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November 18, 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 27<sup>th</sup> Street, Vero Beach, Florida, on Tuesday, November 18, 2008. Present were Commissioners Joseph E. Flescher and Peter D. O'Bryan, re-elected Commissioners Wesley S. Davis and Gary C. Wheeler, and Commissioner-Elect Bob Solari. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Maureen Gelfo.

**1. CALL TO ORDER**

Commissioner Wesley Davis called the meeting to order at 9:00 a.m.

**2. INVOCATION**

Public Works Director Jim Davis delivered the Invocation.

**3. PLEDGE OF ALLEGIANCE**

County Attorney William G. Collins II, led the Pledge of Allegiance to the Flag.



**OATH OF OFFICE BOARD OF COUNTY COMMISSION-**

**JUDGE DAVID MORGAN**

Judge David Morgan administered the Oath of Office to re-elected Commissioners Wesley S. Davis, Gary C. Wheeler, and to Commissioner-Elect Bob Solari.

**ELECTION OF BOARD OF COUNTY COMMISSION CHAIRMAN**

Commissioner Davis invited County Attorney William Collins to conduct the election of Chairman of the Board.

Attorney Collins opened the floor to nominations for Chairman.

Commissioner Flescher NOMINATED Commissioner Wesley S. Davis for Chairman. Commissioner Bob Solari SECONDED the nomination. There were no other nominations.

Attorney Collins CALLED FOR A VOTE on the nomination for Chairman. The Board unanimously accepted the nomination and appointed Commissioner Wesley S. Davis as Chairman of the Board for the year 2009.

**ELECTION OF BOARD OF COUNTY COMMISSION VICE CHAIRMAN**

Attorney Collins then handed the proceedings over to the new Chairman, Wesley S. Davis, to conduct the nominations for Vice Chairman.

Chairman Davis opened the floor to nominations for Vice Chairman.

Commissioner Wheeler NOMINATED Commissioner Peter D. O'Bryan for Vice Chairman.

Commissioner Solari NOMINATED Commissioner Joseph E. Flescher for Vice Chairman.

Chairman Davis CALLED FOR A VOTE on the nomination for Vice Chairman. The Board, by a 3-2 vote (Commissioners O'Bryan and Wheeler opposed) accepted the nomination made by Commissioner Solari and appointed Commissioner Joseph E. Flescher as Vice Chairman of the Board for the year 2009.

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

#### **5. PROCLAMATIONS AND PRESENTATIONS**

##### **5.A. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF NOVEMBER 2008, AS NATIONAL ADOPTION AWARENESS MONTH**

Chairman Davis read and presented the Proclamation to Tim Zorc, who thanked the Board for its recognition. Mr. Zorc discussed the benefits of adopting through the State's adoption program, the Children's Home Society.

**5.B. PRESENTATION OF PROCLAMATION DESIGNATING NOVEMBER 23 –  
29, 2008, AS CHRISTIAN HERITAGE WEEK IN INDIAN RIVER COUNTY**

Chairman Davis read and presented the proclamation to Bob Johnson, who on behalf of the American Families Association, thanked the Board for its continued support.

**6. APPROVAL OF MINUTES**

**6.A. REGULAR MEETING OF SEPTEMBER 16, 2008**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of September 16, 2008. There were none.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Minutes of the Regular Meeting of September 16, 2008, as written.

**6.B. REGULAR MEETING OF SEPTEMBER 23, 2008**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of September 23, 2008. There were none.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Minutes of the Regular Meeting of September 23, 2008, as written.

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

**7.A. RESIGNATION OF DISTRICT 5 APPOINTEE TO THE BOARD OF ZONING  
ADJUSTMENTS**

**8. CONSENT AGENDA**

Vice Chairman Flescher asked to pull Items 8.S., 8.U., and 8.BB. for discussion.  
Commissioner O’Bryan asked to pull Item 8.J. for discussion.

ON MOTION by Commissioner O’Bryan, SECONDED  
by Commissioner Wheeler, the Board unanimously  
approved the Consent Agenda, as amended.

**8.A. APPROVAL OF WARRANTS AND WIRES – OCT 24 TO OCT 30, 2008**

ON MOTION by Commissioner O’Bryan, SECONDED  
by Commissioner Wheeler, the Board unanimously  
approved the list of Warrants and Wires as issued by the  
Clerk to the Board for the time period of October 24, 2008  
to October 30, 2008, as requested in the memorandum  
dated October 30, 2008.

**8.B. APPROVAL OF WARRANTS AND WIRES – OCT 31 TO NOV 6, 2008**

ON MOTION by Commissioner O’Bryan, SECONDED  
by Commissioner Wheeler, the Board unanimously  
approved the list of Warrants and Wires as issued by the  
Clerk to the Board for the time period of October 31, 2008

to November 6, 2008, as requested in the memorandum dated November 6, 2008.

**8.C. INDIAN RIVER COUNTY INVESTMENT ADVISORY COMMITTEE,**  
**QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDING**  
**9/30/08**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously accepted the Investment Advisory Committee Quarterly Report for the time period of July 1, 2008 through September 30, 2008, as recommended in the memorandum of November 6, 2008.

**8.D. EXCHANGE CLUB OF TREASURE COAST**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved donating the use of the County's light carts for a fundraiser to be held by the Exchange Club of the Treasure Coast on December 5, 2008, as recommended in the memorandum of November 12, 2008.

**8.E. ANNUAL SIGNATORIES RESOLUTION**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved **Resolution 2008-173**, directing depositories of County funds to honor certain authorized signatures on County checks, warrants, and other orders for payment;

providing for Board of County Commissioners and Clerk of the Circuit Court signatories; rescinding Resolution No. 2007-157; delegating authority to the County Administrator to declare states of local emergencies and to act in a State of Florida declared emergency affecting Indian River County; and providing an effective date.

**8.F. STASZEWSKI/WINGS OF JOY CHRISTIAN BOOK STORE LEASE  
EXTENSION**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously authorized the Chairman to execute the Lease Extension with Donald and Joanne Staszewski, doing business as the Wings of Joy Christian Book Store, for an additional one-year period, as recommended in the memorandum of November 7, 2008.

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

**8.G. AGREEMENT TO PURCHASE AND SELL REAL ESTATE BETWEEN JAMES  
AND LORINE JENKINS AND INDIAN RIVER COUNTY**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously: (1) authorized payment of \$105,480 to Mr. and Mrs. Jenkins; (2) authorized an attorney's fee of \$5,537.70, to Charles Sullivan, Sr., (3) directed Public Works to credit Mr. and Mrs. Jenkins utility connection account in the sum of \$650 representing one-half of the line connection fee to the County water; and (4) authorized the Chairman to sign the

Purchase and Sale Agreement with James D. Jenkins and Lorine Jenkins, as recommended in the memorandum of November 12, 2008.

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

**8.H. REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO AMEND CERTAIN SECTIONS OF THE ANIMAL CONTROL ORDINANCE CODIFIED IN CHAPTER 302 OF THE INDIAN RIVER COUNTY CODE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously authorized staff to advertise for a Public Hearing to be held December 16, 2008, to adopt the proposed Ordinance, as recommended in the memorandum of November 12, 2008.

