorities in procurement of all government contracts which receive federal funds. He reminded the Commission that in July 2008, the Board had directed staff to meet with representatives from Capital Sanitation to work out a plan for participation in solid waste collection in the Enterprise Zone. It was his understanding that at that time, the County had also opted to negotiate with the current waste haulers and make revisions to the contract to include a price for recycling. He questioned the legality of the County having Treasure Coast Refuse and Waste Management as their haulers for the past 30 years, and informed the Board that he was still seeking work in the Enterprise Zone.

Vice Chairman Davis noted that a correlation should not be made between the quality of a corporation and their ability to bid on a contract. He pointed out that it was the intent of the Board on February 5, 2008 to open up the opportunity for bids to go out and stimulate competition in the Enterprise Zone.

Administrator Baird explained that the Request for Bids put out by the County, involved recycling, which also involves the transfer stations. He divulged that although Capital Sanitation had been asked to submit a bid on the contract, they had not done so. He stated that staff would be updating the Board on the Enterprise Zone in late August or early September 2008, and that staff would also research whether Treasure Coast Refuse and Waste Management have been in place for thirty (30) years. He wanted to ensure that all businesses interested in

bidding had equal opportunities to compete for work in the Enterprise Zone, but noted that if Capital Sanitation wanted to secure business in the Enterprise Zone, they would have to respond to a RFQ (Request for Quote).

William Rigby remarked that Capital Sanitation had not responded to the bid request because the County was already operating efficiently and within their budget. He also pointed out that he could not afford to bid on a job of that magnitude.

Ardra Rigby interjected that there were 13 other companies, having more resources than Capital Sanitation, who did not bid on the contracts. He reminded everyone that Capital Sanitation was here today to discuss obtaining solid waste business in the Enterprise Zone.

Chairman Bowden conveyed that staff would look at this issue and bring it back for further Board consideration.

NO ACTION REQUIRED OR TAKEN

10.B.3. REQUEST TO SPEAK FROM BRIAN KOFKE REGARDING CAMERAS AT TRAFFIC LIGHTS

Brian Kofke, 1656 36th Avenue, discussed his concerns about the County's traffic cameras (presently used to monitor traffic), evolving into surveillance tools for law enforcement. He commended Assistant Public Works Director Chris Mora on the current traffic system and wanted the Board to pledge that it would inform the public should the traffic cameras ever cross over into other types of uses.

Board members commented on the frequency of public surveillance in today's world and deemed that the only intent of the current system was to synchronize and keep traffic moving.

Commissioner Flescher made observations about a different type of traffic surveillance system which is used in large municipalities. He observed that the present system might be melded into law enforcement in times of an emergency, but assured Mr. Kofke that the public would be notified if the County ever considered venturing into that type of surveillance system.

Mr. Kofke believed that the County's traffic cameras were currently being used in a benign manner, and he hoped it would stay that way. He reiterated his desire for the County to inform the public if any changes should occur in the traffic camera usage.

NO ACTION REQUIRED OR TAKEN

10.B.4. REQUEST TO SPEAK FROM SANDRA BLAKLEY, DOG KIDZ COUNTRY DAYCARE & BOARDING, REGARDING APPLICATION OF KENNEL SET BACKS TO NON-KENNEL PORTION OF PROPERTY

Sandra Blakley, owner of Dog Kidz Country Daycare and Boarding, located on 7050 77th Street, presented a handout (copy on file) to the Board, which included site plans for her business. She discussed how she had received County approval for a fencing plan prior to the closing on her property, and subsequently had received notice of a code violation stating that a kennel must maintain a minimum of seventy-five (75) feet separation distance from adjacent properties. Ms. Blakley presented her arguments disputing Code Enforcement's

determination that her business should be treated as a kennel, and requested that her business be left alone.

Richard & Barbara Cahoy, 1560 St. David's Lane, pointed out that many citizens had turned out in support of Ms. Blakley. Mr. Cahoy read a statement (copy on file) supporting Ms. Blakley's business and asked the Board to override the Code Enforcement Board and allow Mrs. Blakely to proceed with her business.

Commissioner Wheeler had reviewed the site plan, and had also visited Dog Kidz, and did not believe there was any nuisance at the facility. He believed Code Enforcement was being used to harass Ms. Blakley over a neighborhood disagreement, and wanted the situation rectified.

Vice Chairman Davis also went to see Dog Kidz. He did not see how 75 feet could make much of a difference; opined that the dog facilities served a tremendous need in the community; and expressed his desire to try to accommodate Dog Kidz.

Douglas Vitunac, Esquire, Collins, Brown, & Caldwell, representing the Petersons, declared that the Board Meeting was not the appropriate forum to seek an override of Code Enforcement's decision; such appeals go directly to Circuit Court. He revealed that Diana Peterson had filed a lawsuit regarding this matter, which was in Circuit Court. Attorney Vitunac provided legal definitions of a kennel; discussed County Code; and asserted that Dog Kidz was a kennel, and as such, must follow Code, and keep all dogs away from the adjacent property line for 75 feet. Attorney Vitunac also noted that although Ms. Blakley's attorney, Mr. LeJoie, was in attendance, neither he, nor his client, had received any notice of today's meeting.

Chairman Bowden pointed out that this item had been placed under "Public Discussion."

Diana Peterson, 6990 77th Street, explained how Dog Kidz was interfering with the quiet enjoyment of her neighboring property, due to noise from the dogs and increased traffic on the street. She believed that the neighborhood was zoned for five-acre single-family ranchettes, and that it was a problem to have a booming commercial business in the middle of the neighboring homes. She informed the Board that if she had known about today's meeting, her neighbors and husband would also have been present.

County Administrator Joe Baird clarified that anyone can get on the Agenda and speak on any item, no action is taken, and the County does not normally inform anyone. He affirmed that this matter should be resolved by Code Enforcement.

County Attorney Will Collins stated that the Board did not have the jurisdiction to overturn a Code Enforcement Board decision. An appeal of the Code Enforcement's Final Order would have to go to Circuit Court for review of the record under which Code Enforcement came to its decision.

