

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF MAY 5, 2009

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JEFFREY K. BARTON

Clerk to the Board



May 5, 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 27th Street, Vero Beach, Florida, on Tuesday, May 5, 2009, at 9:00 a.m. Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, Commissioners Peter D. O'Bryan, and Bob Solari. *Commissioner Gary C. Wheeler was absent.* 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

Commissioner Wesley S. Davis, Chairman, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman Davis requested the following changes to today's Agenda:

1. ADDITION: ITEM 5.D. PRESENTATION OF PLAQUE HONORING SHERIFF DERYL LOAR FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

2. ADDITION: ITEM 5.E. PRESENTATION BY PENNY CHANDLER, CHAMBER OF COMMERCE-UPDATE ON H1/N1 VIRUS

3. DELETION: ITEM 10.B.1. REQUEST TO SPEAK FROM ARDRA RIGBY AND BILL RIGBY REGARDING WASTE HAULING SERVICES IN THE ENTERPRISE ZONE

4. ADDITION: ITEM 13.C. COUNTY ATTORNEY MATTERS: NOTICE OF ATTORNEY-CLIENT SESSION: DIVOSTA HOMES, L.P. AND DIVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER COUNTY, CASE No. 20070109-CA-19

5. ADDITION: ITEM 14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN: SECTOR 3 BEACH RESTORATION PROJECT: UTILIZATION OF UPLAND SAND SOURCES

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board made the above changes to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF MAY AS NATIONAL PRESERVATION MONTH

Commissioner O'Bryan read and presented the Proclamation to Ruth Stanbridge, County Historian; Mary Jean Kelly, Cultural Council; Beverly Tyson, Indian River County Historical Society; and Barbara Tillney, Indian River Shores Historical Society.

5.B. PRESENTATION OF PROCLAMATION IN SUPPORT OF THE EFFORTS TO HELP FIND A CURE OR CONTROL FOR CYSTIC FIBROSIS WITH PARTICIPATION IN THE CYSTIC FIBROSIS FOUNDATION'S GREAT STRIDES WALK

Chairman Davis read and presented the Proclamation to Mayor Richard H. Gillmor, City of Sebastian. Mayor Gillmor announced that the "GREAT STRIDES Walk", sponsored by the Cystic Fibrosis Foundation, would occur on May 16, 2009 at 8:00 a.m. at the Royal Palm Pointe Park.

5.C. PRESENTATION OF PROCLAMATION DESIGNATING MAY 6 – 12, 2009 AS NATIONAL NURSES WEEK

Commissioner Solari read and presented the Proclamation to Ruth McDowell.

5.D. PRESENTATION OF PLAQUE HONORING SHERIFF DERYL LOAR FOR EMPLOYER SUPPORT OF THE NATIONAL GUARD AND RESERVE

Paula Nicoletti, Department of Defense, acknowledged Reverend Bob Bedingfield, former U.S. Navy Chaplain, who was in attendance at today's meeting.

Ms. Nicoletti discussed the important role played by civilian employees serving in the National Guard and National Reserve Forces, and reported that the Federal Government had established a group called *Employer Support of the Guard and Reserve* to ensure that the rights of these workers are upheld. She introduced First Lieutenant John Patton, an aviator, who read his statement honoring Sheriff Deryl Loar for his support and care of military families. Ms. Nicoletti thereupon presented Sheriff Loar a plaque from the *National Committee of the Employer Support of the Guard and Reserve*, honoring the Sheriff as a patriotic employer.

**5.E. PRESENTATION BY PENNY CHANDLER, CHAMBER OF COMMERCE –
UPDATE ON H1/N1 (SWINE) FLU VIRUS**

Penny Chandler, Indian River County Chamber of Commerce, reported that an Emergency Procedures Manual was available to any business upon request, by calling the Chamber Offices at 772-567-3491. Ms. Chandler noted that the Manual would not apply for personal use; that all businesses should have an emergency plan; and that the Manual did not only pertain to the H1-N1 (Swine) Flu outbreak.

Administrator Baird added that the County's website also contained information on the Flu.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF MARCH 10, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of March 10, 2009. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the Minutes of the Regular Meeting of March 10, 2009, as written.