**8.I. LAKES AT BROOKHAVEN SUBDIVISION, REQUEST FOR AN EXTENSION TO COMPLETE REQUIRED IMPROVEMENTS, DEVELOPERS: THE LAKES AT BROOKHAVEN, LLC (DOMENICK R. LIOCE, MANAGER), LAKES AT BROOKHAVEN DEVELOPMENT, LLC (DOMENICK R. LIOCE, MANAGER)**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the Modification to Contract for Construction of Required Improvements No. SD-03-02-09-CFC (2001030151-52639) to extend the completion date to February 6, 2009, and authorized the Chairman to execute same so long as the Letter of Credit Amendment

guaranteeing completion of the remaining required improvements is received by 2:00 p.m. on Monday, December 15, 2008 by the County Attorney's Office, is in acceptable format, and extends the expiration date to May 6, 2009, as recommended in the memorandum of November 10, 2008.

**8.J. ACQUISITION OF RIGHT-OF-WAY ALONG 66<sup>TH</sup> AVENUE**

Commissioner O'Bryan expressed concerns about the price for this parcel. He pointed out that the property was purchased in 2003 for \$70,000, at \$35,000 per acre, and the County was now being asked to pay \$130,000 per acre.

MOTION WAS MADE by Commissioner O'Bryan  
SECONDED by Chairman Davis for discussion, to table  
the purchase of the Wilson property, and to obtain a  
second appraisal on same.

Deputy County Attorney Bill DeBraal revealed that the County's offer of \$260,000 was 15% over the appraised value of \$225,000, based on Peter Armfield and Associates' appraisal, which he believed had been done in 2007.

County Attorney Collins declared that since the appraisal is over 4 months old, and could be considered stale, the Board could order a new appraisal to see what the current market is.

The Chairman CALLED THE QUESTION, and the  
Motion carried unanimously. The Board unanimously  
approved to table the purchase of the Wilson property, and  
to obtain a second appraisal on same.



**8.K. MATERIAL FOR BLUE CYPRESS LAKE ROAD**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved purchasing 23,000 tons or 1,150 truckloads of asphalt millings from Elmo Greer and Sons, at a cost of \$201,250.00, delivered to Blue Cypress Lake Road. The Road and Bridge Division will install and compact the millings along the 4.5 miles, as recommended in the memorandum of November 11, 2008.

**8.L. AMENDMENT NO. 2 TO THE CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR INTERSECTION IMPROVEMENTS AT SR 60 AND 43<sup>RD</sup> AVENUE AND WIDENING OF 43<sup>RD</sup> AVENUE TO 5 LANES FROM SR 60 TO 26<sup>TH</sup> STREET**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved Amendment No. 2 to the Professional Engineering/Land Surveying Services Agreement with Arcadis, as recommended in the memorandum of November 3, 2008.

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

**8.M. APPROVAL OF PROFESSIONAL GEOTECHNICAL SERVICES  
AGREEMENTS, 2008-2009, RFO # 2008071**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the Professional Geotechnical Services Agreements with the following three (3) firms that have submitted fee schedules: (1) AM Engineering and Testing, Inc. of Port St. Lucie, Florida; (2) Dunkelberger Engineering & Testing, Inc. of Port St. Lucie, Florida; and (3) Ardaman & Associates, Inc. of Port St. Lucie, Florida, as recommended in the memorandum of November 3, 2008.

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

**8.N. FINAL PAYMENT TO KIMLEY-HORN AND ASSOCIATES, INC., FOR THE  
WABASSO SUB-AQUEOUS FM AND WM CROSSING PROJECT, UCP-  
960**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved final payment for \$3,533 to Kimley-Horn and Associates, Inc., as recommended in the memorandum of October 24, 2008.

**8.O. WINTER GROVE SUBDIVISION WATER ASSESSMENT PROJECT, UCP  
No. 4002, APPROVAL OF CHANGE ORDER No. 1 AND FINAL PAYMENT  
TO CONTRACTOR AND RELEASE OF RETAINAGE, W.I.P. No. 473-  
169000-0857 BID NUMBER 2008046**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously: (1) approved the total project construction cost of \$55,089.00; (2) approved Change Order No. 1 for an additional amount of \$3,872.00; and (3) approved Application for Payment No. 2 – Final as final payment to the contractor, Young's Communications Co., Inc., in the amount of \$17,422.20, as recommended in the memorandum of November 10, 2008.

**8.P. APPROVAL OF RENEWAL FOR A CLASS "E" CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY FOR WE CARE OF THE TREASURE  
COAST INC. TO PROVIDE WHEELCHAIR / STRETCHER SERVICES**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved renewal of the Class "E" Certificate of Public Convenience and Necessity for We Care of the Treasure Coast, Inc., to be effective for a period of two (2) years from February 6, 2009, to February 6, 2011, as recommended in the memorandum of November 7, 2008.

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

**8.O. RENEWAL OF PROFESSIONAL CIVIL ENGINEERING SERVICES  
AGREEMENT 2008-2009**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the agreements with: (1) Arcadis G & M, Inc. of West Palm Beach, Florida; (2) Carter Associates, Inc. of Vero Beach, Florida; (3) Kimley-Horn & Associates, Inc. of Vero Beach, Florida, and (4) McMahon Associates, Inc. of Palm Beach Gardens, Florida, and authorized the Chairman to execute same, as recommended in the memorandum of October 23, 2008.

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

**8.R. AMENDMENT TO RESOLUTION 2008-141 ABANDONING A PORTION OF  
107<sup>TH</sup> COURT IN VERO LAKE ESTATES**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved **Resolution 2008-174**, amending and correcting Resolution 2008-141, abandonment of a segment of 107<sup>th</sup> Court in Vero Lake Estates.

**8.S. RIGHT-OF-WAY ACQUISITION – 66<sup>TH</sup> AVENUE #0370, 6700 37<sup>TH</sup>  
STREET, INTERSECTION TRANSITION, PAUL A. AND MARY A.  
THORNTON, HUSBAND AND WIFE**

Vice Chairman Flescher spoke of the challenges of the acquisition process, and commended Public Works Director Jim Davis, Assistant Public Works Director Chris Mora, and

Land Acquisition Specialist Louise Gates, for transacting an acquisition that was fair and equitable.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Solari, the Board unanimously approved Alternative No. 1, the purchase of the 0.268 acre parcel on the north side of 37<sup>th</sup> Street, west of 66<sup>th</sup> Avenue for the purchase price of \$13,865.34, plus \$693.27 in attorney fees, and authorized the Chairman to execute the Purchase Agreement with Paul A. and Mary A. Thornton, as recommended in the memorandum of October 30, 2008.

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

**8.T. FEC RAILROAD REIMBURSEMENT AGREEMENT FOR GRADE  
CROSSING AND CROSSING TRAFFIC CONTROL DEVICES, 43<sup>RD</sup> STREET  
RAILROAD CROSSING CONSTRUCTION BY FDOT**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved **Resolution 2008-175**, authorizing execution of a Railroad Reimbursement Agreement for the installation of grade crossing traffic control devices, and future maintenance and adjustment of said devices; providing for the expenditure of funds; and providing when this Resolution shall take effect.

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

**8.U. RIGHT-OF-WAY ACQUISITION – 66<sup>TH</sup> AVENUE #0370, 6780 49<sup>TH</sup> STREET, INTERSECTION TRANSITION, DON AND PAM GROVES, HUSBAND AND WIFE**

Vice Chairman Flescher recognized Public Works Director Jim Davis, Assistant Public Works Director Chris Mora, and Land Acquisition Specialist Louise Gates for obtaining the necessary right-of-way for roadway improvement.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Solari, the Board unanimously approved Alternative No. 1, the purchase of 0.098 acres on the north side of 49<sup>th</sup> Street, west of 66<sup>th</sup> Avenue, for the purchase price of \$5,071.50, plus attorney fees of \$353.58; and authorized the Chairman to execute the Purchase Agreement with Don and Pam Groves, as recommended in the memorandum of November 3, 2008.

