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OF BOARD OF COUNTY COMMISSIONERS
OF DECEMBER 2, 2008

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December 2, 2008

REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, December 2, 2008. Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, and Commissioners Peter D. O’Bryan, Bob Solari, and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

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

2. INVOCATION

Reverend Carol Trax, Community Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Chairman Davis led the Pledge of Allegiance to the Flag.

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

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF CERTIFICATE OF APPRECIATION TO THE INDIAN RIVER COUNTY RECREATION DEPARTMENT

Commissioner O'Bryan read and presented the Certificate of Appreciation to the Indian River County Recreation Department for their participation in the State's Special Olympics event.

5.B. PRESENTATION BY THE INDIAN RIVER COUNTY RECREATION DEPARTMENT ON THE STATE OF FLORIDA SPECIAL OLYMPICS STATE AQUATICS CHAMPIONSHIP EVENT

Recreation Department representatives Cliff Crawford and Mike Redstone accepted the Certificate that was presented above. Mr. Redstone presented a video summary of the events.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF OCTOBER 7, 2008

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of October 7, 2008. There were none

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the Minutes of the Regular Meeting of October 7, 2008, as written.

6.B. SPECIAL CALL MEETING OF OCTOBER 6, 2008 - MINING

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Special Call Mining Meeting of October 6, 2008. There were none.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the Special Call Mining Meeting of October 6, 2008, as written.

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

8. CONSENT AGENDA

Commissioner Wheeler requested Item 8.K. be pulled for discussion

Vice Chairman Flescher requested Items 8.N. and 8.O. be pulled for discussion

Commissioner O'Bryan requested Item 8.Q. be pulled for discussion

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

8.A. APPROVAL OF WARRANTS AND WIRES –NOVEMBER 7 - 13, 2008

ON MOTION by Vice Chairman Flescher, SECONDED
by Commissioner O'Bryan, the Board unanimously
approved the list of Warrants and Wires as issued by the
Clerk to the Board for the time period of November 7, 2008
to November 13, 2008, as requested in the memorandum of
November 13, 2008.

8.B. APPROVAL OF WARRANTS AND WIRES –NOVEMBER 14 - 20, 2008

ON MOTION by Vice Chairman Flescher, SECONDED
by Commissioner O'Bryan, the Board unanimously
approved the list of Warrants and Wires as issued by the
Clerk to the Board for the time period of November 14,
2008 to November 20, 2008, as recommended in the
memorandum of November 20, 2008.

8.C. PROPERTY ACQUISITION – TAX ROLL REMOVAL & TAX CANCELLATION

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O’Bryan, the Board unanimously approved the following Resolutions:

(1) **Resolution 2008-181**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(Richard M. Jones and Mary E. Jones)

(2) **Resolution 2008-182**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(CR510 – David Eldell)

(3) **Resolution 2008-183**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(SR60 and 58th Avenue – Dolores Mary Pesce)

(4) **Resolution 2008-184**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(20th Street - Quang N. Nguyen and Le Thu Thi Tran)

(5) **Resolution 2008-185**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. *(66th Avenue - Robert Joseph Gardiner, II and Wendy Gardiner)*

(6) **Resolution 2008-186**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. *(16th Street – Laurel Homes, Inc.)*

(7) **Resolution 2008-187**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. *(26th Street – Robert H. Cook, Jr.)*

(8) **Resolution 2008-188**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. *(108th Avenue – RaceTrac Petroleum, Inc.)*

(9) **Resolution 2008-189**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. *(108th Avenue – Ro-Ed Corp.)*

(10) **Resolution 2008-190**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. *(CR510 – John Swearingen)*

(11) **Resolution 2008-191**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(CR510 – Alfredia Bender and David Eldell)

(12) **Resolution 2008-192**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(43rd Avenue – PPDC Investments LLC)

(13) **Resolution 2008-193**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(85th Street – David Godwin)

(14) **Resolution 2008-194**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.
(58th Avenue at SR60 – Ruth Silva)

8.D. INDIAN RIVER FARMS WATER CONTROL DISTRICT, FIVE-YEAR PERMIT (#10) AND INTERLOCAL AGREEMENT, LATERAL “B” CANAL RIGHT-OF-WAY

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously: (1) approved the Permit and Interlocal Agreement as presented; (2) authorized payment in the amount of \$2,250; for the Permit; and (3) authorized the Chairman to execute the Permit, as recommended in the memorandum of November 18, 2008.

8.E. BLUE CYPRESS LAKE PARK

ON MOTION by Commissioner Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously authorized the Chairman to execute the Second Amendment to the Agreement with Joneal Middleton and add H. Jean Middleton as a party to the Agreement, as recommended in the memorandum of November 19, 2008.

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

8.F. VERO LAKE ESTATES MASTER PLAN WATER MAIN EXTENSION PHASE 2 – WORK ORDER NO. 9 – PROFESSIONAL SERVICES TO MASTELLER & MOLER, INC. – FINAL PAY TO CONSULTANT

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved final payment to Masteller and Moler, Inc. in the amount of \$1,845.00, as recommended in the memorandum of November 13, 2008.