Roger LaJoie, Esquire, 2546 Fairway Drive, representing Ms. Blakley, commented that Mrs. Peterson had never approached Ms. Blakley about her problems with Dog Kidz. He refuted several of Mrs. Peterson's assertions, and observed that his client had done everything to comply with County Code.

Commissioner O'Bryan explained to Mrs. Peterson that her neighborhood was not platted for ranchettes, but for agricultural land use. He felt that there were conflicting uses in the County's agricultural land use designations which needed to be addressed, so when people buy property, they would know what type of usage might occur on the adjacent property.

NO ACTION REQUIRED OR TAKEN

10.B.5. REQUEST TO SPEAK FROM DR. STEPHEN J. FAHERTY, SR.
REGARDING SUPPORT FOR COUNTY RESOLUTION ON ELECTRIC
UTILITY REFERENDUM

Dr. Stephen J. Faherty, Sr., 2120 Captains Walk, recalled that on May 8, 2008, the Board had directed County staff to work with him to prepare an action plan for implementing the pending Vero Beach Electric Utility Referendum. He read his report (copy on file) to recap the issues experienced by the County residents residing in the unincorporated areas of the City, and the Indian River Shores residents, who pay City Utilities but receive no representation, and whose fees go into the City of Vero Beach's General Fund. He updated the Board on actions taken subsequent to the May 8, 2008 meeting and informed the Board that the Elections Office and the City Council have still not made any determinations regarding the Referendum. He thereafter outlined the actions that he and County staff were requesting from the Board, which included passage of a Resolution in support of the Electric Utility Referendum, which would allow for the creation of a separate Utility Authority to replace the Vero Beach City Utilities Commission.

Vero Beach City Manager Jim Gabbard revealed that the Supervisor of Elections was originally going to clarify some issues with the Attorney General; however, she had been unable to do so. The City was now trying to determine if House Bill 7135, Chapter 2008-227 (relating to the creation of a separate utility authority), applies to them. He spoke of the huge financial impact that might occur as a result of the Bill, and urged the Board to be deliberate and cautious before taking any action. He thereafter invited the Commissioners to gain some additional perspective by touring the City Utility facility and discussing with staff the City's plans for the future of the facility.

The Board, staff, and Mr. Gabbard thereafter discussed the 10% City utility tax, the County's franchise fee, and whether or not the fees charged by the City of Vero Beach Electric Utility were equal for City Utility customers inside and outside the City Limits.

Lee Regan, 3207 Anthem Way, noted that the Utilities Commission only advises the City on technical matters, and that the purpose of the proposed Referendum would be to hold the City accountable.

Clerk's Note: For further discussion of this item, please refer to Item 12.G.1. Office of Management and Budget.

The Chairman called a recess at 10:41 a.m. and reconvened the meeting at 10:55 a.m.

10.B.6. REQUEST TO SPEAK FROM BILL GLYNN, PRESIDENT, NORTH BEACH CIVIC ASSOCIATION, REGARDING CONDEMNATION AND REMOVAL OF UNSAFE RESIDENTIAL STRUCTURE LOCATED AT 9856 DOUBLON DRIVE, SUMMERPLACE

Bill Glynn, 1802 Barefoot Place East, representing the North Beach Civic Association, outlined his reasons for asking the Board to support demolition of the damaged structure, located at 9856 Doubloon Drive, and owned by the Furets. He observed that for almost four years, the County has been trying to have the Furets repair the home, which is a safety hazard, and which attracts vagrants. He did not believe the Furets would do so, as the lot was for sale (copy of realtor information on file); and informed the Board that the Furets also owed back taxes.

Clerk's Note: For further discussion on this item, please see Item under 12.A.1. Community Development.

10.B.7. REQUEST TO SPEAK FROM CHARLIE WILSON, MEDIA ARTS GROUP, REPRESENTING IMAGINE SCHOOLS REGARDING PROPOSED SITE PLAN CONDITION AMENDMENT 4TH STREET LEFT TURN LANE

Charlie Wilson sought Board assistance in solving a dilemma which had occurred at Imagine Schools. He informed the Board that over 600 students, 200 more than were expected, have enrolled in the school's Kindergarten through Five (K-5) Program, which is Phase I of Imagine School's plan. Mr. Wilson recalled that Imagine Schools had agreed to the requirement of putting in a left turn lane going down 4th Street, but the road improvement was to have been done during Phase II (Grades Six through Eight) of the plan next year. With the increased enrollment, Imagine Schools wanted to use the Phase II buildings, but they did not know if this could be done without the left turn lane. Mr. Wilson noted that Imagine Schools would still have to procure the right-of-way.

Vice Chairman Davis asked if someone would be controlling the traffic pattern, and Mr. Wilson affirmed that the children's safety was the most important thing, and that a safety officer would be directing traffic.

Mr. Wilson responded to questions from Commissioner Wheeler regarding whether the school had made any move towards acquiring the right-of-way.

Christian Cascone, Director of Development for Imagine Schools, related that an engineer had been commissioned to design a plan for the left turn lane, but it would take some time to finalize things, which would not address the issue of accommodating the extra students.

Mr. Wilson inquired whether the Board had any authority to amend the order for the left turn lane.

County Attorney Collins explained that a Public Hearing would be required in order to modify this condition; it would then have to go to Planning and Zoning for a recommendation, and to another Public Hearing.

Stan Boling, Planning Director, added that the process described by Attorney Collins would probably take about sixty (60) to ninety (90) days, with all the advertising time-frames.

Commissioner Wheeler asked what would happen to the 200 students if they could not go to Imagine Schools, and Mr. Wilson explained that the public schools would accommodate them.

Mr. Cascone described other options which could be used by Imagine Schools: (1) informing the parents who have not completed their child's enrollment process, that there would be a delay; and (2) retrofitting the multi-purpose room to hold additional kids.

The Board expressed a desire to help Imagine Schools, and directed staff and the County Attorney to investigate whether anything could be legally done.

NO ACTION REQUIRED OR TAKEN

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING – AUGUST 19, 2008:

**POINTE WEST OF VERO BEACH, LTD.'S REQUEST TO MODIFY THE
APPROVED PLANNED DEVELOPMENT (PD) CONCEPTUAL PLAN FOR
POINTE WEST (LEGISLATIVE)**

The Chairman read the notice into the record.

