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OF BOARD OF COUNTY COMMISSIONERS
OF OCTOBER 7, 2008

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October 7, 2008

REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER COUNTY

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, October 7, 2008. Present were Chairman Sandra L. Bowden, Vice Chairman Wesley S. Davis, and Commissioners Joseph E. Flescher, Peter D. O'Bryan and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

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

2. INVOCATION

Commissioner Wesley S. Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Joseph E. Flescher led the Pledge of Allegiance to the Flag.

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

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

5. PROCLAMATIONS AND PRESENTATIONS

**A. PRESENTATION OF PROCLAMATION DESIGNATING OCTOBER 5 – 11,
2008 AS INDIAN RIVER COUNTY FIRE PREVENTION WEEK**

Vice Chairman Davis read and presented the Proclamation to Fire Marshall
Brian Nolan, who on behalf of the Fire Rescue team and support personnel, thanked the Board
for the recognition. Mr. Nolan reinforced the need for pool and fire safety, and brought
awareness to the number of children who die each year from drowning or house fire.

**B. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF
OCTOBER AS RESIDENTS' RIGHTS MONTH**

Commissioner Wheeler read and presented the Proclamation to Advanced
Registered Nurse Practitioner Ruth Rathburn, who, on behalf of her organization, thanked the
Board for the recognition.

Vice Chairman Davis lauded the invaluable assisted living services provided by
the Ombudsman's Program.

C. PRESENTATION BY DR. EDWIN MASSEY, PRESIDENT, INDIAN RIVER STATE COLLEGE

Dr. Edwin Massey, thanked the Board for its support and through a PowerPoint Presentation announced that the Indian River Community College is now named “Indian River State College”, and are continuing with all in-house programs. He gave a brief history of the employment status of the College; outlined the educational history and future goals; highlighted the graduate count and number of colleges throughout the State; and disclosed the amount granted in financial aid. He also announced that they are a registered and accredited College, now offering four-year Bachelor’s Degree programs.

Chairman Bowden thanked the College for its leadership in this community and throughout the State, while Commissioner O’Bryan, commenting on the parking issue, disclosed that our MPO staff Phil Matson, was working on a Grant for our transit system to fund a route that would connect the Indian River campus to the main campus.

6. APPROVAL OF MINUTES

A. REGULAR MEETING OF AUGUST 12, 2008

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of August 12, 2008. There were none.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the regular meeting of August 12, 2008, as written.

B. REGULAR MEETING OF AUGUST 19, 2008

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of August 19, 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 August 19, 2008, as written.

**7. INFORMATIONAL ITEMS FROM STAFF OR
COMMISSIONERS NOT REQUIRING BOARD ACTION -
NONE**

8. CONSENT AGENDA

Commissioners O'Bryan and Flescher asked to pull Item 8.Q., 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 – SEPTEMBER 12 TO SEPTEMBER 18, 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 September 12, 2008 to September 18, 2008, as requested in the memorandum dated September 18, 2008.

8.B. APPROVAL OF WARRANTS AND WIRES – SEPTEMBER 19 TO SEPTEMBER 25, 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 September 19, 2008 to September 25, 2008, as requested in the memorandum dated September 25, 2008.

8.C. ISLES AT WATERWAY VILLAGE PD – PLATS 1A AND 1B, REQUEST FOR SIDEWALK EXTENSIONS, DEVELOPER: DIVOSTA HOMES, L.P.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the sidewalk expansion for an additional two

years (to July 18, 2010), and authorized the Chairman to execute each Modification to Contract for Construction of Required Sidewalk Improvements with DiVosta Homes, L.P., as recommended in the memorandum dated September 30, 2008.

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

8.D. AMERICAN CANCER SOCIETY “MAKING STRIDES AGAINST BREAST CANCER WALK”

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-165** in support of the American Cancer Society Making Strides Against Breast Cancer Walk.

8.E. RESOLUTION IN SUPPORT OF AMENDMENT 6 – PROPOSED CONSTITUTIONAL AMENDMENT FOR WORKING WATERFRONT PROPERTIES

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-166** in support of Constitutional Amendment No. 6, Article VII, Section 4, Article XII, new section bearing the Ballot Title of “Assessment of Working Waterfront based upon

current use” on the November 4, 2008 General Election Ballot.

8.F. ELWILL ASSOCIATES INC. STORMWATER RETENTION POND, OSLO ROAD IMPROVEMENTS PHASE II

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, the \$293,580.00 purchase, and authorized the Chairman to execute the Agreement, as recommended in the memorandum of September 17, 2008.