8.G. AWARD OF BID # 2009021, ANNUAL BID FOR SIDEWALK/SOD

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the contract award to H&D Construction Co., Inc., as recommended in the memorandum of November 13, 2008.

8.H. FINAL PAYMENT TO BROWN AND CALDWELL FOR A PRELIMINARY DESIGN FOR THE NORTH REGIONAL WASTE TREATMENT PLANT EXPANSION – UCP 2696

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved payment for Work Order No. 2 to Brown and Caldwell for a final payment of \$2,000.00, as recommended in the memorandum of November 3, 2008.

8.I. LIBRARY SYSTEM LONG RANGE PLAN UPDATE

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the update to the Long Range Plan, as recommended in the memorandum of November 18, 2008.

8.J. PROFESSIONAL ENGINEERING SERVICES FOR STORMWATER CALCULATIONS AND PERMITTING OF OSLO ROAD IMPROVEMENTS FROM 58TH AVENUE TO 43RD AVENUE – FINAL PAYMENT – IRC PROJECT 0517

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved final payment in the amount of \$1,250.00 to Schulke, Bittle & Stoddard, L.L.C., for Invoice No. 06-098-3, dated September 30, 2008, for final payment for the stormwater calculations and modifications for the S.J.R.W.M.D. permit for Oslo Road improvements from 58th Avenue to 43rd Avenue, as recommended in the memorandum of November 18, 2008.

**8.K. OLD DIXIE HIGHWAY MAINTENANCE MAP APPROVAL COUNTY ROAD
512 SOUTH TO US1**

In response to Commissioner Wheeler's questions, Public Works Director Jim Davis clarified when and how frequently Maintenance Maps are filed, and the objective for acquiring the 1.3 mile roadway section of Old Dixie Highway beginning at CR 512 and continuing south to the next intersection with US1.

County Attorney Will Collins explained the responsibility of attorney fees and believed there would be "taking issues" if the Maintenance Map is not established.

In response to Commissioner O'Bryan's questions, Director Davis explained why it would be in the best interest for the Board to approve the Maintenance Map, and why the County should continue maintaining the road and frontage property.

County Surveyor Michael O'Brien, through a PowerPoint presentation, explained how each parcel would be affected by the Maintenance Map, and responded to questions.

Samuel Block, Attorney, representing Richard and Mary Lou Brown and their family Corporation, Atlantic Coast Enterprises, provided a brief history of their property and believed this would be a "taking" of the Browns' property. He thereafter read an *Affidavit of Owner* from Mr. Brown (copy on file) to the Board. He revealed that his office had sent two letters to the County Community Development Department (dated August 23rd and November 7th of 2007), and had only received a response indicating that the County's Attorney would respond to the position of the Board, to which he is still awaiting. He reminded the Board that the Supreme Court had recently announced that a public body cannot take private property for a private

purpose; and in 1938 the State of Florida ruled that to do that, you need a two-thirds vote of the Legislature.

Commissioner Wheeler indicated that this item should not have been placed under the *Consent Agenda* since it is a controversial item; and the letters Attorney Block sent to the County should have been placed in the Backup for further clarification.

Attorney Block read the letters that were sent to the Community Development Department into the record.

Chairman Davis felt this issue puts the government against private property rights; that it is not a safety issue but a property rights issue; and that it is outside his realm of expertise.

Attorney Block discussed the County's 13 foot assist; the allowance of 30 feet for proper ingress and egress; and Carter Associates' 1994 survey where witness points were used.

Attorney Collins acknowledged that he had not responded to Attorney Block's letters because of the legal issues regarding maintenance. He had checked with the Road and Bridge Division to determine if they had maintained it for the required seven years, and found out they had maintained it for 15 years. He thereafter referenced page 124 of the Backup, and raised a fact issue as to whether the road maintenance only reflected on the database, or if the County actually maintained it.

County Administrator Baird suggested bringing this item back to the Board after meeting with the property owners. He revealed that the County is trying to protect the future rights of the road, and felt the argument was with the width of the road (Old Dixie).

Vice Chairman Flescher agreed with Commissioner Wheeler, that this item should not have been placed under the *Consent Agenda*, and was concerned over the lack of communication.

Commissioner Wheeler questioned the County's current interest in the road, and was disturbed that he had not known this to be controversial until recently.

Chairman Davis supported making improvements to the road, and emphasized the importance of accomplishing it properly.

Attorney Block requested the County to stop mowing the Browns' property.

Attorney Collins indicated that he would respond to Attorney Block's letter after obtaining the facts (regarding the database and what it means in terms of maintenance) from Road and Bridge.

Chairman Davis wanted the County to stay off the Browns' property until the County can confirm the maintenance in the database, delineate the County's position, and respond in writing.

Attorney Block objected to Chairman Davis's suggestion, and requested the County continue maintaining what it has always maintained.

There was a brief discussion regarding how long it would take to go through the database, and whether there would be changes if the County were to take the property.

Director Davis acknowledged this situation to be characteristic of a Maintenance Map right-of-way; and said the Road and Bridge Division had mowed and maintained the shoulders for 30 years.

Chairman Davis wrapped up the discussion and directed the County Attorney to respond to Attorney Block's letters.