11. COUNTY ADMINISTRATOR'S MATTERS-NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

**12.A.1. CONDEMNATION, DEMOLITION AND REMOVAL OF UNSAFE
STRUCTURES**

County Building Official Buddy Akins reviewed the backup memorandum of August 1, 2008, regarding five vacant structures which have been condemned and ordered repaired or removed. He divulged that there were five properties; all the property owners had received proper notice; no satisfactory repairs had been made; and there were no outstanding permits on the properties. He thereafter presented staff's recommendation for approval, based on the conditions outlined on page 321 of the backup.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner Flescher, for discussion,
to approve staff's recommendation.

Commissioner Flescher noted that it was time to eliminate these structures, which could pose a serious safety hazard during a storm.

Edwina Clark, 558 Caribbean Circle & 1730 38th Lane, explained the circumstances surrounding her family's attempts to hold on to her grandfather's property at 1730 38th Lane, which had been in her family for many years. She asked the Board for additional time to see if she could either bring the house up to code, or demolish and remove the building herself, as opposed to having an expensive lien put on the property.

Helen Furet, 9586 Doubloon Drive, outlined the steps she had taken in trying to bring her property into compliance with County Code, and stated she was still waiting for a response from the DEP regarding some documents. If her house had to be torn down, she wanted to know if the foundation would be left, so she could rebuild in the same spot.

Mr. Akins responded that the portion of the slab foundation which was not damaged would be left intact.

Commissioner O'Bryan inquired whether Mr. Akins would be okay with granting an additional sixty (60) days to Ms. Clark, for the home at 4380 38th Avenue. Mr. Akins responded that he had no objections to the extension.

Commissioner Wheeler felt that, in fairness, the 60-day extension should apply to those speakers who were interested enough to attend today's meeting, and he wanted to amend his Motion. However, Commissioner Flescher reminded the Board that Mrs. Furet had already been granted an extension, and nothing had changed.

Connie Jackson related information on her property at 4076 Old Dixie Highway, which was owned jointly by eight families. She stated that attempts had been made to

ameliorate some of the problems; informed the Board that the property was listed for sale; and asked for more time before the property is demolished.

Discussion ensued as the Board reviewed how best to afford the property owners a change to bring their properties into compliance, and how this had been handled in the past.

Assistant County Attorney William DeBraal observed that the property owners are provided with two chances. In the past, the Board approved the Resolution, and directed staff to obtain bids on the demolition structures. At the time of the bid approval, if a permit has been pulled, or if plans have been submitted that would bring the structures up to code, those structures could be withdrawn from the bid package. However, if the structures have not been approved, the Board would approve the bid award and the demolitions.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board: (1) declared said structures unsafe and a nuisance, and ordered the buildings demolished with related debris removed from the property by a private vendor approved through standard bid procedures; (2) approved **Resolution 2008-114**, providing for the demolition of unsafe structures and the recovery of costs; and (3) approved the necessary budget amendment to cover the demolition and removal of the structures and any other necessary legal expenses, all as recommended in the memorandum of August 1, 2008.

(Owners: Alan & Helen Furet – 9586 Doubloon Drive; Paul James McGriff – 1730 38th Lane; Pearl Hampton-Jackson, Presley Jackson and Thomas Jackson – 4380 38th

Avenue; Hampton Jackson, Phoebe Jackson Gipson, Holly Jackson, Thomas Jackson, Pressley Jackson, Pearl Jackson, Alicia Jackson, Jewel Jackson White, Regina Jackson, Merrill Jackson Adkins, Hampton J. Jackson, Jr., Constance Jackson, Merrill A. Russ – 4076 Old Dixie Highway; Thomas A. Kale – 2406 50th Avenue)

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

12.G.1. CITY OF VERO BEACH UTILITY REFERENDUM – REQUESTED

ACTIONS

County Budget Director Jason Brown recalled that in May 2008, staff had met with Dr. Stephen J. Faherty on issues which he had brought to the Board’s attention regarding the City of Vero Beach Electric Utility. Director Brown recapped the memorandum of July 29, 2008 to detail the concerns of the residents living in the unincorporated areas of the City and

Indian River Shores who have City Electric, but do not receive representation from the City of Vero Beach, and who are concerned about their utility rates.

After reminding the Board that a Referendum regarding the creation of a separate Electric Utility Authority might be placed on the November 2008 ballot, Director Brown presented staff's request for policy decisions on the following alternative actions:

1. Approve a Resolution supporting the Referendum.
2. Authorize the drafting of a letter from the Chairman to the Vero Beach City Council and Indian River Shores Town Council including a copy of the County Board's Resolutions and requesting the City and Town to pass their resolutions in order to inform the customer electorate as soon as possible.
3. Authorize the County staff to arrange with the City for stuffers or similar communications to be included in the City's utility bills to advise the customer electorate of the County Board's Resolution and other information related to the utility issues.
4. Authorize the County staff to work with the other jurisdictions in relation to the Referendum and implementing actions required subsequent to it.

John Lee, Customer Service Manager for the City of Vero Beach, addressed the perceived differences between the utility bills for customers inside and outside the City limits, and explained how the costs of the bills were identical, except for the County Franchise Fee on the "Outside City limits" bills (cost comparison on file).

Dr. Stephen Faherty discussed how important it is for customers living in the unincorporated City Limits and Indian River Shores, to have representation and the ability to control potential costs which would be passed onto them as shareholders. He said that the Referendum provides for a separate Utility Authority, which would replace the City Utility Advisory Commission, and which would be representative of the entire customer base.

Vice Chairman Davis believed that the debate was not necessarily about the fees, but more about who has the ability to elect the individuals who are imposing the fees.

Chairman Bowden concurred with Vice Chairman Davis, stating that the issue was about representation.

Commissioner Wheeler wanted to know if customers outside the City Limits had an obligation for any debt which was incurred by the City, and thus would be considered shareholders, and this was confirmed by Mr. Lee.

Commissioner Wheeler felt that if there were any costs associated with the Referendum, they should be passed on to the County residents paying City Utilities and living outside the City Limits, and not to all County residents.