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

8.G. APPROVAL OF FINAL INVOICE AND RELEASE OF RETAINAGE FOR WORK ORDER NO. 3 WITH HYDROMENTIA, INC., FOR ADDITIONAL ENGINEERING SERVICES RELATED TO EGRET MARSH REGIONAL STORMWATER PARK

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the payment of Hydromentia’s Final Invoice No. IRC-2008-5 (including release of retainage), in the amount of \$3,800.00, as recommended in the memorandum of September 23, 2008.

8.H. WABASSO BEACH PARK RESTORATION; WORK ORDER CT-1; PROFESSIONAL ENGINEERING SERVICES FOR FINAL DESIGN SERVICES FOR SITE PLAN, FDEP PERMIT, UTILITIES AND PARK FACILITIES; COASTAL TECHNOLOGY CORPORATION; NINTH AND FINAL PAYMENT FOR RELEASE OF RETAINAGE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the release of retainage to Coastal Technology Corporation, in the amount of \$4,779.71, as recommended in the memorandum of September 24, 2008.

8.I. INTERFUND BORROWING

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously granted approval for interfund borrowing, as necessary, to cover any cash deficits of individual funds that may occur, as recommended in the memorandum dated October 1, 2008.

8.J. APPROVAL OF BID AWARD FOR IRC BID NO. 2008072, SAN SEBASTIAN SPRINGS SUBDIVISION WATER ASSESSMENT PROJECT

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously:
(1) approved the Bid Award to Derrico Construction

Corporation, as the lowest most responsive and responsible bidder, meeting the specifications as set forth in the Invitation to Bid; (2) approved the Sample Agreement, and (3) authorized the Chairman to execute said Agreement after the required performance and payment bonds, along with the appropriate certificate of insurance, have been received and once the County Attorney has approved the agreement as to form and legal sufficiency, all as recommended in the memorandum dated September 26, 2008.

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

8.K. APPROVAL OF BID AWARD FOR IRC BID No. 2009015, ANNUAL BID FOR TRAFFIC SIGNAL HARDWARE AND WIRE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved the Bid Award to American Wire Group, as the lowest and most responsive bidder meeting the specifications as set forth in the Invitation to Bid; (2) authorized the Purchasing Division to issue blanket Purchase Orders for the period of October 1, 2008 through September 30, 2009 with the recommended bidder; (3) authorized the Purchasing Manager to renew this Bid for two (2) additional one (1) year periods, subject to satisfactory performance, vendor acceptance, and the determination that renewal of this

annual Bid is in the best interest of Indian River County, all as recommended in the memorandum of September 26, 2008.

8.L. OCEAN SANDS – VERO LLC REQUEST FOR EXTENSION OF PRELIMINARY PD PLAN APPROVAL FOR A MULTI-FAMILY RESIDENTIAL DEVELOPMENT TO BE KNOWN AS OCEAN SANDS (QUASI-JUDICIAL)

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Ocean Sands-Vero LLC's request for a one-year extension of the site plan for Ocean Sands PD, with all original approval conditions to remain in effect, and the new site plan approval expiration date will be September 13, 2009, as recommended in the memorandum dated September 17, 2008.

8.M. APPROVAL OF BID AWARD FOR IRC BID NO. 2009006, ANNUAL BID FOR ALUMINUM SIGN BLANKS AND HARDWARE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved the Bid Award to Custom Products Corporation, as the lowest and most responsive 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, for the period of October 1, 2008 through September 30, 2009 with the recommended bidder; and (3) authorized the Purchasing Manager to renew this Bid for two (2) additional one (1) year periods, subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual Bid is in the best interest of Indian River County, all as recommended in the memorandum of September 26, 2008.

**8.N. APPROVAL OF BID AWARD FOR IRC BID No. 2008078,
DEMOLITION OF LENNIE'S LOUNGE BUILDING**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Bid Award to Harry's Haul, Inc., as the lowest most responsive and responsible bidder, meeting the specifications as set forth in the Invitation to Bid; and approved the issuance of a Purchase Order after receipt of the appropriate Certificate of Insurance, as recommended in the memorandum dated September 30, 2008.

