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OF SEPTEMBER 16, 2008

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September 16, 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 Street, Vero Beach, Florida, on Tuesday, September 16, 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

Detective Teddy Floyd, Indian River County Sheriff's Office - Crime Prevention Unit, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

County Administrator Joseph A. Baird led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

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

1. **Move:** Item 15.A.2., Approval of Supplemental Emergency Management Preparedness Grant Agreement 09-BG-20-10-40-01 to Item 8.V. Consent Agenda
2. **Deletion:** Item 5.C. Presentation by Geraldine McPherson and Dr. Shirley Pomponi concerning Economic Development Efforts along Florida's Research Coast
3. **Correction:** Item 6. Approval of Minutes, Joint Workshop, ILA-USB July 28 23 , 2008
4. **Move:** Item 13.A. Developer Agreement with Del Lago Inc. d/b/a Race Trac to follow Item 10.A.2.

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION DESIGNATING SEPTEMBER 16 – 19, 2008 AS INDUSTRY APPRECIATION WEEK IN INDIAN RIVER COUNTY

Commissioner O'Bryan read and presented the Proclamation to Linda Schlitt-Gonzalez, of the Vero Beach Chamber of Commerce, who recognized Mark Seeberg, Chairman

of the Industry Appreciation Awards Program. Ms. Schlitt-Gonzalez announced that the Industry Appreciation Awards Luncheon would be held on Thursday, September 18, 2008, at the Indian River State College (IRSC).

5.B. PRESENTATION OF PROCLAMATION DESIGNATING SEPTEMBER 20, 2008 AS THE OCEAN CONSERVANCY'S INTERNATIONAL COASTAL CLEANUP IN INDIAN RIVER COUNTY DAY

Commissioner Flescher read and presented the Proclamation to Jens Tripson, from the Pelican Island Audubon Society. Mr. Tripson reported on the scope of planned activities for September 20, 2008, and related that more information was available at the Pelican Island Audubon Society at 567-3520.

5.C. PRESENTATION BY GERALDINE MCPHERSON, FLORIDA ATLANTIC UNIVERSITY, TREASURE COAST CAMPUS VICE PRESIDENT, AND DR. SHIRLEY POMPONI, EXECUTIVE DIRECTOR OF HARBOR BRANCH OCEANOGRAPHIC INSTITUTE, CONCERNING ECONOMIC DEVELOPMENT EFFORTS ALONG FLORIDA'S RESEARCH COAST

This item was deleted from the Agenda at the request of the presenters.

6. APPROVAL OF MINUTES

6.A. JOINT WORKSHOP, ILA-USB JULY 23, 2008

The Chairman asked if there were any corrections or additions to the Minutes of the Joint Workshop, ILA-USB July 23, 2008. There were none.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Joint Workshop, ILA-USB July 23, 2008, as written.

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

**7.A. CHANGE IN INDIAN RIVER COUNTY SCHOOL DISTRICT APPOINTEE TO
THE ECONOMIC DEVELOPMENT COUNCIL**

8. CONSENT AGENDA

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

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

8.A. APPROVAL OF WARRANTS AND WIRES – AUG 29 TO SEPT 4, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of August 29, 2008 to September 4, 2008, as requested in the memorandum dated September 4, 2008.

8.B. DELETIONS OF CAPITAL ASSETS LESS THAN \$750 AND DECLARING VARIOUS ASSETS TO BE APPROVED FOR SURPLUS/DESTRUCTION

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved to delete the list of assets from the physical inventory listing, as recommended in the memorandum of September 10, 2008.

8.C. OUT OF COUNTY TRAVEL FOR COMMISSIONERS TO ATTEND THE FLORIDA FORUM FOR COUNTY LEADERS: AN ADVANCED COMMISSIONER EDUCATION PROGRAM

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized out-of-County travel for Commissioners to attend a series of three seminars titled The Florida Forum for County Leaders: An Advanced Commissioner

Education Program, at the Hilton University of Florida Conference Center in Alachua County, beginning October 16, 2008, as recommended in the memorandum of September 10, 2008.

8.D. RATIFICATION OF DOCUMENTS EXECUTED BY THE COUNTY ADMINISTRATOR OR DESIGNEE, ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS, UNDER AUTHORITY OF RESOLUTION NO. 2008-097, FROM AUGUST 20, 2008 THROUGH SEPTEMBER 8, 2008

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously ratified the following documents: (1) Communications Services Tax Agreement for Access to Confidential State Tax Information between Indian River County Board of Commissioners and Florida Department of Revenue; and (2) Disbursement Agreement relating to the Jones Pier Environmental Land Acquisition, as recommended in the memorandum of September 9, 2008.

8.E. TRANSFER OF RESPONSIBILITY OF COMPLETING SIDEWALKS IN OAK HOLLOW ESTATES SUBDIVISION FROM DEVELOPER TO POA

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute the Agreement for

the Transfer of Responsibility of Required Improvements between Dileco Development, LLC and the Oak Hollow Estates Subdivision Property Owners Association, as recommended in the memorandum of September 9, 2008.

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

8.F. CORRECTIONS TO RESOLUTION 2008-116 CONCERNING RIGHT-OF-WAY ACQUISITION

Commissioner O'Bryan related that he had pulled this item, in order to allow public comment, if anyone wished to speak on this matter. There were no speakers.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Davis, the Board unanimously approved **Resolution 2008-139**, amending policies for acquisition of right-of-way for road expansion and improvement projects previously set out in Resolution No. 2007-027 and 2008-116.

8.G. APPROVAL WORK ORDER NO. 2 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC., PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534, 8TH STREET SIDEWALK PROJECT, FROM U.S. HWY. 1 TO 6TH AVENUE, IRC PROJECT #0744

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 2 (Engineering) with Ardaman & Associates, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute said Work Order for a not-to-exceed amount of \$562.00, as recommended in the memorandum of August 8, 2008.

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

8.H. APPROVAL WORK ORDER NO. 3 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC., PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534, 8TH STREET SIDEWALK PROJECT, FROM 18TH COURT TO OLD DIXIE HWY., IRC PROJECT #0455

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 3 (Engineering) with Ardaman & Associates, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute

said Work Order for a not-to-exceed amount of \$1,764.00,
as recommended in the memorandum of August 8, 2008.