Vice Chairman Davis wanted to know if we could use the franchise revenue towards payment of any costs, and Administrator Baird acknowledged that the County could utilize a portion of those fees to assist with any related costs.

Chairman Bowden did not want any unforeseen circumstances to occur, and was concerned about the effects the possible change in ownership from the City of Vero Beach to a separate Utility Authority could have on the City's Revenue Bonds.

County staff and City Manager Gabbard agreed that Bond Counsel from the City and the County could work together and come up with some answers.

A brief discussion ensued as Director Brown and Manager Gabbard discussed the particulars of funding expenses related to public education on the Referendum. Mr. Gabbard assured the County that the City had planned on doing an informational mailing if the Statute (Section 366.06(7) (c) applies to the City of Vero Beach, and the Referendum is put on the Ballot.

Commissioner Wheeler pointed out that as the Resolution is written, it is saying the County supports the Referendum. He believed that it was the County's place to give information and not direction on this, and wanted to change the wording to "in support of having the Referendum", but not supporting it.

He suggested the following changes to the wording of the Resolution as "NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, that:

1. The Indian River County Board of County Commissioners (Board) ~~supports~~ supports having the Utility Authority Referendum.
2. The Board requests that the City Council of Vero Beach ~~support~~ hold the Utility Authority Referendum.
3. The Board requests that the Town Council of Indian River Shores ~~supports~~ supports having the Utility Authority Referendum.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Flescher, for discussion, to approve staff's Recommendation #1, with the proposed amendments, in connection with the "City of Vero Utility Referendum" to be held in conjunction with the General Election of November 4, 2008.

For purposes of neutrality, Commissioner O'Bryan recommended deleting Sections 6 and 7 of the Resolution, which presume that the Referendum passes and could indicate favoritism one way or another.

Dr. Faherty asked the Board to leave wording in the Resolution to facilitate County staff working with the City of Vero Beach and Indian River Shores on the Charter for the Utility Authority, should the Referendum pass.

Vice Chairman Davis suggested adding Sections 6 and 7 of the Resolution to the November 18, 2008 Board of County Commission Meeting Agenda, and renumbering the items as there was an error in the numbering.

MOTION WAS AMENDED by Commissioner Wheeler to delete Items No. 6 and 7 from the Resolution.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved **Resolution 2008-115**, as amended, in ~~support~~ of connection with the "City of Vero Utility Referendum" to be held in conjunction with the General Election of November 4, 2008.

Regarding Staff's Recommendation #2, Vice Chairman Davis wanted to ensure that the County's support for having the Referendum would not be stopped if the City of Vero Beach does not want to pass the Resolution.

MOTION WAS MADE by Vice Chairman Davis,
SECONDED by Commissioner Flescher, to approve
Staff's Recommendation #2.

Commissioner O'Bryan wanted to be sure the wording of the letters would reflect the changes which were made on the amended Resolution, which were to reflect " Holding " and " Having " but not "Supporting" the Referendum.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved sending letters to the Vero Beach City Council and the Indian River Shores Town Council, requesting that the City Council of Vero Beach hold a Utility Authority Referendum, and that the Town Council of Indian River Shores support having a Utility Authority Referendum, including a copy of the Board's Resolution, and requesting the City and Town to pass Resolutions in order to inform the customer electorate of same.

Chairman Bowden invited a Motion on staff's Recommendation #3.

MOTION WAS MADE by Vice Chairman Davis,
SECONDED by Commissioner Flescher, for discussion,
to approve Staff's Recommendation #3, to authorize staff

to arrange with the City of Vero Beach for stuffers to be included in the City's utility bills to advise the customer electorate of the Board's Resolution and other information related to the utility issues.

Vice Chairman Davis would like to see any expenses related to this come from the franchise tax on the City Utility bills.

Administrator Baird said they could do a budget amendment to reflect this.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved Staff's Recommendation #3, to authorize staff to arrange with the City of Vero Beach for stuffers or similar communications to be included in the City's utility bills to advise the customer electorate of the Board's Resolution and other information related to the utility issues.

Discussion arose regarding placing Staff's Recommendation #4 on the November 18, 2008 Agenda. This pertained to County staff working with the other jurisdictions in relation to the Referendum and implementing actions required subsequent to the passage of the Referendum.

ON MOTION BY Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved to place on the November 18, 2008 BCC Meeting Agenda (as an action item), staff's Recommendation #4, to authorize the County staff to work

with the other jurisdictions (City of Vero Beach and Indian River Shores), in relation to the Referendum, and to implement actions required subsequent to it, should the voters approve the Referendum.

The Chairman called for a lunch break at 12:20 p.m. and reconvened the meeting at 1:33 p.m., with Assistant County Attorney William DeBaal assuming the Chair in the absence of County Attorney Will Collins.

12.H. RECREATION-NONE

12.I. PUBLIC WORKS

12.I.1. RIGHT-OF-WAY: ACQUISITION OF RIGHT-OF-WAY FOR COUNTY ROAD PROJECTS

Assistant Public Works Director Chris Mora recalled that on June 17, 2008, the Board had directed staff to bring back this item and to give a PowerPoint Presentation to provide more details on the right-of-way acquisition process used by the Public Works Department. He reported that staff had also met with a group of 66th Avenue property owners regarding their concerns about land acquisition procedures relative to the 66th Avenue road widening project.

Director Mora began the PowerPoint Presentation (copy on file) by explaining how the Land Acquisition Division of Public Works is organized, and how staff coordinates with the Engineering, Legal, Traffic Engineering and Community Development Departments.

Director Mora briefly remarked on each of the following four acquisition procedures that have been used to date:

NEGOTIATION

Director Mora noted that this method of direct negotiation with the property owners is the most widely used method; he explained the concept of “arms-length” negotiations, and outlined the five steps of direct negotiation.

DEDICATION

Director Mora related that when a developer realizes he is on a road that will need to be widened at some point, he agrees to dedicate the necessary property to the County, with compensation beyond a certain point.

MURPHY RESERVATIONS

Director Mora explained that Murphy Reservations are old right-of-way reservations created during the Depression. Lands were forfeited to the State due to nonpayment of taxes, but once they were sold back into private ownership, the State held on to certain mineral and transportation rights, and established a road right-of-way 100 feet from the center line of the existing road. As time went by, and most State road right-of-ways became County roads, those rights eventually transferred to the County.

