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**OF BOARD OF COUNTY COMMISSIONERS**  
**OF JANUARY 13, 2009**

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January 13, 2009

**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, January 13, 2009. 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**

Deputy Teddy Floyd, Indian River County Sheriff's Office, Crime Prevention Unit 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**

**Deletion:** Item 8.F., Professional Engineering Services Agreement, CR 512 Corridor Improvements – IRC Project No. 9611 Addendum No. 15 (Masteller & Moler, Inc.)

ON MOTION by Commissioner O’Bryan, SECONDED by Chairman Davis, the Board unanimously approved the above change to the Agenda.

#### **5. PROCLAMATIONS AND PRESENTATIONS - NONE**

#### **6. APPROVAL OF MINUTES**

##### **6.A. WORKSHOP OF OCTOBER 20, 2008 – COMPREHENSIVE PLAN EVALUATION AND APPRAISAL REPORT**

The Chairman asked if there were any additions, deletions or corrections to the Workshop Minutes of October 20, 2008. There were none.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O’Bryan, the Board unanimously approved the EAR Workshop Minutes of October 20, 2008, as written.

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

**7.A. NOTICE OF REGULAR QUARTERLY MEETINGS OF 2009, ST. JOHNS  
IMPROVEMENT DISTRICT ON FILE IN THE OFFICE OF THE CLERK TO  
THE BOARD**

**7.B. ENTERPRISE ZONE DEVELOPMENT AGENCY**

**7.C. AFFORDABLE HOUSING ADVISORY COMMITTEE**

**7.D. 2009 ELECTION OF MPO CITIZENS ADVISORY COMMITTEE  
(MPOCAC) CHAIRMAN AND VICE CHAIRMAN**

**7.E. 2009 ELECTION OF MPO TECHNICAL ADVISORY COMMITTEE  
(MPOTAC) CHAIRMAN AND VICE CHAIRMAN**

**8. CONSENT AGENDA**

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

Commissioner Solari requested Item 8.O. be consolidated with Item 14.A.1.

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

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

**8.A. PROVENCE BAY SIDEWALK EXTENSION REQUEST, DEVELOPER:**  
**CENTEX HOMES**

Commissioner Wheeler voiced concerns over the sidewalks and wanted to see them completed since it was part of the Agreement. He hoped that pulling the Letter of Credit would expedite the project.

MOTION WAS MADE by Commissioner Wheeler,  
SECONDED by Commissioner O'Bryan, to pull the Letter  
of Credit.

Responding to the Board's questions, County Attorney Will Collins affirmed that the contract is in default and could have been renewed at the Administrative level for an additional two years if they had submitted the request for extension in a timely manner. Since they had not, it now comes before the Board. He said the Letter of Credit could be pulled because they are in default, but staff would then be responsible for working out the completion of the sidewalks with the developer, or going out for bid to have the work done through the County.

**Attorney Bruce Barkett**, 756 Beachland Boulevard, on behalf of Centex, pointed out that these matters are normally routine and not brought to the Board. He explained the reasons for the application delay, and updated the Board on the project's status.

There was a brief discussion regarding the extension.

**Ken DeLaTorre**, Design and Entitlement Consultant with Centex Homes, responded to the Board's questions and concerns pertaining to the sidewalks, and the Certificate of Completion for Phase I.

Commissioner O'Bryan wanted to know if the Letter of Credit would still be good if this were to be tabled for two weeks, and Attorney Collins acknowledged that yes, it had been extended.

**Attorney Barkett** summarized an e-mail from Dan Whittenberg to Barry Roy, Centex's Engineer, regarding the preliminary field inspection. Attorney Barkett anticipated receipt of the Certificate of Completion soon, and if not, he would return to the Board with a status report in two weeks.

Commissioner O'Bryan recommended this be tabled for two weeks.

Attorney Collins acknowledged that tabling this Item for two weeks would not jeopardize the security of the Letter of Credit.

MOTION WAS AMENDED by Commissioner Wheeler,  
SECONDED by Commissioner O'Bryan, to table this Item  
until the February 3, 2009 Board of County Commission  
Meeting.

The Chairman CALLED THE QUESTION and the Motion  
carried unanimously.

**8.B. FLORIDA POWER AND LIGHT (FPL) AGREEMENT TO INSTALL  
ADDITIONAL STREET LIGHTS IN THE VERO LAKE ESTATES STREET  
LIGHTING DISTRICTS**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously authorized the County Administrator or his designee to sign the FPL Street Lighting Agreement, thereby authorizing FPL to proceed with the installation of additional street lights in the Vero Lake Estates area, as recommended in the memorandum of January 6, 2009.

