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OF BOARD OF COUNTY COMMISSIONERS
OF NOVEMBER 4, 2008

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November 4, 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, November 4, 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

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

3. PLEDGE OF ALLEGIANCE

Commissioner Gary C. Wheeler led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA / EMERGENCY ITEMS

1. **Addition:** Item 5.D, Presentation by the Indian River County Green Government Certification Committee.

2. **Move** Item 14.D.1 to become Item 5.E.

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

3. **Addition:** Item 14.B.1., "Matters for Advertising Chapter 911, Mining Ordinance."

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

5. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION OF PROCLAMATION DESIGNATING NOVEMBER 11, 2008 AS VETERAN'S DAY

(Clerk's Note: this item was heard following Item 5.E and is placed here for continuity.)

Chairman Bowden read and presented the Proclamation to Veteran's Council representative Dr. Weiss, who thanked the Board for the Presentation and urged County residents to go out and vote.

B. PRESENTATION BY DAVID GUNTER, CHAIRMAN, BOARD OF SUPERVISORS OF THE INDIAN RIVER SOIL AND WATER CONSERVATION DISTRICT PROCLAIMING LOUIS SCHACHT COOPERATOR OF YEAR FOR 2008

Bob Adair, Vice Chairman of the Indian River Soil and Water Conservation District Board, speaking on behalf of Chairman David Gunter, recognized their employee Brenda Davis, Staff Assistant who has done a lot of work for the County. He briefly provided background on the activities of the Soil and Water Conservation District, and read and presented a Proclamation to Louis Schacht honoring him for his contribution to the County in the areas of conservation. **Mr. Schacht** thanked his colleagues for the Proclamation.

C. PRESENTATION OF PROCLAMATION HONORING SANDRA L. BOWDEN

Vice Chairman Davis read and presented the Proclamation and Plaque honoring out-going Chairman, the Honorable Sandra L. Bowden, for her years of commitment and dedicated service to the Community.

Chairman Bowden thanked everyone and expressed her pleasure to serve. Administrator Baird, on behalf of staff, conveyed gratitude to Chairman Bowden.

D. ADDITION: PRESENTATION BY THE INDIAN RIVER COUNTY GREEN GOVERNMENT CERTIFICATION COMMITTEE

(Clerk's Note: This Item was heard prior to Item 5.A.)

Himanshu Mehta of the Solid Waste Disposal District provided an update on the Indian River County Green Government Certification process and requested approval to submit the final application to the Florida Green Building Coalition, Inc. He gave a brief history of the Committee; talked about the benefits of green certification, and the procedures and general guidance for going green.

Amy Thoma continued the presentation by highlighting some of the Committee's achievements and goals for energy & air, water, waste, health, land use and awareness. She also highlighted other "green" programs in the County.

Commissioner O'Bryan pointed out that the State Legislature passed an Energy Bill that requires, in the future, that any County buildings whose architectural plans are commenced after July 1, 2008 have to be built to "green" standards.

Judy Orcutt, concluding the presentation, recognized other green Initiatives/Programs in the County: Habitat for Humanity, the School District, the Environmental Learning Center, Kimley-Horn and Associates, The Mandela Group, and the Chamber of Commerce. She highlighted the levels of certification that could be met and noted that the County has achieved a 53% on the checklist and has attained the "Gold Certification" level. She thanked County Commissioners and Administrator Baird for their support of the Green Building Coalition.

Himanshu Mehta requested Board approval to submit the final application.

E. COMMISSIONER PETER D. O'BRYAN
I. REQUEST FOR THE BOARD OF COUNTY COMMISSIONERS TO
SUBMIT THE FINAL APPLICATION TO THE FLORIDA GREEN
BUILDING COALITION

(Clerk's Note: This item was moved up from Item 14.D.1).

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Commissioner Flescher, for
discussion, to submit the final application to the
Florida Green Building Coalition.

Commissioner Flescher was pleased to note that his early concerns about cost factors involved in this process were diminished, and spoke to the benefits of this program.

The Chairman CALLED THE QUESTION and the Board unanimously approved the submittal of the final application to the Florida Green Building Coalition; approved a budget amendment in the amount of \$4,000.00; and authorized the Chairman to execute the same, as recommended in the memorandum of October 29, 2008.

Christine Kelly, Ag Extension Office, presented “green” mugs to Commissioners.

COPY OF FINAL APPLICATION FORM ON FILE IN THE OFFICE OF CLERK TO THE BOARD

6. APPROVAL OF MINUTES

A. IMPACT FEE WORKSHOP, SEPTEMBER 17, 2008

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Impact Fee Workshop of September 17, 2008. There were none.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the Impact Fee Workshop of September 17, 2008, as written.