EMINENT DOMAIN

Director Mora pointed out that the County has not been aggressive in pursuing Eminent Domain, but due to the size and scope of the road projects, it might become more commonly employed.

Director Mora then briefed the Board on how the County determines when to put a road project into the County road widening program, and listed the factors involved in determining the required amount of right-of-way.

Clerk's Note: Sandra Bowden exited the meeting at 1:46 p.m. and returned within the minute.

Director Mora presented the highlights of the right-of-way acquisition procedures which had been adopted in March 2007 (Resolution 2007-027), and which were designed to streamline and speed up the right-of-way acquisition process. He thereafter summarized the concerns of the 66th Avenue property owners (with whom staff had met), as follows:

- (a) Timing of the "Notice-to-Owner" Letter (which includes notification of the County's interest in their property as well as the notification of statutory rights)
- (b) Slow pace of County condemnation of properties along 66th Avenue

Director Mora then presented staff's recommendation to amend the Resolution, such that the "Notice to Owner" letter is sent out earlier, so that the property owners will be advised of their statutory rights prior to negotiations with County staff.

Assistant County Administrator Michael Zito added to the PowerPoint presentation, detailed voluntary and involuntary acquisitions, which comprise the three phases of right-of-way acquisition. He provided legal definitions of Eminent Domain, and used case law to illustrate the requirements for pre-suit negotiations. He conveyed staff's belief that Eminent Domain should be the last step in any negotiation process; discussed the proposed revisions to

Resolution 2007-027; and reiterated that the amended Resolution would provide for notice to be sent to property owners prior to any written offer. Mr. Zito thereafter asked the Board to approve staff's recommendation, amending County policies for acquisition of right-of-way for road expansion and improvement projects previously set forth in Resolution 2007-027.

Commissioner O'Bryan, referred to Section 4 of the proposed Resolution, where it states that the Consulting Engineer would be directed to prepare the SCALE Report* following 60% design completion, and asked if that wasn't a bit late in the process. Director Mora explained that the Engineer would have examined all of the elements in the SCALE Report by the time it got to the 60% level, and suggested that the Resolution read "provide" the SCALE Report, rather than "prepare" the SCALE Report.

The Chairman opened the floor to public comments.

Ruth Stanbridge, 4835 66th Avenue, expressed appreciation for staff's PowerPoint, and for the cooperation the property owners have been receiving from the Commissioners, especially Chairman Bowden, Vice Chairman Davis, and Commissioner Wheeler. She asked whether the Notice-to-Owner letters had been mailed out and learned from Director Mora that fifteen (15) of the eighteen (18) letters have been sent to property owners with whom the County had begun negotiations (not all on 66th Avenue). The remaining three letters would be sent out today (August 12, 2008).

* SCALE REPORT: Safety Considerations; Cost; Availability of Alternate Route; Long-Range Planning; and Environmental Factors

On behalf of the properly owner group on 66th Avenue, **Mrs. Stanbridge** offered the following suggested amendments to the proposed Resolution:

On behalf of the properly owner group on 66th Avenue, **Mrs. Stanbridge** offered the following suggested amendments to the proposed Resolution:

Spell out the acronym SCALE (found in the SCALE Report)

PROPOSED AMENDMENTS TO RESOLUTION:

Section 4, Bullet No. 2:

- After notice to owner, negotiations will remain open for 120 days based on a written offer, after the notification to complete a voluntary purchase unless extended by both parties or terminated by either party, in writing.

Section 4, Bullet No.3:

- Within 30 or 60 days following termination of negotiations, the file would be assigned to one of the eminent domain firms on contract for drafting a resolution of necessity for approval by the Board of County Commissioners.

Section #4, Bullet No.4:

- At the same time, and also within 30 or 60 days, an appraisal would be ordered for the affected property in order to comply with statutory requirement, and the consulting engineer would be directed to prepare a SCALE report.”

Section #4, Bullet No. 5:

- Following the completion of the appraisal and SCALE report, the County will follow Chapter 73, and an unconditional good faith offer would be made to the property owners and a resolution of necessity would be brought before the Board for approval.

Section 6:

6. ~~This is a resolution of general policy which is not binding.~~ Deviations from this policy can be made as needed to fit the circumstances of unique acquisitions.

Mrs. Stanbridge pointed out that there was no talk of negotiation or mediations here, even though those are required by Chapter 73.

Mr. Zito conveyed that staff had no objection to any of the changes.

A lengthy discussion ensued during which the Board and staff considered Mrs. Stanbridge's suggestions; analyzed the organizational structure of the Public Works Department as related to right-of-way acquisitions; and established the importance of administrative staff having access to legal counsel.

The Board, staff, and Mrs. Stanbridge discussed whether the time parameters suggested by Mrs. Stanbridge could be managed, particularly in view of the 113 parcels which remained on 66th Avenue.

The Board voiced its concerns about the property owners on 66th Avenue being in a state of limbo, and expressed its desire to move things along on their behalf.

Commissioner Wheeler felt that it would be advantageous, if the County needed to acquire property quickly, to offer a higher price, instead of negotiating for a lower price.

The Board's Consensus was to incorporate the suggestions made by Mrs. Stanbridge and Director Mora into the Resolution.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved Resolution **2008-116**, as amended, amending policies for acquisition of right-of-way for road expansion and improvement projects previously set out in Resolution No. 2007-027.

12.J. UTILITIES SERVICES

12.J.1. CONSULTING SERVICES WORK ORDER NO. 7 WITH SCHULKE, BITTLE & STODDARD, L.L.C. FOR PERMITTING, DESIGN AND CONSTRUCTION SERVICES FOR A WATER MAIN EXTENSION ON 77TH ST. UCP-3086

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 7 to Schulke, Bittle & Stoddard, LLC in the amount of \$22,250.00 for design work associated with this project, and authorized the

Chairman to execute same, as recommended in the memorandum of August 1, 2008.