**8.O. APPROVAL OF BID AWARD FOR IRC BID No. 2009007, ANNUAL
BID FOR TRAFFIC SIGNAL EQUIPMENT**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved the Award of all items to Traffic Parts, Inc., as the lowest and most responsive bidder, meeting the specifications as set forth in the Invitation to Bid; (2) authorized the Purchasing Division to issue blanket Purchase Orders, for the period of October 1, 2008 through September 30, 2009 with the recommended bidder; and (3) authorized the Purchasing Manager to renew this Bid for two (2) additional one (1) year periods, subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual Bid is in the best interest of Indian River County, all as recommended in the memorandum of September 26, 2008.

**8.P. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR
ISLAND CLUB OF VERO BEACH DRAINAGE IMPROVEMENTS**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, the Cut and Fill Balance Waiver request from Carter Associates, Inc., as

recommended in the memorandum of September 30, 2008.

**8.Q. FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)
MAINTENANCE MEMORANDUM OF AGREEMENT (MPOA) AND
AUTHORIZING RESOLUTION FOR LANDSCAPE MAINTENANCE
ALONG SR 60 FROM JUST WEST OF I-95 INTERCHANGE
(M.P.22.389) TO JUST WEST OF 82ND AVENUE (M.P.23.923) FM #
228628-1-52-01**

Commissioner O'Bryan was concerned with the type of vegetation in the median and the maintenance required to keep it looking good, particularly on State Road 60, one of the main gateways to our County. He questioned how much control was in this contract for anti-weed measures and in selecting the actual landscape plan, to ensure low maintenance, and low water consumption.

Assistant Public Works Director Chris Mora assured him that staff has worked very closely with the Department of Transportation (DOT) on this portion of landscaping for SR 60, and has the option to return the contract for revision if they disagreed with some of the provisions.

Commissioners discussed other alternatives for providing the landscaping and how they could reduce cost. They also thought they should seek ideas on how to reduce water dependency, among other things, for our medians and landscaping.

MOTION WAS MADE by Commissioner Flescher,
SECONDED by Vice Chairman Davis, under
discussion, to deny staff's recommendation for
approval of Alternative 1, and to direct staff to look at

other options and return this matter to the Board for further review and consideration.

Vice Chairman Davis wondered, in light of the Memorandum of Agreement with DOT, what position that would place the County in, and whether it puts us in a situation where we are under a time constraint to even talk about the landscape issue.

Director Mora clarified that this is a maintenance agreement that simply sets forward the fact that the County will agree to maintain the landscaping, and it does not mean that we do not have time to make some changes to it.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board denied staff's recommendation, and directed staff to look at other options and return to the Board with its findings for further consideration.

8.R. SERVICE AGREEMENT FOR VERO BEACH E911 PUBLIC SAFETY ANSWERING POINT (PSAP) LOGGING RECORDER ON A SOLE SOURCE BASIS FROM REPLAY SYSTEMS, INC.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Service Maintenance Agreement with Replay Systems, Inc., at a cost of \$2,366.99, as recommended in the memorandum of September 11, 2008.

8.S. INDIAN RIVER COUNTY HEALTH DEPARTMENT, 2008/2009 FEE SCHEDULE

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2008-167** to adopt a 2008/2009 Fee Schedule for the Indian River County Health Department.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES – NONE

10. PUBLIC ITEMS

A. PUBLIC HEARINGS

1. 129TH PLACE PETITION WATER SERVICE, A PORTION OF INDIAN RIVER COUNTY RIVER ACRES,

INDIAN RIVER COUNTY RIVER COUNTY PROJECT NO.
UCP-2953, RESOLUTION III

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

Dan Chastain, Manager of Assessment Projects, recapped the backup memorandum dated September 24, 2008 and reminded the Board that on September 9, 2008, they approved Resolutions I (2008-121) and Resolution II (2008-122) for the subject water service project. He provided further details on the project, noting that the design has been completed by Utilities staff and they are now ready to begin the assessment process associated with the project. He thereafter presented staff's recommendation for approval of Resolution III, which affirms the preliminary assessment roll on the subject property.

*The Chairman opened the Public Hearing. There were no speakers and the
Chairman closed the Public Hearing.*

ON MOTION by Commissioner Wheeler,
SECONDED by Vice Chairman Davis, the Board
unanimously approved **Resolution 2008-168**
confirming the Special Assessments in connection
with water main expansion to 129th Place (a portion of
Indian River Acres) in Indian River County, Florida;
and providing for Special Assessment Liens to be
made of record.