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

8. CONSENT AGENDA

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

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

8.A. APPROVAL OF WARRANTS AND WIRES – OCT. 10 TO OCT.16, 2008

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the list of Warrants and Wires issued by the Clerk to the Board for the time period of October 10, 2008, to October 16, 2008, as requested in the memorandum dated October 16, 2008.

8.B. APPROVAL OF WARRANTS AND WIRES – OCT. 17 TO OCT. 23, 2008

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the list of Warrants and Wires issued by the Clerk to the Board for the time period of October 17, 2008, to October 23, 2008, as requested in the memorandum dated October 23, 2008.

8.C. VALUE ADJUSTMENT BOARD HEARINGS

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the extension of the tax roll prior to the completion of the Value Adjustment Board hearings, as requested in the memorandum dated October 28, 2008.

8.D. LEASE EXTENSION 8865 91ST AVENUE, VERO BEACH, FL CR 510 WIDENING AND IMPROVEMENTS, COUNTY PROJECT NO. 0610, GINA HOWER, TENANT

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved Alternative 1, the Lease Renewal Agreement allowing Gina Hower to remain in the premises and amending the Lease to terminate on April 30, 2009; and

authorized the Chairman to execute the Agreement, as recommended in the memorandum dated October 10, 2008.

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

8.E. 43RD AVENUE, 8TH STREET TO 18TH STREET ROAD IMPROVEMENTS, RIGHT-OF-WAY ACQUISITION 1150 43RD AVENUE, ELBERT C. & FRANCIS K. PICKERILL

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved Alternative 1, the \$1,800.00 purchase with Elbert & Francis Pickerill, and authorized the Chairman to execute said Agreement, as recommended in the memorandum dated October 8, 2008.

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

8.F. FINAL PAY REQUEST #18 FOR THE INDIAN RIVER COUNTY EMERGENCY OPERATIONS CENTER (EOC)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the final payment on the Emergency Operations Center to Turner Construction Company,

Inc., in the amount of \$58,895.00, as recommended in the memorandum of October 24, 2008.

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

8.G. RENEWAL OF PROFESSIONAL BRIDGE DESIGN SERVICES AGREEMENT FOR 2008-2009

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the Professional Services Agreement with Bridge Design Associates, Inc., and authorized the Chairman to execute same, as recommended in the memorandum of October 16, 2008.

8.H. ROADWAY IMPROVEMENTS TO SR A1A AND CR 510 KIMLEY-HORN AND ASSOCIATES, INC., AMENDMENT NO. 2-RELEASE OF RETAINAGE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the release of retainage for Amendment No. 2 to Kimley-Horn and Associates, Inc., in the amount of \$7,300.00, as recommended in the memorandum of October 15, 2008.

8.I. APPROVAL OF WORK ORDER NO. MCI-REVISED WITH PENINSULA HYDROLOGIC DATA SPECIALISTS, INC. FOR WATER QUALITY TESTING AND SUPPORT SERVICES FOR THE MAIN RELIEF CANAL POLLUTION CONTROL SYSTEM

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved Work Order No. MC1-Revised with Peninsula Hydrologic Data Specialists, Inc., and authorized the Chairman to execute same, as recommended in the memorandum dated October 17, 2008.

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

8.J. RIGHT-OF-WAY ACQUISITION, 74TH AVENUE SOUTH OF STATE RD. 60, CORNER 8TH STREET & 74TH AVE., DONALD S. BEATY

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved Alternative 1, the \$419,855 purchase of right of way, improvement replacement and legal fee, and authorized the Chairman to execute said Agreement, as recommended in the memorandum dated October 27, 2008.

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

8.K. WORK ORDER NO. 4 (ENGINEERING/SURVEYING), MORGAN EKLUND, INC. – 53RD STREET ROADWAY IMPROVEMENTS PROJECT FULL & FINAL PAY LAKE HYDROGRAPHIC SURVEYING AND MAPPING, INDIAN RIVER COUNTY RIVER COUNTY PROJECT NO. 0107, CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES CONTRACT 0725

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved payment of Morgan & Eklund, Inc.'s Invoice No. 1-08-952, dated October 17, 2008, in the amount of \$5,490.00 for full and final pay for Work Order No. 4, as requested in the memorandum of October 23, 2008.

8.L. WORK ORDER NO. 8 (ENGINEERING/SURVEYING), MASTELLER, MOLER, REED AND TAYLOR, INC., IRC HIGH WATER MARK SURVEY, TROPICAL STORM FAY IRC PROJECT NO. 0846 – FULL AND FINAL PAY CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES, CONTRACT 0725

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved payment of Masteller, Moler, Reed & Taylor, Inc.'s Invoice No. 2658-7298, dated October 21, 2008, in the amount of \$3,485.00, as recommended in the memorandum dated October 23, 2008.

