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**OF DECEMBER 16, 2008**

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December 16, 2008

**REGULAR MEETING OF THE BOARD OF COUNTY**  
**COMMISSIONERS**

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27<sup>th</sup> Street, Vero Beach, Florida, on Tuesday, December 16, 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 Maureen Gelfo.

**1. CALL TO ORDER**

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

**2. INVOCATION**

Reverend Derrick West, First Baptist Church, delivered the Invocation.

**3. PLEDGE OF ALLEGIANCE**

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

#### **4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS**

1. **Addition:** Item 11.A. Update from the County Administrator on the Baltimore Orioles

2. **Deletion:** Item 12.C.1., Custodial Services, for inclusion on the December 23, 2008 Agenda

3. **Addition:** of Item 14.C.1., by Commissioner Wheeler to discuss appointments to the Treasure Coast Regional Planning Council.

Vice Chairman Flescher requested the addition of Item 10.B. Public Discussion, stating that Mr. Todd Westover from Treasure Coast Refuse, had requested an opportunity to speak regarding waste hauling in the Enterprise Zone.

Attorney Collins offered legal opinion on why it would not be appropriate to have the discussion at this point. He conveyed that an advertisement had been published yesterday seeking applications for hauling in the enterprise zone, and the ad instructed prospective applicants not to contact the County Commission, County Administrator, or SWDD staff, but to direct questions to the Purchasing Manager.

Vice Chairman Flescher provided the background on Mr. Westover's request, noting that he was uncertain when the proper time would be for Mr. Westover to discuss his urgent matter.

Attorney Collins noted that there must be a public hearing before any franchise could be awarded and that would be the proper time for the requested discussion. He stated that for any individual potential applicant to speak now would be fraught with peril for everyone.

Vice Chairman Flescher stated that he had not known what Mr. Westover or his attorney was going to bring forward, but he had wanted to at least request the opportunity for Mr. Westover to speak.

Attorney Collins stated that the Board would have to approve this matter unanimously.

**Matt Moral**, 2850 North Andrews Avenue, Ft. Lauderdale, FL, legal counsel for Mr. Westover, and representing Republic Services Limited of Florida, LP, dba Treasure Coast Refuse, sought and was denied permission (pursuant to legal requirements), to discuss the existing franchise held by Treasure Coast Refuse.

MOTION WAS MADE by Commissioner Wheeler to not add Item 10.B. Public Discussion Items, to the Agenda, and to bring it back at the appropriate time.

Chairman Davis explained that the policy for emergency additions was that one individual Board member could prohibit an emergency item from being added to the Agenda.

ON MOTION by Commissioner O'Bryan,  
SECONDED by Commissioner Solari, by a 4-1 vote

(Vice Chairman Flescher opposed), the Motion to approve the above changes to the Agenda FAILED.

Chairman Davis questioned the Board's intentions and asked for separate Motions on Items 11.A., and 14.C. He explained that an individual vote was unnecessary on Item 12.C.1., because that was just a pull from the Agenda.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously approved to add Item 11.A., Update on the Baltimore Orioles, to the Agenda.

Chairman Davis announced that the next vote would be on Commissioner Items.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, by a 4-1 vote (Vice Chairman Flescher opposed), the Motion to approve the addition of Item 14.C., Discussion on Appointments to the Treasure Coast Regional Planning Council, FAILED.

Chairman Davis pointed out that the rules were that there must be a unanimous vote on emergency items.

Commissioner Wheeler sought and received explanation by Vice Chairman Flescher on his opposition to adding Item 14.C.

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

## **5. PROCLAMATIONS AND PRESENTATIONS**

### **5.A. PRESENTATION BY THE TAXPAYER'S ASSOCIATION OF INDIAN RIVER COUNTY – MISER OF THE YEAR AWARD TO JOSEPH A. BAIRD, INDIAN RIVER COUNTY ADMINISTRATOR**

**Rose Spytek**, President Taxpayer's Association, and **Paul Teresi**, Vice President and President-Elect, presented background on the Award before bestowing it upon Joseph Baird, who thanked the Taxpayer's Association.

Chairman Davis thanked Ms. Spytek and Mr. Teresi for the feedback provided by the Taxpayer's Association during the budget process.

### **5.B. PRESENTATION OF PROCLAMATION DESIGNATING DECEMBER 7 – 13, 2008, AS DOLLARS FOR SCHOLARS WEEK**

Commissioner Solari read and presented the proclamation to Lisa Zahner, Executive Director of Dollars for Scholars, who thanked the Board for its continued support. **Ms. Zahner** reported that scholarship applications were available online, and displayed the trophy which would be awarded (in honor of long-time supporter Dr. Ronald Jaffe), to the school with the highest percentage of its graduating class applying to Dollars for Scholars.

## **6. APPROVAL OF MINUTES**

### **6.A. REGULAR MEETING OF OCTOBER 14, 2008**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of October 14, 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 October 14, 2008, as written.

### **6.B. REGULAR MEETING OF OCTOBER 21, 2008**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of October 21, 2008. There were none.

ON MOTION by Commissioner O'Bryan,  
SECONDED by Vice Chairman Flescher, the Board  
unanimously approved the Minutes of the Regular  
Meeting of October 21, 2008, as written.

### **6.C. REGULAR MEETING OF NOVEMBER 4, 2008**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of November 4, 2008. There were none.

ON MOTION by Commissioner O'Bryan,  
SECONDED by Vice Chairman Flescher, the Board  
unanimously approved the Minutes of the Regular  
Meeting of November 4, 2008, as written.

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

**7.A. RESIGNATION OF DISTRICT 1 APPOINTEE TO UTILITY ADVISORY  
COMMITTEE**

**7.B. CITY OF VERO BEACH APPOINTMENTS TO COUNTY COMMITTEES AND  
REGIONAL BOARDS FOR 2008-2009**

**7.C. CITY OF FELLSMERE APPOINTMENTS TO COUNTY COMMITTEES AND  
REGIONAL BOARDS FOR 2008-2009**

**7.D. SCHOOL BOARD APPOINTMENTS TO COUNTY COMMITTEES FOR 2008-  
2009**

**8. CONSENT AGENDA**

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

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

**8.A. APPROVAL OF WARRANTS AND WIRES NOVEMBER 21, 2008 THRU  
DECEMBER 4, 2008**

ON MOTION by Commissioner Solari,  
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 November 21, 2008 through  
December 4, 2008, as requested in the memorandum  
dated December 4, 2008.