**8.C. APPROVAL WORK ORDER NO. 1 (ENGINEERING) WITH A.M.  
ENGINEERING AND TESTING, INC., PROVIDING PROFESSIONAL  
GEOTECHNICAL SERVICES IN ACCORDANCE WITH THE ANNUAL  
GEOTECHNICAL SERVICES CONTRACT FOR INDIAN RIVER COUNTY  
PARKS MAINTENANCE COMPLEX, IRC PROJECT NO. 0701**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Work Order No. 1 (Engineering) authorizing the project as outlined in the proposals, and authorized the Chairman to execute same for a fee of \$5,990.00, as recommended in the memorandum of December 30, 2008.

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

**8.D. PROFESSIONAL SERVICES WITH G. K. ENVIRONMENTAL, INC. FOR 53<sup>RD</sup> STREET ROADWAY IMPROVEMENTS, IRC PROJECT NO. 0107**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Professional Agreement authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute same, as recommended in the memorandum of December 29, 2008.

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

**8.E. WABASSO BEACH PARK RESTORATION; PROJECT NO. 0822 BID NUMBER 2008070, CHANGE ORDER NO. 1; OCEAN GATE GENERAL CONTRACTORS, INC.**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Change Order No. 1, and authorized the Chairman to execute same, so the contractor can be directed to make the changes, as recommended in the memorandum of January 6, 2009.

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

**8.F. PROFESSIONAL ENGINEERING SERVICES AGREEMENT, CR 512**  
**CORRIDOR IMPROVEMENTS – IRC PROJECT No. 9611 ADDENDUM No.**  
**15 (MASTELLER & MOLER, INC.)**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Addendum No. 15 for a total cost of \$6,650.00, as recommended in the memorandum of January 5, 2009.

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

**8.G. WORK ORDER No. 5 (ENGINEERING/SURVEY) GLOBALMIND (FKA NICK MILLER, INC.), FINAL PAY AND RELEASE OF RETAINAGE, INDIAN RIVER COUNTY VERTICAL CONTROL NETWORK (IRCVCN), INDIAN RIVER COUNTY MASTER CONTRACT 0504**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment of Invoice No. 12250, dated December 10, 2008 in the amount of \$2,762.50 for final payment and release of retainage for Work Order No. 5, as recommended in the memorandum of January 5, 2009.

**8.H. WORK ORDER No. 3 – RELEASE OF RETAINAGE, INDIAN RIVER COUNTY VERTICAL CONTROL NETWORK (IRCVCN) WITH GLOBALMIND (FKA NICK MILLER, INC.), INDIAN RIVER COUNTY PROJECT No. 0504**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment of globalmind Invoice No. 11751-RET, dated December 10, 2008, in the amount of \$940.00, for release of retainage, as recommended in the memorandum of January 5, 2009.

**8.I. WORK ORDER No. 4 GLOBALMIND (FKA NICK MILLER, INC.), FINAL PAY AND RELEASE OF RETAINAGE, INDIAN RIVER COUNTY VERTICAL CONTROL NETWORK (IRCVCN), PROJECT 0504**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment of globalmind Invoice No. 12249, dated December 10, 2008, in the amount of \$650.00, as recommended in the memorandum of January 5, 2009.

**8.J. APPROVAL OF BID AWARD FOR IRC BID NO. 2009022, 129<sup>TH</sup> PLACE  
SUBDIVISION WATER ASSESSMENT PROJECT**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously: (1) approved bid award to Timothy Rose Contracting, Inc. as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid; (2) approved the Sample Agreement; and (3) authorized the Chairman to execute said Agreement when required performance and payment bonds have been submitted along with appropriate certificate of insurance and the County Attorney has approved the Agreement as to form and legal sufficiency, as recommended in the memorandum of January 5, 2009.

**8.K. COMMERCIAL/INDUSTRIAL DEMAND REDUCTION RIDER AGREEMENT  
WITH FLORIDA POWER & LIGHT**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Commercial/Industrial Demand Reduction Rider Agreement (CDR) with FP&L, and authorized the Chairman to execute same, as recommended in the memorandum of December 12, 2008.

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

**8.L. APPROVAL OF BID AWARD FOR IRC BID NO. 2009028 UPGRADE**  
**ELECTRICAL SERVICE TO MIDWAY AT THE IRC FAIRGROUNDS**

Commissioner O'Bryan explained the details of replacing the electrical service at the Fairgrounds. He felt that even though staff recommended the low bidder (FMR Electrical Contractors, Inc., West Melbourne) for the bid award, an attempt should be made to keep the tax dollars within the County and to consider awarding the bid to Advanced Electrical Systems, Inc., from Vero Beach.