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

**8.I. APPROVAL WORK ORDER NO. 4 (ENGINEERING) WITH ARDAMAN &
ASSOCIATES, INC., PROVIDING PROFESSIONAL GEOTECHNICAL
SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL
SERVICES CONTRACT NO. 0534, INDIAN RIVER BLVD. SIDEWALK
IMPROVEMENTS FROM 12TH ST. TO 17TH ST., IRC PROJECT #0745**

ON MOTION by Vice Chairman Davis, SECONDED by
Commissioner Flescher, the Board unanimously approved
Work Order No. 4 (Engineering) with Ardaman &
Associates, Inc., authorizing the project as outlined in the
Scope of Services, and authorized the Chairman to execute
said Work Order for a not-to-exceed amount of \$1,904.00,
as recommended in the memorandum of August 8, 2008.

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

8.J. APPROVAL WORK ORDER NO. 5 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC., PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534, 12TH STREET SIDEWALK PROJECT, FROM 16TH AVENUE TO 11TH PLACE – IRC PROJECT #0216

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 5 (Engineering) with Ardaman & Associates, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute said Work Order for a fee not-to-exceed \$2,328.00, as recommended in the memorandum of August 8, 2008.

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

8.K. APPROVAL WORK ORDER NO. 6 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC., PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES CONTRACT NO. 0534, 12TH STREET SIDEWALK PROJECT, FROM 43RD AVENUE TO 27TH AVENUE, IRC PROJECT #0604

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 6 (Engineering) with Ardaman & Associates, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute

said Work Order, for a not-to-exceed amount of \$5,700.00, as recommended in the memorandum of August 13, 2008.

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

8.L. 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, FULL AND FINAL PAY

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved payment of Masteller and Moler, Inc. Invoice No. 0742LB-1, dated August 31, 2008 for full and final payment of Addendum No. 1, as recommended in the memorandum of September 9, 2008.

8.M. AUTHORIZE ADVERTISEMENT FOR A PUBLIC HEARING FOR THE PURPOSE OF CONSIDERING AN ORDINANCE TO AMEND CHAPTER 105. PURCHASING, VOLUME I, CODE OF ORDINANCES, INDIAN RIVER COUNTY, FLORIDA

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

authorized the advertisement of a public hearing on Tuesday, October 7, 2008, for the proposed Ordinance amending Chapter 105 of the County Code of Ordinances, as recommended in the memorandum of September 9, 2008.

8.N. BID AWARD: IRC BID No. 2009003 ANNUAL BID FOR ELEVATOR MAINTENANCE, GENERAL SERVICES / FACILITIES MANAGEMENT

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) awarded the Annual Bid to General Elevator Sales & Service, Inc., as the lowest, most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid; (2) authorized the Purchasing Division to issue blanket Purchase Orders or individual job Purchase Orders, as needed, for the period of October 2008 through September 30, 2009 with General Elevator Sales & Service, Inc.; and (3) authorized the Purchasing Manager to renew this bid for two (2) additional one (1) year periods subject to satisfactory performance, zero cost increase, vendor acceptance and the determination that renewal of this annual bid is in the best interest of Indian River County, as recommended in the memorandum of September 4, 2008.

8.O. 2008/2009 STATE OF FLORIDA, DEPARTMENT OF HEALTH CONTRACT

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the 2008/2009 contract with the State of Florida Department of Health, as recommended in the memorandum of September 8, 2008.

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

8.P. PROFESSIONAL ENGINEERING SERVICES AGREEMENT, CR 512
CORRIDOR IMPROVEMENTS – IRC PROJECT NO. 9611, ADDENDUM
NO. 11 (MASTELLER & MOLER, INC.) – RELEASE OF RETAINAGE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher the Board unanimously approved payment of Masteller & Moler, Inc. Invoice No. 9649AHA-1RET, dated August 27, 2008, in the amount of \$4,766.63, and utilizing the remaining \$22,330.66 for construction services for CR 512, Phase IV, as recommended in the memorandum of September 3, 2008.

8.O. WORK ORDER NO. 11 TO THE PROFESSIONAL BRIDGE DESIGN SERVICES
AGREEMENT WITH BRIDGE DESIGN ASSOCIATES, INC. FOR
PEDESTRIAN BRIDGE OVER 14TH STREET CANAL, INDIAN RIVER
COUNTY PROJECT NO. 0745

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 11 for the lump sum fee of \$13,273.30, and authorized the Chairman to execute said Work Order, as recommended in the memorandum of August 28, 2008.

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

8.R. TERMINATION OF INTERLOCAL AGREEMENT BETWEEN SCHOOL
DISTRICT AND INDIAN RIVER COUNTY FOR VIDEO-RECORDING
SERVICES

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved termination of the Interlocal Agreement with the Indian River County School District, pursuant to paragraph 3a and authorized the County Administrator or his designee to send a letter on behalf of the Board of County Commissioners formally terminating the Interlocal Agreement, as recommended in the memorandum of September 10, 2008.

8.S. INDIAN RIVER COUNTY BID NO. 2009008, ANNUAL BID FOR PEST CONTROL SERVICES, GENERAL SERVICES / FACILITIES MANAGEMENT

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) rejected all bids; (2) approved revising the bid specifications; and (3) approved re-advertising the bid in an effort to obtain more competitive prices, as recommended in the memorandum of September 10, 2008.

8.T. MISCELLANEOUS BUDGET AMENDMENT 020

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-140**, amending the fiscal year 2007-2008 Budget.

8.U. CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR BRIDGE REPLACEMENTS AND WIDENING OF 66TH AVENUE FROM SOUTH OF SR60 TO 59TH STREET

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Amendment No. 5 to the Professional Engineering/Land Surveying Services Agreement with Arcadis G & M, Inc.,

as recommended in the memorandum of September 8, 2008.

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

**8.V. APPROVAL OF SUPPLEMENTAL EMERGENCY MANAGEMENT
PREPAREDNESS GRANT AGREEMENT 09-BG-20-10-40-01**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Federally Funded Subgrant Agreement (09-BG-20-10-40-01) between Indian River County Emergency Management and the Florida Department of Community Affairs, Division of Emergency Management and authorized Director of Emergency Services John King as the contract manager for this agreement, as recommended in the memorandum of September 9, 2008.