8.M. WORK ORDER No. 14 (ENGINEERING/SURVEYING), CARTER ASSOCIATES, INC. - FULL AND FINAL PAY, IRC HIGH WATER MARK SURVEY, TROPICAL STORM FAY IRC PROJECT No. 0846 – CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES, CONTRACT 0725

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board approved payment of Carter Associates, Inc.'s Invoice No. 08429-1, dated October 24, 2008, in the amount of \$4,960.00 for full and final payment of Work Order No. 14, as recommended in the memorandum of October 24, 2008.

8.N. WAL-MART STORE EAST L.P.'S REQUEST FOR APPROVAL OF A CORRECTED FINAL PLAT FOR THE SAM'S CLUB AT VERO BEACH COMMERCIAL PLANNED DEVELOPMENT

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously granted approval for the corrected final plat for the Sam's Club at Vero Beach Commercial Planned Development, as recommended in the memorandum dated October 21, 2008.

8.O. DEMOLITION 4230 29TH AVE., LUFLETTA AND WILL BATTLE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved and granted Mrs. Ernestine Williams 60 days in which to secure a building permit in order to effectuate the necessary repairs on the structure located at 4230 29th Avenue; and the Building Department will remove this item from the approved demolition Purchase Order and not to take any action against this house at this time; and should Mrs. Williams not make substantive progress, in the opinion of the County staff, within that 60 days, staff would be directed to commence demolition under the original Order, as recommended in the memorandum dated October 28, 2008.

8.P. NAP INDIAN RIVER II, L.L.C.'S REQUEST FOR FINAL PLAT APPROVAL FOR A COMMERCIAL SUBDIVISION TO BE KNOWN AS THE LANDINGS

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously granted final plat approval for The Landings commercial subdivision, as recommended in the memorandum dated October 13, 2008.

**8.Q. APPROVAL OF STATE SOVEREIGNTY SUBMERGED LANDS
LEASE FOR THE ARCHIE SMITH FISH HOUSE DOCK FACILITY**

ON MOTION by Commissioner Wheeler,
SECONDED by Vice Chairman Davis, the Board
unanimously approved the sovereignty submerged
lands Lease for the Archie Smith Fish House dock
facility, and authorized the Chairman to sign the
Lease, as recommended in the memorandum dated
October 28, 2008.

PARTIALLY EXECUTED COPY OF LEASE ON FILE IN THE OFFICE
OF THE CLERK TO THE BOARD

**8.R. ROYAL OAK MOBILE HOME PARK WATER CONNECTION,
WORK AUTHORIZATION DIRECTIVE NO. 2007-016, UCP NO. 3082,
APPROVAL OF FINAL PAYMENT TO LABOR CONTRACTOR DERRICO
CONSTRUCTION CORP. AND RELEASE OF RETAINAGE**

ON MOTION by Commissioner Wheeler,
SECONDED by Vice Chairman Davis, the Board
unanimously approved the application for release of
retainage to Derrico Construction Corp., in the
amount of \$831.89, final payment No. 2, as
recommended in the memorandum dated October 27,
2008.

8.S. CHOOSE LIFE LICENSE PLATE FUNDING ANNUAL AUDIT

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the Annual Choose Life Specialty License Plate Report and authorized the Chairman to sign the Report for submittal to the Department of Highway Safety and Motor Vehicles, as recommended in the memorandum dated October 27, 2008.

COPY OF REPORT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.T. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR LOT 5, BLOCK 13, VERO LAKE ESTATES SUBDIVISION, UNIT 2, LOCATED AT 8365 92ND AVENUE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the cut and fill balance waiver based on the criteria of Section 930.07(2)(d)1, as recommended in the memorandum dated October 23, 2008.

8.U. AWARD OF BID #2008081, 12TH STREET SIDEWALK (16TH AVENUE TO 11TH AVENUE), IRC PROJECT NO. 0216

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the contract award to Timothy Rose Contracting Inc., in the amount of \$140,000.91, as recommended in the memorandum dated October 27, 2008.

8.V. AWARD OF BID # 2008080, 12TH STREET SIDEWALK (43RD AVE. TO 27TH AVE.), IRC PROJECT NO. 0604

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved the bid award to Sheltra & Sons Construction Co. Inc., in the amount of \$303,421.25, as recommended in the memorandum dated October 27, 2008.