Director Frame told the Board about the disclosure form, and noted that Advanced Electrical Systems, Inc. had signed and notarized the form but left one of the blocks blank, making it incomplete.

Attorney Collins considered this to be a minor error.

Even though Commissioner O'Bryan thought FMR Electrical Contractors, Inc., from West Melbourne, was qualified, he believed that for a small difference they should award the bid to a business in the County.

MOTION WAS MADE by Commissioner O'Bryan to award the bid to Advanced Electrical Systems, Inc. There was no SECOND. MOTION DIED.

Commissioner Solari voiced concerns that if staff starts ignoring out of county bids, and if vendors stop bidding, then it would allow in-County bidders to have less financial discipline by raising their bids, and over time the County would pay more for projects with limited dollars.

Vice Chairman Flescher felt this would send a message to outside vendors that they need not apply on County bids. He wanted to do everything necessary to encourage the local business community to support the County's contracts.

Commissioner Wheeler indicated that the dollar amount was minimal, and did not want to set precedence. He thought staff needed to be careful about setting a policy to only deal within the County; otherwise, it would lessen the competitive bidding process.

Chairman Davis was not in favor of awarding the bid to the second bidder because their bid was \$500 more.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Solari, the Board by a 4-1 vote (Commissioner O'Bryan opposed) approved bid award to FMR Electrical Contractors, Inc., as the lowest most responsive and responsible bidder, meeting the specifications as set forth in the Invitation to Bid; and approved the issuance of a Purchase Order after receipt of the appropriate Certificate of Insurance, as recommended in the memorandum of January 7, 2009.

**8.M. APPROVAL OF REQUEST FOR PROPOSALS 2009-016 FOR CUSTODIAL SERVICES**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously accepted staff's unanimous ranking of Beachland Cleaning Services with the pricing as submitted, for the purpose of finalizing the terms of the annual custodial contract for the Board's review and decision at the January 20, 2009 Board meeting, as recommended in the memorandum of January 7, 2009.

**8.N. A RESOLUTION IN SUPPORT OF THE DR. MARTIN LUTHER KING JR. HOLIDAY PARADE**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-003**, in support of the Dr. Martin Luther King Jr. Holiday Parade.

**8.O. 2009 BCC COMMITTEE APPOINTMENTS AND RE-APPOINTMENTS**

Commissioner Solari requested this to be heard under Item 14.A.1., Chairman Davis's matters.

There was a CONSENSUS to move this item, for discussion, to Chairman Davis's matters.

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

## **10. PUBLIC ITEMS**

### **10.A. PUBLIC HEARINGS - NONE**

### **10.B. PUBLIC DISCUSSION ITEMS**

#### **10.B.1. REQUEST TO SPEAK FROM FRED MENSING REGARDING CHANGE OF BID AWARD RULES**

**Fred Mensing**, 7580 129<sup>th</sup> Street, Sebastian, recapped his outline of Bid Award Options (copy on file), and voiced concerns over staff awarding contracts outside the County.

Commissioner O'Bryan, speaking as the liaison to the Beach and Shore Committee, invited Mr. Mensing to attend their next committee meeting to present this information for staff's review; and thereafter voiced apprehension over local logistics.

NO ACTION REQUIRED OR TAKEN

#### **10.B.2. REQUEST TO SPEAK FROM FRANK ZORC REGARDING CONTAMINATION AT THE AIRPORT**

**Frank Zorc** praised Piper Aircraft for their positive effect on the County's economy; however, he felt that it was time to "raise the curtain" on how Piper disposed of the toxic chemical, trichloroethylene. He believed the manner in which it was disposed, contaminated drinking water and created underground plumes. He asked the Board to hear evidence from Alan Stadnick, an eyewitness to the disposal.

**Alan Stadnick**, 2295 44<sup>th</sup> Avenue, a resident of Vero Beach since 1965, told his story of what he had witnessed as a child and his experiences while working at Piper Aircraft (copy on file). He requested the Board launch an investigation and clean up effort.

Management Director of the Solid Waste Disposal District, Himanshu Mehta, announced that consultants Brown and Caldwell, and Geosyntec, had been investigating this site for many years. He acknowledged that a ground water sampling program had identified some groundwater contamination, and that numerous wells placed around the property determined the extent of the contamination. He said that in 2001, there was a remedial action plan to clean up around the old Humane Society area., and he assured the Board that staff has a cooperative relationship with the Department of Environmental Protection to actively cleanup the site.