Debra Robinson, 315 Greytwig Road, said she had observed the Browns maintaining the property "all the way to the pavement" and urged the Board to deny the Maintenance Map.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, the Board unanimously denied the proposed Maintenance Map.

8.L. WORK ORDER NO. 1 (ENGINEERING) WITH ARDAMAN & ASSOCIATES, INC. PROVIDING PROFESSIONAL GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL GEOTECHNICAL SERVICES – 16TH STREET BRIDGE AT 74TH AVENUE (PROJECT NO. 9920B)

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Work Order No. 1 (Engineering), authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute same for a not-to-exceed fee of \$3,500.00, as recommended in the memorandum of November 19, 2008.

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

**8.M. APPROVAL OF A ONE-YEAR CONTRACT EXTENSION WITH THE
CONSERVATION FUND FOR PROFESSIONAL SERVICES RELATING TO
THE COUNTY ENVIRONMENTAL LANDS PROGRAM**

Chairman Davis wanted to know if this item would delay the progress of intersection improvements, and Planning Director Stan Boling said it would not.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously authorized the Chairman to execute the Amendment of Agreement for Professional Services with The Conservation Fund Charitable Trust, as recommended in the memorandum of November 17, 2008.

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

**8.N. VERO ESTATES, LLC'S REQUEST FOR EXTENSION OF SITE PLAN
APPROVAL FOR A MULTI-FAMILY RESIDENTIAL DEVELOPMENT TO BE
KNOWN AS VERO ESTATES (QUASI-JUDICIAL)**

Vice Chairman Flescher felt this item was inappropriately placed under the *Consent Agenda* since it is labeled Quasi-Judicial. He requested that in the future, these types of items be placed under *Departmental Matters* so they can be open for discussion.

Chairman Davis wanted to ensure that this extension would not delay the CR 510/66th Avenue intersection improvements. Director Boling said he was not aware of any problems that would delay the improvements.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously approved Vero Estates, LLC's request for a one-year extension of the site plan for Vero Estates with all original approval conditions to remain in effect, as recommended in the memorandum of November 17, 2008.

The new site plan approval expiration date will be May 24, 2009

8.O. LMC DEVELOPMENT VERO, LLC'S REQUEST FOR EXTENSION OF SITE PLAN APPROVAL FOR A MULTI-FAMILY RESIDENTIAL DEVELOPMENT TO BE KNOWN AS INDIGO (QUASI-JUDICIAL)

Vice Chairman Flescher believed this Item, like 8.N. above, was inappropriately placed under the *Consent Agenda* since it too was labeled Quasi-Judicial. He emphasized that enhancement changes need to be noted and discussed through an administrative process, not labeled Quasi-Judicial.

A brief discussion ensued regarding extensions being placed under the *Consent Agenda*. Chairman Davis stated that items considered Quasi-Judicial, should not be placed under the *Consent Agenda*.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously approved LMC Development Vero, LLC's request for a one year extension of the site plan for Indigo with all original approval conditions to remain in effect, as recommended in the memorandum of November 13, 2008.

The new site plan approval expiration date will be June 14, 2009

8.P. WOODSIDE FIELDSTONE RANCH, LLC'S REQUEST FOR FINAL PLAT APPROVAL FOR A SUBDIVISION TO BE KNOWN AS FIELDSTONE RANCH PHASE 1

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously granted final plat approval for Fieldstone Ranch Phase 1 Subdivision, as recommended in the memorandum of November 17, 2008.

8.Q. WORK ORDER NO. 16 (ENGINEERING/SURVEY), 43RD AVENUE, 8TH TO 18TH STREET, ROADWAY IMPROVEMENTS PROJECT, RIGHT-OF-WAY MAPPING

Commissioner O'Bryan reminded the Board that Everette Brown's property is adjacent to the subject property, and felt that since there appeared to be past discrepancies about

the right-of-way, staff should coordinate with Mr. Brown's surveyors to ensure everyone is on the "same page."

Director Davis said that Mr. Brown had used an out-of-town surveyor, and felt the survey was in error. He clarified that when the Malaluka Gardens Subdivision was platted, a 50 foot right-of-way east of the centerline of 43rd Avenue was dedicated on the face of the plat; therefore, he felt staff had no reason to question the dedicated language.

Commissioner O'Bryan felt it best to send a letter to Mr. Brown or his attorney, so everyone would be able to coordinate and agree before the process moves forward.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Work Order No. 16 with Carter Associates, Inc., authorizing the project as outlined in the Scope of Services; and authorized the Chairman to execute same, as recommended in the memorandum of November 17, 2008.

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

8.R. AMENDMENT NO. 1 TO CIVIL ENGINEERING AND LAND SURVEYING
AGREEMENT WITH ARCADIS U.S., INC. FOR WIDENING OF 20TH
AVENUE FROM 25TH STREET SW TO 21ST STREET SW, IRC PROJECT
No. 0541

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Amendment No. 1 to the Professional Civil Engineering Services Agreement with Arcadis U.S., Inc., in the amount of \$14,944.56, as outlined in the Scope of Services; and authorized the Chairman to execute same, as recommended in the memorandum of November 17, 2008.