**8.B. INTEREST RATE CHANGE ON ALL COUNTY FINANCING (PETITION  
PAVING, UTILITY ASSESSMENT PROJECTS, UTILITY IMPACT FEES, ETC.)**

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved the fixed interest rate of  
5.75%, which rate will remain in effect for calendar  
year 2009 for all County financing, with the  
exception of projects directly affiliated with a bond  
issue for which the bond covenants dictate a  
different interest rate, as recommended in the  
memorandum of December 10, 2008.

**8.C. MISCELLANEOUS BUDGET AMENDMENT 003**

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved **Resolution 2008-199**,  
amending the fiscal year 2008-2009 Budget.

**8.D. STEPHEN M. BAILEY, 26<sup>TH</sup> STREET (82<sup>ND</sup> AVENUE TO 74<sup>TH</sup> AVENUE)**

**PAVING PROJECT**

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved Alternative No. 1, the  
Agreement to Purchase and Sell Real Estate with  
Stephen M. Bailey, for \$260,400, along with legal  
fees of \$3,500, and authorized the Chairman to  
execute same, as recommended in the memorandum  
of November 25, 2008.

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

**8.E. FINAL PAYMENT AND RELEASE OF RETAINAGE, APPLIED TECHNOLOGY  
AND MANAGEMENT, INC., WORK ORDER #8**

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved the application for final

payment and release of retainage to Applied Technology and Management, Inc., as recommended in the memorandum of December 5, 2008.

**8.F. FIRST AMENDMENT TO AGREEMENT – FLORIDA INSTITUTE OF TECHNOLOGY, GRANT AGREEMENT FWC-06720**

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved the First Amendment to Agreement with Florida Institute of Technology (FIT), as recommended in the memorandum of December 5, 2008.

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

**8.G. FINAL PAYMENT TO ARCADIS, US, INC. FOR THE ROCKRIDGE SEWER REPLACEMENT PROJECT – UCP-2521**

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved Amendment 1 to Work Order 1 to Arcadis, US, Inc., and authorized final pay and execution of same, as presented in the memorandum of December 8, 2008.

**8.H. AWARD OF BID # 2009019, THE ENCLAVE SUBDIVISION, IRC PROJECT**

**No. 0816**

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved awarding the contract to  
Sheltra & Son Construction Co., Inc., in the amount  
of \$72,498.20, as recommended in the memorandum  
of December 9, 2008.

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

**8.I. DENIS AND SHERYL SCARPINATO REQUEST FOR PARTIAL RELEASE OF  
AN EASEMENT AT 2205 7<sup>TH</sup> AVENUE SE (LOT 20, RIVERPOINT  
SUBDIVISION)**

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved **Resolution 2008-200**,  
releasing a portion of an easement on Lot 20,  
Riverpoint Subdivision.

**8.J. CONSIDERATION OF SUBMITTAL OF AN APPLICATION FOR A STATE  
SOVEREIGN SUBMERGED LANDS LEASE FOR COUNTY MANAGEMENT OF  
BOAT CLUB ISLAND (SPOIL ISLAND NO. IR25)**

Commissioner O'Bryan inquired about approaching the Florida Department of Environmental Protection (FDEP) regarding renewal or extension of the County's Management Agreement with the State for Boat Club Island, rather than submitting the fees and multiple documents required by FDEP for the submerged lands lease.

Roland DeBlois, Chief Environmental Planner, revealed that he had discussed the situation with the Aquatic Preserve Boat Club Island staff, and the County would be working with Aquatic staff to retain the docks, even if the County does not apply for the lease.

A brief discussion ensued regarding the opportunity for an individual or group to adopt the Island.

ON MOTION by Commissioner O'Bryan,  
SECONDED by Commissioner Solari, the Board  
unanimously approved staff's recommendation: (1)  
to not apply for a sovereignty submerged lands lease  
for management of Boat Club Island and to let  
management responsibilities revert to the Florida  
Department of Environmental protection (FDEP);  
and (2) directed staff to coordinate with FDEP  
Aquatic Preserve staff with respect to repair of the  
existing docks accessing the island, as

recommended in the memorandum of December 9, 2008.

**8.K. FLORIDA POWER AND LIGHT (FPL) AGREEMENT TO INSTALL  
ADDITIONAL STREET LIGHT IN THE GIFFORD STREET LIGHTING  
DISTRICT**

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously authorized the County Administrator to execute the FPL Street Lighting Agreement, thereby authorizing FPL to proceed with the installation of street lights in the Gifford area, as recommended in the memorandum of December 2, 2008.

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

**8.L. RIGHT-OF-WAY ACQUISITION – 66<sup>TH</sup> AVENUE #0370, 217 N. PARK  
BLVD., VENICE, FL 34285, BEATRICE B. AMENDOLA TRUST**

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved Alternative No. 1, the Agreement to Purchase and Sell Real Estate with Beatrice B. Amendola, Trustee, for the purchase price of \$84,645, plus engineering fees of \$3,428.85

and attorney fees and costs of \$6,348, and authorized the Chairman to execute the Purchase Agreement, as recommended in the memorandum of December 8, 2008.

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

**8.M. WINDSOR PROPERTIES, INC. REQUEST FOR FINAL PLAT APPROVAL  
FOR A SUBDIVISION TO BE KNOWN AS WINDSOR PLAT 26 P.D.**

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously granted final plat approval for Windsor Plat 26 P.D., as recommended in the memorandum of December 8, 2008.

**8.N. REQUEST FOR BOARD APPROVAL OF A WORK PLAN MODIFICATION, A  
BUDGET AMENDMENT AND CLOSEOUT OF THE COUNTY'S DISASTER  
RECOVERY INITIATIVE COMMUNITY DEVELOPMENT BLOCK GRANT  
(CDBG)**

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved the revised project work plan and budget amendment by authorizing the Chairman to sign the modification forms, and by authorizing the Chairman to sign and submit any CDBG related

documents to allow the County to close out the Grant, as recommended in the memorandum of December 4, 2008.

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

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

**10. PUBLIC ITEMS**

**10.A.1. CONSIDERATION OF AMENDMENTS TO RESTRICTIONS ON PARKING COMMERCIAL VEHICLES IN RESIDENTIAL AREAS; LDR CHAPTERS 901, 911, AND 912 (LEGISLATIVE)**

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

Planning Director Stan Boling reviewed the backup memorandum of December 8, 2008, and used a PowerPoint (copy on file) to provide background and analysis on staff's request to consider amendments to Chapters 901, 911, and 912 of the Land Development Regulations (LDR's), which pertain to current restrictions on parking commercial vehicles in residential areas. He thereafter presented the recommendations of staff, the Professional Services Advisory Committee (PSAC), and the Planning and Zoning Commission (PZC), for approval of the required amendments to the LDR's, by adoption of the proposed Ordinance.