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

**8.V. PRANGE ISLANDS CONSERVATION AREA ADOPTION AGREEMENT**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the Prange Islands Conservation Area Adoption Agreement, and authorized the Chairman to execute same, as recommended in the memorandum of November 3, 2008.

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

**8.W. WORK ORDER NO. 9 (ENGINEERING/SURVEYING) MASTELLER, MOLER, REED AND TAYLOR, INC., CR512 PHASE II – DRAINAGE POND E, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT CONSERVATION EASEMENT BOUNDARY SURVEY**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved Work Order No. 9 with Masteller, Moler, Reed & Taylor, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute same, as recommended in the memorandum of October 29, 2008.

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

**8.X. WORK ORDER NO. 15 (ENGINEERING/SURVEY) – FULL & FINAL PAY, 43<sup>RD</sup> AVENUE AND STATE ROAD 60 INTERSECTION IMPROVEMENTS PROJECT, RIGHT-OF-WAY & LAND ACQUISITION “MARKS MOBIL” PARCEL BOUNDARY SURVEY, CARTER ASSOCIATES, INC. – IRC PROJECT NO. 0855, CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES CONTRACT 0725**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved payment of Carter Associates, Inc. Invoice No. 08462-1, dated October 30, 2008, in the amount of \$3,100.00 for full and final payment of Work Order No. 15, as recommended in the memorandum of November 3, 2008.

**8.Y. CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR BRIDGE  
REPLACEMENTS AND WIDENING OF 66<sup>TH</sup> AVENUE FROM SOUTH OF  
SR 60 TO 59<sup>TH</sup> STREET, AMENDMENT NO. 6**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved Amendment No. 6 to the Professional Engineering/Land Surveying Services Agreement with Arcadis, as recommended in the memorandum of November 3, 2008.

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

**8.Z. MISCELLANEOUS BUDGET AMENDMENT 002**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved **Resolution 2008-176**, amending the Fiscal Year 2008-2009 Budget.

**8.AA. HOLIDAY SCHEDULE FOR INDIAN RIVER COUNTY LIBRARY SYSTEM**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the following Holiday Schedule for the Indian River County Library System, as recommended in the memorandum of November 18, 2008:



**THANKSGIVING** – (Thursday, November 27, 2008)

Main Library, North County Library, Gifford Youth Activity Center Library and Law Library:

Closed 5:00 p.m. Wednesday, November 26, 2008,

All day Thursday, November 27, 2008, and Friday November 28, 2008.

**CHRISTMAS** - (Thursday, December 25, 2008)

Main Library, North County Library, Gifford Youth Activity Center Library and Law Library:

Closed at 5:00 p.m. Wednesday, December 24, 2008,

All day Thursday, December 25, and Friday, December 26, 2008

**NEW YEAR'S DAY** – (Thursday, January 1, 2009)

Main Library, North County Library, Gifford Youth Activity Center Library and Law Library:

Closed at 5:00 p.m. Wednesday, December 31, and New Year's Day, January 1, 2009

**8.BB. AGREEMENT WITH IRC/POINTE WEST/PYROTECNICO FOR FIREWORKS**

Vice Chairman Flescher praised the cost-sharing arrangement that the County has with Pointe West for this recreational endeavor. He reported that he had conveyed his concerns to Chuck Mechling that the price of \$6,000 was too high, and that Mr. Mechling had presented his concerns to the Pyrotecnico representative, who was willing to reduce the cost.

**Chuck Mechling**, 1999 Pointe West Drive, related that Pyrotecnico had agreed to provide the fireworks display at cost. This resulted in a \$2,000 reduction of the total cost, which

would be apportioned between Pointe West and the County, and which would allow Pointe West to add some “bounce houses” to the day’s festivities.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Chairman Davis for discussion, to approve the Contract with Pyrotecnico, and to accept the \$2,000 cost reduction to be split 50/50 with Pointe West.

Commissioner Solari announced that the fireworks display would be held on December 20, 2008.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved the Contract with Pyrotecnico, with a \$2,000 reduction to be split 50/50 with Pointe West, and authorized the County Administrator or his designee to execute same, along with Pointe West as co-sponsor.

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

**8.CC. SOUTH COUNTY REGIONAL PARK (SCRP) PLAYGROUND**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously authorized the County Administrator or his designee to initiate purchase and installation of the GameTime Playground to Dominica Recreation Products in the amount of \$124,999.76 for South County Regional Park, as recommended in the memorandum of November 6, 2008.

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

**8.DD. 2008 BAYTREE AND MARBRISA DUNE RESTORATION PROJECT,  
CONSTRUCTION CONTRACT – CKA AND ASSOCIATES, INC.**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the Privity Agreement with CKA and Associates, Inc., in the amount of \$347,806, as recommended in the memorandum of November 6, 2008.

Pursuant to staff, the project is eligible for \$173,903 or 50% cost sharing with FDEP under Grant 071R2. Additionally, and as stated in the Tri-Party Agreement, Baytree and Marbrisa will jointly fund the 50% or \$173,903 local match requirement of the Grant. Therefore the County will expend no local dollars on this project.

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

**8.EE. MISCELLANEOUS BUDGET AMENDMENT 022**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved **Resolution 2008-177**, amending the fiscal year 2007-2008 Budget.

**8.FF. VACATION COMPENSATION CONSIDERATION**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously authorized the payment of up to one week for excess vacation time over the maximum accrual. Employees will

forfeit all additional vacation accruals over the maximum, all as recommended in the memorandum of November 13, 2008.

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

**10. PUBLIC ITEMS**

**10.A. PUBLIC HEARINGS**

**10.A.1. LARS HAKANSSON AND ROBIN DAVIS' REQUEST FOR ABANDONMENT OF A PORTION OF 48<sup>TH</sup> AVENUE IN WABASSO (LEGISLATIVE)**

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 October 16, 2008 to provide background information on the request by Lars Hakansson and Robin Davis for the County to abandon a segment of right-of-way located on 48<sup>th</sup> Avenue, one block east of US Highway 1 in Wabasso, and between 85<sup>th</sup> Place and 86<sup>th</sup> Street, within the Weona Park Subdivision. He displayed slides and aerials of the subject right-of-way (copy on file), and divulged that the abandonment would not affect the zoning line. He then presented staff's recommendation that the Board of County Commissioners approve the right-of-way abandonment, with the reservation of a drainage easement over the entire right-of-way area, and a 30' wide utility easement running north/south and centered in the existing right-of-way.

Chairman Davis and Commissioner O'Bryan asked Director Boling whether the subject right-of-way might become necessary for future access and have to be repurchased, and learned from Director Boling that it would not.

*The Chairman opened the public hearing.*

**Arthur Krieger**, 7625 58<sup>th</sup> Court, who had been working with the owners on the abandonment, expressed his appreciation for the County's cooperation in the right-of-way abandonment.

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

ON MOTION by Commissioner Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved **Resolution 2008-178**, providing for the closing, abandonment, vacation and discontinuance of the segment of 48<sup>th</sup> Avenue (Oleander Avenue) that lies between 85<sup>th</sup> Place (Poinsettia Blvd) and 86<sup>th</sup> Street (Palm Blvd) in Wabasso, said land lying in Indian River County, Florida.