8.W. FLORIDA INLAND NAVIGATION DISTRICT PROJECT AGREEMENT FOR OSLO ROAD BOAT RAMP, IRC PROJECT NO. 0381

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved and authorized the Chairman to execute the Florida Inland Navigation District Project Agreements

for the Oslo Road Public Boat Ramp, as recommended
in the memorandum dated October 27, 2008.

PARTIALLY EXECUTED COPY OF AGREEMENT ON FILE IN THE OFFICE
OF THE CLERK TO THE BOARD

**8.X. AWARD OF BID # 2008075, 5TH STREET SW BRIDGE
REPLACEMENT AND INTERSECTION IMPROVEMENTS, IRC PROJECT
No. 0206**

ON MOTION by Commissioner Wheeler, SECONDED
by Vice Chairman Davis, the Board unanimously
approved the contract award to Sheltra & Sons
Construction Co. Inc., as recommended in the
memorandum dated October 23, 2008.

**8.Y. APPROVAL OF AMENDMENT NO. 1 TO LEGISLATIVE PROJECT
GRANT NO. LP6734 FOR THE EGRET MARSH REGIONAL
STORMWATER PARK**

ON MOTION by Commissioner Wheeler, SECONDED
by Vice Chairman Davis, the Board unanimously
approved Amendment No. 1 to DEP Agreement No.
LP6734, and authorized the Chairman to execute same,
as recommended in the memorandum dated October 15,
2008. The Agreement will then be returned to the

Florida Department of Environmental Protection, which will finalize its execution.

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

8.Z. COLLECTIVE BARGAINING AGREEMENT BETWEEN INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT AND (IAFF)INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2201

Commissioner O'Bryan recognized and acknowledged the Firefighters who negotiated the contract in good faith and came forward with a contract that he believes is beneficial to the County.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved the Collective Bargaining Agreement between the IAFF Local 2201 and Indian River County Emergency Services District, as recommended in the memorandum dated October 28, 2008.

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

8.AA. EXECUTION OF 2008 BAYTREE AND MARBRISA DUNE RESTORATION PROJECT TRI-PARTY AGREEMENT

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved and authorized the Chairman to execute the Tri-Party Agreement among the County, Baytree Condominium Association and Marbrisa Homeowners Association, as recommended in the memorandum dated October 21, 2008.

Pursuant to staff, and as stated in the Agreement, Baytree and Mabrisa will provide funding for the entire local cost share match, paid in full and at their respective shares, prior to project construction. Therefore, the County will expend no local dollars on this project.

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

8.BB. DECLARE EXCESS EQUIPMENT SURPLUS FOR SALE OR DISPOSAL, GENERAL SERVICES PURCHASING DIVISION

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously: (1) approved and declared the listed items surplus and authorized its sale and/or proper disposal; and (2) granted the authority to have the surplus equipment sold at public auction during the month of December, at the Indian River County School District Maintenance Yard,

as recommended in the memorandum of October 28, 2008.

8.CC. DECLARE RETIRING VEHICLES SURPLUS FOR DONATION

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Davis, the Board unanimously approved and declared the vehicles surplus, for donation to the Senior Resource Association for use in expanding public and private transportation programs, as recommended in the memorandum of October 28, 2008.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

A. JEFFREY K. BARTON, INDIAN RIVER COUNTY CLERK OF CIRCUIT COURT
CONSTITUTIONAL OFFICER FINANCIAL REPORT FOR FISCAL YEAR 2007-2008

Clerk of the Circuit Court Jeffrey K. Barton informed the Board that the Clerk's Office was returning to the County \$150,000.00 in unexpended funds, the same amount returned to the State.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously accepted the Financial Report of the Indian River County Clerk of the Circuit Court for the fiscal year 2007-2008 as submitted under cover of letter dated October 30, 2008.

**B. CHARLES W. SEMBLER, INDIAN RIVER COUNTY TAX COLLECTOR
CONSTITUTIONAL OFFICER FINANCIAL REPORT FOR FISCAL YEAR
2007-2008**

Jeff Smith, Assistant Tax Collector, on behalf of Tax Collector Charles Sembler, presented their Financial Statement and informed the Board that his Office was returning almost \$3.6 million, which was \$338,000 more than they had projected. He thereafter introduced Tax Collector elect Carole Jean Jordan.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner O'Bryan, the Board unanimously accepted the Financial Report of the Indian River County Tax Collector for the fiscal year 2007-2008 as submitted under cover of letter dated October 28, 2008.

**C. DAVID C. NOLTE, INDIAN RIVER COUNTY PROPERTY APPRAISER
CONSTITUTIONAL OFFICER FINANCIAL REPORT FOR FISCAL YEAR
2007-2008**

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

the Financial Report of the Indian River County Property Appraiser for the fiscal year 2007-2008 as submitted under cover of letter dated October 28, 2008.