**10.A.2. PUBLIC HEARING FOR THE PURPOSE OF
CONSIDERING AN ORDINANCE TO AMEND CHAPTER 105.
PURCHASING, VOLUME I, CODE OF ORDINANCES,
INDIAN RIVER COUNTY, FLORIDA**

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

General Services Director Tom Frame recapped the backup memorandum dated September 30, 2008 and informed the Board that most of the existing language contained in Chapter 105 of the County's Code has remained unchanged since 1990, with some exceptions. That has resulted in the Purchasing Code being severely outdated and has caused extra steps and requirements that in today's economy costs more than we receive in value or protection. He outlined the changes in the Performance Bond, and recommended that the Board consider the proposed changes to the Ordinance, open the Public Hearing, take public comments, close the Public Hearing and adopt the proposed Ordinance.

The Chairman opened the Public Hearing. There were no other speakers and the Chairman closed the Public Hearing.

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

Vice Chairman Davis' gathered from Director Frame's comments that because of some of the bonding requirements, the "little guy" in our community can now compete for some of these smaller projects, which had not been the case in the past.

The Chairman CALLED THE QUESTION and the motion carried unanimously. The Board approved **Ordinance 2008-016** amending certain provisions of Chapter 105, the County's Purchasing Ordinance; providing findings; amending Sections 105.01 and 105.02 of the Code to clarify the authority of the County Administrator; amending Section 105.04 to change the Payment and Performance Bond requirement threshold from \$25,000 (Twenty-five Thousand Dollars) to \$100,000 (One Hundred Thousand Dollars) and to clarify certain provisions concerning Bid Bonds and bidders in default to the County; creating a new section to adopt an environmentally preferred procurement policy; providing for repeal of other conflicting Ordinances; providing for inclusion in the Code of Ordinances of Indian River County; providing for filing with the Department of State; and providing an effective date.

10.B. PUBLIC DISCUSSION ITEMS

1. REQUEST TO SPEAK FROM DAVID COX, PELICAN ISLAND AUDUBON, REGARDING MARINE ADVISORY NARROWS WATERSHED ACTION COMMITTEE

Mr. David Cox, gave a brief background on the formation of the Marine Advisory Board and highlighted its lack of activities since inception. He, in an effort to reinvent the Marine Advisory and Narrows Watershed Action Committee (MANWAC), asked the Board to

consider the four (4) recommendations presented on page 230 of the backup, to restore the effectiveness of the MANWAC.

Mr. Cox recommended that the MANWAC Board be reconstituted with additional members, a second representative from a local environmental group, and one from the City of Sebastian be added to the Board, and that representation from government agencies be eliminated. He asked the Board of County Commissioners to direct staff to draft a resolution repealing **Resolution 2003-013** and for it to be brought back to Board for consideration and approval.

Board members discussed the possibility of a duplication of services; contemplated the need for this Committee; and wondered if the committee could be merged with another agency.

MOTION WAS MADE by Commission O'Bryan,
Seconded by Commissioner Wheeler, to instruct staff
to address the four conditions presented by Dr. Cox,
with the exception that we include the governmental
agencies and not eliminate them, and go with his
recommendations from his September 23rd Motion,
which included the St. John's River Water
Management District, the Sebastian River, the Florida
Department of Environmental Protection, and the U.S.
Fish and Wildlife Service. .

Vice Chairman Davis sought clarity on whether the Motion was to keep the

Committee with the modifications stated, and upon an affirmative acknowledgement, voiced his non-support of the Motion, and thought they could rework the MANWAC by merging with another functional committee.

Commissioner Wheeler felt perhaps now was the time to re-evaluate all our committees, and suggested staff bring this matter back at a later date.

The Chairman CALLED THE QUESTION and by a 3-2 vote (Commissioners Davis and Flescher opposed) the Motion carried, approving the recommendations of Mr. Cox for the reconstitution of the MANWAC, with the exception that we include the governmental agencies and not eliminate them, and directing staff to draft a resolution that repeals Indian River County Resolution 2003-131 and return to the Board for further consideration.

10.B.2. REQUEST TO SPEAK FROM FREDDIE L. WOOLFORK REGARDING GIFFORD AQUATIC CENTER (5) POINT PLAN

Mr. Freddie Woolfork, 4590 57th Avenue, presented for Board consideration a 5-Point Plan for keeping the Gifford Aquatic Center open during the winter months. The “Continuum Plan of Action” proposed:

- an increase in all facets of community involvement at the pool to enhance community support;
- to increase the level of marketing/publicity for the pool’s operation and activities to the general public;
- to increase the activities and the programmatic layout at the pool;

- to change the hours, days of the week, and monthly operational schedule for service at the pool; and
- to increase the overall attendance at the Gifford Aquatic Center.