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

12.J.2. APPROVAL OF FIRST AMENDMENT TO DEVELOPER'S AGREEMENT AND FIRST ONE-FIFTH PAYMENT TO WOODSIDE TUSCANY, LLC DBA WOODSIDE HOMES SOUTHEAST FLORIDA PER DEVELOPER'S AGREEMENT FOR OFFSITE 24-INCH MASTER PLANNED WATER MAIN

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved the First Amendment to the Agreement with Woodside Tuscanly, LLC for Tuscanly Lakes Subdivision and the request for initial payment to Woodside Homes Southeast Florida, pursuant to the Revised Developer's Agreement in the amount of \$94,793.05 (\$119,475.55 - \$24,682.50) and four (4) additional annual payments of \$119,475.55 beginning in August of 2009 and ending August 2012, as recommended in the memorandum of July 16, 2008.

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

12.J.3. WORK ORDER NO. 10 WITH CAMP DRESSER AND MCKEE, INC. –
WELLFIELD MAINTENANCE AND MANAGEMENT SERVICES FOR
NORTH AND SOUTH COUNTY RO WATER TREATMENT PLANTS

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

Chairman Bowden asked for an explanation on this matter.

Director of Utilities Eric Olson reviewed the backup memorandum of August 1, 2008, to provide background information on the wells which are used to operate the North and South County Reverse Osmosis Plants. He explained that the Work Order would allow staff to proceed with maintenance activities on the older wells, which would bring them up to capacity and maximize the amount of existing assets at the plants.

Chairman Bowden asked staff to dispel a rumor that the County was running out of water, and learned from Administrator Baird that the County would not run out of water until 2025.

Commissioner Wheeler recalled that recently, at a workshop meeting, there had been talk of the wells bringing the County only as far as 2017.

Director Olson explained why that projection has changed; described how the projections for growth curves (for water usage) are determined; and reported that due to diminishing growth curves, and the increasing amount of physical infrastructure, County water would be good to about 2025. He noted that, if a lot of growth and expansion happens over the next five years, the curve would be re-evaluated. Additionally, he acknowledged that there was a

finite amount of water, and that it was important to continue looking at alternative water supplies.

Director Olson responded to Commissioner Wheeler's question about a hydrology study which was going to be conducted by the St. John's River Water Management District (SJRWMD).

Administrator Baird provided assurances that the County had planned well for the future, and that the water source would certainly go beyond 2011, and probably to 2025.

Commissioner Wheeler asked whether the growth which was taking place in Brevard County would impact the County's water source.

Director Olson agreed that there was competition for the water source, and remarked that the County would explore desalination and some other options, because at some point, there will not be as much available water as there is now.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved Work Order No. 10 with CDM (Camp Dresser & McKee Inc.) and authorized the Chairman to execute same, as recommended in the memorandum of August 1, 2008.

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

**12.J.4. WEST WABASSO COMMUNITY WATER PROJECT – PHASE II, TIM ROSE
CONTRACTING, INC., FINAL PAYMENT**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute final payment to Timothy “Tim” Rose Contracting, Inc. for the amount of \$5,300.78, as recommended in the memorandum of August 5, 2008.

**12.J.5. ROYAL OAK MOBILE HOME PARK 4” COMPOUND MASTER WATER
METER, UCP No. 3082**

MOTION WAS MADE by Commissioner O’Bryan, SECONDED by Commissioner Flescher, for discussion, to approve staff’s recommendation.

Commissioner O’Bryan asked whether the lien, to be levied for the financing of the water system, would be placed upon the residents of the Mobile Home Park, or the Park itself. Director Olson revealed that the lien would be placed on the Mobile Home Park.

Bill Lain, owner of Royal Palm Mobile Home Park, presented a handout to the Board (copy on file) which detailed the loss of income experienced by the Mobile Home Park since the initial investment in the property. He informed the Board that the residents of the Park are primarily senior citizens living on fixed incomes, who would find it a financial hardship to finance the water connection system.

Administrator Baird responded to Commissioner O'Bryan's question regarding the interest rate.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board: (1) determined that Royal Oak Mobile Home Park has sufficiently demonstrated, to the Board's reasonable satisfaction, that the unforeseen payment of the capacity and water hook up charges are a financial burden and that all other funding sources have been exhausted currently. (*The Department of Utility Services has the financial ability to finance these charges for a period of up to twenty (20) years, with a superior lien for any such amounts due to be executed in recordable form reflecting the payment schedule and filed in the public records of Indian River County Florida*) and (2) approved (a) the expenditure of funds for construction of the water facilities up to a total amount of \$25,595.63 and authorized staff to proceed with acquiring the necessary permitting to construct the water facilities; (b) authorized the Chairman to execute Work Authorization Directive No. 2007-016 in the amount of \$8,894.38, to Derrico Construction Corp. for the labor portion of the project; (c) delegated the authority to the County Administrator to sign the funding agreement with the park owner/borrower after review and approval by all appropriate staff and the County Attorney's office; and (d) authorized the Utility Department to enter into a 20-year lien agreement with Mr. Bill Lain/Royal Oak Mobile

Home Park for the financing of capacity charges up to \$45,460.00 under the terms of Section 201.09D.; of the Indian River County Ordinance 2006-038, as amended, all as recommended in the memorandum of July 30, 2008.

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

The Chairman called for a recess at 2:59 p.m. and reconvened the meeting at 3:11 p.m.

13. COUNTY ATTORNEY MATTERS

13.A. ACQUISITION OF RIGHT-OF-WAY ALONG 66TH AVENUE ENCUMBERED

BY MURPHY RESERVATIONS

Attorney DeBaal explained that Nick Miller, Inc., had done a study in 2005 that provided a full report of all Murphy Reservations in the County. He reported that the Deputy County Attorney William DeBaal recapped the backup memorandum dated July 28, 2008, and provided background history and description of Murphy Reservations, rights-of-way (inclusive of some oil and mineral rights) which had been acquired by the State and subsequently reverted to the County. He divulged that property owners are often unaware of the Murphy Reservation unless it is found through a title insurance search, or until they are approached by a condemning authority, such as the County, and told that a road or other improvements are to be constructed in the Murphy Reservation encumbering their property, and that compensation is not going to be provided.