Clerk's Note: This item was moved from Item 15.A.2. Emergency Services

District

**9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL
AGENCIES-NONE**

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. IMAGINE SCHOOLS' REQUEST TO MODIFY A CONDITION OF THE SPECIAL EXCEPTION USE APPROVAL FOR THE IMAGINE SCHOOLS 4TH STREET FACILITY

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

Planning Director Stan Boling recapped the memorandum of September 8, 2008, to provide an update on Imagine Schools, a Kindergarten through Eighth Grade (K-8) facility being constructed at 6000 4th Street, between 58th Avenue and 66th Avenue. Through aerial slides, he depicted the proposed site plan for the school, which was designed to be built in two phases – Phase 1 for Kindergarten through Grade 5, with 500 students; and Phase 2 for Grades 6 through 8, with an estimated total of 750 students at build out. Due to a larger than expected enrollment, the school wanted to proceed with Phase II, without the requirement that was stipulated by the Board in April 2008, to have the left turn lane in place prior to their receiving their Certificate of Occupancy (CO). Director Boling acknowledged that based on the technical turn lane threshold standards in the LDR's, staff had not recommended putting in the left turn lane.

Through a PowerPoint presentation (copy on file), Director Boling outlined and detailed the options discussed by the Planning & Zoning Commission (PZC) and by staff, which included using law enforcement for interim traffic control; and the posting of financial security relative to construction of the left turn lane. He noted that the financial security would not cover the cost of any right-of-way acquisition or for culverting the canal, which was a possible design option. He thereafter presented staff's recommendation for Board approval to modify the left turn condition and give Imagine Schools their CO for Phases 1 and 2; to have them put

in the left turn lane in one year or more, if conditions warrant, and to have them post the security for a future turn lane.

Vice Chairman Davis disclosed that he had conducted business activities and had conversations with Mr. Charlie Wilson, a representative of Imagine Schools. Chairman Bowden and Commissioners O'Bryan and Wheeler acknowledged having had conversations with staff, school representatives, and/or property owners around the project. Legal counsel was sought from Attorney Collins, who made the determination that it would be appropriate for the Commissioners to vote.

Discussion ensued as the Board considered whether or not the left turn lane was necessary; and expressed concerns about future growth, and traffic flow problems.

Commissioner O'Bryan questioned the need for the left turn lane, and Vice Chairman Davis wanted to eliminate having a left turn into the school.

Discussion ensued between the Board and staff regarding whether the left turn lane could be tied into the future 66th Avenue paving project; what the anticipated costs would be for culverting the canal; the amount of available deceleration lane into the school and the amount of stacking distance available on site; and the mechanisms of the traffic flow.

Director Boling presented an aerial slide depicting the configuration of the parking, and the pick up and drop off areas.

Commissioner Wheeler wanted to have the left turn lane built prior to issuance of the Certificate of Occupancy (CO).

Bruce Barkett, Esquire, representing Imagine Schools, stated that the applicant had agreed to put up \$350,000 for the turn lane on 4th Street in order to get their permit. He did not believe it was appropriate to also make the school pay for the culverting of the right-of-way at \$500.00 a foot. He pointed out that the \$350,000 bond could be used to construct the turn

lane when the County's 4th Street improvements are done, as part of the County's long range plan.

Charlie W. Wilson, representing Imagine Schools, through a detailed PowerPoint presentation, provided an update on Imagine Schools, which included an analysis of possible alternatives to the left turn lane. He pointed out that although the School had initially been advised by County staff that a left turn lane would not be required, the School was committed to paying \$350,000 for the left turn, but they cannot obtain the right-of-way, with construction costs having escalated into the millions. He asked the Board to delete the previous conditions of Phase 2, and accept the following compromise: (1) prohibit left turns into the school; (2) require safety officers on site during peak hours; and (3) require the posting of a \$350,000 Letter of Credit, which would stay in effect until the left turn lane is installed, or an acceptable alternative plan is approved by the Commission.

Staff and Mr. Wilson responded to Commissioner Wheeler's queries regarding the terms of the initial agreement with Imagine Schools; and whether the school had thoroughly investigated the costs for the turn lane prior to agreeing to the condition.

Chairman Bowden asked what the maximum number of students at Imagine Schools would be, and learned from Director of Development Christian Cascone that it was currently limited to 750, but the potential for the entire facility would be 910 students.

Vice Chairman Davis wanted to know if Imagine Schools would be funded for busing through the School District, and was advised by Joe Mills, Principal of Imagine Schools, that busing would be provided through the school district if so desired by the parents. He noted that currently the parents prefer to bring their elementary school age children to school.

The Chairman opened the public hearing.

Sandy Reinhardt, 398 Farley's Court, presented data and reviewed a traffic analysis chart (copy on file) supporting her belief that the Board's decision to grant special exception use approval for Imagine Schools was based on faulty data. She asked the Board to imagine the traffic flow problems which she believed would be generated on 4th Street, without the left turn lane.

Ray Reinhardt, 398 Farley's Court, presented a detailed traffic analysis (copy on file) based on a study he had done at Imagine School's temporary site at Central Assembly Church. He opined that the overall data which had been presented to the Board by Imagine Schools was flawed. Mr. Reinhardt expressed his concerns regarding the prospective traffic congestion which could occur on 4th Street, without the left turn lane. He proposed turning the bus loop into a car queue lane, as another option to avoid traffic congestion.

Discussion ensued between staff and Commissioner Wheeler regarding the accuracy of the methodology and numbers which were used in the traffic studies conducted by both the County and the Reinhardt's at Central Assembly Church.

The Chairman called a break at 10:49 a.m. and reconvened the meeting at 11:00 a.m., with all members present.

The following individuals addressed the Board in support of enforcing the left turn lane requirement for Imagine Schools:

Jeff Brewster, 360 Farley's Court

Ron Lambert, 365 Farley's Court

Daniel Shaw, 545 61st Avenue

Attorney Barkett reminded everyone that staff had not felt the turn lane was warranted, and it had not been recommended; however, the condition was added by the Board,

and agreed to by Imagine Schools. He felt that any inconvenience to the neighbors could be avoided by not allowing left turns into the school.