The Plan also included ideas on how to bridge the gap for those who cannot pay the fee to enter the Center, as well as ideas for raising funds for the Center. He concluded by thanking the donors who made the opening of the pool possible.

Commissioner Flescher recalled that he had made several recommendations and Motions to keep the pool open, and believed this 5-point Plan is what was lacking. He encouraged a commitment from area residents to honor attendance to keep the pool open.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Wheeler, under discussion, to re-open the Gifford pool at the next available date, based on the proposed 5-Point Plan, the commitment of the community, and with funding from the contingency funds.

Commissioners debated whether to use contingency funds, versus using funds from the North County Pool, or from the entire Recreation budget. They also desired to have a cap on the proposed \$28,000.00 funding.

Administrator Baird cautioned about haste, and requested that he be given time to look over the budget and return to the Board with a plan.

Discussion ensued regarding using contingency funds and the possibility that such action could result in the elimination of employees, and Commissioner Wheeler did not want to see an employee get cut to facilitate this program.

There was a CONSENSUS to bring the matter back on the next Board Agenda.

While Commissioner O'Bryan expressed his non-support of the request, Commissioner Flescher advocated the consideration and approval of the 5-point plan, pointing out the usefulness of the pool in the community. Chairman Bowden highlighted the importance of attendance for the Plan to work.

John Mitchell, Indian River Shores, a member of a foundation that has contributed a significant amount of money to the subject pool, urged the Board to keep the pool open, citing the amount of money contributed to this effort by the community.

Chairman Bowden asked Recreation Director Cliff Crawford to clear up the misunderstanding about the heater at the pool. Mr. Crawford gave a brief history of the well that was constructed at approximately 60 feet deep and was not sufficient to maintain a constant water flow from the time the pool was originally constructed. He said the problem should be corrected soon and the pool will have heating. Administrator Baird clarified how funding was made available for the pool.

Commissioner O'Bryan and Mr. Mitchell engaged in discussion regarding hours of operation of the pool and Mr. Mitchell argued that if hours were being eliminated at the Gifford Pool, they ought to consider doing the same thing at the North County Pool to avoid division in the County.

Chairman Bowden dismissed rumors of racial discrimination and spoke of the collaborative efforts with Gifford over the years.

Mr. Mitchell expressed appreciation of the Chairman's work and support for the community, as well as that of other Commissioners.

Godfrey Gibson, 4136 57th Court, addressed Commissioner O'Bryan's comments regarding taxpayers, and the lack of use of the pool during the winter months. He acknowledged that the pool would close at some time, but begged for flexibility to negotiate opening and closing hours. He alluded to a \$16,000.00 over budget allocation for the North County pool, and the Budget Director clarified that the North County pool did not get \$16,000.00 more than they asked for, they got a \$16,000.00 increase over the previous year.

Peggy Thompson, 2307 Seville Avenue, in response to Commissioner O'Bryan's concerns, stated that the hours of operation were not set in stone and were negotiable. She then offered and handed to Commissioner Flescher an undisclosed contribution.

Reverend Dr. Crystal Bujol, 8 Vista Gardens Trail, Unit 102, felt they were being scolded for asking the Board to take a fair and equitable look at this budget. She thought that fairness would be to cut the North County Pool (21%), the same as Gifford. She stated that for years Gifford has been a "front porch" community, underserved and economically deprived, so titled by the State of Florida because Gifford was under-represented, among other things. She highlighted some of the activities at the Gifford pool, which included teaching kids to be lifeguards.

The Chairman called a break at 11:09 a.m., and reconvened the Meeting at 11:24 a.m., with all members present.

Commissioner Flescher restated the Motion.

The Chairman CALLED THE QUESTION and by a 4-1 vote (Commissioner O'Bryan opposed), The Board approved to re-open the Gifford pool at the earliest convenience, using contingency or recreation funds not-to-exceed \$21,000.00, at the altered hours, during the winter months.

10.B.3. REQUEST TO SPEAK FROM BRIAN HEADY REGARDING EXPENDITURE OF OUR TAX DOLLARS

Mr. Brian Heady was absent.

10.C. PUBLIC NOTICE ITEMS

- 1. NOTICE OF SCHEDULED PUBLIC HEARINGS OCTOBER 14, 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, ESTUARINE 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 (LEGISLATIVE)**

The Chairman read the Notice into the record.