6.B. REGULAR MEETING OF MARCH 17, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of March 17, 2009. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, by a 4-0 vote (Commissioner Wheeler absent), the Board unanimously approved the Minutes of the Regular Meeting of March 17, 2009, as written.

6.C. REGULAR MEETING OF MARCH 24, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of March 24, 2009. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the Minutes of the Regular Meeting of March 24, 2009, as written.

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

7.A. INDIAN RIVER COUNTY CENSUS 2010 COMMUNITY ACTION COMMITTEE VACANCIES

**7.B. CITIZEN ADVOCATE VACANCY ON THE TRANSPORTATION
DISADVANTAGED LOCAL COORDINATING BOARD**

Noted for the record was the vacancy on the Transportation Disadvantaged Local Coordinating Board, due to Mr. Jim Granse, Citizen Advocate Representative, having passed away April 1, 2009.

**7.C. 2009 ELECTION OF AGRICULTURE ADVISORY COMMITTEE (AAC)
CHAIRMAN AND VICE CHAIRMAN**

Noted for the record was the election of Kevin O'Dare as Chairman, and Robert Adair as Vice Chairman, for 2009.

8. CONSENT AGENDA

**8.A. APPROVAL OF WARRANTS AND WIRES, APRIL 10, 2009 THRU APRIL 16,
2009**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of April 10, 2009 to April 16, 2009, as recommended in the memorandum of April 16, 2009.

8.B. APPROVAL OF WARRANTS AND WIRES, APRIL 17, 2009 TO APRIL 23, 2009

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the list of Warrants and Wires as issued by the Clerk to the Board for the time

period of April 17, 2009 to April 23, 2009, as requested in the memorandum of April 23, 2009.

8.C. TRI-PARTY SUBLEASE AGREEMENT FOR STEALTH FLAGPOLE AT SEA OAKS WASTEWATER TREATMENT WITH VERIZON WIRELESS AND NEW CINGULAR WIRELESS

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the Tri-Party Sublease Agreement with Verizon Wireless Personal Communications LP d/b/a/ Verizon Wireless and New Cingular Wireless PCS, LLC, and authorized the Chairman to execute same, in the form presented, as recommended in the memorandum of April 28, 2009.

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

8.D. AUTHORIZATION TO ATTEND 2009 ANNUAL FSBPA CONFERENCE

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board authorized out-of-county travel for Commissioners and staff to attend the Florida Shore & Beach Preservation Association Annual Conference September 16 – 18, 2009 in Amelia Island, Florida, as requested in the memorandum of April 27, 2009.

**8.E. OUT OF COUNTY TRAVEL TO ATTEND THE FIRE OPS 101 EVENT IN
MIAMI, FLORIDA**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved out-of-county travel for Commissioners and staff to attend the Emergency Medical Services Conference, Fire Ops 101 in Miami, Florida on Saturday, June 6, 2009, as requested in the memorandum of April 28, 2009.

**8.F. EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
PROGRAM – AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 –
STATE SOLICITATION, CERTIFICATE OF PARTICIPATION**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board: (1) accepted the recommendation to serve as the coordinating unit of government in the Florida Department of Law Enforcement's Edward Byrne Memorial Justice Assistance Grant (JAG) Program – American Recovery and Reinvestment Act of 2009; (2) authorized the Chairman to sign the Certificate of Participation naming Jason E. Brown, Director, Management & Budget, as the contact person; (3) accepted the total amount of the Grant, which is \$533,198; and (4) directed the Substance Abuse and Violent Crime Policy Advisory Board to recommend a distribution of these funds among local applicants, as recommended in the memorandum of April 27, 2009.

8.G. WORK ORDER NO. 6 (ENGINEERING/SURVEYING) KIMLEY-HORN AND ASSOCIATES, INC. – FULL & FINAL PAY, INDIAN RIVER BLVD. SIDEWALK IMPROVEMENT PROJECT, 12TH STREET TO 17TH STREET, 14TH STREET BRIDGE ELEVATION DETAIL SURVEY, IRC PROJECT NO. 0745, CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved payment of Invoice No. 3812937, dated March 31, 2009, in the amount of \$4,380.00 for full and final payment of Work No. 6, as recommended in the memorandum of April 16, 2009.