Bryan Good, Kimley Horn and Associates, did not believe a problem would occur with traffic queuing out past the school, and declared that there would have to be an over 800% increase in projected traffic volume associated with the school to meet the County's turn lane warrant.

Discussion ensued among the Board, Attorney Barkett, and Principal Mills regarding various means of controlling potential traffic stacking problems.

Vice Chairman Davis felt that the solution was to have Imagine Schools prevent traffic stacking on 4th Street (other than in the deceleration lane), possibly by designing some increased stacking areas on school grounds; and to not allow left turns until such time as the lane is put in. He wanted to retain the financial requirement for the school to pay for the turn lane, and to impose some type of fine if the stacking is not adequately controlled.

Commissioner O'Bryan felt that Phase 1 of the school, with the 500 students, should be opened and real traffic counts should be obtained. Thereafter, a determination could be made as to whether Imagine Schools could keep traffic off of 4th Street, and approval for the additional 250 kids could be granted for the next school year.

Mr. Cascone addressed questions posed by the Board regarding the maximum number of students which could be accommodated at the facility; the timeline of the school's construction; and the construction materials.

Mr. Wilson remarked that the left turn lane could not be done at this time. He noted that the school was "demand-driven" and it was the parents who were requesting to speed things up to accommodate more students.

Commissioner Wheeler supported Commissioner O'Bryan's suggestion of opening Phase 1 of the school and obtaining more accurate data, before making a decision as to the necessity for the left turn lane.

Further discussion ensued between the Board and Mr. Reinhardt regarding the traffic study, and the queuing capacity at the temporary and permanent school sites. Mr. Reinhardt believed that the total queue capacity at the permanent site on 4th Street could accommodate 72 cars, whereas the data obtained from the temporary site revealed a queue of 216 cars.

Vice Chairman Davis declared that Imagine Schools should proceed with Phase 2, with the requirements to post their bond, and to keep traffic on the school site and off of 4th Street. He observed that Code Enforcement could impose fines on the school if they do not regulate the traffic accordingly.

The Board members and staff discussed how to enforce the no left turn rule; methods utilized by other schools to alleviate traffic flow problems; and having County and school staff work together to solve any traffic-related issues.

Attorney Barkett asked the Board to approve a Motion supporting Imagine School's request for a left turn lane abeyance; allowing them to post the money for the turn lane until the County improves 4th Street; requiring a traffic control officer; and prohibiting left turns into the school.

Vice Chairman Davis supported Attorney Barkett's suggested Motion, but wanted to add language specifying that traffic could not be stacked on 4th Street.

Mr. Cascone remarked that Imagine Schools wanted to alleviate the Board's concerns, and would be happy to include language stating that traffic must be kept on site, and not be allowed to stack on 4th Street.

Director Boling noted there were 174 parking spaces, for staff and parents, provided at the site at build out. He thereafter responded to questions from the Board regarding parking configurations.

The following speakers expressed confidence in Imagine School's ability to handle any traffic –related issues:

William Sellers, 716 34th Terrace

Joseph Paladin, President Black Swann Consulting

Mr. Paladin spoke about using the traffic control person to handle the situation; having the school consider busing as an option if necessary, and putting the burden on the school to solve any problems.

Discussion ensued between Commissioner O'Bryan and staff regarding discrepancies between staff's and the Reinhardt's traffic studies, and whether those numbers would translate to the permanent location.

Commissioner Wheeler agreed with Commissioner O'Bryan that Phase 1 should be opened and an analysis should be done to see if things would work.

Commissioner Flescher felt that the neighbors' concerns would be solved by eliminating the left turn lane and having law enforcement and best management practices on site.

Vice Chairman Davis believed that this was the only opportunity the County would have to enforce the requirement to stay off of 4th Street.

County Attorney Collins, who was asked to provide a legal opinion on enforcement, believed that the enforcement process would be cumbersome.

The Board and staff continued to discuss traffic enforcement procedures.

Laura Sellers, 716 34th Terrace, was dismayed that the County would consider fining taxpayers for using a public road. She praised Imagine Schools, and said that it was a normal part of community living to experience minor delays in any school district.

Mr. Reinhardt, alluding to his traffic study, reiterated his concerns about possible traffic blocking occurring on 4th Street. He suggested that the school create a queuing driveway around the perimeter of the school to accommodate more on site stacking.

Attorney Barkett disclosed that although Imagine Schools was fine with Vice Chairman Davis's suggestion to keep traffic off 4th Street, the school was not going to redesign the site plan.

There being no further speakers, the Chairman closed the public hearing.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, for discussion, to: (1) not allow a left turn into the school; (2) require a traffic officer; and (3) keep all traffic and stacking onsite and monitor it for a period of three months (3 months) minimum, to see if there is a need for the left turn lane.

Commissioner Wheeler clarified that the bond requirement to put up \$350,000 for the left turn lane, was not part of the Motion.

Discussion ensued among the Board and Attorney Barkett as the latter sought and received clarification on what the school's focus would be during the three-month evaluation period. Director Mora said that staff would be using quantitative numbers to evaluate the data and determine if the amount of traffic generated by Phase 1 of the school could be handled.

The Board Consensus was that, after the three-month period, if Imagine Schools could keep its traffic on site, it could proceed with Phase 2.

Principal Mills asserted that Imagine Schools would experience no problems with the traffic queuing on site.

Mr. Cascone explained the importance for Imagine Schools to have some certainty that they could ultimately move ahead with the opening of both of their buildings.

The Board, staff, and Mr. Reinhardt continued to voice their concerns and suggestions about monitoring and controlling the traffic.

The Board and Mr. Cascone discussed how the three-month evaluation period would impact Imagine Schools' construction plans.

Commissioner Flescher opposed the Motion, stating that the school had already agreed to control the traffic and we were now asking for a three-month assessment which would delay the project. Additionally, the Motion did not require the letter of credit.

Commissioner Wheeler conveyed his support for neighborhood schools, including Imagine Schools. He believed that if the queue is kept on site, and things are working, the school would receive unanimous approval to move forward.