**10.A.2. COUNTY INITIATED REQUEST TO AMEND THE CAPITAL IMPROVEMENTS ELEMENT OF THE COMPREHENSIVE PLAN (LEGISLATIVE)**

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

Community Development Director Bob Keating, through a PowerPoint presentation (copy on file), and a recap of the backup memorandum dated November 5, 2007, provided background description and analysis on the request to amend the Capital Improvements Element (CIE) of the Comprehensive Plan. He noted that today's hearing was a continuation of the November 4, 2008 hearing, at which time staff was asked to address the Board's concerns regarding the Transportation section (which basically focused on right-of-way acquisitions for the 43<sup>rd</sup> and 66<sup>th</sup> Avenue road projects) of the Capital Improvements Program (CIP). He thereafter detailed the changes which staff had made to the draft CIE.

Director Keating noted that the Capital Improvements Element (CIE) of the Comprehensive Plan requires an annual update, and must demonstrate “Financial Feasibility”, with the amended Capital Improvements Element submitted for compliance review to the Department of Community Affairs (DCA) by December 1, 2008. Director Keating thereafter presented staff’s recommendation that the Board approve the amendment to the Capital Improvements Element, and direct staff to transmit the amended Capital Improvements Element to the DCA for review.

Discussion ensued between the Board and staff regarding whether the \$2 million allocation for road projects would be enough to purchase all of the necessary right-of-way parcels on 66<sup>th</sup> Avenue. Director Mora acknowledged that eventually more money would be needed.

Budget Director Jason Brown pointed out that each portion of the Comprehensive Plan is amended each year, and that adjustments to the funding can be made as needed at that time.

Commissioner Wheeler sought and received information from Assistant Public Works Director Chris Mora regarding the 26<sup>th</sup> Street (43<sup>rd</sup> Avenue to US 1) road widening project, from which \$2 million had been transferred for the right-of-way purchases on 66<sup>th</sup> Avenue. He then requested that staff provide various statistics to him regarding the right-of-way acquisitions on 66<sup>th</sup> Avenue; if the numbers are what he assumes, his first priority would be to protect the homeowners who are being inconvenienced, by speeding up the right-of-way acquisition process. He offered suggestions towards streamlining the acquisition processes: (1) set up a special department to deal strictly with acquisitions; and (2) focus on purchasing needed right-of-way, then start looking at building the projects with the remaining monies.

Chairman Davis supported Commissioner Wheeler’s sentiments, and wanted to see staff develop a plan for a right-of-way acquisitions department.

Director Mora and County Administrator Baird provided information for Vice Chairman Flescher regarding two segments of the SR 60 road project, Segment 1 (2 miles from 82<sup>h</sup> Avenue to 66<sup>th</sup> Avenue) which cost \$38 million, and Segment 2 (1 ½ miles from I-95 to 82<sup>nd</sup> Avenue).

Vice Chairman Flescher voiced that funding had already been designated for the 66<sup>th</sup> Avenue Road Project, and that there had been a cost reduction on the SR 60 project; and wondered why only \$2 million was available for the right-of-way acquisition fund at this time. He expressed concern over whether the County had enough revenue to satisfy the Notice to Owner letters which have already been sent.

Director Brown acknowledged that the County was running low on road project funding, and could be looking at a serious shortfall in funds for road projects overall. He noted that this was not a problem unique to Indian River County; the Federal Government ran out of money last month for road projects.

Commissioner Wheeler reiterated that he would be in favor of approving the amendment to the CIE, but to make the priority be property acquisition, and to not necessarily build roads this year.

County Administrator Baird suggested the Board be given a status update every three months.

Chairman Davis supported planning for future growth by obtaining the right-of-way, noting that would also enable developers to put in some of the roads.

Commissioner O'Bryan wanted statistics on any of the road projects which were at 60% design completion, and also wanted to establish personal accountability to track the progression of a project to its completion.

Discussion continued as Commissioners expressed their desire to establish a tracking mechanism, and to have staff develop a Department of Acquisitions to streamline the right-of-way acquisition process.

*The Chairman opened the public hearing.*

**Penny Chandler**, IRC Chamber of Commerce, questioned the validity of removing funding from infrastructure improvements, such as was proposed on 26<sup>th</sup> Avenue. Ms. Chandler requested that if changes were going to be made to infrastructure improvements within the Enterprise Zone, that a report be provided to the Enterprise Zone Advisory Committee.

**Bob Johnson**, Coral Winds Subdivision, opposed approval of the proposed CIE, fearing that it would cause an increase in gasoline taxes. He also suggested that the County widen one, rather than two, lanes on 43<sup>rd</sup> Avenue.

**Dian George**, 27th Avenue, thanked Commissioner Wheeler and supported his stance on obtaining right-of-way properties prior to building the roads.

**Adriene Cuffe**, 695 43<sup>rd</sup> Avenue, also agreed with Commissioner Wheeler, and further expressed her desire for 43<sup>rd</sup> Avenue to be 3-laned, according to the original plan.

**Ruth Stanbridge**, 4835 66th Avenue, urged the Commissioners to honor the commitments made to the landowners where right-of-way is needed, and to assign a realistic figure for road acquisitions.

*The Chairman called a recess at 10: 40 a.m. and reconvened the meeting at 10:50 a.m., with all members present.*

**Charlene Brown**, 5145 66<sup>th</sup> Avenue, believed that the payback from the FDOT from SR60 should be put into the purchase of right-of-way.



Administrator Baird acknowledged that the residents on 66<sup>th</sup> Avenue were unhappy with the amount of funding budgeted for the acquisitions on their road, and reiterated that the plan could be changed; the Board could direct administration to work on other avenues of funding for the project, if it so desired.

**Joseph Paladin**, President Black Swan Consulting, cautioned the Board to be sure that any changes in the design to 43<sup>rd</sup> Avenue would maintain concurrency, noting that when the project had been designed, the residents had been promised an 80 foot right-of-way. He also advised amending the LDR's to permit shifting funds back and forth between Districts.

**Ms. Stanbridge**, 4835 66<sup>th</sup> Avenue, suggested that the Board be provided with updates on the County road projects every thirty days, rather than every three months, as suggested earlier by Administrator Baird.

A brief discussion ensued among Commissioners and staff regarding the optional sales tax and the gas tax.

**Ms. George** opposed any additional taxation.

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

Director Brown clarified for Commissioner Wheeler the total amount available, and the total amount required, for road projects.

MOTION WAS MADE by Commissioner Wheeler for the County to set forth, with the Capital Improvements Program, that priorities have changed from funding projects to funding right-of-way acquisitions. MOTION DIED FOR LACK OF A SECOND.

Discussion ensued between Commissioners and staff regarding options for increased funding for the 66<sup>th</sup> Avenue Road Project.

Chairman Davis declared that it was not feasible to do the 66<sup>th</sup> Avenue Road Project with the \$2 million allocated.

Public Works Director Jim Davis advised that there was a substantial amount of funding within the five-year Capital Improvements Program for right-of-way acquisition, and if the \$2 million budgeted for 66<sup>th</sup> Avenue is over-expended, funding can be borrowed from other projects.

Administrator Baird suggested aggressively purchasing the right of way, re-adjusting as needed, and reviewing projects and status with the Board every three months.