Commissioner O'Bryan wondered about the inclusion of a 15,000 pound truck under the vehicle allowances in the proposed amendments.

Director Boling acknowledged that the above was a heavy vehicle, but pointed out that staff was comfortable with the vehicle sizes, and wanted to have a clear dividing line between what is and is not permitted. He added that determinations had also been made as to the types of vehicles that would not be allowed, such as bucket trucks, dump trucks, and semi tractors.

Vice Chairman Flescher supported the proposed amendments, citing cases where businesses have been forced to downsize and work from their own residences. He pointed out that the updated restrictions would not impact public roads and bridges.

Commissioner Wheeler questioned staff on how long a commercial vehicle could be stored, and about whether the Ordinance update would impact the storage of recreational vehicles, such as boats.

Staff thereafter responded to Commissioner Wheeler's concerns about the proposed Ordinance being too restrictive for landowners in agricultural zoning who might need to have on-site several trucks for a business operation.

*The Chairman opened the public hearing.*

**Fred Mensing**, 7580 129<sup>th</sup> Street, Sebastian, wanted to see exemptions from the size restrictions (in addition to exemptions granted to tow trucks) granted to emergency service vehicles and horse trailers which must be parked on-site at a residence.

Director Boling felt that most commercial vehicles would fit in the size parameters set forth in the proposed amendments to the LDR's.

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

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously adopted **Ordinance 2008-021**, concerning an amendment to its land development regulations (LDRs); providing for an amendment to Chapter 901, definitions; Chapter 911, zoning, and Chapter 912, single family development, by amending general provisions Section 911.15, and by amending parking and storage section 912.17, and by providing for repeal of conflicting provisions; codifications; severability; and effective date.

**10.A.2. PUBLIC HEARING TO AMEND CERTAIN SECTIONS OF THE ANIMAL CONTROL ORDINANCE CODIFIED AT CHAPTER 302 OF THE INDIAN RIVER COUNTY CODE (LEGISLATIVE)**

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

John King, Director of Emergency Services, stated that he was accompanied by Jason Ogilvie, Animal Control Manager. Director King recapped the backup memorandum of December 3, 2008 and used a PowerPoint (copy on file) to provide background on the request to amend certain sections of Chapter 302 of the County Code, the Animal Control Ordinance. Director King summarized the key points of the four basic areas which staff wanted to update: (1) procedure for application, issuance, and renewal of license; (2) license fees; (3) impoundment, redemption, surrender, and disposition of non-quarantined animals; and (4) dogs which are involved in a biting or attack incident.

Director King reported that the proposed amendments would achieve the following:

- Permit owners to purchase both one (1) and three (3) year licenses
- Revise and create fees appropriate for the licenses
- Clarify “payment upon surrender of animal” language
- Revise notice of rights and appeals procedure for a biting or attack incident.

Concluding his presentation, Director King presented staff’s recommendation for: (1) approval of the required amendments to Chapter 302, by adoption of the proposed Ordinance; and (2) amendment of existing animal control licensing fees, by approval of the proposed Resolution.

Regarding potentially dangerous dogs, Commissioner O’Bryan agreed with giving the animal’s owner five (5) working days to get his/her case together (Ordinance, Section 302.081 [2]), page 203 of the backup), but wanted to include specifications for the Emergency Services Director to shorten his review time to five (5) calendar, rather than five (5) working, days.

Senior Assistant County Attorney Marian Fell read a proposed revision to the Ordinance, which would provide for the Emergency Services Director’s review time to be shortened to five (5) calendar days, and not five (5) working days, and which provides for only one review, rather than an additional appeal by the owner, as proposed in the first draft Ordinance.

Chairman Davis desired to leave intact the existing license fees.

Budget Director Jason Brown responded to Commissioner Wheeler's questions regarding the revenues generated by the license fees.

Commissioner Wheeler believed that the fee increase was appropriate, because programs should be paid for by those who utilize them.

Chairman Davis expressed that it is not the pet owners who follow the rules who have the issues with Animal Control; those owners who do not meet the requirements are the ones who should be taxed or fined.

Commissioner Wheeler agreed with Chairman Davis's logic; nonetheless, he felt that by not charging the pet owners, the entire expense burden for Animal Control is put upon the taxpayers.

Commissioner Solari requested that staff provide a spreadsheet on revenues related to Animal Control. He pointed out that the fee would just be paying for the program of getting the animals licensed.

Vice Chairman Flescher felt that the proposed \$5.00 increase for the license was fair, as cost adjustments had not been made in quite awhile. He felt that the three-year license would benefit the pet owners and help in the maintenance of Animal Control's database.

*The Chairman opened the public hearing.*

**Fred Mensing**, 7580 129<sup>th</sup> Street; Sebastian, felt it was unfair to have higher fees for the owners of a gentle pet dog, but wanted to see financial penalties imposed on the owners of aggressive, potentially vicious, breeds of dogs.

Director King informed Mr. Mensing that this item has come before the Legislature, but as matters stand, the County is not allowed to have a breed-specific Ordinance.

**Renee Renzi**, Waverly Place, asked the Board to consider the effects of the requirement to provide a fee upon surrender of an animal (Ordinance Section 302.07(D)(1), noting that some owners have back fees and might set the animal loose rather than incur expenses for the unwanted pet.

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

Commissioners and staff continued to discuss situations where an owner wants or needs to surrender an animal, but does not want to pay any required fees or back fines, and who might decide to let his or her animal loose.

Commissioner O'Bryan suggested amending the language to Section 302.07(D) (1) of the proposed Ordinance as follows: "An animal may be signed over to the animal control division at any time prior to or during impoundment of any nature whatsoever by its owner or his or her designee by executing an unconditional release and surrender statement..."

Commissioner O'Bryan stated that his forthcoming Motion would also include a topic reviewed with Attorney Fell earlier (in today's discussion), wherein the Emergency Director's review time of a case would be shortened to five (5) calendar, rather than working days, and which provides for only one review (rather than an additional appeal by the Owner, as set forth in the proposed amendments).