NO ACTION REQUIRED OR TAKEN

**10.B.3 REQUEST TO SPEAK FROM JOSEPH PALADIN, BLACK SWAN**  
**CONSULTING REGARDING RESOLUTION 139 ROW**

**Joseph Paladin**, Black Swan Consulting, provided a history of what preceded the approval of Resolution 2008-139 – Amending policies for acquisition of right-of-way for road expansions and improvement projects previously set out in Resolution Nos. 2007-027 and 2008-116. He requested the Board appoint an individual to serve as a “point-person,” whereby contractors could obtain answers to questions and concerns through one person. He also wanted an explanation as to why he had not received the Resolution of Necessity on 66<sup>th</sup> Avenue, and the details for moving forward.

Attorney Collins told Mr. Paladin that when the decision is made to go into litigation, it goes to outside counsel. He explained that the 30 day period is the minimum period

that the Statute requires before litigation can be filed, and that there must be an unconditional offer giving the landowners 30 days to accept or reject it.

Deputy County Attorney Bill Debraal said the Resolution of Necessity would soon be coming forward. He conveyed that the consultant completed the corridor study, submitted it to staff last week, and that it would be brought forward in February for Board approval. He felt that 30 days might not be sufficient time to bring a suit, due to all the different aspects that must be explored.

After a brief discussion regarding the Resolution of Necessity, **Mr. Paladin** voiced concerns that the system which was put in place for right-of-way acquisition was not working.

Attorney Collins believed Mr. Paladin was asking for something that was not obtainable, and he explained how this could not fit into a “rigid time frame” due to all the components, and the complexity of eminent domain. He did not think 30 days would be a reasonable expectation.

Chairman Davis acknowledged the emotional drain that individuals encounter when going through the right-of-way process, and because of that, he liked the idea of having an Ordinance in place for reasons of structure and the ability to move forward with a predictable time frame.

Attorney Collins spoke about the process, how it cannot be locked into an Ordinance, and the workload of outside counsel.

In response to Commissioner O’Bryan’s query, Attorney DeBaal affirmed that the property owners had not provided formal responses of accepting, rejecting, or countering the County’s offers.

**Ruth Stanbridge** said that the property owners on 66<sup>th</sup> Avenue had not received the Resolution of Necessity.

Attorney Collins clarified that the Resolution of Necessity is not directed to the property owner, but rather to the Court to show why it is imperative to acquire the property; and the description of what the County is offering to buy is what the property owner receives. He said that when staff receives the necessary documents to bring the Resolution of Necessity forward, they will do so. He reemphasized the complexity of the process and stressed why the procedures need to be followed as closely as possible, and not on a rigid time frame.

Attorney DeBaal informed the Board that the final draft of the Corridor Study had been prepared and submitted for review; and that once the Scale Report is received and approved, staff will receive the Resolution of Necessity.

There was a brief discussion regarding the rejection of offers, and going to Court.

In response to Chairman Davis's question, Attorney DeBaal reassured him that no Resolution of Necessity had been issued without the completion of the Scale Reports.

**Charlene Brown** recapped the actions from the August 12, 2008 Board of County Commission Meeting regarding the discussions between Commissioner O'Bryan and Director Chris Mora relating to the status of the Scale Report.

Assistant Public Works Director Chris Mora detailed the current status for the three pending segments and their Scale Reports.

Discussion ensued regarding the temporary appointment of Michael Zito as the point-person, conception of Resolution 2008-139, the Corridor Study, and the Resolution of Necessity.

**Ruth Stanbridge** wanted the Board to assure the people on 66<sup>th</sup> Avenue, who have already received their *Notice to Owner*, that they would move forward, despite the results of today's meeting.

Attorney DeBraul reported that negotiations were ongoing with the property owners along 66<sup>th</sup> Avenue, unless the property owners have terminated negotiations. He reemphasized that after the Corridor Study is approved, and the Resolution of Necessity is passed by the Board, it would then be put into a lawsuit, and everyone would be contacted, hopefully within 90 days.

Commissioner Solari wanted clarification on how long it would take before the Resolution of Necessity would be approved, if the Corridor Study comes before the Board in February, and Attorney DeBraul said it could be finished at the following meeting.

**Charlene Brown** voiced concerns over staff's actions, and the Board and staff rebutted and clarified County policies and procedures.

Assistant County Administrator Michael Zito assured the Board that voluntary negotiations on 66<sup>th</sup> Avenue had not been interrupted.