8.H. WORK ORDER NO. 7, (ENGINEERING/SURVEYING) – FINAL PAY & RELEASE OF RETAINAGE MASTELLER, MOLER, REED, AND TAYLOR, INC., CR512 PHASE III ROADWAY IMPROVEMENTS, FINAL RIGHT-OF-WAY MAPPING PROJECT IRC PROJECT NO. 9611B, CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES CONTRACT 0725

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved payment of Masteller, Moler, Reed and Taylor, Inc., Invoice No. 2645-7974, dated April 16, 2009 in the amount of \$2,584.00 for full and final payment of Work Order No. 7, as recommended in the memorandum of April 21, 2009.

**8.I. CHOOSE LIFE LICENSE PLATE FUNDING, DISTRIBUTION OF FUNDS TO
CARE NET PREGNANCY CENTER OF INDIAN RIVER CO.**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the advance distribution of the Choose Life License Plate funds in the amount of \$17,000, to Care Net Pregnancy Center of Indian River County, with the stipulation that all fund expenditures must be in accordance with Florida Statutes, Sections 320.08056 and 320.08058(29). Additionally, all documentation of expenditures and return of unused funds must be received by the Indian River County Budget Office no later than October 9, 2009, as recommended and stated in the memorandum of April 27, 2009.

**8.J. OSLO ROAD BOAT RAMP, RETAINAGE RELEASE FOR PELICAN PETE
CONSTRUCTION CO. INC., IRC PROJECT NO. 0381**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the release of retainage of \$5,345.27 per the attached Pelican Pete Construction Co., Inc. Payment Application No. 6, as recommended in the memorandum of April 28, 2009.

8.K. PROFESSIONAL ENVIRONMENTAL SERVICES AGREEMENT, OSLO BOAT RAMP – IRC PROJECT NO. 0381, G.K. ENVIRONMENTAL, INC., RELEASE OF RETAINAGE

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved payment of G.K. Environmental, Inc. Invoice No. 042309, dated April 23, 2009 in the amount of \$590.00, as recommended in the memorandum of April 28, 2009.

8.L. PROVIDING GEOTECHNICAL SERVICES FOR OSLO ROAD AND OSLO ROAD BOAT RAMP IMPROVEMENTS DUNKELBERGER ENGINEERING & TESTING, INC., WORK ORDER NO. 3 – RELEASE OF RETAINAGE IRC PROJECT #0381

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved release of retainage in the amount of \$621.05 to Dunkelberger Engineering & Testing, Inc. per the request dated April 29, 2009, and as recommended in the memorandum of April 28, 2009.

8.M. WORK ORDER NO. 10 (ENGINEERING/SURVEYING) CARTER ASSOCIATES, INC. – RELEASE OF RETAINAGE, PROPOSED OSLO ROAD BOAT RAMP DESIGN AND PERMITTING PROJECT, INDIAN RIVER COUNTY PROJECT NO. 0381

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner

Wheeler absent), the Board approved payment of the Carter Associates, Inc. Invoice No. 03422-09-1, dated April 29, 2009 in the amount of \$661.00, as recommended in the memorandum of April 29, 2009.

8.N. DECLARE ADDITIONAL EXCESS EQUIPMENT SURPLUS FOR SALE OR DISPOSAL, AND REMOVAL OF ONE VEHICLE FROM THE PREVIOUSLY APPROVED LIST

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board: (1) declared the additional listed items surplus and authorized its sale and/or proper disposal through the Public Auction to be held at the Indian River County Sheriff's Complex at 10:00 a.m. on May 9, 2009; (2) approved the deletion of a 2002 Chevy Blazer, Fleet #628 from the list approved by the Board on April 21, 2009; and (3) approved the addition to the list of Vehicle #279, a 1998 Chevy S-10 pickup truck, to also be sold at the auction, as recommended in the memorandum of April 28, 2009.

8.O. IRC SHERIFF'S ADMINISTRATION UNDERGROUND FUEL TANKS GEOSYNTEC CONSULTANTS WORK ORDER #21

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved Work Order #21 with Geosyntec Consultants, Inc. in the amount not to exceed \$60,067 including a 20% contingency for unanticipated work that may be required during the

closure activities. Any use of contingency will be authorized by staff and reported to the Board as an informational item as soon after as practical, as recommended and stated in the memorandum of April 27, 2009.