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, to approve staff's recommendation, with the following changes: (1) amend Section 302.07(D)(1), to include "...at any time prior to or during impoundment of any nature..."; and (2) amend Section 302.081(A)(2) to stipulate that the Emergency Services Director's review time would be five (5) calendar days, and provide for only one review (rather than allowing an additional appeal by the owner, as set forth in the proposed amendments).

Under discussion, Chairman Davis wanted the licensing fee structure to remain the same.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Chairman Davis opposed), the Motion carried. The Board: (1) adopted **Ordinance 2008-022**, with the above changes, amending Sections 302.04 (B) and 302.04 (D) of the County's Animal Control Ordinance to allow three year licenses for three year vaccinations; amending Section 302.07 (D) (1) to clarify payment upon surrender of an animal; and amending Section 302.081 (A) of the County's Animal Control Ordinance to provide a right of appeal prior to the imposition of reasonable restrictions on a dog involved in any biting or attack

incident that does not result in severe injury or death; providing for severability; providing for repeal of other conflicting Ordinances; providing for inclusion in the Code of Ordinances of Indian River County; providing for filing with the Department of State; and providing for an effective date; and (2) approved **Resolution 2008-201**, amending certain of the existing fees and procedures found in Part A, license and impoundment fees, of Resolution 2006-005 related to the enforcement of the Animal Control Ordinance.

*The Chairman called a recess at 10:31 a.m. and reconvened the meeting at 10:43 a.m., with all members present.*

**10.A.3. PUBLIC HEARING FOR APPROVAL OF A RESOLUTION ELECTING TO USE THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON AD VALOREM ASSESSMENTS FOR THE GIFFORD COMMUNITY CENTER MUNICIPAL SERVICE BENEFIT UNIT (LEGISLATIVE)**

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

Deputy County Attorney William DeBraul reported that this was the first of two Public Hearings. He recapped the backup memorandum of December 8, 2008, to provide background and details on the request to use non-ad valorem assessments for maintenance, operation, and improvement of the Gifford Community Center, through the creation of a new

Municipal Services Benefit Unit (MSBU). Attorney DeBaal displayed an aerial projection of the proposed MSBU area; pointed out two changes to the map; and informed Commissioners that if the Resolution was approved, an explanatory letter would be sent to the residents within MSBU boundaries. Attorney DeBaal thereafter requested Board approval of the proposed Resolution, and of the MSBU Map and legal description.

*The Chairman opened the public hearing. Seeing none, the Chairman closed the public hearing.*

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, to approve staff's recommendation, including the map and legal description for the Municipal Service Benefit Unit.

Attorney DeBaal clarified that as it was a statutory requirement for this item to go to the second public hearing, Commissioner Wheeler did not need to include the request in his Motion.

Commissioner Solari advocated having the most possible communications with the residents as possible, and also wanted to have notice provided to the main community groups in Gifford, like the Progressive Civil League, NAACP, and COPE. He wondered: (1) if there was some mechanism for accountability in the MSBU to make sure funds were properly used; and (2) whether there should be a five-year sunset clause, so the community could make future determination on whether or not it wished to continue with the Gifford MSBU.

Attorney DeBraal declared that he would provide notice to the Gifford Community Groups and informed Commissioners that Budget Director Jason Brown had been working on budget matters with the Gifford Progressive Civil League.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved: (1) **Resolution 2008-202**, electing to use the uniform method for the levy, collection, and enforcement of non ad valorem assessments pursuant to Florida Statute Section 197.3632 to recover the costs of operation, maintenance and improvement of the Gifford Community Center; and (2) the Map and legal description for the Municipal Service Benefit Unit.

**10.B. PUBLIC DISCUSSION ITEMS-NONE**

**10.C. PUBLIC NOTICE ITEMS-NONE**

**11. COUNTY ADMINISTRATOR'S MATTERS-NONE**

**11.A.1. UPDATE ON ORIOLES**

Administrator Baird recapped that at the December 2, 2008 Board of County Commission meeting, the Commissioners extended to the Baltimore Orioles a deadline of December 15, 2008 for their acceptance or rejection of the County's final proposal. He informed Commissioners that the Orioles had proposed a counter-offer which was substantially different than the County's offer, which was received on December 12, 2008.

Administrator Baird concluded that since the Commission has established a deadline, and the Orioles have not accepted the final offer, County negotiations with the team would be terminated, effective December 15, 2008, unless the Board votes otherwise.

Chairman Davis questioned whether the County's offer should be rescinded if discussions are terminated with the Orioles.

Attorney Collins advised that if an offer is on the table and the County's intent is to move on, it is better to rescind the offer.

Commissioner O'Bryan offered for consideration a four-point plan: (1) reject the Orioles' counter-offer received as of December 12, 2008; (2) rescind the County's October 30, 2008 offer; (3) impose a 30-day cooling off period; and (4) eliminate any confidentially restrictions on Board members or County.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Solari, to: (1) officially reject, in writing, the Orioles' counter-offer, which was received as of December 12, 2008; (2) officially rescind the County's October 30, 2008 final offer; (3) impose a 30-day cooling off period with the Baltimore Orioles; and (4) officially notify the Baltimore Orioles of the County's intent to eliminate, as of December 16, 2008, the confidentiality restrictions which had been imposed upon the County and Board members.

**Joseph Paladin**, President, Black Swan Consulting, urged the Commissioners to exercise caution in setting an ultimatum and drawing a line in the sand, because there are not too many chances to bring professional ball teams into the County.

Administrator Baird responded to questions from **Bob Johnson**, Coral Wind Subdivision, regarding other possible options to take, before discontinuing current negotiations with the Orioles.

**Mr. Paladin** felt that the County needed more information before concluding negotiations, and that the County should exercise every option to try to draw the Baltimore Orioles to Vero Beach.

Commissioner O'Bryan talked about the tremendous efforts put forth by Administrator Baird and Vero Beach City Manager Jim Gabbard, in trying to accommodate the Orioles. He declared that it is time to move forward, noting that other venues are hesitant to come here because of the pending contract. He divulged that the counter-offer made by the Orioles was insulting, and that the concessions they were asking of the City and County were unheard of and far removed from the County's offer.

**Fred Mensing**, 7580 129<sup>th</sup> Street, Sebastian, was opposed to throwing the Orioles totally out; instead he wanted to let the team know that their counter-offer has been rejected and the County would henceforth be considering offers by other venues.

**Mr. Paladin** urged the Board to hold a public workshop on this very important topic, which affects the whole community.