NO ACTION REQUIRED OR TAKEN

*Chairman Davis called a recess at 10:44 a.m. and reconvened the meeting at 11:00 a.m. with all members present.*

**10.C. PUBLIC NOTICE ITEMS**

**10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING JANUARY 20, 2009:**

**SUNNYSIDE UP 1, LLC'S REQUEST TO REZONE APPROXIMATELY 40.3 ACRES FROM RM-6, RESIDENTIAL MULTI-FAMILY DISTRICT (UP TO 6 UNITS/ACRE), AND RM-8, RESIDENTIAL MULTI-FAMILY DISTRICT (UP TO 8 UNITS/ACRE), TO PDTND (PLANNED DEVELOPMENT TRADITIONAL NEIGHBORHOOD DESIGN) AND OBTAIN CONCEPTUAL PD PLAN APPROVAL FOR A PROJECT TO BE KNOWN AS SUNNYSIDE UP (LEGISLATIVE)**

Attorney Collins read the notice into the record.

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

**12. DEPARTMENTAL MATTERS**

**12.A. COMMUNITY DEVELOPMENT - NONE**

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

**12.C. GENERAL SERVICES - NONE**

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

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

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

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

**12.H. RECREATION - NONE**

**12.I. PUBLIC WORKS**

**12.I.1. CR 512, PHASE IV – PROJECT NO. 9611B, BID NUMBER 2008012,  
CHANGE ORDER NO. 2 UPDATE (NO BACKUP)**

County Engineer Christopher Kafer, Jr. conveyed that this contract with H & J Contracting, Inc. was brought before the Board on January 6, 2009, pulled from the Consent Agenda, discussed, and tabled. He said the direction from the Board was to solicit local supply sources and bring it back; and after summarizing the revised dollar amounts in the backup he asked the Board to approve staff's recommendation.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Change Order No. 2, with H&J Contracting, Inc., increasing the contract amount by \$260,769.57, with the new contract amount of \$8,939,946.53, as recommended in the memorandum of January 12, 2009.

**12.I.2. MURPHY LAND RESERVATIONS FOR ROADWAY IMPROVEMENT**  
**PROJECTS**

Assistant Public Works Director Chris Mora recapped his memorandum of January 2, 2009, where he presented the background and history of the Murphy Land Reservations. He presented two options to the Board and explained why staff recommended Option No. 1. – “Re-establish County policy of utilizing Murphy reservations for roadway improvement projects, without compensating the property owner. Rescind Murphy exception for 66<sup>th</sup> Avenue.”

Chairman Davis sought and received clarification regarding cost estimates. He believed the County could save money by not honoring the Murphy Reservation, offering the citizens a fair price, and moving forward with the road project, without going to Court.

Director Mora explained the different processes and situations used to acquire property when widening roadways.

Attorney Collins informed the Board that it could retain and exercise the Murphy Reservations when dealing with developments of vacant land, as opposed to acquiring property for road expansion where people are actually living.

Discussion ensued regarding what would be best for the County and its citizens; upholding the legal right to utilize the Murphy Reservation; upholding a moral obligation to the people who were unaware of the Murphy Reservation; waiving the Murphy Reservation; and recording the Murphy Reservations.

Attorney Collins acknowledged that Murphy Deeds are already recorded, and the problem seems to be that title searches typically go back 30 years, and Murphy Reservations go back 60 or 70 years.

Chairman Davis suggested the recorded information be added to the County's website.

There was a brief discussion pertaining to the ownership of the Murphy Deeds; upholding the decision/commitment to property owners on 66<sup>th</sup> Avenue from a previous Board meeting; and dealing with residents on a case-by-case basis.

Attorney Collins explained the road right-of-way for utilities.

**Ruth Stanbridge** aired her concerns regarding legal battles; compensating landowners; and the easement that was placed on her land during the 1930's. She provided a brief history of the official 1936 State Road Department Map for Indian River County, and pointed out that only the roads that showed up on the State Road Map during the time period of the Murphy Act were considered as state roads. She encouraged the Board to approve Option 2. – "Ignore all Murphy reservations and compensate property owners for the full value of the Murphy land. Expand the Murphy procedure adopted for 66<sup>th</sup> Avenue and apply it countywide," and discount the Murphy Reservations throughout the County.

**A. Ronald Hudson**, 66<sup>th</sup> Avenue, reiterated points he had made at the August 12, 2008 Board of County Commission Meeting concerning the Murphy Reservation. He said he did not know anything about the Murphy Reservation when the property was purchased because the title search had not reflected restrictions. He believed the property owners on 66<sup>th</sup> Avenue had been held hostage for three years because they could not sell, develop, or use the property for collateral after they received the County's letter. Mr. Hudson felt that even though the Murphy

Reservation is a legal process, the Board should abide by the decision from the August 12<sup>th</sup> meeting. He asked the Board to eliminate the Murphy Reservations throughout the County.