Commissioners and staff engaged in detailed discussion on the 43<sup>rd</sup> and 66<sup>th</sup> Avenue Road Projects, the five-year plan, the funds which had been advanced to the FDOT for the SR 60 Road Project, and the possibility of transferring funds designated for other projects to the 66<sup>th</sup> Avenue project.

Relative to transferring funds from other projects, Commissioner Solari felt it would be best for the Metropolitan Planning Organization (MPO) to come back with suggestions on any project which could be removed at this time.

Chairman Davis wanted to move both construction and right-of-way acquisitions forward, with some exceptions.

Commissioner Wheeler reiterated that he would support the CIP, provided that it was clear that the number 1 priority would be right-of-way acquisitions, rather than construction. Not only did he not want to run out of money to purchase right-of-way, he wanted to see things speeded up, so the homeowners would not be in limbo.

Chairman Davis wanted to see staff come up with a plan to fund the right-of-way purchases for those owners on 66<sup>th</sup> Avenue who have been given their Notice to Owner letters, and to see this worked out in the 2009/2010 and the 2010/2011 fiscal years.

MOTION WAS MADE by Commissioner Wheeler, to approve staff's recommendation, with the caveat that a priority for expenditures would be right-of-way acquisitions, and with the Metropolitan Planning Organization (MPO) evaluating the roads and projects to find additional funding for same. MOTION DIED FOR LACK OF A SECOND.

Commissioner O'Bryan felt that the County needed to balance its right-of-way acquisition program with certain roadway projects. He wanted to approve the amendments to the Comprehensive Plan's CIE as is, and re-evaluate specifics once the statistics related to right-of-way acquisitions on 66<sup>th</sup> Avenue (requested by Commissioner Wheeler earlier in meeting), have been provided by staff.

Commissioner Wheeler clarified that his Motion was intended to make purchasing right-of-way, and not road building, the first priority when funds run low.

**Ruth Stanbridge**, 4835 66<sup>th</sup> Ave., sought assurance from the Board that negotiations with the landowners on 66<sup>th</sup> Avenue who have been provided with the Notice to Owner letters would not be delayed.

Chairman Davis responded that transactions need to continue in the time frame stipulated by Resolution 2008-139 for those individuals who have received the Notice to Owner letters, while Commissioner O'Bryan pointed out that the information which had previously been requested by Commissioner Wheeler would be used to expedite transactions with the homeowners.

Administrator Baird divulged that Commissioners would be receiving a report in two days regarding a change in organization which puts more people into the right-of-way acquisitions area. He declared that Mrs. Stanbridge would be provided with a copy of the report.

Board and staff responded to Mr. Paladin's questions on what constitutes a willing seller, and on the projects/funds which are in the first three years of the Capital Improvements Program.

**Ms. Brown**, 5145 66<sup>th</sup> Avenue, explained why some of the residents of 66<sup>th</sup> Avenue had terminated their negotiations with the County.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, to adopt staff's recommendation to amend the text of the Comprehensive Plan's Capital Improvements Element, with the following conditions: the purchase of right-of-way shall be the first priority for funding, and the MPO, with staff's input, shall evaluate as soon as possible what roads should be prioritized, so determinations can be made as to what funds can be shifted around.

Commissioner Wheeler conveyed that he was going to meet with Attorney Collins and Administrator Baird to discuss streamlining the right-of-way acquisition process.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board adopted **Ordinance 2008-018**, *as amended above*, amending the text of the Comprehensive Plan's Capital Improvements Element; and providing severability and effective date.

**10.A.3. CONSIDERATION OF THE INDIAN RIVER COUNTY COMPREHENSIVE  
PLAN EVALUATION AND APPRAISAL REPORT (EAR) (LEGISLATIVE)**

Community Development Director Bob Keating, through a PowerPoint presentation (copy on file), provided background, analysis, and overall objectives of the Evaluation and Appraisal Report (EAR). He reported that the first EAR was adopted on December 17, 1996, and the second EAR must be submitted to Department of Community Affairs (DCA) on or before December 1, 2008. Director Keating asked the Board to approve the draft EAR by approving the Resolution, and to direct staff to transmit the adopted EAR to DCA for review.

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

ON MOTION by Commissioner O'Bryan , SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2008-179**, adopting the Evaluation and Appraisal Report for the Indian River County Comprehensive Plan; stating the intent of the Board of County Commissioners to amend the Comprehensive Plan based upon recommendations contained in the report; and approving the transmittal of the report to the Department of Community Affairs in accordance with Section 163.3191, Florida Statutes.

Chairman Davis extended kudos to Director Keating and the entire staff for an excellent job on the EAR.

*The Chairman called for a recess at 12:05 p.m. and reconvened the meeting at 12:11 p.m., with all Commissioners present, and with Attorney Collins absent.*

**10.B. PUBLIC DISCUSSION ITEMS**

**10.B.1. REQUEST TO SPEAK FROM MARY MCGUIRE SMITH REGARDING  
CLARIFICATION OF RULES AND PROTOCOL**

This item was deleted.

**10.B.2. REQUEST TO SPEAK FROM EVERETTE BROWN REGARDING 43<sup>RD</sup>  
AVENUE**

**Katia Brown**, 4236 11<sup>th</sup> Street, spoke on behalf of her husband, Everett Brown. She thanked the Commissioners for taking an interest in the effect that the road widening is having on the residents. However, she reported that the County's plans continue to negatively impact her family's property, and asked the Board to either purchase the home, or to offset the damages so the home can be sold.

NO ACTION REQUIRED OR TAKEN.

*(Clerk's Note: Attorney Collins rejoined the meeting at 12:12 p.m.)*

**10.B.3. REQUEST TO SPEAK FROM DR. STEPHEN J. FAHERTY, SR.  
REGARDING VERO BEACH UTILITY AND MIAMI-DADE MUNICIPAL  
TAX ISSUE AND PROHIBITION RESOLUTION**

**Dr. Stephen J. Faherty, Sr.**, 2120 Captains Walk, recalled discussion and actions which occurred at the Regular BCC Meeting of August 12, 2008, and which pertained to the Electric Utility Referendum. He detailed the concerns of the city utility customers who resided outside the city limits and did not receive representation, and presented an update on the situation, which included the circulation of a petition to all city utility customers requesting that they support the establishment of a representative utility authority.

Dr. Faherty divulged that a Resolution had been passed by Miami-Dade County protesting the imposition of a 25% water surcharge by the cities of Miami and North Miami, and advised that the cities were organizing to combat a prohibition against imposing municipal taxes on County residents. He requested that the Board attend the December 9, 2008 meeting of the Vero Beach City Utility Advisory Commission, at which public comments would be solicited.

His other requests included:

- Resolution (similar to that of Miami-Dade) to be sent to the County's four state legislators, requesting legislation prohibiting the city's imposition of a 10% municipal surcharge for electricity on County residents outside of the city limits
- Resolution requesting legislation prohibiting the imposition of a debt or liability on customers outside of the city limits by revenue bonds or other types of debt instruments, unless approved by referendum
- Resolution requiring legislation for the city to hold a referendum for all customers to approve capital expenditures over \$10 million
- Authorize staff to coordinate with Miami-Dade Government, other counties, and the Florida Association of Counties on legislative language, actions, etc., which should be presented to the County's four state legislators at the next legislative session
- Extend an offer to the four state legislators to meet in County Commission Chambers regarding the City Electric Utility

Concluding, Dr. Faherty discussed the revenue shortfall that was awaiting the city utility, and opined that it was the County residents who would be taxed to make up the deficit.