**D. KAY CLEM, INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS
CONSTITUTIONAL OFFICER FINANCIAL REPORT FOR FISCAL YEAR
2007-2008**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Wheeler, the Board unanimously accepted the Financial Report of the Indian River County Supervisor of Elections for the fiscal year 2007-2008 as submitted under cover of letter dated October 30, 2008.

**E. ROY RAYMOND, INDIAN RIVER COUNTY SHERIFF
I. CONSTITUTIONAL OFFICER FINANCIAL REPORT FOR FISCAL
YEAR 2007-2008**

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Flescher, the Board unanimously accepted the Financial Report of the Indian River County Sheriff's Office for the fiscal year 2007-2008 as submitted under cover of letter dated October 30, 2008.

2. FY 2008 STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP) AWARD

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved that \$157,349.00 be amended into Corrections Operating Expenses to pay the consulting firm and to augment funds needed for inmate medical, as requested in the letter dated October 23, 2008.

10. PUBLIC ITEMS

A. PUBLIC HEARINGS

1. COUNTY INITIATED REQUEST TO AMEND THE CAPITAL IMPROVEMENTS ELEMENT OF THE COMPREHENSIVE PLAN

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

Community Development Director Bob Keating recapped the backup memorandum dated October 27, 2008 and provided background and analysis on the request to amend the Capital Improvements Element of the Comprehensive Plan. He thereafter presented staff's recommendation for approval of the required text amendment to the Plan by adoption of the proposed ordinance.

Director Keating responded to questions from the Board regarding continued expenditure on State Road 60, gas prices and gas tax. He continued his presentation proposing that a portion of the 66th Avenue project be removed, and concluded with a summary of staff's proposals and recommendations.

Commissioner O'Bryan expressed concerns about 66th Avenue and existing right-of-way issues, and felt they needed to complete that section on 66th Avenue or continue with the right-of-way to give residents some closure, to which Commissioners Wheeler, Davis, and Flescher agreed.

The Chairman opened the Public Hearing.

Ruth Stanbridge, 4835 66th Avenue, had various concerns about the proposed amendment, in particular the segment on 66th Avenue slated for removal. She questioned Attorney Collins, seeking to know the procedure if this amendment is approved to go forward, and whether language in the proposal (page 392) was in conflict with Resolution 2008-139. Ms. Stanbridge urged fairness to all and hoped the Board would consider some of the alternatives.

Everette Brown, 43rd Avenue, opposed the amendment; questioned the intent for the 8th to 12th Street segment which was left blank on the map displayed by staff; and argued the County's sudden lack of need for use of his construction easement.

Adriene Cuffe, 695 43rd Avenue, had hoped 43rd would be taken off the next 5-year Plan. She also hoped the Board would consider Mrs. Stanbridge's comments, delay their vote, and review staff's analysis/report to ensure that they reflect continuity.

Mickey Barkett, Esquire, representing Mark's Mobil, directed specific questions to Director Keating regarding the completion and authenticity of the proposed document being submitted to the State Department of Community Affairs. She also questioned whether the proposed document was prepared in accordance with State Statute, to which Director Keating assured her that the document in its entirety was, to the best of his knowledge, true and accurate, and was prepared consistent with Florida Statutes Chapter 163.

The Chairman called a Break at 11:01a.m., and reconvened the meeting at 11: 22 a.m. with all members present.

Leo Cahill, 1195 43rd Avenue, hoped the project would be delayed and the Board use the time to review some of the design features that are in question. He saw the need for a clear definition of private property and right to privacy.

Joseph Paladin, President, Black Swan Consulting, asked if any of the items being eliminated were figured into the concurrency projects that have been approved, and Director Keating replied that we have looked at existing counts plus vested and there was available capacity. Director Keating responded to further questions from Mr. Paladin regarding the amount of trips that would be coming back online; whether 53rd Street was going to be part of the negotiations with Divosta for Waterway Village; and if, on the roads projects being completed, they were running in or over costs using more or less impact fees.

Bob Johnson, Coral Wind Subdivision, asked that this item be tabled to another meeting and that copies of the amendment be handed out to interested parties.

Charlene Brown, 5145 66th Avenue, spoke of the impact to residents on 66th Avenue and saw Resolution 2008-139 as a commitment to residents. She felt that to terminate

right-of-way acquisition in mid-stream would be a breach of the Resolution. She hoped the Board would delay the process.

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

After further lengthy and detailed discussions by Commissioners and staff, expressions of concern, opposition, and suggestions from County residents to delay the process, the Board decided as follows:

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved to table this item to a time certain, the November 18, 2008 Board of County Commissioners' Meeting, to be brought back with the 66th Avenue segment that was proposed for removal added back in the Plan.