**Joseph Paladin**, Black Swan Consulting, wanted the Board to proceed with an Option 3. He felt the Board should eliminate 66<sup>th</sup> Avenue from discussions since it was already voted on at a prior meeting, and he believed the remaining Murphy cases should be considered on a case-by-case basis.

**Chuck Mechling**, 1999 Point West Drive, wanted to know if the County had been challenged on the Murphy Reservation.

Attorney Collins acknowledged there had been one challenge, and due to an error, the County had worked it out. He explained that when the County buys property, it is based on the appraised value, and the appraisal may be less if the property is burdened by an easement. He felt that if the easement was waived, it would increase the underlying property value.

In response to Commissioner Wheeler's query, Attorney Collins affirmed that Murphy Reservations did not reflect on Title Search Surveys because they are so old.

Commissioner O'Bryan had a hard time believing that there were so many "State roads" in 1937.

Attorney Collins believed Marvin Carter had the best records as to what was and was not a state road in the 1930's. Mr. Carter had told him that the local jurisdictions got a share of the gas tax revenue based on how many miles of state roads were in their County; therefore, everyone fled to the Legislature to make these roads state roads so the local areas could increase their share of the gas tax revenues. Attorney Collins felt it would be difficult to establish the fact that these were state roads at the time the deeds were issued.

**Mrs. Stanbridge** said she had the 1936 road map that the County did not possess. It was revised in 1946, state roads were few and far between, and many of the roads that the County has listed were never state roads.

MOTION WAS MADE by Commissioner Wheeler, to approve Option 2. There was no SECOND. MOTION DIED.

Commissioner O'Bryan wanted to obtain more information and review the map that Mrs. Stanbridge has in her possession. He asked her to provide the 1936 roadmap to staff for further review.

MOTION WAS MADE by Commissioner O'Bryan, to table this Item. There was no SECOND. MOTION DIED.

Attorney Collins informed the Board that it would not make a difference if a state road was considered as such in 1934, but rather, what it was on the date the deed was sold by the state of Florida to an individual property owner.

**Mrs Stanbridge** voiced concerns over the long process, the expertise that would be required, and the expense of this issue going to Court.

MOTION WAS MADE by Vice Chairman Flescher, to uphold the Board's previous decision on the right-of-way issue regarding Murphy Deed Restrictions for 66<sup>th</sup> Avenue, and reserve the right to apply the decision making on a case-by-case basis. There was no SECOND. MOTION DIED.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Davis, to: (1) ignore all Murphy Reservations and compensate property owners on 66<sup>th</sup> Avenue for the full value of Murphy land to which the Board already made offers; (2) table this Item for 30 days; and (3) obtain more legal information on the status of the Murphy Deeds.

The Chairman CALLED THE QUESTION and by a vote of 4-1 (Commissioner Wheeler opposed), the Motion carried.

Commissioner Wheeler gave his reasons for opposing the Motion.

*The Chairman called a recess at 12:24 p.m. and reconvened the meeting at 1:01 p.m. with all members present.*

## **12.J. UTILITIES SERVICES**

### **12.J.1. WEST REGIONAL WASTEWATER TREATMENT PLANT EXPANSION FROM 2 MGD TO 6 MGD – CHANGE ORDER 2 FOR EXPANSION OF THE EFFLUENT DISTRIBUTION PUMPS & EXTENSION TO CONTRACT COMPLETION – UCP-2621**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the change to contract price to \$13,775,159.33, and authorized the Chairman to execute the Second Change Order to contract documents with Wharton-Smith, Inc., Construction Group, as presented, and as recommended in the memorandum of December 29, 2008.

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

**12.J.2. APPROVAL OF WORK ORDER NO. 19 WITH GEOSYNTEC FOR GROUND WATER ASSESSMENT AND MONITORING PROPOSAL NORTH COUNTY WATER FACILITY**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously authorized Work Order No. 19, with Geosyntec, Inc., for Site Assessment for \$41,435.00, as recommended in the memorandum of January 5, 2009.

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

The Chairman announced that the Solid Waste Disposal District Item would be heard before Item 13.A.