He thereafter responded to questions from the Commissioners regarding actions which had been taken towards getting appropriate legislation for this situation.

Chairman Davis stated that he would contact Dr. Faherty and that the Board would do anything it could to advance this item with the Florida Association of Counties.

NO ACTION REQUIRED OR TAKEN.

**10.C. PUBLIC NOTICE ITEM**

**10.C.1. SCHEDULED FOR PUBLIC HEARING ON DECEMBER 2,**

**2008:**

**COMPREHENSIVE PLAN'S FUTURE LAND USE ELEMENT TO ALLOW UP TO TWENTY FIVE PERCENT (25%) RECREATIONAL VEHICLE USE WITHIN THE MOBILE HOME RENTAL PARK (MHRP) LAND USE CATEGORY, AND TO AMEND THE TEXT OF THE COMPREHENSIVE PLAN'S FUTURE LAND USE ELEMENT AND THE TEXT OF THE COASTAL MANAGEMENT ELEMENT BY REVISING THE DEFINITION OF THE COASTAL HIGH HAZARD AREA (CHHA), AND BY UPDATING THE COASTAL HIGH HAZARD AREA MAPS AND DEPICTING THE CHHA ON THE FUTURE LAND USE MAP (LEGISLATIVE)**

Attorney Collins read the notice into the record.

**11. COUNTY ADMINISTRATOR'S MATTERS**



**11.A. CHILDCARE RESOURCES OF INDIAN RIVER COUNTY USE OF FAIR  
GROUNDS EXPO CENTER**

County Administrator Joseph Baird explained that the County had waived fees for several other venues, but due to operating expenses, the loss of revenue could become problematic. He reported that the fees had previously generated about \$100,000 of income, and noted that the fee for a non-profit organization is \$525 a day, and \$775 for a profit organization. Administrator Baird believed it was in the County's best interest to limit the fee waivers, and asked for Board direction.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Solari, to DENY Childcare Resources of Indian River County's request to waive the fees for the inaugural Touch-a-Truck Family Festival Fundraising event on March 28, 2009 at the Fairground Expo Center.

Commissioner Wheeler acknowledged the importance of the non-profit agencies; noted that Childcare Resources receives some funding from the County; and discussed the need to defray operating expenses.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board directed staff to DENY Childcare Resources of Indian River County's request to waive the fees for the inaugural Touch-a-Truck Family Festival Fundraising event on March 28, 2009 at the Fairground Expo Center.

**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**

**12.I.1. STATE ROAD 60 BETWEEN I-95 AND 82<sup>ND</sup> AVENUE, JOINT**

**PARTICIPATION AGREEMENT WITH THE FLORIDA DEPARTMENT OF  
TRANSPORTATION ADVANCE FUNDS FOR WIDENING STATE ROAD 60  
FROM 4-LANES TO 6-LANES**

Assistant Public Works Director Chris Mora reviewed the backup memorandum and used a PowerPoint (copy on file) to provide background and analysis on the SR 60 widening project. Today's request involves Segment 2, the final segment of the project which needs to be widened, the 6-laning of SR 60 from I-95 to 82<sup>nd</sup> Avenue. Director Mora reported that construction would begin in 2009. He informed the Board that construction costs had dropped from the original estimates on both segments, which has resulted in reduced SR 60 interest share fees charged to developers. Director Mora thereafter presented staff's recommendation to

approve the Locally Funded Agreement to fund the widening of SR 60, from 4-lanes to 6-lanes, between I-95 and 82<sup>nd</sup> Avenue.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Alternative No. 1, the State of Florida Department of Transportation (FDOT) Advance Reimbursement Locally Funded Agreement to fund the widening of SR 60, from 4-Lanes to 6-Lanes, between I-95 and 82<sup>nd</sup> Avenue, and authorized the Chairman to execute same, as recommended in the memorandum of November 12, 2008.

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

**12.I.2. AWARD FOR CONSTRUCTION OF EGRET MARSH REGIONAL  
STORMWATER PARK, PROJECT NO. 0430, BID NO. 2008076 AND  
LICENSE AGREEMENT WITH HYDROMENTIA, INC.**

Public Works Director Jim Davis reported that this storm water project was required for County compliance with the NPDES (National Pollutant Discharge Elimination System) and EPA (Environmental Protection Agency) requirements for cleaning up surface waters and water bodies. He reported that the project would be constructed along 74<sup>th</sup> Avenue at 4<sup>th</sup> Street, and explained how the project would work to remove nitrogen and phosphorous from stormwater. Director Davis presented staff's request for the Board to: (1) award the construction contract; (2) approve the License Agreement with HydroMentia, Inc.; and (3) seek approval from SJRWMD's governing Board for the \$1.5 million Grant Agreement to aid in construction of the project.

Director Davis reviewed the backup memorandum to provide the bid history of this item, which involved a conflict between H & D Construction, Inc., the lowest responsive bidder, and Close Construction, Inc., the second lowest bidder. He explained why staff felt that the bid should be awarded to the second lowest bidder, Close Construction, Inc.

Commissioner Flescher questioned the prudence of not using the least expensive bid, which would save \$120,000 or \$170,000, because not enough "T's" and "I's" were crossed. He ascertained from Director Davis that the information has now been received from H & D.

County Attorney Will Collins presented explanation as to why H & D's bid was determined by the Committee to be non-responsive at the time of submittal. He advised that the Board has the authority to decide what were technicalities or irregularities, and waive such, but the Committee's recommendation was that the original bid application was lacking in matters of responsiveness.

County Administrator Baird explained to Commissioner Wheeler why, if H & D's bid was determined to be inadequate, it was not immediately disqualified.

Commissioner Wheeler commented that if H & D was weak on their application, he would question how strong they would be on the job. He felt that it was important to follow policies and procedures.

Director Davis clarified for Commissioner O'Bryan why there were discrepancies among the bids in the cost for various items which the construction companies would have to purchase while doing the project.

Commissioner Solari reminded the Commissioners that H & D's bid would provide a \$170,000 savings to the citizens of the County, and felt that the determining factor in this situation should not be the protest letter, but whether the actual items which were missing were substantive enough to turn away the bid award from H & D.

Director Davis next provided the details of the License Agreement with HydroMentia; reported that SJRWMD was fully behind funding this item; and re-stated staff's recommendation to award the bid to Close Construction, and to approve the License Agreement with HydroMentia. He felt comfortable that SJRWMD would execute the \$1.5 million Grant Agreement on December 9, 2008, which documents would be brought back to the Board for execution.

Further discussion ensued as staff responded to the Commissioners' questions regarding the two bidders and whether the protest letters submitted by H & D Construction, Inc. (pages 532-537), and by Close Construction, Inc. (pages 470-474) were valid.

**Malcolm Cunningham, Esquire**, representing H & D Construction, Inc., refuted the claim that H & D's original bid package contained sufficient omissions to cause their disqualification. He reminded the Commissioners that \$170,000 was a substantial sum, and asked the Board to exercise its power to waive the technicalities and award the bid to H & D.

Attorney Collins responded to Commissioner Wheeler's query on which items were omitted by H & D, and which caused staff to award the bid to Close Construction.

**James Horn**, CEO of H & D Construction, acknowledged that the information should have been included in the bid package, and that a mistake had been made, but the information was supplied expeditiously. He told the Board that if his company did not get the job, a lot of local employees would lose jobs.