11. COUNTY ADMINISTRATOR'S MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT - NONE

12.B. EMERGENCY SERVICES - NONE

12.C. GENERAL SERVICES - NONE

12.D. HUMAN RESOURCES - NONE

12.E. HUMAN SERVICES - NONE

12.F. LEISURE SERVICES – NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET - NONE

12.H. RECREATION – NONE

12.I. PUBLIC WORKS

1. 43RD AVENUE WIDENING UPDATE

Assistant Public Works Director Chris Mora, through a PowerPoint Presentation, provided background, which included a history of the 43rd Avenue widening, the status of roadway construction plans and designs, the status of right-of-way acquisition, and the impact on property owners. He also reminded the Board of prior actions on the matter and pointed out that no right-of-way is needed from Mr. Brown's property, only a 10-foot temporary construction easement.

Commissioner Wheeler's question of whether staff realistically believed the schedule presented, led to discussion regarding the commencement and duration of construction for 58th Avenue versus State Road 60 (SR 60).

Vice Chairman Davis's question of how the temporary construction easement would affect Mr. Brown's property prompted a response from Director Mora who stated that the hedge would have to be temporarily removed and would be replaced.

Everette Brown, 43rd Avenue, in defense of his property rights, opposed the temporary construction easement, which he said would fall within 20 feet of his bedroom, and with the actual road being 45 feet away. He cited significant impact to his home in the form of structural cracks, vibration, noise, dust, and debris, and thought the safety issue would be quite considerable.

Mr. Brown requested that all Murphy Reservations along 43rd Avenue be released, as was done on 66th Avenue and should be Countywide, to which Commissioners Wheeler and Davis agreed. Mr. Brown questioned whether a study was done regarding the impact to homeowners and cited the lack of notice to homeowners of their right to legal representation before they signed a contract. He said he was not even aware of the start and end date of construction and found the method used by the County to acquire property, unconscionable.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Vice Chairman Davis, to direct staff
to bring the Murphy Deed back countywide.

Commissioner Wheeler thought it was unfair to the rest of the County. Vice Chairman Davis said he would Seconded the Motion with the caveat “if individuals were not aware of the Murphy Deed.”

Chairman Bowden saw the need for research because of the cost factor, and Commissioner Wheeler did not care about the cost factor, but fairness.

Attorney Collins assured the Board that the County possesses data on the Murphy reservations and explained the reason the research was done in the 1990s.

Based on comments by and discussion with Attorney Collins, Commissioner Wheeler restated his Motion as follows:

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Vice Chairman Davis, to direct staff
to bring this matter back with research, at a fixed date,
for Board review and consideration.

Mr. Brown pointed out that the County had already agreed and set a precedent by releasing the reservations on 66th Avenue, and questioned how they could fail to apply the same to 43rd Avenue. He believed that in all fairness the County has to do the same for 43rd Avenue.

Adrienne Cuffe, 695 43rd Avenue, asked if there was a time-frame on the

construction easement, because her neighbor had signed a contract under the impression it would be a three-lane and not a four-lane road. She addressed the matter of notice to homeowners regarding workshops on the subject and expressed a desire to see, in the next presentation from staff, computer graphics of a stretch of the road, with medians, a turn lane, and how U-turns would be handled.

Director Mora addressed some of Ms. Cuffe's concerns, and offered to meet with her and show her the plans. Public Works Director Jim Davis informed the Board that there are 19 parcels with Murphy Acts along 43rd Avenue, and temporary construction easements were needed for most of them.

Bob Johnson, Coral Wind Subdivision, was surprised to see that 43rd Avenue has been divided into four different segments. He asked that the Board be not confused when talking about different segments of 43rd Avenue, and hoped the Commission would reconsider going back to the 3-laning.

Doug Cuffe, 43rd Avenue, would like to see studies re-done on the amount of cars on the road, and would appreciate if the streetlights are removed from the pictures given out, because he was told they could not be put in.

Administrator Baird, in response to Ms. Cuffe's remarks concerning the appraisal and purchase price for Liberty Lounge, said an appraisal was done on Lennie's and they were paid slightly above the appraisal. Vice Chairman Davis added that there could be a big difference between assessed values from Property Appraiser.

Ms. Cuffe asked how the process was determined for residents, and what fair and equitable value was accorded to residents when their properties were being purchased. Vice Chairman Davis informed her that the same methods were used for residential, typically comparable sales.