*(The Board convened as the Commission of the Solid Waste Disposal District at 1:03 p.m. The Board reconvened as the regular Board of County Commission at 1:29 p.m.)*

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

#### **13.A. DISCLOSURE OF WRITTEN COMMUNICATIONS REGARDING EX-PARTE (ONE-SIDED) CONTACTS ON QUASI-JUDICIAL MATTERS**

Attorney Collins reminded the Board that last month, the Board had discussed using Statutorily approved methods of removing the presumption of prejudice which results from one-sided contacts in Quasi-Judicial matters to see if they comply with the already adopted rules. During the discussion, there was concern about totally implementing the allowances under the Act because of the difficulty of disclosing oral contacts and catching the substance of everything said between two people. The direction at that time was to prepare a Resolution that would allow written communications to be directed to the Board on Quasi-Judicial matters, while still prohibiting any meetings and phone calls with respect to these projects, on the condition that those communications are disclosed. The Resolution would provide any communications received to be forwarded to the County Administrator for coordination with the department head. The correspondence would thereafter be put on the Agenda so it could be put in the Backup and on the website, so everyone would have the same information and opportunity to address or rebut it. He drew attention to the form on page 240 of the Backup, which would be used for disclosure of any written communication received.

Attorney Collins responded to the Commissioner's questions and concerns regarding the disclosure form, the present policy, Sunshine violations, and Quasi-Judicial procedures.

The Commissioners voiced their feelings and concerns over conversations involving Quasi-Judicial matters.

Commissioner Solari suggested each Commissioner set his own policy regarding which communication could be accepted from the public. He felt that each Commissioner could put something in place that would allow the public to know their feelings of disclosure.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Davis, to approve: (1) the disclosure form, deleting the title word "*Written*", to read as: "*Disclosure of ~~Written~~ Communications on Quasi-Judicial Matter*"; (2) each Commissioner setting his own policy regarding communications; and (3) each Commissioner implementing a policy with their Personal Aide to inform the public of their feelings regarding disclosure.

**Charlie Wilson**, 1057 6<sup>th</sup> Avenue, Vero Beach, reported that this Quasi- Judicial procedure has been widely used in other Counties and throughout the State. He explained the process and said that in order for this procedure to work properly, everything should be made public, accurate and complete. He felt this would help businesses, and save staff hours and thousands of dollars.

Vice Chairman Flescher felt this would lead to lobbying, and possibly be more of a cost factor to the community than a benefit.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Vice Chairman Davis, to approve: (1) **Resolution 2009-004**, providing for the receipt and disclosure of ex-parte communications on Quasi-Judicial matters; (2) the disclosure form, deleting the title word

“Written”, to read as: “*Disclosure of ~~Written~~ Communications on Quasi-Judicial Matter*”; (3) each Commissioner setting his own policy regarding communications with the public; and (4) each Commissioner implementing a policy with their Personal Aide that would allow the public to know their feelings of disclosure.

There was a brief discussion regarding taped conversations and the desire to obtain a “living list” of Quasi-Judicial items from staff.

The Chairman CALLED THE QUESTION and by a vote of 4-1 (Commissioner Flescher opposed), the Motion carried.

*The Chairman called a recess at 2:03 p.m. and reconvened the meeting at 2:09 p.m. with all members present.*

## **14. COMMISSIONER ITEMS**

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

#### **14.A.1. CURRENT COMMITTEE APPLICATIONS**

*(Clerk's Note: Item 8.O. was heard under this Item)*

Chairman Davis discussed the committee appointments from the January 6, 2009 Board of County Commission meeting, and explained that the committees which have no more

than one person seeking a particular position were put under the Consent Agenda, Item 8.O., and those that had more than one person seeking a position were put under his matters Item, 14.A.1.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Davis, to approve Consent Agenda Item 8.O. – 2009 BCC Committee Appointments and Re-Appointments.

Commissioners O’Bryan, Wheeler, and Flescher, and Mr. Charlie Wilson, sought and received clarification from Chairman Davis regarding the vacant positions and the specifics of approving Item 8.O.

Commissioner Solari, and Chairman Davis, WITHDREW their Motion. MOTION WITHDRAWN.

Attorney Collins, in response to Chairman Davis, did not see ramifications if this item were to be tabled for one week; however, he said it would need to be turned around by noon tomorrow.

Commissioner Solari proposed that Item 8.O. be tabled for one week, to allow staff to make any necessary adjustments/corrections.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved to table Item 8.O. – 2009 Committee Appointments and Re-Appointments, until the January 20, 2009 Board of County Commission Meeting.

Chairman Davis invited input from the Board regarding the Land Acquisition Advisory Council, Planning and Zoning Commission, and the Children's Services Advisory Committee.