**Attorney Cunningham** declared that Close's bid also contained missing documents, and he did not feel that one company should be disqualified on the basis of technical information, and the other not disqualified on that same basis.

**Danny Boromei**, 881 SW 120<sup>th</sup> Drive, Okeechobee, and another bidder, explained why he felt that H & D's bid should be considered nonresponsive.

MOTION WAS MADE by Vice Chairman Flescher to approve Option #2, determine that the H & D Construction Company, Inc. protest is valid; award the bid to H & D Construction Company, Inc.; and approve the License Agreement with HydroMentia, Inc. MOTION DIED FOR LACK OF A SECOND.

Commissioner Wheeler pointed out that legal staff had advised that H & D's protest was not valid, because the protest from Close was given on time. Thus, he would support Vice Chairman Flescher's Motion, but with the deletion of the language stating that H & D's protest was valid.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, to approve Option #2, to award the bid to H & D Construction Company, Inc., and to approve the License Agreement with HydroMentia, Inc., conditional upon the deletion of the language stating that the H & D Construction Company, Inc.'s protest is valid.

Commissioner Solari added that we are moving in the right direction with this Motion. He pointed out that if staff is held to every little technicality; it could cost the taxpayers money. He applauded staff for the follow-up in obtaining the necessary documentation from H & D.

Commissioner O'Bryan's comments on an inconsistency he had noted, relative to Board allowances for technical glitches, sparked brief debate among the Commissioners regarding whether or not the Board was acting consistently with prior actions. Chairman Davis set forth the importance of upholding the integrity of the bid process, and the lowest most responsive bid.

**Margaret Palmer**, President HydroMentia, Inc., wanted the Board to know that the \$170,000 which would be saved by using H & D could not be applied elsewhere. She applauded Public Works' perseverance with this project and spoke about the effectiveness of the Algal Turf Scrubber. Ms. Palmer thereafter offered to provide any interested parties with additional information on the Algal Turf Scrubber.

Regarding Ms. Palmer's above comment, Commissioner Solari felt that the taxpayers would still be saving \$170,000.

Director Davis noted that a summary of staff's recommendation was on page 464 of the backup, and he sought and received confirmation that the entire recommendation was included in Vice Chairman Flescher's Motion.

Commissioner O'Bryan questioned the \$200,000 contingency amount set aside for Change Orders or work directives which were included in staff's recommendation.

Administrator Baird remarked that this dollar amount could be brought back to the Commissioners at a future time, if necessary.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner O'Bryan opposed), the Motion carried. The Board: (1) approved to award the construction contract to H & D Construction Company, Inc. and approve the License Agreement with HydroMentia, Inc., contingent upon (a) approval of the \$1.5 million Legislative appropriation by SJRWMD's Governing Board; and (b) upon receipt and proper filing of all required bonds, Certificates of Insurance, and all other necessary construction contract documents from H & D Construction Company, Inc., on or before December

10, 2008; (2) approved the sample Construction Contract Agreement and authorized the Chairman to execute the completed Agreement if the ATS License Fee has also been approved, and when required performance and payment bonds have been submitted along with Certificates of Insurance, and all other necessary construction contract documents, and the County Attorney has approved the Agreement as to form and legal sufficiency; (3) authorized approximately a 4% (or estimated \$200,000) construction contract amount for contingencies; and (4) approved the License Agreement (which includes the \$380,000 ATS License Fee) with HydroMentia, Inc., and authorized the Chairman to sign two copies of the Agreement, contingent upon (a) approval of the \$1.5 million Legislative appropriation by SJRWMD's Governing Board; and (b) receipt and proper filing of all required bonds, Certificates of Insurance, and all other necessary construction contract documents from H & D Construction, Inc., on or before December 10, 2008.

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

*The Chairman called a recess at 1:44 p.m. and reconvened the meeting at 1:57 p.m., with all members present.*



**12.J. UTILITIES SERVICES**

**12.J.1. SOUTH AND NORTH COUNTY REVERSE OSMOSIS WATER TREATMENT PLANT, TECHNICAL ASSISTANCE IN WATER SUPPLY PLANNING PROJECTS, CAMP DRESSER & MCKEE, INC. (CDM) – AMENDMENT NO. 2 TO WORK ORDER NO. 5**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved Amendment No. 2 to Work Order No. 5 with Camp Dresser & McKee, Inc. (CDM), in the amount of \$30,000, adjusting the contract for Work Order No. 5 to \$130,000.00, and authorized the Chairman to execute same, as recommended in the memorandum of November 5, 2008.

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

**12.J.2. AMENDMENT NO. 4 TO WORK ORDER NO. 2 TO PBS&J – ADDITIONAL MODELING TASKS ASSOCIATED WITH CONSUMPTIVE USE PERMIT**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously: (1) approved Amendment No. 4 to Work Order No. 2 with Post, Buckley, Schuh, & Jernigan (PBS&J); (2) approved additional design fees not to exceed \$36,000.00; and (3) authorized the Chairman to execute the same, as recommended in the memorandum of November 5, 2008.

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

**12.J.3. SPOONBILL MARSH WETLAND FACILITY – UCP 2785, CHANGE  
ORDER NO. 1 FOR TIM ROSE CONTRACTING, INC.**

MOTION WAS MADE by Commissioner Wheeler,  
SECONDED by Commissioner Solari, to approve staff's  
recommendation.

Under discussion, Commissioner O'Bryan conveyed that he had toured the area  
and the contractor was doing an excellent job. He also extended kudos to Director Olson for a  
great job on this facility.

The Chairman CALLED THE QUESTION and the  
Motion carried unanimously. The Board approved  
Change Order No. 1 to Tim Rose Contracting, Inc., for  
\$128,928.65, and authorized the Chairman to execute  
same, as recommended in the memorandum of October  
15, 2008.

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

**12.J.4. SR60 FROM 87<sup>TH</sup> AVENUE TO 90<sup>TH</sup> AVENUE CONFLICT RESOLUTION  
WITH FDOT DRAINAGE, PAVEMENT AND TRAFFIC SIGNAL  
IMPROVEMENTS, APPROVAL OF WORK ORDER NO. 8 FOR  
ENGINEERING DESIGN SERVICES TO RETAIN SCHULKE, BITTLE &  
STODDARD AND APPROVAL OF PROJECT FOR PUBLIC BID, UCP #3098**

ON MOTION by Commissioner Wheeler , SECONDED  
by Vice Chairman Flescher, the Board unanimously: (1)  
approved the total construction and consulting costs for

the project estimated at \$2,064,569.50; (2) approved the project for public bidding through the County Purchasing Division; (3) approved retaining Schulke, Bittle & Stoddard for engineering and surveying services; (4) approved Work Order No. 8 with Schulke, Bittle & Stoddard for a total amount of \$108,500.00, and (5) authorized the Chairman to execute same, as recommended in the memorandum of September 24, 2008.

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

### **13. COUNTY ATTORNEY MATTERS**

#### **13.A. POINTE WEST SOUTH VILLAGE, PHASE I P.D., DEVELOPER: POINTE WEST OF VERO BEACH, LTD., DEFAULT UNDER SIDEWALK CONTRACT**

County Attorney Collins reported that Pointe West South Village, which was in default on a sidewalk contract, has requested an extension. They had hoped to have the sidewalks completed before November 18, 2008; however, since the sidewalk construction is two-thirds done, Pointe West needs the extension. Attorney Collins thereafter presented staff's recommendation that the Board grant Pointe West the extension. He noted that Pointe West's cash deposit will be refunded to them upon completion of the sidewalk.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Solari, the Board unanimously: (1) approved the Third Modification to Contract for Construction of Required Sidewalk Improvements No. PD-04-04-06-CFCSIDE (99070081), with Pointe West of Vero Beach, Ltd., to extend the sidewalk completion date to August 17, 2010; (2) approved the accompanying Cash Deposit and Escrow Agreement; and (3) authorized the

Chairman to execute same, as recommended in the memorandum of November 7, 2008.