10.B. PUBLIC DISCUSSION ITEMS

1. REQUEST TO SPEAK FROM EVERETTE BROWN REGARDING 43RD AVENUE

Mr. Brown addressed the Board regarding the way the acquisition of his temporary construction easement along 43rd Avenue was being handled by County staff. He accused County staff of harassment and negligence in handling area residents, and reasserted his objection to the project being so close to his home.

Public Works Director Jim Davis explained the purpose of the Notice to Owner, the basis of the need of the 10-foot easement, and whether it was derived from the plans that were designed. He confirmed that because of Mr. Brown's objection to use of his property, the County decided to not pursue a construction easement from him and found other alternatives.

Administrator Baird offered that staff would meet with Mr. Brown to go over the matter. **Mr. Brown** refused, saying he did not trust staff, but would meet only if his attorney was present.

Commissioner Flescher asked Mr. Brown if he would agree to meet with Commissioners and staff, including his own attorney. **Mr. Brown** was agreeable, but wanted accountability, and asked that the Board appoint a committee to investigate the problem.

Mr. Cayhill expressed his unhappiness with the Boulevard designs for 43rd Avenue, which he felt amounted to intrusion on his property and privacy. He asked if it was a legal requirement for the Boulevard design.

10.C. PUBLIC NOTICE ITEMS

1. NOTICE OF SCHEDULED PUBLIC HEARING NOVEMBER 18, 2008: LARS HAKANSSON AND ROBIN DAVIS' REQUEST FOR ABANDONMENT OF A PORTION OF 48TH AVENUE LYING BETWEEN 85TH PLACE AND 86TH STREET IN WABASSO (ADMINISTRATIVE)

The Chairman read the Notice into the record.

11. COUNTY ADMINISTRATOR 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. GRADING 87TH STREET WEST OF CR 512 IN FELLSMERE

Tim Scannell presented his request, on behalf of area residents, for County maintenance of 87th Street, west of CR 512 in Fellsmere, and suggested that costs be distributed among the owners of the property.

Public Works Director Jim Davis through a PowerPoint Presentation provided background on the grading of 87th Street west of CR 512 in Fellsmere.

Attorney Collins provided legal opinion on the rights of residents and options they may pursue.

The Board discussed how the problem could be resolved, while Mr. Scannell talked about the concept of who has the right to maintain the subject road, with Commissioner Wheeler explaining why he thought the request for County maintenance was not feasible.

The Chairman called a break at 1:38 p.m. and reconvened the Meeting at 1:59 p.m. with all members present.

Attorney Collins reminded the Board of discussions prior to the break, concerning obtaining a One Hundred percent (100%) consent of the assignment of an easement from all seventeen (17) landowners. Attorney Collins offered to contact the relevant party to get an easement document assigned which would enable us to pass the legal hurdle of having an ownership interest; then public funds could be expended either through a special assessment project or an MSBU.

Vice Chairman Davis desired to have County engineers come up with some appropriate fees for the maintenance of the roads and go from there.

ON MOTION by Vice Chairman Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved to have County engineers come up with some appropriate fees for the maintenance of the roads and proceed from there.

12.J. UTILITIES SERVICES

1. CHANGE ORDER No. 5 TO IRC CONTRACT 2006012 WITH POOLE AND KENT COMPANY OF FLORIDA, INC., FOR THE EXPANSION OF THE NORTH RO WATER TREATMENT PLANT

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved Change Order No. 5 to IRC Contract 2006012 with Poole and Kent Company of Florida, Inc., to increase the contract in the amount of \$72,458.00; (2) authorized staff to reimburse CDM in the amount of \$8,538.00 for pump witnessing being deducted from the contract; and (3) authorized the Chairman to execute same, as recommended in the memorandum of October 21, 2008.

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

13. COUNTY ATTORNEY

A. REQUEST FOR LEASE EXTENSION BY DONALD AND JOANNE STASZEWSKI D/B/A WINGS OF JOY CHRISTIAN BOOK STORE

Deputy County Attorney William DeBaal recapped the backup memorandum dated October 27, 2008 and updated the Board on the request for an extension of the lease by Donald and Joanne Staszewski d/b/a/ Wings of Joy Christian Book Store. Said property, located at 1940 58th Avenue, was leased back to the Staszewski's after the Board agreed to purchase it on April 8, 2008. He thereafter presented staff's recommendation that the Board either approve the request and extend the Lease or deny the request for an extension to February 1, 2009.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to extend the lease for an additional twelve (12) months, at the current rate of \$1.00 per month.