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

8.S. CHANGE ORDER NO. 3, FINAL PAYMENT AND RETAINAGE RELEASE FOR 79TH STREET (106TH AVENUE TO 101ST AVENUE), 87TH STREET (106TH AVENUE TO 102ND AVENUE) PROJECT # 0535 & 0536, BID NUMBER 2007070

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Change Order No. 3, final payment to Sheltra and Son Construction, Inc. in the amount of \$40,674.15 plus release of retainage in the amount of \$132,642.56, as recommended in the memorandum of November 14, 2008.

**8.T. APPROVAL OF PROFESSIONAL GEOTECHNICAL SERVICES AGREEMENT,
2008-2009, RFO # 2008071**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Professional Geotechnical Services Agreement with Universal Engineering Sciences, Inc., for annual Professional Geotechnical Engineering Services, as recommended in the memorandum of November 18, 2008.

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

**8.U. AMENDMENT #1, NEARSHORE REEF MONITORING GRANT
AGREEMENT, FLORIDA FISH AND WILDLIFE CONSERVATION
COMMISSION, FWCC-06720**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Amendment No. 1 to FWC-06720. The Grant amount of \$250,000.00 is on a cost reimbursement basis with no local match requirement, as recommended in the memorandum of November 21, 2008.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT'S REQUEST FOR VACATION OF THE PLAT OF THE TOWN OF BROADMOOR SUBDIVISION (QUASI-JUDICIAL)

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

Director Boling recapped his Memorandum of November 19, 2008 providing an update on St. Johns River Water Management District's request for plat vacation, and through an aerial slide depicted subject property.

In response to Vice Chairman Flescher's query, Director Boling affirmed that the development rights would be extinguished, and the plat vacation approval would erase the plat, returning the land to acreage for public purposes for use by the St. John's River Water Management District (SJRWMD).

Robert Crabill, Attorney with Wright, Fulford, Moorhead and Brown, Orlando, introduced Ray Button.

Ray Button, from St. John's River Water Management District, stated that during discussions with the Fellsmere Joint Venture Group, they wanted to preserve their development rights; however, after exploring their options they realized there was nothing they could preserve.

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

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2008-195**, providing for the vacation of Town of Broadmoor Subdivision, said land lying in Indian River County, Florida.

(The Chairman called a recess at 10:20 a.m. and reconvened the meeting at 10:30 a.m. with all members present.)

10.A.2. COUNTY INITIATED REQUEST TO AMEND THE TEXT OF THE COMPREHENSIVE PLAN'S FUTURE LAND USE ELEMENT TO ALLOW LIMITED RV USE WITHIN THE MOBILE HOME RENTAL PARK LAND USE DESIGNATION CATEGORY; AMEND THE TEXT OF THE FUTURE LAND USE ELEMENT AND THE COASTAL MANAGEMENT ELEMENT TO CHANGE THE DEFINITION OF THE COASTAL HIGH HAZARD AREA; AMEND THE COASTAL HIGH HAZARD AREA MAP, FIGURE 9.24 OF THE COASTAL MANAGEMENT ELEMENT; AMEND THE COASTAL HIGH HAZARD AREA MAP, FIGURE 2.29 OF THE FUTURE LAND USE

**ELEMENT; AND AMEND THE FUTURE LAND USE MAP BY DEPICTING
THE REVISED COASTAL HIGH HAZARD LINE (LEGISLATIVE)**

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

Commissioner Solari suggested the two components to the Comprehensive Plan be heard separately. County Community Development Director Robert Keating agreed.

Director Keating explained the first component of the Comprehensive Plan Amendment - County Initiated Request to Amend the Text of the Comprehensive Plan's Future Land Use Element to Allow Limited RV use within the Mobile Home Rental Park Land Use Designation. He spoke about the adoption of the MHRP land use category, the 12 existing mobile rental parks, and the meetings and results with park owner representatives. He thereafter reminded the Board that in September they had directed staff to initiate the text amendment of Policy 1.14.2 of the Comprehensive Plan's Future Land Use Element to allow up to 25% of recreational vehicle use in the mobile home park rental category; and he reported that the Amendment is consistent with the Comprehensive Plan.

In conclusion, Director Keating pointed out that this component of the Amendments would allow for RV rental spaces only in designated Mobile Home Rental Parks; would provide a financial incentive for park owners to keep the park in mobile home use; and that the proposed RV use would not create additional density or intensity. He also informed the public that the Department of Community Affairs has an allowance where anyone speaking at a public hearing, such as this, could provide their name and address, and information regarding this Amendment would be forward to them through the review process.

Discussion ensued over concerns of mobile home parks having a threshold of 15 acres or less; whether the County has an Ordinance stipulating the age that a mobile unit can go into a park; constituents that chose to live in mobile home parks; platting; land development regulations; sewer systems; displacement and attrition of mobile homes.

The Chairman opened the public hearing.