Mr. Mills asserted that Imagine Schools could handle the queuing of the students, but he was disconcerted by the uncertainty of putting Imagine Schools before another public hearing, at which more stipulations could be added.

Further discussion continued as Board members debated on the best method to proceed; whether or not Code Enforcement could effectively control any traffic problems; and whether or not to impose the three-month delay.

Commissioner O'Bryan asked Commissioner Wheeler if he wanted to add to his Motion, that upon the successful demonstration that Imagine Schools could queue all traffic on site, the County would waive the requirement for construction of a left turn lane.

Attorney Collins advised the Board that it could not bind a future commission to such an action.

Attorney Barkett asked the Board to let the school finish building the school; to issue citations if traffic is not kept satisfactorily off of 4th Street; to have the school post the bond, if it is deemed necessary; and to have the school post a traffic control officer on site.

Vice Chairman Davis advised that he was going to vote against Commissioner Wheeler's Motion so he could make his own Motion.

The Chairman CALLED THE QUESTION and by a 2-3 vote (Commissioners Bowden, Davis, and Flescher opposed) the Motion failed. The Board denied (1) to not allow a left turn into the school; (2) to require a traffic officer; and (3) to keep all traffic and stacking onsite and monitor it for a period of three (3) months (minimum, to see if there is a need for the left turn lane.

MOTION WAS MADE by Vice Chairman Davis, SECONDED by Commissioner Flescher, for discussion, (1) to have Imagine Schools to post the \$350,000 bond for the construction of the left turn lane on 4th Street and to not permit left turns into the school until the left turn lane is constructed; (2) to have an officer on-site to control traffic; and (3) to have the Sheriff's Department impose

traffic citations on Imagine Schools should stacking occur on 4th Street.

A brief debate ensued among the Commissioners, regarding whether or not the traffic restriction was enforceable by the Sheriff's Department.

The Chairman CALLED THE QUESTION, and the Motion carried by a 3-2 vote (Commissioners O'Bryan and Wheeler opposed). The Board approved: (1) to have Imagine Schools post the \$350,000 bond for the construction of the left turn lane on 4th Street and to not permit left turns into the school until the left turn lane is constructed; (2) to have an officer on-site to control traffic; and (3) to have the Sheriff's Department impose traffic citations on Imagine Schools should traffic stacking occur on 4th Street.

The Chairman called a recess at 1:18 p.m. and reconvened the meeting at 2:01 p.m., with all members present.

Clerk's Note: The following discussion occurred following Item 14.B.1., and is placed here for continuity.

Commissioner Wheeler sought clarification as to who would be responsible for purchasing the right-of-way for the left turn lane when it is needed; and who would be responsible to culvert the ditch.

Vice Chairman Davis responded that it would be the County's responsibility to purchase the necessary right-of-way for the left turn lane.

Commissioner Wheeler wanted it on record that this might be setting a precedent, as he was unsure of whether there had ever been a private development which needed right-of-way to put in a turning lane, where someone else had to purchase the property. He sought and received confirmation from Attorney Collins that because the right-of-way was across the street from Imagine Schools, which does not own the property, the County would have to purchase the property and culvert the ditch. Attorney Collins added that if the left turn lane is needed, the \$350,000 which Imagine Schools is posting would be applied towards all of those costs.

**10.A.2. ALLIANCE HOLDING, LLC'S (RACETRAC'S) REQUEST FOR
ABANDONMENT OF A PORTION OF 107TH COURT BETWEEN 94TH
STREET AND CR 512 IN VERO LAKE ESTATES**

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

Planning Director Stan Boling recapped the backup memorandum of August 28, 2008 to provide the background and conditions of Alliance Holding, LLC's (Racetrac's) request to abandon a portion of 107th Court (between 94th Street and CR 512) in Vero Lake Estates. Through a PowerPoint presentation, he presented a zoning map and legal description of the area to be abandoned. Director Boling thereafter presented staff's recommendation for approval of the right-of-way abandonment, based on the analysis presented on page 199 of the backup.

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

ON MOTION by Vice Chairman Davis, SECONDED by
Commissioner O'Bryan, the Board unanimously approved
Resolution 2008-141, providing for the closing,

abandonment, vacation and discontinuance of the segment of 107th Court that lies between 94th Street and CR 512 in Vero Lake Estates, said land lying in Indian River County, Florida.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM JEFF THOMPSON REGARDING IMPACT

FEES

This item was withdrawn by Mr. Thompson, who had to leave.

NO ACTION REQUIRED OR TAKEN.

**10.B.2 REQUEST TO SPEAK FROM CHUCK MECHLING REGARDING
PROCEDURE FOR IMPACT FEE WORKSHOP**

Chuck Mechling, Pointe West, related that he had received a report late on September 12, 2008, the Friday afternoon prior to the Impact Fee. He urged the Board to establish a better notification process for concerned people to receive information in a timely manner.

Responding to Commissioner Wheeler's inquiry, Director Keating explained that a copy of the PowerPoint presentations that both consultants would be giving at the meeting was sent out. He added that the consultants were not tasked with preparing a report, as their obligation was to give a presentation and answer the Board's questions at the Workshop meeting.

Discussion ensued between the Board, staff, and Mr. Mechling wherein the purpose of the Impact Fee workshop, to be held on Wednesday, September 17, 2008, was clarified, and the importance of public input was affirmed.

NO ACTION REQUIRED OR TAKEN.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING FOR

SEPTEMBER 23, 2008:

RYALL ACQUISITION GROUP, LLC'S REQUEST TO REZONE APPROXIMATELY 585.57 ACRES FROM A-1, AGRICULTURAL 1 (UP TO 1 UNIT/5 ACRES), RS-3, RESIDENTIAL SINGLE-FAMILY (UP TO 3 UNITS/ACRE), RM-3, RESIDENTIAL MULTI-FAMILY (UP TO 3 UNITS/ACRE), RM-6, RESIDENTIAL MULTI-FAMILY (UP TO 6 UNITS/ACRES), RM-8, RESIDENTIAL MULTI-FAMILY (UP TO 8 UNITS/ACRE), AND CON-2, ESTURINE WETLAND CONSERVATION DISTRICT TO PLANNED DEVELOPMENT TRADITIONAL NEIGHBORHOOD DESIGN (PDTND) AND OBTAIN CONCEPTUAL PLANNED DEVELOPMENT PLAN APPROVAL FOR A PROJECT TO BE KNOWN AS LIBERTY PARK

The Chairman read the notice into the record.