Under discussion, Vice Chairman Davis felt it would be wise to have language in the Lease Agreement that specified should the County need to take possession of the property sooner, they have the power to exercise early termination.

Attorney DeBaal said such a provision could be added in the Lease, that we would provide some type of Notice to have them vacate the premises.

MOTION WAS AMENDED by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to extend the lease for an additional twelve (12) months, at the current rate of \$1.00 per month, subject to early

termination if required by County, and upon the issuance of written Notice.

There were no further discussions.

The Chairman CALLED THE QUESTION and the Board unanimously approved to extend the lease for an additional twelve (12) months, at the current rate of \$1.00 per month, subject to early termination if required by County, and upon the issuance of written Notice.

13.B. RESOLUTION OF NECESSITY FOR OSLO ROAD/27TH AVENUE

Deputy County Attorney William DeBaal introduced Eminent Domain Counsel, Mary Dorman, Dorman and Gutman, who are representing the County on the Cumberland Farms take.

Mary Dorman, Esquire, explained the intent of the proposed resolution, which approves the preferred alignment as stated in Kimley-Horn's 27th Avenue route study from 17th Street southwest to 5th Street southwest; approves the preferred pond site in Kimley-Horn's Pond Siting Report; and deals with the acquisition by eminent domain of that certain property located in the northeast corner of Oslo Road and 27th Avenue.

Ms. Dorman noted that there were three legal descriptions added to the Agenda packet and it appeared to her that some of them may have been cropped, and two of the three needed to be replaced. She handed to the Deputy Clerk revised replacements for the incomplete

Legal Descriptions on file. She provided further detailed information on the process of eminent domain and responded to questions from the Board pertinent to the matter.

Commissioner O'Bryan asked Engineer Brian Good if, on his Report, there were any other alternate property near the intersection that Cumberland Farms could utilize.

Brian Good, P.E., Kimley-Horn & Associates, was not aware of any property in close proximity that the County owns title to, but believed there was a parcel immediately to the north, which would serve as the new corner for the intersection of Oslo Road and 27th Avenue, and that may or may not be a desirable location for the owners of Cumberland Farms.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Davis, the Board unanimously approved Alternative 1, **Resolution 2008-172** approving the preferred alignment for improvements to 27th Avenue (C.R. 607) between 17th Street SW and 5th Street SW; approving the preferred pond site for the future improvements to 27th Avenue (C.R. 607) in the area of the intersection with Oslo Road (C.R. 606); determining the necessity of acquiring certain real property for improvements to Oslo Road (C.R. 606), and for improvements to 27th Avenue (C.R. 607); and authorizing the County Attorney to acquire property by purchase or eminent domain.

**13.C. PURCHASE AND LEASE AGREEMENTS FOR MARK'S MOBIL
FOR THE STATE ROAD 60/43RD AVENUE INTERSECTION
IMPROVEMENT**

Deputy County Attorney William DeBraul reminded the Board of prior actions on this matter, including the unanimous approval by the Board on September 16, 2008, to enter into Purchase and Lease Agreements for Mark's Mobil to facilitate the State Road 60/43rd Avenue intersection improvements. He thereafter recommended approval of the Purchase Agreement with Marks Mobil and authorization for execution of said Agreement.

Commissioner O'Bryan expressed concern regarding possible contamination of the site, and who would be responsible for the clean-up. He saw the need for assignment of responsibility, and asked that such provisions be incorporated in the Contract prior to closing, making it clear where liability rests.

Attorney DeBraul responding to Commissioner O'Bryan's concerns, said the Department of Environment Protection (DEP) would consider this a low risk site because there was no need for potable water from the site. He disclosed that the site has qualified for remediation help from the State, and if it is required, we would have to apply for it. He felt safe that there were two sources (Mark's Mobil and the State) of funds available if clean-up becomes necessary and would not recommend that money be held in escrow for possible clean-up.

Commissioner O'Bryan reiterated the need for a site assessment and assignment of responsibility for cleaning up the site, prior to closing on the agreement.

Mickey Barkett, Esquire, Barkett Law Firm, 201 East Pine Street, Orlando, understood from Mr. Vogt of the Health Department that there was very little risk to the County to pay for contamination for a number of reasons, on which she did not elaborate. She reminded

the Board of the terms of the offer by the Halls, approved by the Board on September 16, 2008, which terms were definite and in writing. She argued that for the Board to attempt to change the terms of the contract at this stage would be an attempt to change the contract. She offered that in the interest of compromise they would be willing to discuss potential escrow. She described the forms of prevention and analyses that has been done on the site to measure the levels of contamination.