The following individuals **opposed** the County initiated request to amend the text of the Comprehensive Plan's Future Land Use Element to allow limited RV use within the Mobile Home Park Land Use Designation Category:

Maurice Nelson, Countryside Park

Donald Debaggis, former President of Countryside Park

Bob Aberns, Countryside Park

Irwin Botnick, Countryside Park

Harold Scott, Vero Palm Estates Park

Bill Kelly, Countryside Park

Gwendolyn Ripp, Heron Cay Park

Joe Ryan, Heritage Plantation

Bill Gorman, Lifestyle Choice Realty, Inc., manager of Tanglewood Village Co-op

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

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously agreed to not transmit the first component of the Comprehensive Plan Amendment to the Department of Community Affairs (DCA).

(Clerk's Note: At 11:48 a.m., the Chairman announced that the Board would retreat to the Commissioners' Conference Room to conduct an Attorney-Client Session. After the Attorney-Client Session the Commissioners recessed one-half hour for lunch.) The Board returned to the Chambers at 1:30 p.m., and the Chairman closed the Attorney-Client Session.

Director Keating explained the second component of the Comprehensive Plan Amendment – Amend the Text of the Future Land Use Element, the Coastal Management Element; Change the Definition of the Coastal High Hazard Area (CHHA); Amend the Coastal High Hazard Area Map, and Amend the Coastal High Hazard Area Map. He told how this was a State mandate, and an item the County had to consider when it adopted its first Comprehensive Plan in 1990. He clarified the significance of the CHHA, and pointed out that in 2006 the State Legislature changed the definition of the CHHA, and as part of that change the State had mandated all local governments to amend the definition of CHHA in their Comprehensive Plans. This Amendment involves changing the text of the Future Land Use Element, the Coastal Management Element, and changes to the Coastal High Hazard Area Map and the Future Land Use Map. Director Keating reported that the Amendment is consistent with the Comprehensive Plan, and recommended the Board approve the Resolution giving staff direction to eliminate the mobile home amendment component.

In response to Commissioner O'Bryan's query, Director Keating affirmed that the CHHA is east of US1.

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

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the second component, **Resolution 2008-196**, as amended, to amend the Text of the Coastal Management Element and the Future Land Use Element by Changing the Definition of the Coastal High Hazard Area and by Depicting the Coastal High Hazard Area on the Future Land Use Map of the Comprehensive Plan, to the State of Florida Department of Community Affairs.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM FRANK ZORC REGARDING PIPER CONTAMINATION AT THE AIRPORT

(Clerk's Note: Item 10.B.1. was heard following Item 11.B. and is placed here for continuity.)

Frank Zorc, 1695 20th Avenue, summarized Piper Aircraft's violations and the documented evidence regarding Piper contamination (copies on file) which he had filed with the Florida Department of Environmental Protection Agency.

Commissioner O'Bryan felt this was an EPA issue.

Discussion ensued regarding Allen Stadnick's written comments pertaining to Piper's contamination (copies on file), and GeoTech's acknowledgement of the make and model numbers of the trucks that hauled 55 gallon drums, filled with chemicals, to a dump site located at 43rd Avenue and 41st Street.

Mr. Zorc wanted Piper to be accountable for the contamination cleanup, not the taxpayers.

Attorney Collins acknowledged that Piper had deposited 55 gallon drums, on numerous occasions, at the old landfill on 41st Street over the years. He stated that there had been plumes detected under 41st Street, and if Piper dumped hazardous waste illegally, that they should be responsible for the cleanup. He said that most of the environmental laws were passed in the early 1970's, and even though he had not looked at them recently, in terms of retroactivity, he felt the basis of the complaint was that if they had disposed of something, and we can seek recourse against them to recover our expenditures in cleaning up the plumes, that we should ask the Governor to appoint a Special Prosecutor to research the evidence.

Commissioner Solari suggested sending the information to Tallahassee to see if it is something they could pursue, and Attorney Collins encouraged it.

Chairman Davis asked Mr. Zorc to provide him with contact information so he could send a follow-up letter.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING DECEMBER 9, 2008:

**REQUEST TO REDESIGNATE ±.075 ACRES FROM L-1, LOW-DENSITY
RESIDENTIAL-1 (UP TO 3 UNITS/ACRE), TO CI, COMMERCIAL/**

**INDUSTRIAL, AND TO REZONE THAT ±.075 ACRES FROM RM-3,
MULTIPLE-FAMILY RESIDENTIAL DISTRICT (UP TO 3 UNITS/ACRE), TO
CL, LIMITED COMMERCIAL DISTRICT (QUASI-JUDICIAL)**

The Chairman read the notices into the record.

11. COUNTY ADMINISTRATOR'S MATTERS

**11.A. MEETINGS OF THE BOARD OF COUNTY COMMISSION, PROPOSED –
2009 MEETING DATES**

Administrator Joseph Baird provided the Board with a proposed schedule of Commission meeting dates for 2009.

Chairman Davis requested the meeting of September 1, 2009, be removed from the meeting schedule.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Solari, the Board unanimously approved the proposed 2009 meeting schedule, with the exception of September 1, 2009, which was stricken..