Chairman Davis sought and received confirmation from Attorney Collins that official action could be taken at today's meeting.

**Bill Curtis**, 3410 Buckinghammock Trail, felt that the County was in a strong position, with a lot to offer the Orioles or any other business, and Commissioners and staff should think positively about moving forward.

Administrator Baird attested to the advantages which the County could offer to the Orioles.

Commissioner Solari supported Commissioner O'Bryan's Motion; remarked that the County had offered a lavish and substantial package to the Orioles; and declared that, with maintenance costs for the Stadium at \$100,000 per month, the County needed to move rapidly forward.

Vice Chairman Flescher felt that Commissioner O'Bryan's Motion would still allow the opportunity for the Orioles to come back, if they so desired; however, he agreed that it was time to move on, be open, and get a team into the Stadium.

The Chairman CALLED THE QUESTION. The Board unanimously approved to: (1) officially reject, in writing, the Baltimore Orioles' counter offer, which was received on December 11, 2008; (2) officially rescind, in writing, the County's October 30, 2008 final offer; (3) impose a 30-day cooling off period with the Baltimore Orioles; and (4) officially notify the Baltimore Orioles of the County's intent to eliminate, as of December 16, 2008, the confidentiality restrictions which had been imposed upon the County.

## **12. DEPARTMENTAL MATTERS**

### **12.A. COMMUNITY DEVELOPMENT**

#### **12.A.1. REQUEST FOR AUTHORIZATION FOR STAFF TO ISSUE A REQUEST FOR PROPOSALS TO HIRE A CONSULTANT TO ADMINISTER A NEIGHBORHOOD STABILIZATION PROGRAM COMMUNITY DEVELOPMENT BLOCK GRANT**

Community Development Director Bob Keating reviewed the backup memorandum of December 5, 2008 to provide details and analysis on the request for proposals (RFP) to hire a consultant to administer Community Development Block Grant (CDBG) funds under a new Neighborhood Stabilization Program (NSP). He divulged that the County would be receiving two categories of funds: (1) about \$3.5 million to acquire and rehabilitate foreclosed homes for re-sale to low and very low-income households; and (2) about \$1 million to acquire and rehabilitate foreclosed homes for renting to very low income households. Director Keating thereafter presented staff's recommendation to authorize the Community Development Director to issue a Request For Proposal to hire a consultant to administer the NSP grant.

Chairman Davis wanted to minimize government involvement, and turn the money over to those organizations with experience in this field.

Director Keating related that any non-profit which becomes involved in this enterprise must have five years of experience in this area. He conveyed that the County has oversight responsibility for the project, and that the maximum amount that can be used for administration of the Grant is 6%.

Commissioner O'Bryan asked where the rental money goes, and learned from Director Keating that any income derived from the process, which has not been used to off-set expenses, reverts to the State.

Sasan Rohani, Chief of Long-Range Planning, disclosed for Commissioner Solari that the clock has not begun for this project, and that the County would have ten (10) months to utilize the Grant funds.

Commissioner Solari observed that the rents generated from the properties would probably not cover the full expenses for the property's insurance, taxes and maintenance, and felt it would be beneficial to have early and substantial involvement from local housing groups and local charitable organizations, because each one of the houses would need substantial help going forward.

Responding to Commissioner Wheeler's query, Director Keating divulged that staff has discussed with the Housing Authority the oversight of the rentals; and that several non-profits and the Habitat for Humanity were qualified to oversee the ownership side of the program.

Commissioner Wheeler expressed concerns about the homeowners who are on the edge of foreclosure, and who lack the money to do necessary repairs to the home.

Director Keating explained that a lot of rehabilitation loans are provided by SHIP (State Housing Initiatives Partnership Program). He then responded to further questions from Commissioners regarding the SHIP Program, and the use of NSP funds.

Sasan Rohani responded to Julianne Price's question regarding the five-year requirement for non-profit organizations to participate in the program.

**Teddy Floyd** stated that the non-profit organizations could work together with the County to help the people requiring assistance.

**Jim Davis**, 775 Broadway Street, and a member of Coalition for Affordable Homes, Mental Health Collaborative, and Vice President Elect of the County Chapter of the Alliance of the Mentally Ill, reported that a group of non-profits had come together in their commitment to make this program a viable opportunity for many disadvantaged people.

**Bridey Buetell**, 408 21<sup>st</sup> Street SE, Program Administrator for the Mental Health Collaborative, revealed that there currently exists a lack of housing for the mentally ill. She voiced that this Grant was a once-in-a-lifetime opportunity for the non-profit organizations to assist populations who need some housing options.

ON MOTION BY Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved authorization for the Community Development Director to issue an RFP to hire a consultant to administer a NSP Grant, as recommended in the memorandum of December 5, 2008.

**12.B. EMERGENCY SERVICES-NONE**

**12.C. GENERAL SERVICES**

**12.C.1. CUSTODIAL SERVICES**

PULLED

**12.D. HUMAN RESOURCES-NONE**

**12.E. HUMAN SERVICES-NONE**

**12.F. LEISURE SERVICES-NONE**

**12.G. OFFICE OF MANAGEMENT AND BUDGET-NONE**

**12.H. RECREATION-NONE**

**12.I. PUBLIC WORKS-NONE**

**12.J. UTILITIES SERVICES**

**12.J.1. RELEASE OF RETAINAGE AND FINAL PAYMENT TO GIANNETTI  
CONTRACTORS, INC. FOR THE ROCKRIDGE SEWER REPLACEMENT  
PROJECT UCP-2521**

*(Clerk's Note: This item was heard following 13.A. County Attorney Matters).*

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

Commissioner O'Bryan commended Director of Utilities Erik Olson for a job  
well done.

Chairman Davis agreed, and also extended kudos to Director Olson and staff.

Director Olson credited Project Manager Larry Brown and Giannetti Contractors, Inc., with the positive outcome of this project, and invited the Commissioners and public to visit and see the positive changes to the Rockridge neighborhood.

Administrator Baird and Director Olson also thanked and commended Phil Carpenter, President of the Rockridge Homeowners Association.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board unanimously approved final pay and release of retainage to Giannetti Contractors for \$644,888.56, as recommended in the memorandum of December 5, 2008.