Attorney Collins repeated the Motion for staff to return to the Board with Murphy Reservation information as to location and value, as best they could.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board directed staff to bring this matter back with research, at a fixed date, for Board review and consideration.

12.J. UTILITIES SERVICES - NONE

1. REPLACEMENT OF 24" FORCE MAIN ON 15TH AVENUE FROM OSLO ROAD TO MASTER IN-LINE PUMP STATION No. 89 – UCP No. 3096

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved the total estimated cost for the project of \$229,972.15 for labor and materials, and authorized the Chairman to execute Work Authorization No. 2007-018 with Derrico Construction Corporation for \$127,869.28, as recommended in the memorandum of September 16, 2008.

12.J.2. REQUEST CLARIFICATION AND DIRECTION FOR SERVING UTILITIES AND SOLID WASTE TO THE CITY OF FELLSMERE

Utilities Director Erik Olson briefed the Board on the cities served by the County, which include the unincorporated areas and the City of Sebastian, and does not serve the City of Vero Beach, and the City of Fellsmere Wastewater Utilities, but not for water. They do, however, have an emergency inter-connect with the City of Fellsmere. He asked for Board direction of whether staff should enter into discussions with Fellsmere for the provision of water and sewer services, pointing out that if the Board were to instruct staff as requested, Fellsmere would be perceived as any other developer as far as impact fees go.

Vice Chairman Davis thought this was long overdue, and was more comfortable with negotiations between Fellsmere and County than between Fellsmere and Palm Bay. He was in favor of consolidating services wherever we could and believed taxpayers would be better served by one utility serving City and County.

Fellsmere City Manager Jason Nunemaker agreed with Vice Chairman Davis and remarked that when looking at the CDM report sometime ago, it seemed the obvious conclusion would be that long-term planning would dictate a more regional approach to water resource delivery, and they are definitely an advocate for that. He assured the Board that the discussions they have had with Palm Bay were just discussions, and it was never envisioned that it would be possible to have a partnership there that would service the subject areas.

Commissioner O'Bryan thought Fellsmere had signed an MOU with Palm Bay, in particular, to provide water to the Fellsmere Joint Venture properties to the west, and Mr. Nunemaker gave details of the Joint Planning Agreement, stating that apart from sharing data on

future needs analysis, they have not in any way committed anything as far as their service area; they have not given any guarantees that they could have the service area; and they have not made any agreements about who would be providing services, such as water.

Commissioner O'Bryan felt this should be wrapped into the Interlocal Service Boundary Agreement we are currently negotiating and let staff work on it through that process.

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

Commissioner Wheeler echoed the comments of other Commissioners and expressed his support for the request.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved and directed staff to proceed with negotiating with the City of Fellsmere for the provision of water and sewer service to the City by Indian River County, as recommended in the memorandum of September 29, 2008.

13. COUNTY ATTORNEY

A. OCULINA BANK REQUEST TO COMPROMISE LIEN

Attorney Collins recapped the backup memorandum dated October 1, 2008 and provided background on the matter of a foreclosure suit filed in February 2008, against Lot 13 Surfside Estates, the Lewis Barton property, with the County as a Defendant. He reminded the

Board of prior actions and subsequent Court actions on the matter, and presented staff's recommendation to reject Oculina's contingent offer of \$25,000, and to advise if they would accept some higher contingent offer. The County attorney would not be in favor of a higher offer.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Vice Chairman Davis, under discussion, to approve Option 1, staff's recommendation to reject Oculina's contingent offer of \$25,000.00.

Vice Chairman Davis questioned the ownership of the first secured mortgage, and whether Oculina or the County was first in line for the lien, and Attorney Collins informed him that the County was first in line. In light of that response, Vice Chairman Davis felt taxpayers are well secured and we are better off staying where we are.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board rejected Oculina's contingent offer of \$25,000.00, as recommended in the memorandum of October 1, 2008.

13.B. DEVELOPER AGREEMENT WITH INDIAN RIVER FEDERAL CREDIT UNION AND ELWILL ASSOCIATES, INC.

Deputy County Attorney Bill DeBraal provided background informing the Board that Elwill Associates own property that the County needs to cross to provide drainage for the Oslo Road improvements. He reminded the Board of its prior approval, under the Consent Agenda, of the purchase of the Elwill property for construction of a drainage pond for the Oslo

Road improvements. This request is an exchange agreement whereby Elwill Associates grant the County a drainage Easement to facilitate the County running a pipe underground to get to the drainage pond and in turn when we excavate the fill from the drainage pond, it would be provided to Elwill & Associates for construction of their buildings.