Commissioner O'Bryan advised that the only positions they could take action on today are the Member-at-Large positions.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Solari, the Board unanimously approved the appointment of Leroy E. Smith, as Member-at-Large to the Land Acquisition Advisory Council.

MOTION WAS MADE by Commissioner O'Bryan for the re-appointment of George F. Hamner, Jr. and Richard H. Baker, as Members-at-Large to the Planning and Zoning Commission.

As a point of order, Vice Chairman Flescher believed there should be two motions, serving each individual separately.

MOTION WAS AMENDED by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to re-appoint Richard H. Baker, as Member-at-Large to the Planning and Zoning Commission.

The Chairman CALLED THE QUESTION and by a 2-3 vote, (Chairman Davis and Commissioners Flescher and Solari opposed), the MOTION FAILED.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Davis, to appoint Erin Grall, as the Member-at-Large to the Planning and Zoning Commission.

Under point of order, Commissioner O'Bryan did not believe this procedure followed Resolution 2008-112 since the Member-at-Large Advisory Committee positions were not posted on the Agenda and read into the record, which can not be filled earlier than 14 days.

Attorney Collins said the Resolution is policy for appointing Members-at- Large, and that it had five particular points. The first point states that at-large Advisory Committee members shall be appointed by the Board of County Commissioners, and the second, third and fourth points discuss vacancies. He felt it becomes a question of what a "vacancy" is. He voiced his interpretations, saying that a "vacancy" occurs for an unexpired term, and "appointments" are to be made in January when the term is up. He felt the Board needed to make appointments as noted in point one of the Resolution. He voiced concern regarding the Planning and Zoning Commission possibly not having a quorum at their January meeting if this were delayed for two weeks.

Discussion ensued over the Planning and Zoning Commission, the Resolution, and whether this was considered a vacancy or an appointment.

Commissioner Solari asked the Chairman to call the question.

Commissioner O'Bryan reiterated that moving forward would be in violation of Resolution 2008-112.

Chairman Davis announced that he would move forward based on Attorney Collins's opinion that this would not be in violation of the Resolution.

The Chairman CALLED THE QUESTION and by a vote of 2-3 (Commissioners Wheeler, Flescher and O'Bryan opposed), the motion to appoint Erin Grall, as the Member-at-Large to the Planning and Zoning Commission FAILED.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, to appoint David Cox as the Member-at-Large to the Planning and Zoning Commission.

The Chairman CALLED THE QUESTION and by a vote of 3-2 (Chairman Davis and Commissioner Solari opposed), the Motion carried.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, the Board unanimously approved the appointment of George F. Hamner, Jr. as the Member-at-Large to the Planning and Zoning Commission.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the appointment of Karen Deigl, as the Member-at-Large to the Children's Services Advisory Committee.

Chairman Davis announced that the only action pending is to determine if the three applicants for the Land Acquisition Advisory Council meet the requirements, and after the determination, Item 8.O. will be revisited.

Commissioner O'Bryan asked if the three positions under the Community Development Block Grant Citizen Advisory Task Force were open positions.

**Charlie Wilson** voiced concern over the two-year terms for the Community Development Block Grant Citizen Advisory Task Force, believing that this and many other committees may not have a quorum for their first meeting.

Discussion ensued regarding Planning and Zoning Commission district appointees.

Commissioner O'Bryan mentioned that he would be re-appointing Greg Smith as the District 4 Appointee on the Planning and Zoning Commission, and Chairman Davis said he would be keeping Donna Keys on as well.

Commissioner O'Bryan informed the Board that Representative Mayfield would be submitting her resignation from the Economic Development Council, creating an at-large vacancy.

In response to Commissioner O'Bryan's question, Chairman Davis pointed out that the Community Development Block Grant Citizen Advisory Task Force has three current vacancies, and as such, the three who applied would be appointed. He also noted that there were no other vacancies or conflicts.

**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**

The Chairman announced that the Solid Waste and Disposal District Items would be heard before Item 13.A., County Attorney Matters. The Board convened 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 NOVEMBER 18, 2008**

**15.B.2. APPROVAL OF MINUTES REGULAR MEETING OF DECEMBER 9, 2008**

**15.B.3. UPDATE TO THE SWDD BOARD ON THE NEW PLANET ENERGY  
PROPOSAL FOR WASTE TO ENERGY**

**15.C. ENVIRONMENTAL CONTROL BOARD - NONE**

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

**16. ADJOURNMENT**

There being no further business, the Chairman declared the meeting adjourned at  
2:35 p.m.

ATTEST:

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

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

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

BCC/LAA/2009Minutes