**12.J.2. AMENDMENT NO. 1 TO IRC CONTRACT 2006012 WITH POOLE AND KENT COMPANY OF FLORIDA, INC. FOR THE EXPANSION OF THE NORTH RO WATER TREATMENT PLANT TO ALLOW RELEASE OF RETAINAGE FOR SUBSTANTIALLY COMPLETED ITEMS**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously: (1) approved Change Order No. 6 to IRC Contract 2006012 with Poole and Kent Company of Florida, Inc. to increase the contract in the amount \$17,278.00; (2) approved Amendment

No. 1 to Contract No. 2006012 that allows release of retainage for components that have been substantially completed by the County; and (3) authorized the Chairman to execute same, as recommended in the memorandum of December 5, 2008.

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

**12.J.3. AMENDMENT NO. 7 TO WORK ORDER NO. 1 WITH ECOTECH CONSULTANTS, INC.**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, the Board unanimously approved Amendment No. 7 to Work Order No. 1 with Ecotech Consultants, Inc., in the amount of \$6,500.00, and authorized the Chairman to execute same, as recommended in the memorandum of November 21, 2008.

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

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

#### **13.A. ATTORNEY-CLIENT SESSION CONCERNING LITIGATION WITH OCEAN CONCRETE, INC. AND GEORGE MAIB**

*(Clerk's Note: At 11:43 a.m., the Chairman announced that the Board would retreat to the County Commission Conference Room 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, Peter D. O'Bryan, Gary C. Wheeler, and Bob Solari; County Administrator Joseph A. Baird, County Attorney William G. Collins II, Assistant County Attorney George Glenn, and Sharleen J. Sudbury, Certified Court Reporter.

*(The Commissioners returned to the Chambers at 12:17 p.m., and the Chairman closed the Attorney-Client Session. The Commissioners recessed for lunch at 12:20 p.m., and returned to the Chambers at 1:30 p.m.)*

#### **13.B. APPROVAL OF PURCHASE OF PROPERTY LOCATED AT 1935 43<sup>RD</sup> AVENUE, MERMAID CARWASH**

Attorney DeBraal recapped the backup memorandum of December 8, 2008, to provide background and analysis on the request to purchase the entire Mermaid Carwash property from Timothy and Joshana Tynes. He reported that the Tynes were asking for extended possession until March 31, 2010, with a provision for early taking, which would require payment of \$5,000 for every month that the County takes possession prior to that date.

He thereafter presented staff's recommendation to approve the Purchase and the Lease Agreements.

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

Commissioner O'Bryan was opposed to the \$5,000 penalty for the early take.

Discussion ensued as staff responded to questions and comments from the Commissioners regarding the \$5,000 penalty. Public Works Director Jim Davis conveyed that it was hard to guarantee anything in today's environment, but he did not see that the County would need the property prior to March 2010.

Attorney DeBraul responded to Commissioner Wheeler's questions regarding what the process would be to re-negotiate the Agreement, if the \$5,000 condition was removed from the Agreement.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner O'Bryan opposed), the Motion carried. The Board: (1) approved the purchase of the entire Mermaid Carwash property, and authorized the Chairman to execute the Agreement to Purchase and Sell Real Estate, with Timothy E. and Joshana Tynes; and (2) the Lease Agreement with Timothy E. Tynes and Joshana Tynes and Mermaid Carwash, Inc.

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

**13.C. APPROVAL OF PURCHASE FOR RIGHT-OF-WAY OF PROPERTY  
LOCATED AT 3540 41<sup>ST</sup> STREET, VERO BEACH, FL 32967**

Assistant County Attorney George Glenn informed the Commissioners that the purchase of right-of-way from the Gaeta Development Company, was necessary for future road improvements to 41<sup>st</sup> Street.

ON MOTION by Commissioner Solari,  
SECONDED by Vice Chairman Flescher, the Board  
unanimously approved the Agreement to Purchase  
and Sell Real Estate for the 41<sup>st</sup> Street right-of-way,  
with Neil Gaeta, Trustee, and Gaeta Development  
Company, and authorized the Chairman to execute  
same, as recommended in the memorandum of  
December 9, 2008.

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

**13.D. APPROVAL OF MEDIATED SETTLEMENT AGREEMENT FOR PURCHASE  
OF PROPERTY LOCATED AT THE SOUTHWEST CORNER STATE ROAD 60  
AND 66<sup>TH</sup> AVENUE**

Attorney DeBraul recapped the backup memorandum of December 4, 2008, to provide background and chronology on the Mediated Settlement Agreement for the property

owned by State Hwy 60/Kings Hwy LLC. He used an aerial projection to display the subject parcels, and provided details on the County's future road improvement plans for 66<sup>th</sup> Avenue. He thereafter presented staff's recommendation to approve the Mediated Settlement Agreement for the purchase of the subject property.

ON MOTION by Commissioner Wheeler,  
SECONDED by Chairman Davis, the Board  
unanimously approved the Mediated Settlement  
Agreement with State Hwy 60/Kings Hwy, LLC, for  
the aggregate sum of \$1,900,000, as recommended  
in the memorandum of December 4, 2008.

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

**13.E. UNCONDITIONAL OFFER FOR PARCEL OF PROPERTY OWNED BY MARY  
CHARLENE BROWN, 5145 AND 5115 66<sup>TH</sup> AVENUE, VERO BEACH**

Attorney DeBraul displayed an aerial projection of the 2.0 acre parcel owned by Mary Charlene Brown, and provided background description on the request to make an unconditional offer for the parcel. He thereafter presented staff's recommendation to approve the unconditional offer to purchase the necessary right-of-way, or the entire parcel.

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner Wheeler, the Board  
unanimously approved the unconditional offer to  
purchase the necessary right-of-way from Ms. Mary  
Charlene Brown, at a price of \$259,555, and the

unconditional offer to purchase the entire parcel for \$385,250, as recommended in the memorandum of December 10, 2008.

**13.F. UNCONDITIONAL OFFER FOR A PARCEL OF LAND ON THE CORNER OF 66<sup>TH</sup> AVENUE AND 49<sup>TH</sup> STREET OWNED BY MARY CHARLENE BROWN**

Attorney DeBraal displayed an aerial projection of the subject property, owned by Mary Charlene Brown, and provided background description on the request to make an unconditional offer for the parcel. He thereafter presented staff's recommendation to extend to Ms. Brown an unconditional offer, to either purchase the necessary right-of-way or the entire parcel.

ON MOTION by Commissioner Flescher, SECONDED by Chairman Davis, the Board unanimously approved an unconditional offer to purchase the necessary right-of-way from Ms. Mary Charlene Brown, at a price of \$247,250 and an unconditional offer to purchase the entire parcel for \$373,750, as recommended in the memorandum of December 10, 2008.