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

8.P. MISCELLANEOUS BUDGET AMENDMENT 012

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved **Resolution 2009-058**, amending the Fiscal Year 2008-2009 Budget.

8.Q. RIGHT-OF-WAY ACQUISITION – CR510 #0610, 6200 85TH STREET, SEBASTIAN, FL 32958, OWNER: JONES, ARTHUR LEE

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved Option 1, the purchase of the needed right-of-way at a price of \$12,000, and authorized the Chairman to sign the Purchase and Sale Agreement with Arthur Lee Jones, as recommended in the memorandum of April 1, 2009.

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

8.R. RIGHT-OF-WAY ACQUISITION – 66TH AVENUE #0370, 53RD STREET, INTERSECTION TRANSITION, MIREILLE T. AYOUB, OWNER

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner

Wheeler absent), the Board approved Alternative No. 1, the purchase of the 0.187 acre parcel for the purchase price of \$10,397, and authorized the Chairman to execute the Purchase Agreement with Mireille T. Ayoub, as recommended in the memorandum of April 14, 2009.

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

8.S. RIGHT-OF-WAY ACQUISITION – 66TH AVENUE #0370, 6760, 6790, AND 6816 45TH STREET, INTERSECTION TRANSITION, RALPH A. AND DIANE M. POWELL, OWNERS

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved Alternative No. 1, the purchase of the 0.280 acre parcel, and authorized the Chairman to sign the Purchase Agreement with Ralph A. Powell and Diane M. Powell, as recommended in the memorandum of April 1, 2009.

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

8.T. RIGHT-OF-WAY ACQUISITION – 66TH AVENUE #0370, 53RD STREET, INTERSECTION TRANSITION, HERBERT T. JAMES, JR., REVOCABLE TRUST 1991, HERBERT T. JAMES, JR. TRUSTEE

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved Alternative No. 1, the purchase of the .560 acre parcel for the total price of \$38,980, and authorized the Chairman to sign the Purchase Agreement with Herbert T. James, Jr., as Trustee

of The Herbert T. James, Jr. Revocable Trust - 1991, as recommended in the memorandum of April 16, 2009.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARING

10.A.1. REQUEST FOR AUTHORIZATION TO SUBMIT AN FY 2008/09 GRANT

APPLICATION FOR 49 USC CH. 53, SECTION 5307 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) MASS TRANSIT CAPITAL GRANT (LEGISLATIVE)

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

Phil Matson, Metropolitan Planning Organization (MPO) Staff Director, presented background information, conditions, and analysis on the request to apply for the subject Grant Funds, to be used to construct a new transit administration/bus parking facility for the Indian River Transit/Community Coach system, on the west side of 43rd Avenue, north of the Supervisor of Elections Building. Mr. Matson divulged that \$2.110 million of Federal Transit Administration (FTA) funds would be allocated to the County; that no matching funds would be required; and that approximately 50 jobs would be created in conjunction with this project. He thereafter requested that the Board open the Public Hearing and then authorize staff to formally apply for the Grant Funds.

The Chairman opened the Public Hearing.

There being no speakers, the Chairman closed the Public Hearing.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved **Resolution 2009-059**, authorizing the filing of a FY 2008/09 Grant Application for 49 USC CH. 53, Section 5307 American Recovery and Reinvestment Act (ARRA) Mass Transit Capital.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM ARDRA RIGBY AND BILL RIGBY REGARDING REQUEST TO REVISIT THE DECISION REGARDING WASTE HAULING SERVICES IN THE ENTERPRISE ZONE - WITHDRAWN

This item was withdrawn.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARINGS MAY 19, 2009:

A. CONSIDERATION OF PROPOSED AMENDMENTS TO REGULATIONS FOR CHANGEABLE COPY AND ELECTRONIC MESSAGE SIGNS WITHIN SPECIAL CORRIDORS: LAND DEVELOPMENT REGULATIONS CHAPTER 911 (LEGISLATIVE)

B. CONSIDERATION OF PROPOSED AMENDMENTS PROVIDING FOR TEMPORARY SUSPENSION OF COMPLIANCE WITH REGULATIONS NOT DIRECTLY RELATED TO PUBLIC SAFETY: LAND DEVELOPMENT REGULATIONS CHAPTER 902 (LEGISLATIVE)