**13.B. ATTORNEY-CLIENT SESSION: DIVOSTA HOMES, L.P. AND DIVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER COUNTY, CASE NO. 20070109-CA-19**

Attorney Collins reviewed the backup memorandum of November 10, 2008 to provide background information on the request to have an attorney-client session concerning the litigation with DiVosta Homes, L.P. and DiVosta Homes Holdings, L.L.C. on the topic of Waterway Village concurrency. He stated that the attorney-client session would be held on December 2, 2008, at 11:30 a.m. in the County Commissioner's Conference Room (rather than the County Administrator's Conference Room, as was stated in the memorandum).

*No Board action required or taken*

**14. COMMISSIONER ITEMS**

**14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN**

**14.A.1. RESOLUTION AND RECOMMENDATION FOR "STAN MAYFIELD MEMORIAL HIGHWAY"**

Chairman Davis had been notified about a movement going forward at the State level to name a portion of SR 60 after the late State Representative, Stan Mayfield, who had advanced the SR 60 Road Project. He asked for Board support of the Resolution of Support.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Solari, to approve sending the Resolution of Support to the State Legislature, that State Route 60 from I-95 west to the Florida Turnpike

should be named “The Stan Mayfield Memorial Highway.”

Under discussion, Commissioner Wheeler remarked that the County has consistently taken the position to not name roads after people, but in this case, it would be a State, and not a County, action.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved sending the Resolution of Support to the State Legislature, that State Route 60 from I-95 west to the Florida Turnpike should be named “The Stan Mayfield Memorial Highway”, as recommended in the memorandum of November 13, 2008.

*Clerk’s Note: The Resolution of Support is a third-party Resolution, to be executed jointly with Indian River County, the Indian River County and Sebastian Chambers of Commerce, the Tax Collector, the Republican Party of Indian River County, Indian River Medical Center, the Economic Development Division of the Chamber of Commerce, and Indian River State College.*

COPY OF RESOLUTION OF SUPPORT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**14.B. COMMISSIONER JOSEPH E. FLESCHER, VICE CHAIRMAN-NONE**

**14.C. COMMISSIONER PETER D. O'BRYAN**

**14.C.1. DISCUSSION OF STATUS OF OFFER TO MAJOR LEAGUE BASEBALL  
TEAM**

Commissioner O'Bryan recapped the situation with the Baltimore Orioles, who had been presented with a County offer to utilize the Dodgertown facility for spring training and other development activities. At this time, the Orioles were also considering an offer from Sarasota County and have not yet confirmed or denied their acceptance of the County's offer. He related that the contract with Dodgertown's current management company expires on December 31, 2008, conjointly with the Dodgers' contract, and pointed out the need to have in place an alternative management plan for the facility, should the Orioles decline the County's offer. He felt it would be inappropriate, and perhaps cause for lawsuit, to have two offers ongoing simultaneously, and felt that if an offer is made to another management facility, the first offer (to the Orioles) should be rescinded.

Chairman Davis wanted to have staff begin drafting a Request for Proposal (RFP) so the County would be prepared to go out to bid, should it become necessary.

Administrator Baird divulged that next week Craig Cowan of the Dodgers would be providing him with the costs of maintaining Dodgertown, and noted that the County would need to determine at what level the facility would be kept open. He informed the Commissioners that there were some other interested parties in the baseball venue, which could not be discussed at this time.

Chairman Davis advocated having a temporary plan in place until some type of venue could be secured for Dodgertown.

Commissioner O'Bryan observed that the Orioles had told the County to negotiate all it wants, and he wanted to see the County Administrator come back to the next Board meeting with a full-time contract to manage the facility.

MOTION WAS MADE by Commissioner O'Bryan to direct the County Administrator to come up with a Request For Proposal (RFP) for full-time management for the Dodgertown Facility. MOTION DIED FOR LACK OF A SECOND.

Commissioner O'Bryan wanted to get an answer from the Orioles, so that the County could move forward on the Dodgertown Facility.

Administrator Baird stated that he wanted to establish a temporary management situation because there was another baseball venue which might be interested in running Dodgertown. He added that the other venue would prefer to be sent a letter indicating the County's interest.

Chairman Davis was in favor of beginning the aforementioned negotiations.

Concluding discussion, Administrator Baird reiterated that there was another venue that was interested in Dodgertown, and that staff would be returning to the Board the first week in December 2008 with a "Plan B" to keep the Facility going on a temporary basis. If the other venue does not work out, the County would go out for an Request For Quote (RFQ) for someone to manage the Facility.

*No Board action required or taken*

**14.D. COMMISSIONER GARY C. WHEELER-NONE**

**14.E. COMMISSIONER BOB SOLARI**

### **14.E.1. ECONOMIC DEVELOPMENT**

Commissioner Solari sought to have an economic development meeting or summit which would be a full day activity open to the entire community. Some of the goals for the summit would be: (1) to let residents know that the County is trying to address the current economic situation; (2) to update the Commissioners on actions being taken by County and by the private sector relative to economic development; (3) to let individuals (inside and outside of the County) know that the County is serious about being open for business, and about partnering with people who are bringing positive economic development to the County. Commissioner Solari proposed to hold the summit sometime following the Chamber of Commerce's open meeting on December 17, 2008.

Chairman Davis acknowledged that there were some matters that were stifling the economy right now, and that the County needs to start crafting a policy for the next several years on how the County can help facilitate the small existing and future businesses in the community. He conveyed that he would like the meeting to allow intermingling with the citizens, and to not be held as a workshop.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to hold an Economic Development Summit, in either the second or third week of January 2009, to build on what the Chamber of Commerce and others have done, and that the Economic Summit be as open and informal as possible, with citizens and County working together to make sure the economy develops as strongly and positively as it can.

Attorney Collins explained legal requirements of publication for the Economic Development Summit, which would have to be done under the Sunshine Law.



Vice Chairman Flescher wondered whether there was a charge for using the Richardson Center, and suggested if so, the Commissioners might want to hold the meeting at the Fairgrounds.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved to have an Economic Development Summit in either the second or third week of January 2009, to build on what the Chamber of Commerce and others have done, and that the Economic Summit be as open and informal as possible, with citizens and County working together to make sure the economy develops as strongly and positively as it can.

## **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 Meeting, the Board would reconvene as the Board of Commissioners of the Solid Waste Disposal District. Those Minutes are being prepared separately and appended to this document.

#### **15.B.1. APPROVAL OF MINUTES REGULAR MEETING OF SEPTEMBER 23, 2008**

#### **15.B.2. RFP No. 2008052 WASTE TO ENERGY PROJECT – SELECTION COMMITTEE REPORT**

### **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  
2:48 p.m.

ATTEST:

\_\_\_\_\_  
Jeffrey K. Barton, Clerk

\_\_\_\_\_  
Wesley S. Davis, Chairman

Minutes Approved: \_\_\_\_\_

BCC/MG/2008Minutes