11.B. DISCUSSION OF DODGERTOWN FACILITY OPERATIONS

Administrator Baird spoke about the on-going discussions pertaining to the Baltimore Orioles relocating to Dodgertown. He said that effective January 1, 2009 the County will become responsible for maintaining the Dodgertown property, with the exception of the

Conference Center. Six Dodgertown grounds employees, plus two others, would maintain the facility for approximately five months or until someone takes over the contract. He proposed that the Board approve a monthly budget of \$102,479.11 (monies from the Tourist Tax Fund) to maintain the Dodgertown facility. Due to the current economic situation, he felt it would be in the best interest of the County to close the Conference Center and Hotel.

In response to Commissioner Wheeler's inquiry, Administrator Baird said he would like to have an "umbrella organization" that would bring in tournaments throughout the year.

Commissioner O'Bryan voiced concerns over possible litigation, and the numerous delays. He said, "Enough is enough" and suggested staff move forward.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to establish a deadline of Monday, December 15, 2008, at 5:00 p.m. for the Baltimore Orioles to accept the signed contract. If they decline the contract, staff will formally rescind the offer on Tuesday, December 16, 2008, and the County Administrator will pursue other avenues.

There was a brief discussion regarding indebtedness with the Dodgers.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board unanimously approved to establish a deadline of Monday, December 15, 2008, at 5:00 p.m. for the Baltimore Orioles to accept the signed

contract. If they decline the contract, staff will formally rescind the offer on Tuesday, December 16, 2008, and the County Administrator will pursue other avenues.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Solari, to authorize Administrator Baird to hire the necessary people to maintain the Dodgertown facilities, as outlined in the operating cost estimate, effective January 1, 2009.

Bob Johnson, Coral Wind Subdivision, wanted to know if this would change the Bond rating. Administrator Baird confirmed that it would not, since it is based on a pledge of revenue sources.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board authorized Administrator Baird to hire the necessary people to maintain the Dodgertown facilities, as outlined in the operating cost estimate, effective January 1, 2009

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. CONSIDERATION OF DRAFT REVISED INTERLOCAL SERVICE

BOUNDARY AGREEMENT

Director Keating provided the Board with the background, history, and status of the Interlocal Service Boundary Agreement (ISBA). Through his presentation he outlined the ISBA adoption process; ISBA components; ISBA Map; exceptions; and objections to the ISBA. He recommended the Board concur with staff's recommendations, and to discuss any objections with representatives of the other parties at the December 15, 2008 ISBA Elected Officials Meeting.

Discussion ensued regarding Department of Community Affairs (DCA) requirements of Fellsmere, and the significance of the point-to-point annexation provision.

Al Miner, Sebastian City Manager, defined through an aerial slide, Sebastian's proposed progression and perspective as to how much property could be annexed.

Director Keating felt that staff would be able to create an alternative point-to-point access to the Graves property, but felt concern over creating enclaves.

Assistant County Attorney George Glenn pointed out that staff would probably support an exemption from Florida law to get to the Graves' property, but would not support any exemptions other than that, nor further point-to-point annexations unless it complies with Florida law. He felt that bringing the enclaves into the process was the responsibility of the property owner.

Discussion ensued as the Commissioners discussed point-to-point contiguity for Sebastian, Exhibits, and exemptions.

Mike Ray, 440 Greystone Court, explained the annexation process, and the point-to-point concept for Sebastian. He suggested the Board review the document and make it a tool that is for "good growth and jobs."

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

Under discussion, Commissioner O'Bryan asked if distance provisions were included in Exhibit E, Indian River County New Town Allowances. Director Keating said the Staff Negotiating Group agreed there should not be a separation distance for moving the boundary for a new town.

The Chairman CALLED THE QUESTION. The Board unanimously concurred with staff's objections to the Agreement (Exhibit F and Sebastian point-to-point contiguity), and agreed to raise those objections at the upcoming Interlocal Service Boundary Agreement (ISBA) elected officials meeting, as recommended in the memorandum of November 17, 2008.

12.A.2. CONSIDERATION OF DRAFT MANAGEMENT PLAN FOR THE SAND LAKES CONSERVATION AREA

ON MOTION by Commissioner Wheeler, SECONDED by Chairman Davis, the Board unanimously approved the Sand Lakes Conservation Area Land Management Plan with the conditions as recommended by the Conservation Lands Advisory Committee (CLAC), and as recommended in the memorandum of November 20, 2008.

The Chairman called a recess at 3:16 p.m. and reconvened the meeting at 3:24 p.m., with all members present.

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. 43RD AVENUE ROAD WIDENING PROJECT (SOUTH OF 12TH STREET) –
NOTICE TO OWNERS**

Public Works Director Jim Davis stated that he had addressed the Board regarding this item at the November 18, 2008 Board of County Commission Meeting where the Board had approved revisions to the Capital Improvement program for road construction and is now coming back to seek guidance regarding right-of-way acquisition, particularly on 43rd Avenue, south of 8th

Street. He recalled that this project was moved to the fourth and fifth year of the five year Capital Improvement Plan (CIP). The funds allocated in those years were to purchase right-of-way south of 8th street. In accordance with Resolution 2008-139, staff had prepared the *Notice to Owner* for the property owners south of 8th Street, but were held until the outcome of the November 18th Board of County Commission Meeting when the CIP was amended. He voiced concern that if the Notices are sent out, and the funds are not budgeted for the fourth and fifth year, the County would have to borrow funds from another project to advance the right-of-way acquisition, which could delay construction on other projects that were funded in the first three years. He reviewed three Alternatives (see page 388 in the Backup), recommending Alternative No. 1 (to amend Resolution No. 2008-139), and asked the Board for direction.