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

Commissioner O'Bryan asked if Elwill would take the excavations, no questions asked, and Attorney DeBaal replied affirmatively.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved the Developer's Agreement with Elwill & Associates, Inc., as recommended in the memorandum of September 19, 2008.

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

14. COMMISSIONERS ITEMS

A. COMMISSIONER SANDRA L. BOWDEN, CHAIRMAN -
NONE

B. COMMISSIONER WESLEY S. DAVIS, VICE CHAIRMAN

I. DRAFT LETTER TO OWNERS TO GAUGE INTEREST IN AN MSBU FOR ROAD IMPROVEMENTS

Vice Chairman Davis informed the Board that Mr. Scannell has requested that his road be graded through the County's Petition Grading Program, and stated that the subject road has been brought up to County standards. Vice Chairman Davis wished to see those roads incorporated on the grading list, and he asked for Board approval of the draft letter for conceptual approval to send same to property owners on 87th Street.

Attorney Collins in response to Vice Chairman Davis stated that the subject area did not have an Association, but they had filed a Declaration of Covenants Restrictions and Obligations for roadway maintenance that created easements for ingress and egress on four roads in the area (85th, 87th, 89th and 91st Streets) and it apportioned responsibility for maintenance of the roads to the owners of the properties adjacent to those roads.

Vice Chairman Davis said his first Motion would be to direct staff to visit the area to see if they met the criteria of our Petition Grading Program, and if they do, to have them added to our grading list.

Commissioner Flescher said he would support that Motion, and Administrator Baird cautioned about making decisions because of the similarity to the Murphy Deed. He suggested staff brings this back with a report.

Mr. Scannell argued the concept of an MSBU, which is to construct a road where there is none or to substantially improve a road where there is a deficiency. He pointed out that neither was the case with his road and it did not need to be substantially improved, but needed to be graded periodically. He requested that the County provide the grader and the local residents

provide the necessary material and they would have an informal MSBU; and there would be no expense to the County other than what it normally expends on other roads.

Attorney Collins explained the County's current policy to not accept maintenance of any roads unless they are paved, and he and Vice Chairman Davis disagreed on that detail.

Administrator Baird reiterated his suggestion for staff to bring the mater back for further review and consideration.

MOTION WAS MADE by Vice Chairman Davis to direct staff to go out and tell us why these roads whenever they were installed would not meet the program that we have in place for grading. MOTION DIED for lack of a Second.

Attorney Collins opined on the assignment of the County's rights of ingress egress, while Commissioners, staff and Mr. Scannell continued to debate the MSBU, whether to release the letter, and the justification of paving some roads versus others.

There was A CONSENSUS to bring this matter back for consideration.

2. *MARRIAGE PROTECTION AMENDMENT*

Vice Chairman Davis requested that the Board authorize the County Attorney to draft a Resolution of support for the Marriage Protection Amendment (a/k/a the Federal Marriage Amendment), and introduced **Joan McGarvey**, 615 39th Court SW, Coordinator for Marriage Amendment for the State.

MOTION WAS MADE by Vice Chairman Davis to direct the County Attorney to draft a resolution in support of Amendment No. 2. MOTION DIED for lack of a Second.

Commissioner Wheeler, with a clearer understanding of the provisions of the first Paragraph of the Amendment, was in favor of the request and Seconded the Motion.

MOTION WAS MADE by Vice Chairman Davis, SECONDED by Commissioner Wheeler, to direct the County Attorney to draft a resolution in support of Amendment No. 2, the Marriage Protection Amendment.

There were no further discussions.

The Chairman CALLED THE QUESTION and by a 3-2 vote (Commissioners Flescher and O'Bryan opposed) the Motion carried directing the County Attorney to draft a resolution in support of Amendment No. 2, the Marriage Protection Amendment.

14.C. COMMISSIONER JOSEPH E. FLESCHER - NONE

D. COMMISSIONER PETER D. O'BRYAN - NONE

E. COMMISSIONER GARY C. WHEELER - NONE

15. SPECIAL DISTRICTS AND BOARDS

A. EMERGENCY SERVICES DISTRICT - NONE

B. SOLID WASTE DISPOSAL DISTRICT - NONE

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
1:01 p.m.

ATTEST:

Mary Louise Scheidt, Interim Clerk

Wesley S. Davis, Vice Chairman
For: Sandra L. Bowden, Chairman

Minutes Approved: _____