Attorney DeBaal explained that Nick Miller, Inc., had done a study in 2005 that provided a full report of all Murphy Reservations in the County. He reported that the

County has been using the property encumbered by the Murphy Reservations in the past and not gone further. He said the situation on 66th Avenue was different, whereby it required using the Murphy Reservation property, plus additional property for the right-of-way. He detailed four methods which are used by other Florida condemning Authorities in conjunction with Murphy Reservations.

Attorney DeBraal outlined four options in staff's recommendation for handling the Murphy Reservations along 66th Avenue as follows:

- (1) Continue the current practice of utilizing unreleased Murphy Reservations without compensation to adjacent property owners
- (2) Negotiate a compromised value for the Murphy Reservation
- (3) Retain an appraiser to value the Murphy Reservation
- (4) Ignore the Murphy Reservation and pay full appraised value for the property

He thereafter asked for Board direction as to how staff should proceed when negotiating for rights-of-way on properties along 66th Avenue, which are encumbered by Murphy Reservations.

Vice Chairman Davis believed that the appropriate manner was to negotiate as if the Murphy Reservation was not there.

Chairman Bowden suggested that negotiations for Murphy Reservations be done on a case-by-case basis. County Administrator Baird agreed, adding that the Board should use caution because this could be a costly decision in the long run. Vice Chairman Davis disagreed.

Discussion ensued between the Commissioners and Attorney DeBraal regarding handling negotiations on property with Murphy Reservations.

Chairman Bowden opened the floor for public comment.

A. Ronald Hudson, 4640 58th Avenue, owner of property on 66th Avenue, for over 20 years, had no knowledge of a Murphy Reservation on his property, until the County made plans to widen 66th Avenue. He felt that it was wrong for the County to take property and not compensate landowners, and believes it is the worse Public Relations image that the County could project. He urged the Commissioners to consider staff's recommendation, to ignore the Murphy Reservation and pay full appraisal value for the property.

Commissioner Wheeler wondered if it would be possible to accept staff's fourth recommendation, but to have a judgment placed against any title insurance companies who failed to divulge the existence of the Murphy Reservations.

Discussion ensued between Commissioner Wheeler and **Mr. Hudson** regarding the responsibilities of the title insurance companies.

Commissioner Bowden was dismayed that no one outside of the government appeared to have knowledge of the Murphy Reservations, and she did not feel you could penalize the property owners.

MOTION WAS MADE by Vice Chairman Davis, SECONDED by Commissioner Wheeler, to approve staff's Recommendation No. 4, to ignore the Murphy Reservation and pay the full appraised value of the properties along 66th Avenue.

Assistant County Administrator Michael Zito suggesting exploring a title insurance claim in each individual case.

Motion WAS AMENDED by Vice Chairman Davis, SECONDED by Commissioner Wheeler, to approve staff's Recommendation No. 4, to ignore the Murphy Reservation and pay the full appraised value of the properties along 66th Avenue, and to explore title insurance claims where possible.

The Chairman opened the floor for further public input.

Charlene Brown, 5145 66th Avenue, read a statement detailing her reasons for opposing the County's utilization of the Murphy Reservations. She noted that her family had been paying taxes on their 66th Avenue property since 1944, and pointed out that many other landowners on 66th Avenue had also been there for a long time. She pointed out that the County has already compensated other landowners for Murphy Reservations, and declared that all landowners should be treated fairly. She believed that the County's only alternative would be to compensate the landowners for the full appraised value for their property, and declared that if their property is taken without just compensation, the landowners would be willing to bring this issue to Court.

Ruth Stanbridge, 4835 66th Avenue, County historian, felt that the Murphy Act had been done with good intentions, but over the years, it has been corrupted. She believed that the anomalies and inconsistencies found in the historical documents along 66th Avenue would result in massive fees for title searches and lengthy litigations. Mrs. Stanbridge urged the

Board to select Option No. 4, to ignore the Murphy Reservations and pay full appraised value for the properties.

Attorney DeBaal conveyed that should the validity of a Murphy Reservation be brought to court, the County would have to hire an expert in eminent domain, and also pay for the opposing side's expert. He commented that there were a good number of Murphy Reservations on 66th Avenue, and he encouraged the Board to limit their choice of Option No. 4 to 66th Avenue improvements only, or "burn the book" (of Murphy Deeds) and never use a Murphy Reservation again, although he would not recommend the latter.

The Board discussed the possibility of other landowners, who have had their land taken without compensation in a Murphy transaction, contending the Board's payment for Murphy Reservations on 66th Avenue.

Mrs. Stanbridge mentioned that Nick Miller's Murphy Reservation maps were flawed, and she cautioned that the County would encounter problems from their use.

Chairman Bowden asked Attorney DeBaal to clarify whether his recommendation applied only to the properties on 66th Avenue, and he affirmed that this was so.

Commissioner Wheeler reminded the Commission that the property owners were paying full price and taxes for their land; he did not know how the County could pick and choose where they would and would not utilize the Murphy Reservations; and he wanted Option No. 4 to be applied Countywide. He believed that what has happened with Murphy Reservations has been wrong, and needs to be corrected.

Chairman Bowden asked Attorney DeBaal to repeat his recommendation.

Attorney DeBraal recommended limiting the recommendation for today's decision (to ignore the Murphy Reservation and pay full appraised value for the property), to 66th Avenue, adding that this item could be brought back at a later date for further consideration on policy for future Murphy Reservations.

Discussion ensued as the Board and staff discussed the culpability of the title insurance companies in determining proper title. Mr. Zito pointed out that there are all kinds of claims upon properties that a purchaser at a closing would be unaware of, unless they had been informed by their title company that they are in the public record. Generally speaking, title insurance companies are required to search with blinders on, they normally go back 30 years within the chain of title, if it's older than 30 years, they are generally not responsible. However, there are some conditions, depending upon how many times the property has been transferred in the chain, that requires the title searcher to go back to the root of the title, and if they have failed in that responsibility, the County should be able to preserve that claim.

Commissioner Wheeler wondered if Vice Chairman Davis's Motion would include the entire County or just the properties on 66th Avenue.

Vice Chairman Davis said his Motion would be specifically for the properties on 66th Avenue.

Commissioners O'Bryan and Wheeler wanted the Motion (to ignore the Murphy Reservation and pay full appraised value for the properties), to be applied Countywide.