Assistant County Attorney Michael Zito reiterated the Motion from the November 18, 2008 Board of County Commission meeting, emphasizing right-of-way acquisitions as a priority, and said that staff would look at competing projects. He requested the Board's direction.

There was a lengthy discussion among the Commissioners as they voiced their preferences and concerns over the three Alternatives (see pages 387 and 388 of the Backup). They also discussed the possibility of causing fear and anxiety to residents on 43rd Avenue when the Notices are sent out.

Director Davis voiced concern over cash flow, relocating utilities, expiring permits, and new requirements on environmental issues that could complicate obtaining additional permits, if the projects do not stay on track.

Assistant Public Works Director Chris Mora informed the Board that the *Notice to Owners* on 43rd Avenue, south of 8th Street, had already been sent to residents, and that staff is within the 120-day timeframe. He said that the appraisals have not been received; offers had not been made; and that staff is in a holding pattern until negotiations can be conducted for those

Notices that had already been sent. He acknowledged that other Notices have not been sent out, and were pending the results of today's meeting. He pointed out that if Alternative No. 1 is selected, the Notices that were sent out would need to be retracted.

Attorney Collins clarified that after the *Notice to Owner* is sent, negotiations will remain open for 120 days after the notification to complete a voluntary purchase, unless extended by both parties, or terminated by either party in writing. Therefore, if staff decides there is no money to move forward with the acquisition, staff can terminate by a written notice to those parties that dropped out of the five year plan.

Administrator Zito specified that the Capital Improvement Element (CIE) segment is from 12th Street to Oslo Road, with funding included in the third year, and that the intention is to concentrate the efforts on the segment of 43rd Avenue from 8th Street and 12th Street since the County can afford to centralize that effort; and that the segment south of 43rd Avenue is just a distant consideration for funding at this point.

Ruth Stanbridge, 4835 66th Avenue, found this departmental item misleading. She believed Alternative No. 1: (1) deals indirectly with 43rd Avenue, and directly with revising and amending Resolution 2008-139; (2) deals directly with the funding for right-of-way and retracting or rescinding the *Notice to Owner*, which may not be legal; and (3) is a County-wide issue that is hidden inside a departmental subject. She did not feel Alternative No. 2 was any better since staff could allow deviation from this policy; and it could be made to fit circumstances of unique acquisitions. Mrs. Stanbridge felt the Board should: (1) choose Alternative No. 3; (2) direct staff to continue sending the *Notice to Owner* in accordance with the Resolution; (3) continue purchasing acquisitions to widen future roads; (4) reaffirm that the *Notice to Owner* (which was already sent) be honored; (5) not amend Resolution 2008-139; (6) continue to make the right-of-way acquisitions a priority; and (7) ensure the procedures under the Resolution continue to move forward.

Everette Brown, 4236 11th Street, wanted clarification on the location of the CIP projects and to whom the *Notice to Owners* were sent. He requested the Board recognize and consider the impact that the numerous road projects around the County has put upon the residents.

Director Davis reported that four of the pending projects have grant funding from the Department of Transportation (DOT), and that unless those projects are built within certain time restraints, they would be lost.

Discussion ensued regarding amendments to Resolution 2008-139; concurrency and the Capital Improvement Element; and prioritizing roads and acquiring right-of-ways.

Administrator Zito acknowledged that the only function of the *Notice to Owner* is to serve as a prerequisite to filing a lawsuit in court.

Mr. Brown voiced further concern over the 43rd Avenue project and being inconvenienced with the retraction of the *Notice to Owner*.

Bill Bethel, 4875 66th Avenue, cited Florida Statute 73.015 as the governing Statute for the *Notice to Owner*. He said that it allows the condemnee to understand their rights under the law, and that abrogating someone's rights could lead to a lawsuit. He listed the three basic rights in Florida: possession, use, and disposal; and said that once a person receives a formal notice that the County is interested in buying the property, they can either purchase it voluntarily or they can take it involuntarily. He feels this takes away his right of disposal, which makes the County liable under the law.

Commissioner Wheeler said there is no intent to withdraw the *Notice to Owner*, that had already been sent, and he wanted to bring this to a conclusion. Therefore, if that is the case, the County has no option but to continue forward and go to court.

Attorney Collins responded to Mr. Bethel's comments saying that even after the *Notice to Owner* is received, and the County is in negotiation with you, you have the right to sell the property to a third party, if you do not like the County's price. It is not until the Deed is taken through a Condemnation Order of Taking that you are precluded from selling the property.

There was a brief discussion regarding the filing of legal documents, appraisals, retracting issues, and funding.

Director Brown acknowledged the County had already acquired most of the right-of-way north of 8th Street, on 43rd Avenue.

Budget Director Jason Brown addressed funding issues, and did not see any financial planning concerns.