11. COUNTY ADMINISTRATOR'S MATTERS-NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. REQUEST TO INITIATE COMPREHENSIVE PLAN CHANGES TO ALLOW LIMITED RECREATIONAL VEHICLE USE IN MOBIL HOME RENTAL PARKS

Planning Director Stan Boling recalled the Board's adoption on October 23, 2007, of Comprehensive Plan changes which created a Mobil Home Rental Park (MHRP) designation affording protections to residents of rental parks from conversion of the parks to other uses. Through a review of the backup memorandum of September 4, 2008, Director Boling presented background and analysis of staff's request to allow a limited number of Recreational Vehicles (RV's) to rent space in some of the MHRP's. He then presented his request for the Board to authorize staff to initiate a Comprehensive Plan Amendment to allow a limited number of RV's as a use in MHRP's and to make any corresponding LDR Amendments that would be needed to regulate that usage.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously directed staff to initiate a Comprehensive Plan text amendment and LDR amendment to allow a limited number of recreational vehicles (RV's) in Mobil home rental parks (MHRP), as recommended in the memorandum of September 4, 2008.

12.A.2. CONSIDERATION OF PLANNING & ZONING COMMISSION

RECOMMENDATIONS ON MINING REGULATIONS & GROUNDWATER

ISSUES

Planning Director Stan Boling, recapped the backup memorandum of August 19, 2008 and used a PowerPoint presentation to provide background on the Board's request for staff and the Planning & Zoning Commission (PZC) to re-evaluate the County's existing mining regulations. He recalled actions which ensued subsequent to a six (6) month mining moratorium which began January 7, 2008, and presented highlights and analysis of some of the recommendations made by staff and the PZC. He noted that any changes to the regulations which the County wishes to pursue must happen before January 7, 2009, when the moratorium ends. He thereafter presented staff's recommendation to consider the PZC's mining ordinance recommendations, and to direct staff to initiate the formal LDR amendment process to modify the County's mining regulations based on the PZC's 38 item list of recommended LDR modifications (see list on pages 273-277 of the backup information).

George Hamner, Jr., Chairman, Planning & Zoning Commission (PZC), stated that the PZC reviewed all of the concerns that were expressed at their meetings, and a consensus was reached regarding the recommendations. PZC had agreed that sand mining needed to continue in AG-1 zoning, thus they had compiled a long list of issues for consideration. Mr. Hamner believed that the biggest issue was truck traffic, and pointed out that the PZC had recommended that the County consider extra enforcement. He hoped the Board would move ahead with the LDR modifications to the mining regulations.

Charles Cramer, 10729 U.S.1, Sebastian, felt the proposed regulations were good, but there were some items that he believed would need tweaking. He was unsure if the Board wanted feedback on the 38 recommendations at today's meeting, or whether there would be another opportunity to comment before January 7, 2009.

Attorney Collins advised Mr. Cramer to bring his issues to staff before the regulations are drafted, and if his concerns are not satisfactorily addressed, he should attend the hearings and speak to the Professional Services Advisory Committee (PSAC) and the Planning & Zoning Commission who will make recommendations to the Commission.

Discussion ensued as the Board confirmed the necessity of providing timely direction to staff regarding the LDR's, particularly in view of the January 7, 2008 expiration date for the moratorium, and agreed to proceed with the review of the recommendations.

Sean Sexton, 7880 37th Street, wanted the proposed regulations to consider the effects of cumulative mines. He declared that the Agricultural Advisory Committee's (AAC's) recommendation to have a hydrology report done was absolutely necessary; wanted to have monitoring wells placed on conservations areas; and wondered how the conflicting enterprises of mining and conservation could be carried on in the same vicinity, without considering what impact one might have upon the other.

Discussion ensued among the Board, Mr. Sexton, and Mr. Hamner regarding the placement of monitoring wells.

Responding to a question posed by Vice Chairman Davis, Attorney Collins confirmed that any mining application which comes in subsequent to the end of the mining moratorium on January 7, 2008, would be required to comply with the new regulations.

A brief discussion ensued among the Board, staff, and PZC Chairman Hamner regarding Recommendation No. 6, to obtain the hydrology report.

Mr. Sexton posed a question on behalf of **Linda Mitchell**, 8340 65th Street, who wanted to know if there would be public notice when mining permits are up for renewal.

Attorney Collins advised that existing mines must renew their operating permits annually in October of each year, and although it is public record, public notice is not provided.

Ms. Mitchell could, however, contact staff around October 1st of each year to check on the permit renewal of any particular mine.

Commissioner O'Bryan made observations on Recommendations No. 6 and 7 (found on page 273 of backup), regarding groundwater and hydrology. He suggested that Recommendation No. 6, the requirement of a hydrology report, should specify that the report must be conducted by a non-profit, unbiased hydrologist or some neutral party. For Recommendation No. 7, to establish specifications for the hydrology report, he wanted to include what the variance would be from the baseline data.

The Board, staff, and Mr. Hamner continued to discuss their ideas and concerns regarding the hydrology reports.

Suzon Franzke, 8190 37th Street, requested that the Board hold an evening meeting, to accommodate working people, when the final vote is made on the LDR's. She addressed the Board with her suggestions and concerns, particularly enforcement issues and truck traffic, and voiced opposition to PZC's recommendation to continue mining in AG-1 zoning. She also expressed concerns about whether Vice Chairman Davis (whose brother owns a mine), and Mr. Hamner (who has agricultural interests), should be allowed to participate in the mining deliberations.

Attorney Collins explained the law and affirmed the suitability of Vice Chairman Davis's participation in mining discussions and votes. He offered to provide a memorandum to the Board containing the Attorney General's opinion on conflicts of interest, and would provide a copy to Ms. Franzke.

Mr. Hamner provided assurances that his agricultural interests did not conflict with his participation in mining deliberations.