While Attorney Barkett and Commissioner O'Bryan argued the terms of the contract and whether \$400,000 should be set aside in escrow for clean-up of contamination, Attorney Collins explained what such action would mean, and would not recommend that inclusion, because it would mean a substantive change to the contract agreed upon prior.

Charles Vogt, Environmental Specialist III, IRC Department of Health, answered questions regarding the extent of liability for site clean-up of Mark's Mobil; whether the County should escrow funds for the clean-up; and explained why it would not be necessary to attribute costs to Mark's Mobil for future cleanup of the site. He pointed out that currently Mark's Mobil has Federal and State required liability insurance to cover any discharge that may occur on the property. As far as escrowing, there should not be any outline cost to the county for clean-up because everything is already covered under one insurance or another.

Mr. Vogt, in response to who would be responsible for clean-up if contamination is detected, stated that it would be the Early Detection Center Program (the State) for where old discharges exist., and if there is a new discharge present that is not known at this point, it would be covered under the Mark's Mobil's insurance. He responded to further questions from Commissioners and provided further details on the subject site.

Commissioner Flescher expressed comfort with, and acceptance of, Legal Counsels' opinions regarding non-liability to the County.

Ms. Barkett expressed great consternation because of a seeming delay in the closing hours of the contract, and alluded to the possibility of “bad faith negotiations under Chapter 3.” She requested that the Board approve the Lease as submitted by staff.

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

Commissioner Wheeler brought clarity to a newspaper article of Sunday, November 2, 2008, which compared the subject property to the \$930,000 the County paid for Lennie’s Bar, and which alleged that two commissioners have had more than a passing interest in Mark’s Mobil because of the amount of money spent for services there. Commissioner Wheeler clarified that for the last four years, he spent \$272.80 for oil changes, and wanted it made clear, before he voted on this item, that he has no connection to Mark’s Mobil.

Attorney Collins was comfortable with the Agreement as presented.

The Chairman CALLED THE QUESTION and by a 4-1 vote (Commissioner O’Bryan opposed) the Board approved the Purchase and Lease Agreements for Mark’s Mobil and authorized the Chairman to execute said documents, as recommended in the memorandum of October 29, 2008.

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

**13.D. LICENSE AGREEMENT WITH GLOBAL TOWER ASSETS, LLC
AND CONSTRUCTION OF NEW TOWER**

Deputy County Attorney DeBral recapped the backup memorandum of October 27, 2008 and apprised the Board of the condition of the communications tower in Hobart Park, which was damaged in the hurricanes of 2004, thus warranting construction of a new tower. He presented for consideration and approval Global Tower Assets, LLC's offer to build a new tower, in addition to assuming other responsibilities, as listed at page 557 of the backup.

ON MOTION by Commissioner Wheeler,
SECONDED by Commissioner Flescher, the Board
unanimously approved the License Agreement with
Global Tower Assets, LLC, and authorized the
Chairman to sign any related lease assignments
between the County and FPL and the FAA, as
recommended in the memorandum of October 27,
2008.

AGREEMENT/MOL 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 – NONE,**

**1. MATTERS FOR ADVERTISING CHAPTER 911, MINING
ORDINANCE.**

MOTION WAS MADE by Vice Chairman Davis,
SECONDED by Commissioner Wheeler, to advertise
Chapter 911 as a special exception and the Board
would have the discretion of deciding which way to
go.

Chairman Bowden asked Vice Chairman Davis if he had changed his mind, and
he said he had not; his position has not changed; he saw the point that Ms. Smith brought to his
attention and that was why he was doing it.

The Chairman CALLED THE QUESTION and the
Motion carried unanimously.

C. COMMISSIONER JOSEPH E. FLESCHER - NONE

D. COMMISSIONER PETER D. O'BRYAN

**1. REQUEST FOR THE BOARD OF COUNTY COMMISSIONERS TO
SUBMIT THE FINAL APPLICATION TO THE FLORIDA GREEN
BUILDING COALITION**

(Clerk's Note: This item was moved and became Item 5.E. See discussions and decision at Item 5.E., above.)

E. COMMISSIONER GARY C. WHEELER - NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT -NONE

15.B. SOLID WASTE DISPOSAL DISTRICT

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

**15.B.1. APPROVAL OF MINUTES, REGULAR MEETING OF
SEPTEMBER 16, 2008**

15.B.2. RETENTION OF SPECIALIZED OUTSIDE COUNSEL BY SWDD

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.

6. ADJOURNMENT

There being no further business, the Chairman declared the Meeting
adjourned at 3:05 p.m.

ATTEST:

By: _____
Jeffrey K. Barton, Clerk

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

Minutes Approved: _____

BCC/AA/2008 Minutes