Commissioner O'Bryan suggested the Board only focus on 43rd Avenue today and make it a priority for the Metropolitan Planning Organization (MPO), then the Board could change the Resolution at a later time. He preferred Alternative No. 1, but under the retraction, he wanted it to say, "retraction of any notices sent to date for temporary construction easements ONLY at year four and five."

Chairman Davis drew Commissioner O'Bryan's attention to Alternative 2, and said if he is wanting to focus on 43rd Avenue, and not change the Resolution, that the verbiage should read as: "Direct staff to defer sending additional Notices on the 43rd Avenue project south of 8th Street pursuant to Section 6 of Resolution 2008-139 which provides that 'deviation from this

policy can be made as needed to fit the circumstances of unique acquisitions.’ This option would also include retraction of any notices sent to date along the deleted portion of the project.” ~~or those projects where right-of-way acquisition is not funded in the first 3 years of the Capital Improvement Element.~~

Commissioner O’Bryan wanted to know: (1) if the Motion would include the retraction where it would only apply to temporary construction easements; and (2) if we had sent a Notice regarding right-of-way purchases, if we would move forward with those notices, but retract the Temporary Construction Easement (TCE) Notices.

Administrator Baird felt this measure would work until they get to the MPO.

All Commissioners were in agreement that no changes be made to Resolution 2008-139.

Commissioner O’Bryan wanted to know if there should be a retraction of the Temporary Construction Easements (TCE), and Director Davis said there needs to be right-of-way on the west side and on the east side, south of 4th Street. He said it would not be wise to start condemning the TCE’s when we may not build the project.

Commissioner O’Bryan indicated that Alternative No. 2 specifies 43rd Avenue south of 8th Street, so he suggested the option include, “retraction of any notices sent to date.”

Mrs. Stanbridge believed that this would solve the 43rd Avenue problem, and advocated against changing the Resolution.

Mr. Brown voiced further concern over 43rd Avenue being delayed once again (whether it is a Temporary Construction Easement or full taking), and how this has affected residents' property values, and concerns over staff.

Attorney Collins informed the Board of the proper procedures for changing a resolution.

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Commissioner Solari, to approve
Alternative No. 2, to include the first four lines, and
stopping at the word "date".

Under discussion, Commissioner Wheeler clarified the Motion; voiced concern over the individuals who had already received Notices; and suggested adding the retraction of only temporary construction easement notices sent to date.

MOTION WAS AMENDED by Commissioner O'Bryan,
SECONDED by Commissioner Solari, to amend line four
to read: "This option would include retraction of only
temporary construction easement notices sent to date."

The Chairman CALLED THE QUESTION and the MOTION carried unanimously. The Board approved Alternative No. 2 to read: “Direct staff to defer sending additional Notices on the 43rd Avenue project south of 8th Street pursuant to Section 6 of Resolution 2008-139 which provides that ‘deviations from this policy can be made as needed to fit the circumstances of unique acquisitions.’ This option would also include retraction of only temporary construction easement notices sent to date.”

12.J. UTILITIES SERVICES - NONE

13. COUNTY ATTORNEY MATTERS

13.A. ATTORNEY-CLIENT SESSION: DiVOSTA HOMES, L.P. AND DiVOSTA HOMES HOLDING, LLC. VS. INDIAN RIVER COUNTY, CASE No. 20070109-CA-19

(Clerk’s Note: The Board broke for the regular Board of County Commission Meeting at 11:48 a.m. to conduct the Attorney-Client Session that was scheduled for 11:30 a.m.)

Chairman Davis read into the record the Attorney-Client Session. Those in attendance were Commissioners Wesley S. Davis, Joseph E. Flescher, Gary C. Wheeler, Peter D. O’Bryan, Bob Solari, County Attorney William G. Collins II, County Administrator Joseph A. Baird, John K. Shubin, Esquire (outside Counsel via telephone), and a certified court reporter.

(The Board returned to the Chambers at 1:30 p.m., and the Chairman closed the Attorney-Client Session.)

14. COMMISSIONER ITEMS

14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN

**14.A.1. POLICY FOR APPOINTING “AT LARGE” MEMBERS TO ADVISORY
COMMITTEES**

Chairman Davis wanted to know if the Commissioners would like to appoint Members-at-Large at the will of the Commissioner Liaison to the committee, or make it a point certain. After a brief discussion, it was decided that all Commissioners would be notified of a Member-at-Large vacancy under Informational Items on the Agenda. Upon receipt of an application and after 14 days, the application would be placed on the Agenda for recommendation by the committee’s Commissioner Liaison. For those committees that do not have Commissioner Liaisons, it would be the responsibility of the Chairman and Commissioner Assistant to bring it forward.

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

14.C. COMMISSIONER GARY C. WHEELER - NONE

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

14.E. COMMISSIONER BOB SOLARI - NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT - NONE

15.B. SOLID WASTE DISPOSAL DISTRICT - NONE

15.C. ENVIRONMENTAL CONTROL BOARD - NONE

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES

16. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 5:04 p.m.

ATTEST:

Mary Louise Scheidt, Clerk, *Ad Interim*

Wesley S. Davis, Chairman

Minutes Approved: _____
BCC/LAA/2008Minutes