**13.G. UNCONDITIONAL OFFER FOR PARCEL 112 ON 66<sup>TH</sup> AVENUE OWNED BY PHYLLIS AND LAWRENCE BROWN, 4785 66<sup>TH</sup> AVENUE, VERO BEACH**

Attorney DeBraal displayed an aerial projection of the subject property, owned by Phyllis and Lawrence Brown, and provided background description on the request to make

an unconditional offer for the parcel. He thereafter presented staff's recommendation to extend to Mr. and Mrs. Brown an unconditional offer, to either purchase the necessary right-of-way, or the entire parcel.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Davis, the Board unanimously approved an unconditional offer to purchase the necessary right-of-way from Mr. and Mrs. Brown, at a price of \$206,770, and an unconditional offer to purchase the entire parcel for \$304,750, as recommended in the memorandum of December 9, 2008.

**13.H. UNCONDITIONAL OFFER FOR PARCEL 105 ON 66<sup>TH</sup> AVENUE OWNED BY ERMA LEE LEWIS, 5265 66<sup>TH</sup> AVENUE, VERO BEACH**

Attorney DeBral displayed an aerial projection of the subject property, owned by Erma Lee Lewis, and provided background description on the request to make an unconditional offer for the parcel. He thereafter presented staff's recommendation to extend to Ms. Lewis an unconditional offer to either purchase the necessary right-of-way, or the entire parcel.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously approved an unconditional offer to purchase the necessary right-of-way from Mrs. Lewis, at a price of \$118,335 and an unconditional

offer to purchase the entire parcel for \$212,750, as recommended in the memorandum of December 9, 2008.

**13.I. UNCONDITIONAL OFFER FOR PARCEL 101 ON THE SOUTHWEST  
CORNER OF 66<sup>TH</sup> AVENUE AND 61<sup>ST</sup> STREET OWNED BY HARRIS GROVES  
VERO BEACH, FLORIDA**

Attorney DeBral displayed an aerial projection of the subject property, owned by Harris Groves, and provided background description on the request to make an unconditional offer for the parcel. He thereafter presented staff's recommendation to extend to Harris Groves an unconditional offer to purchase the necessary right-of-way, noting that because of the size of the property, staff did not recommend purchasing the whole property.

ON MOTION by Commissioner Solari,  
SECONDED by Commissioner O'Bryan, the Board  
unanimously approved an unconditional offer to  
purchase the necessary right-of-way from Harris  
Groves at a price of \$148,350, as recommended in  
the memorandum of December 9, 2008.

**13.J. UNCONDITIONAL OFFER FOR PARCEL 106 ON 66<sup>TH</sup> AVENUE OWNED BY  
JOHN AND DEBRA MAROTTO, 5215 66<sup>TH</sup> AVENUE, VERO BEACH**

Attorney DeBral displayed an aerial projection of the subject property, owned by John and Debra Marotto, and provided background description on the request to make an

unconditional offer for the parcel. He thereafter presented staff's recommendation to extend to Mr. and Mrs. Marotto an unconditional offer to purchase either the necessary right-of-way, or the entire parcel.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved an unconditional offer to purchase the necessary right-of-way from Mr. and Mrs. Marotto at a price of \$233,105, and an unconditional offer to purchase the entire parcel for \$327,750, as recommended in the memorandum of December 9, 2008.

#### **14. COMMISSIONER ITEMS**

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

##### **14.A.1. RESOLUTION TO RECONNECT THE SOUTH FLORIDA AND ST. JOHNS RIVER WATER MANAGEMENT DISTRICTS**

Chairman Davis provided background information on the request from the Indian River Citrus League for Board support of a draft Resolution to reconnect the South Florida and St. Johns River Water Management Districts (SJRWMD). Chairman Davis informed the other Commissioners that he would also be asking St. Lucie County to support the Resolution. He thereafter asked for a Motion to direct staff to review the draft Resolution, and bring it back for review, to the Board of County Commissioner Meeting on December 23, 2008.

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

Chairman Davis responded to Commissioner O'Bryan's question regarding  
water routing east and west of the sand ridge.

Commissioner Solari made observations about the benefits of reconnecting the  
two Water Districts.

The Chairman CALLED THE QUESTION and the  
Motion carried unanimously. The Board directed  
legal staff to review the draft Resolution and bring it  
back before the Board on December 23, 2008, with  
comments and suggestions for finalization, as  
recommended in the memorandum of December 8,  
2008.

**14.A.2. DISCUSSION REGARDING EX PARTE COMMUNICATIONS AND QUASI  
JUDICIAL MATTERS**

Chairman Davis sought legal opinion on the proposed Disclosure Form (page  
390 of the backup) for the Commissioners to disclose any ex parte conversations they may  
have prior to a quasi-judicial matter. He declared that he would like the opportunity to have  
conversations with his constituents and to subsequently disclose those conversations.  
Chairman Davis added that although he would like the Board's support on this, he was not  
saying that each Commissioner had to follow his example.

Attorney Collins stated that the substance of any ex parte conversation should be added to the Disclosure Form, discussed the two alternative procedures laid out in Statute 286.0115 (pages 391 and 392 of the backup), and recommended that the Board follow Chapter 286.0115(1)(a), subsections (c)1-(c)4, whereby communications and the identity of the person with whom they took place are disclosed and made part of the record before final action.

Deliberations ensued as Commissioners discussed whether it was preferable to use the Disclosure Form, or to limit communications to an open forum discussion, when something was quasi-judicial in nature.

Commissioner Wheeler wanted to know if each Commissioner could determine whether or not to use the Disclosure Form or to limit conversations to the public hearing.

Attorney Collins revealed that the procedure for disclosure must be adopted by Ordinance or Resolution. He conveyed that each Commissioner could make the decision whether or not to meet with the individual and file the disclosures, or they could inform the constituent they would rather have the conversation be on record.

The Commissioners continued to discuss whether it would be best to allow the ex parte communications via the Disclosure Forms, or to limit discussions to the public hearings.

Commissioner O'Bryan suggested that the Commissioners receive written communications, which could be put into the public record.

Attorney Collins explained that the law makes a distinction between written and oral ex parte communications. He explained that a Resolution could be drafted such that the Board could receive written communications as long as they are made part of the record.

**Joseph Paladin**, Black Swan Consulting, supported having the Disclosure Form, stating that it was a matter not only of transparency in the government, but a matter of having the Commissioners receive all pertinent information.