Commissioner O'Bryan wanted staff to re-examine and tighten up all of the uses which are presently allowed under AG-1. He remarked that some mapping could be done, where certain areas might be designated suitable for mining, and others could be designated as suitable for residential.

Discussion ensued as the Board considered: (1) whether it would be appropriate, at this time, to review all of the recommendations at today's meeting, or if it would be better to have a separate meeting; and (2) whether to go ahead and receive public input today.

Attorney Collins advised that the Board could have a Special Call Meeting to discuss the recommendations, at which public comment could be received.

The Board CONSENSUS was to have a Special Call Meeting later this week, and to allow the individuals who were in attendance at this meeting to speak.

Various concerns regarding mining activities were expressed by the following individuals:

Amy Banov, 69th Street

Susan Boyd, 8025 24th Street

Donna Nixon, 7511 37th Street

Virginia (inaudible surname) 2330 80th Court

Victor Knight, 3295 Ranch Rd

Fred Mensing, 7580 129th Street

Vice Chairman Davis asked why PZC had decided not to remove mining from AG-1, and learned from Mr. Hamner that there were still some fairly large tracts of land east of I-95, where property owners may or may not wish to do mining on their own property.

Mr. Cramer was concerned that the applicants who had been required to hold back their permits during the moratorium, would experience another type of moratorium, and have to wait another year to fulfill the requirement of obtaining the hydrology report.

Attorney Collins explained that the moratorium itself would have lifted and the fact that more time is needed to process and get an application permitted does not constitute a moratorium.

Mr. Cramer said that he wants to see 12 out of the 38 recommendations modified, and he was still not clear as to whether his concerns should be presented at this time.

Chairman Bowden wanted to allow the individuals who were present to have the opportunity to speak.

Joseph Paladin asked if there would be legal repercussions if mining is taken out of AG-1 zoning.

Attorney Collins declared that there would be legal repercussions, and provided the details of the governing Statute, the Burt Harris Act. He opined that legally, it would be a bad idea to remove mining from Ag-1.

There were no further speakers and the Board briefly discussed when to hold the Special Call Meeting, with discussion to resume after the break.

The Chairman called a recess at 3:36 p.m. and reconvened the meeting at 3:49 p.m., with all members present.

The Chairman asked the other Commissioners to bring their schedules with them to the Impact Fee Workshop to be held on Wednesday, September 17, 2008, at which time they would try to select a date for the Special Call Meeting.

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- NONE

13. COUNTY ATTORNEY MATTERS

13.A. DEVELOPER AGREEMENT WITH DEL LAGO INC. D/B/A/ RACE TRAC

Clerk's Note: This item was heard prior to Item 10.A.2. , and all discussion is placed here for continuity.

Deputy County Attorney William DeBral reviewed the backup memorandum of September 10, 2008 to discuss the details of a land exchange whereby Del Lago Inc. d/b/a/ Race Trac would convey to the County a 0.37 acre parcel in the form of right-of-way along 108th Avenue, contingent upon the County abandoning interest in a 0.715 acre section of right-of-way, known as 107th Court.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Developer's Agreement with Del Lago Inc. d/b/a/ Race Trac, as recommended in the memorandum of September 10, 2008.

13.B. PURCHASE OF MARK'S MOBIL FOR THE STATE ROAD 60/43RD AVENUE INTERSECTION IMPROVEMENT

Deputy County Attorney William DeBral reviewed the backup memorandum of September 10, 2008, providing background and details on the County's prospective purchase of Mark's Mobil service station, located at the intersection of SR60 and 43rd Avenue, and owned by Mark and Winona Hall. Attorney DeBral displayed an aerial view of the property required for road expansion, and stated that the Hall's are entitled to full compensation for the value of the property, since the remaining parcel would be rendered virtually worthless as a result of the

County's take. He then presented staff's recommendation to accept the offer for the Hall's to receive \$1.65 million for their property.

Attorney DeBraul confirmed for Commissioner Wheeler that the entire cost for the property, inclusive of all fees, would be \$1.65 million.

County Administrator Joseph Baird expressed staff's opinion that the proposed offer was much too high.

Chairman Bowden posed questions to Attorney DeBraul regarding the property appraisal.

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

Commissioner O'Bryan observed that there was a variance in the amount that the Hall's had paid for the property, and posed questions to Mr. Morgenstern.

Lloyd J. Morgenstern, CPA, Morgenstern, Phifer & Messina, P.A., 101 East Kennedy Blvd., Tampa, responded to Commissioner O'Bryan's questions, providing details and the rationale behind the profit and loss statements he had compiled in his Preliminary Business Damage Assessment Report. He acknowledged that the statements were based on four years of tax returns, from 2002 through 2005, and explained why the tax returns for 2006 and 2007 had not yet been finished. He provided handouts (copies on file) to the Commissioners displaying the typical selling prices of businesses similar to Mark's Mobil, and explained the methodology he had used to calculate the value of Mark's Mobil, which had been purchased in 1991 for \$150,000.

Assistant County Administrator Michael Zito interjected that the backup information indicated that the purchase price for Mark's Mobil had been \$250,000 in 2001.

Mickey Barkett, Esquire, 201 East Pine Street, Orlando, and representing the Hall's, confirmed that there was an error in the figures previously presented and that the actual cost was \$150,000.

Mr. Morgenstern continued his presentation, discussing his methodology for calculating the business damages which the Hall's would experience.

Commissioner O'Bryan revealed that the Hall's were being required to replace their underground tanks by December 2009, at a cost of over \$400,000, and based upon the Hall's' estimated annual cash flow of \$53,000, he did not perceive that happening. He was concerned that the County might be overpaying the Hall's for a business which might be shut down in a year anyway.

Mr. Morgenstern explained that Exxon Mobil would finance the replacement of the tanks.

A brief discussion ensued between the Board, staff, and Administrator Baird regarding the business valuation report being compiled without tax data from 2006 & 2007.

Attorney Barkett explained why the tax returns had not been completed; declared that the lack of the 2006 & 2007 tax data did not eliminate the County's liability to pay business damages; and affirmed that Mr. Morgenstern's report showed a reasonable valuation at \$364,050.