Chairman Bowden stated that she assumed that this item applied to 66th Avenue, as presented in the backup, and she wanted to keep the vote on that issue. She would be happy to re-agenda this item.

Attorney DeBraul alerted the Board to the probability of people learning that the Murphy Reservations on 66th Avenue had been ignored, and coming before the Commission to demand payment for a Murphy Reservation which had already been utilized by the County, and for which they had not received compensation.

County Budget Director Jason Brown felt that going backwards and compensating for previously utilized Murphy Reservations could be potentially financially disastrous for the County.

A brief discussion ensued between the Board and staff regarding whether there would be a Statute of Limitations for payment on the Murphy Reservations, and how a lawsuit in inverse condemnation could be brought by the landowner against the County, if someone wanted to challenge the County not compensating on other road projects.

Mr. Zito advised that the County could try to make Option 4 not apply retroactively.

John Jackson, 6855 66th Avenue, asserted that the County has already paid for some of the Murphy Reservations; thus, people who have never received compensation for their Murphy Reservations, would have just cause to sue the County.

Vice Chairman Davis deferred to Attorney DeBraul regarding whether the Motion could be applied Countywide, and for his recommendation.

Attorney DeBraul pointed out that he had written his memorandum specific to 66th Avenue, and he was asking the Board for direction on negotiating with the landowners who have property encumbered by a Murphy reservation along 66th Avenue. If the Board wants to

expand beyond 66th Avenue, staff would like the opportunity to look at additional roads, to evaluate the validity of Murphy Deeds, and bring further information back at a later date.

Vice Chairman Davis, although he agreed with making this Motion Countywide, deferred to Attorney DeBaal's advice, and stated that his original Motion would stand.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved staff's Recommendation No. 4, to ignore the Murphy Reservation and pay full appraised value, only for the properties on 66th Avenue, with the caveat to explore title insurance claims where possible.

**13.B. NECESSITY OF TAKE RESOLUTION FOR A PARCEL OF PROPERTY
LOCATED ON 16TH STREET BETWEEN 66TH AND 74TH AVENUE**

Deputy County Attorney William DeBaal recalled that in March 2008, in conjunction with road improvement plans for 16th Street, staff had been directed to explore methods of acquiring right-of-way on a 0.60 acre parcel owned by Terry R. and Lyndell R. Fleming, located on 16th Street between 66th and 74th Avenue. Through a recap of the backup memorandum of August 1, 2008, Attorney DeBaal described the road project and the subject property, and explained the necessity of acquiring the parcel; conveyed the appraisal value of the property; and outlined the process of filing a lawsuit in eminent domain should the Flemings not accept the County's offer. He thereafter presented staff's recommendation, to make an unconditional offer of \$15,000.00 (almost twice the appraised value), and then to file a lawsuit in Eminent Domain, if the offer is rejected.

Assistant Public Works Director Chris Mora thereafter displayed a map of the subject area and responded to questions from the Board regarding the amount of set-back which would remain after the right-of-way acquisition.

MOTION WAS MADE by Commissioner Flescher, to approve staff's recommendation. MOTION FAILED, for lack of a SECOND.

Linda Fleming, 6880 16th Street, did not believe the road being paved was for the public good. She divulged that she had only received notice of today's meeting at 7 p.m. last night; had not seen the appraisal; had not received her "Letter-to-Owner," nor received a written offer; and has had no negotiations regarding her property. She perceived that the quick take option was not available to the County.

Staff members provided some explanations for the delay in noticing Mrs. Fleming, but the Board felt that it was inexcusable, and that there was an inherent problem in the system.

Apologies were proffered to Mrs. Fleming by the Board and by Administrator Baird, who provided assurance that the County would sit down with Mrs. Fleming and schedule some meetings.

Chairman Bowden thanked Mrs. Fleming for coming to speak to the Board today, and Administrator Baird reiterated that staff would meet with her at her convenience.

Ted Robinson, 50 Caserea Court, Indian River Shores, did not feel there was any benefit to the taxpayers from the taking of the Flemings' property.

The Board CONSENSUS was to table this item, and to find out from Administrator Baird where the process “fell through.”

Clerk’s Note: The following Motion was made following Item 15.B.1. and is placed here for continuity.

ON MOTION BY Commissioner Flescher, SECONDED by Commisioner O’Bryan, the Board unanimously approved to TABLE this item until a time certain.

14. COMMISSIONER ITEMS

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

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

14.C. COMMISSIONER JOSEPH E. FLESCHER-NONE

14.D. COMMISSIONER PETER D. O’BRYAN-NONE

14.E. COMMISSIONER GARY C. WHEELER-NONE

15. SPECIAL DISTRICTS AND BOARDS

15.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.

15.A.1. CONSTRUCTION SERVICES CONTRACT (PART 2 AGREEMENT) WITH BARTH CONSTRUCTION FOR THE REPLACEMENT OF INDIAN RIVER COUNTY FIRE RESCUE STATION No. 9

15.B. SOLID WASTE DISPOSAL DISTRICT

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

15.B.1. APPROVAL OF MINUTES-REGULAR MEETING OF JUNE 17, 2008

15.B.2. DISPOSAL PROTOCOL FOR CONTAMINATED SOILS AND PERMISSION TO ADVERTISE FOR PUBLIC HEARING ON SEPTEMBER 09, 2008 TO AMEND SWDD RATE RESOLUTION

15.B.3. FUEL TANK RELOCATION FROM FORMER DOT FACILITY TO LANDFILL – WORK ORDER No. 15 TO GEOSYNTEC CONSULTANTS

15.B.4. APPROVAL OF BID AWARD FOR IRC BID No. 2008069

TRANSPORTATION OF STABILIZER TO INDIAN RIVER COUNTY

LANDFILL

15.B.5. AMENDMENT No. 1 TO WORK ORDER No. 16 TO GEOSYNTEC

CONSULTANTS, INC.

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, the Chairman declared the meeting adjourned at 4:33 P.M.

ATTEST:

Jeffrey K. Barton, Clerk

Sandra L. Bowden, Chairman

Minutes Approved: _____

BCC/MG/2008Minutes