Commissioner Solari felt that it would be better to put everything in writing, so that all Commissioners could receive the same information.

**Mr. Paladin** suggested having a constituent accompany any personal visit to a Commissioner with a written summary of what was to be discussed at the meeting.

Commissioner O'Bryan was hesitant to take Mr. Paladin's above suggestion, and reiterated that a constituent could submit his/her ideas in writing. He inquired whether it was necessary to approve a Resolution to remove the presumption of prejudice from written ex parte communications.

Attorney Collins stated that after a Motion from the Board, he would draft a Resolution to be brought back to a future meeting.

ON MOTION by Commissioner O'Bryan,  
SECONDED by Commissioner Solari, the Board  
unanimously directed the County Attorney to draft a  
Resolution allowing the process for written Ex-Parte  
communication.

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

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

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

**14.D.1. CLARIFICATION ON THE BOARD'S POLICY TO RE-APPOINT AT-LARGE MEMBERS TO COUNTY ADVISORY COMMITTEES**

Commissioner O'Bryan stated that there had been rumors about expiring advisory committee terms becoming open positions, to be filled through a process other than blanket re-appointment, which has been done for the past three years. He felt that the blanket re-appointments were efficient and cost-effective, and would not prohibit a Commissioner (via a majority vote), from removing an at-large member. He thereafter sought clarification that Board policy, as it has been, was to have a blanket re-appointment of at-large advisory committee members.

Chairman Davis supported the idea of blanket re-appointments. He suggested that the committee appointments be handled similarly to the Consent Agenda, so Commissioners could vote separately on any individual who has been pulled from the list of re-appointees. In the event of two individuals applying for the same seat, he wanted to see the Board vote on the two applicants.

Commissioner Solari wondered if a nomination would have to be made at the same time that the Board voted to remove, or not re-appoint, an individual from a committee.

Commissioner O'Bryan pointed out that the advisory committee vacancy does not occur until the Board votes to remove the committee member. At that point, the Board can advertise for an applicant to fill the position.

Vice Chairman Flescher did not believe it has been Board policy, but rather the general practice, to have the blanket re-appointments. He declared that there was no reason to have a term limit, unless there was going to be a choice at the end of that term.

Attorney Collins clarified that all the committee members served at the pleasure of the Board, whether it was for a two-year term or not. He stated that the Board has the power to reappoint, and it controls how appointments are maintained or changed.

Vice Chairman Flescher asked whether any committee member's removal might result in a vacancy for a period of time, pursuant to Resolution 2008-112, which addresses policy for appointing "at large" members to advisory committees.

Attorney Collins explained that if a position becomes vacant, the vacancy will be advertised under "Informational Items" on the Board Agenda. Applications will be accepted for two weeks, at which time the Board votes on whoever is best suited among the applicants.

Commissioner Solari liked the idea of having the opportunity to review the committees, and to meet with the applicants, should there be more than one person wanting to serve on a vacancy.

Commissioner O'Bryan wanted to stick with current policy of re-appointing the members. If a Commissioner wants to replace an at-large member, he could pull the member off of the committee, and secure a majority vote.

Chairman Davis wanted any citizen who applies for a committee position, to have the opportunity to state their case to the Commission, even if the current appointee has not been pulled.

The Commissioners continued debate on the intent of the Resolution, and proper procedure for removal and replacement of a committee member.

Commissioner O'Bryan reminded Board members that the position is not open until there is a majority vote to remove the committee member, and the Resolution mandates that an open position must be advertised for two weeks.

Commissioner Wheeler remarked that if a Commissioner wanted to replace a committee member with another individual, he should just bring it before the Board and if a majority votes on it, it is accomplished.

**Mr. Paladin** questioned whether someone could apply for a position prior to its becoming vacant.

Commissioner O'Bryan responded that, because a vacancy was for an at-large committee member, the replacement could not be made for two weeks, due to the advertising requirement.

Commissioner Solari was fine with pulling someone off the Consent Agenda, but wanted to know if he would have to nominate a candidate or candidates if he wanted a committee member or members pulled.

Commissioners continued to discuss procedures for filling at-large committee vacancies prior to, and subsequent to, Resolution 2008-112.

MOTION WAS MADE by Commissioner Solari for the Commissioners to send in their recommendations for any at-large committee members that they would prefer to fill a committee position, prior to the week in January at which the list of committee appointments is placed on the Agenda for approval, and have the vote be taken at that time. MOTION DIED FOR LACK OF A SECOND.

Commissioner Solari noted that his idea would provide a relatively quick process for dealing with the Committees at one meeting.

Vice Chairman Flescher did not believe that Commissioner Solari's Motion was consistent with Resolution 2008-112.

**Charlie Wilson**, 1057 6<sup>th</sup> Avenue, felt that the time for a new appointee to come forward would be at the time of term expiration.

Commissioner Solari recapped that it seemed as if the Board would place on the Consent Agenda, the committee members whose terms were expiring, and any Commissioner who wanted to pull a position or positions could do so, and that would start the vacancy process.

NO BOARD ACTION TAKEN OR REQUIRED

**14.D. COMMISSIONER BOB SOLARI-NONE**

## **15. SPECIAL DISTRICTS AND BOARDS**

### **15.A. EMERGENCY SERVICES DISTRICT**

The Chairman announced that immediately upon adjournment of the regular Board of County Commission meeting, the Board would reconvene as the Board of Commissioners of the Emergency Services District. Those Minutes are being prepared separately and appended to this document.

#### **15.A.1. APPROVAL TO PURCHASE ONE FIRE ENGINE AND ASSOCIATED EQUIPMENT FOR FIRE RESCUE STATION 12 (GIFFORD COMMUNITY STATION) FROM TEN-8 FIRE EQUIPMENT, INC.**

### **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 OCTOBER 21, 2008**

#### **15.B.2. APPROVAL OF MINUTES REGULAR MEETING OF NOVEMBER 4, 2008**

#### **15.B.3. PUBLIC ANNOUNCEMENT FOR RECYCLING DURING THE HOLIDAY SEASON**

**15.B.4. PUBLIC ANNOUNCEMENT FOR AN ANNUAL ELECTRONICS  
RECYCLING EVENT ON JANUARY 24, 2009**

**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  
3:32 p.m.

ATTEST:

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Mary Louise Scheidt, Clerk, *Ad Interim*

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

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

BCC/MG/2008Minutes