County Attorney William Collins, in response to Assistant Administrator Michael Zito, explained that because the design of the road does not require the taking of the whole property, it could only show the necessity of take for the portion that is necessary to do the road improvements. If the County tries to claim entitlement of paying for and taking the whole, the Hall's could defeat it on a Resolution of Necessity, and thus would be entitled to business damages.

He further stated that a partial take would result in a piece of property too small to have any viable use. He sought and received confirmation from Attorney Barkett, an eminent domain attorney, that if a cure plan is not available for the business subsequent to the take, the value of the land is typically paid for as severance damage, rather than the cost to cure by rebuilding or redesigning the business.

Detailed and lengthy discussion ensued among Board members, staff, and legal counsel for Mark's Mobil regarding just value, possession by Eminent Domain, and whether to grant the Hall's the \$1.65 million for Mark's Mobil. The Board concluded discussion with the following decision:

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board accepted and approved the settlement terms of purchasing Mark's Mobil for \$1.65 million, as recommended in the memorandum of September 10, 2008.

Vice Chairman Davis asked **Attorney Mickey Barkett** to remain and speak under Item 14.E.

14. COMMISSIONER ITEMS

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

14.B. COMMISSIONER WESLEY S. DAVIS, VICE CHAIRMAN

**14.B.1. DRAFT LETTER REQUESTING FUNDING PARTICIPATION FOR AN
UPDATED STUDY ON THE HYDROGEOLOGY OF INDIAN RIVER COUNTY**

Vice Chairman Davis reminded the Board that at the September 9, 2008 Board meeting, staff had been asked to draft a letter to St. Johns River Water Management District (SJRWMD) requesting joint funding of an updated Hydrogeology study. He asked the Board for approval of the letter.

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the letter as written, and as recommended in the memorandum of September 11, 2008.

14.C. COMMISSIONER JOSEPH E. FLESCHER-NONE

14.D. COMMISSIONER PETER D. O’BRYAN

14.D.1. CONSTITUTIONAL AMENDMENT 6

Commissioner O’Bryan explained that some of the individuals who wanted to speak on this item had been obligated to leave.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved to TABLE this item until September 23, 2008.

14.E. COMMISSIONER GARY C. WHEELER

14.E.1. DELEGATION OF AUTHORITY TO MAKE UNCONDITIONAL OFFERS FOR PURCHASES OF RIGHT-OF-WAY PROPERTY

Commissioner Wheeler discussed the details of his memorandum of September 10, 2008, which pertained to speeding up the negotiation process in right-of-way purchases. His recommendations included delegating to staff the authority to offer no more than 15% above the appraised value for purchase of right-of-way property.

Vice Chairman Davis agreed with Commissioner Wheeler's desire to streamline the right-of-way acquisition process, and wanted to see the right-of-way department consolidated, with more cohesiveness among the different departments. He requested Attorney Mickey Barkett, who had expertise in eminent domain, to provide her perspective on streamlining right-of-way acquisitions.

Attorney Mickey Barkett stated that right-of-way acquisitions should begin with whoever originates the right-of-way designs, which should then be evaluated by engineering, which would be provided with the overall objective of the road project. She believed that the sooner a taking authority gets in and does the project, the better, for both the government and the property owner. She suggested that the Board check with other Counties regarding their processes, and disclosed that paralegals and non-attorneys can be used to handle pre-negotiations. Attorney Barkett deemed that obtaining fair appraisals, then adding an additional percentage, could often effect a smooth right-of-way acquisition process.

Attorney Barkett responded to questions from the Board specific to the purchase of Mark's Mobil. She pointed out that the County could have used their position as a taking authority to take the entire property without compensating for business damages, if an engineering necessity for the entire property had been established.

Deputy County Attorney William DeBraul stated that appraisers and attorneys should be involved at the beginning of the planning process. He noted that the County needs to identify where costly takings might occur and plan accordingly.

Pursuant to the Board's request, Public Works Director Jim Davis discussed the history of the intersection at Mark's Mobil, and explained why the right-of-way acquisition process for Mark's Mobil had taken so long.

Administrator Baird advised that he and Attorney Collins would meet to discuss right-of-way acquisition procedures.

The Board directed the County Attorney and the County Administrator to return to the Board with a proposal on a faster, more streamlined, and cohesive procedure for moving forward with future right-of-way acquisitions.

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT

The Chairman announced that immediately upon adjournment of the regular BCC meeting, 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. AUTHORIZATION FOR FINAL PAYMENT AND RELEASE OF
RETAINAGE TO BARTH CONSTRUCTION, INC. FOR THE CONSTRUCTION
OF FIRE RESCUE TRAINING TOWER**

**15.A.2. APPROVAL OF SUPPLEMENTAL EMERGENCY MANAGEMENT
PREPAREDNESS GRANT AGREEMENT 09-BG-20-10-40-01**

Clerk's Note: This item was moved and placed on the Consent Agenda as Item

8.V.

**15.A.3. CONSTRUCTION SERVICES CONTRACT (PART II AGREEMENT) WITH
BARTH CONSTRUCTION FOR THE CONSTRUCTION OF INDIAN RIVER
COUNTY FIRE RESCUE STATION No. 12**

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. SCHEDULED PUBLIC HEARING ON SEPTEMBER 23, 2008 TO APPROVE
THE THIRD AMENDMENT TO THE FRANCHISE AGREEMENTS FOR
WASTE MANAGEMENT, INC. OF FLORIDA AND REPUBLIC SERVICES OF
FLORIDA, LP**

**15.B.2. INDIAN RIVER CORRECTIONAL INSTITUTION'S REQUEST FOR SOLID
WASTE ASSESSMENT ADJUSTMENT**

**15.B.3. PUBLIC ANNOUNCEMENT FOR A HOUSEHOLD HAZARDOUS WASTE
COLLECTION EVENT ON SEPTEMBER 20, 2008 & CONTRACT FOR
HOUSEHOLD HAZARDOUS WASTE COLLECTION**

**15.B.4. AMENDMENT No. 1 TO WORK ORDER No. 9 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
5:37 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Sandra L. Bowden, Chairman

Minutes Approved: _____

BCC/MG/2008Minutes