C. ORDINANCE AMENDMENT TO PROVIDE CHARGING A REGISTRATION FEE FOR SEX OFFENDERS AND PREDATORS, CAREER FELONS AND CONVICTED FELONS (LEGISLATIVE)

County Attorney Collins read the notices 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-NONE

12.J. UTILITIES SERVICES

**12.J.1. GRAND HARBOR SPOONBILL MARSH AMENDED SITE AGREEMENT FOR
UTILITY EASEMENT**

ON MOTION by Commissioner O'Bryan, SECONDED
by Vice Chairman Flescher, by a 4-0 vote (Commissioner
Wheeler absent), the Board approved the Amended
Agreement for Utility Easement with Grand Harbor North

Land, LLC, and authorized the Chairman to execute same, as presented and recommended in the memorandum of April 22, 2009.

13. COUNTY ATTORNEY MATTERS

13.A. REFERENDUM ON ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION ALSO KNOWN AS "TAX ABATEMENT"

Senior Assistant County Attorney Marian E. Fell recalled that in March 2009, the Board had instructed staff to work on the referendum process for an Economic Development Tax Exemption, also known as a Tax Abatement Incentive. She requested direction from the Board on the following matters, as outlined in her memorandum of April 27, 2009: (1) when to hold the referendum; (2) whether to hold it by mail ballot, or in conjunction with the municipal elections, and if the latter, whether to negotiate with the municipalities on the cost-share of the election; (3) whether to have a 15-word title on the ballot question; and (4) whether to authorize staff to present a public education program on the ballot question.

Kay Clem, Supervisor of Elections, reviewed her backup memorandum of March 20, 2009, to detail some of the cost-cutting strategies utilized to bring the cost of a County-wide General Election for the Tax Abatement Issue, from her original estimate of \$250,000 to approximately \$117,000. She also provided information on the upcoming elections for the municipalities of Vero Beach, Sebastian, and Fellsmere.

Ms. Clem confirmed for the Board, that if the County adds on an election ballot with the municipalities, it would constitute a General Election, at the cost of \$117,000. She noted, however, that, if the County could get the cities to cost-share, the County's final total for the General Election would be \$112,000.

Replying to Vice Chairman Flescher's query, **Ms. Clem** stated that the cost for placing the referendum on the 2010 ballot would be \$117,000, based on 40% voter participation. She pointed out that costs would escalate with increased voter turnout.

Commissioner O'Bryan acknowledged that he would like to see the referendum be voted on in November 2009. However, because of the cost, possible better voter turnout for a regularly scheduled General Election, and in order to avoid any potential negative association caused by cost-sharing negotiations with the Municipalities, he advocated placing the referendum on the November 2010 General Election ballot.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, to direct staff to move forward with an Ordinance, with the intent to place the Referendum on Economic Development Ad Valorem Tax Exemption on the November 2010 General Election Ballot.

Chairman Davis agreed with Commissioner O'Bryan, stating that if the referendum is placed on the November 2010 General Election ballot, the County would be able to add the referendum to the ballot at no extra cost, and use resources already allocated for a general election. He added that as much as he wanted to move the referendum ahead quickly, the \$117,000 would be a significant expense in this year's budget.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Commissioner Wheeler absent), the Motion carried.

Commissioner O'Bryan noted that several of Attorney Fell's questions had been answered by the above action, and there would now be time to deliberate over any other concerns associated with the Referendum, such as public education on the referendum issue.

Attorney Fell confirmed that staff would bring back to the Board a separate item on the remaining matters pertaining to the referendum which required Board direction.

**13.B. STIPULATION CONCERNING EXTENDED POSSESSION FOR 66TH AVENUE
PROPERTY OWNERS WILLIAM BETHEL, CHARLENE BROWN, RUTH AND
WILLIAM STANBRIDGE, HARRIS GROVES, JOHN AND DEBRA MAROTTO,
ERMA LEE LEWIS, MATTHEW AND HILDA HARBOUR, STEPHEN AND
SHELLY RYAN, PAUL AND RENNIE THOMPSON, JR. AND LAWRENCE AND
PHYLLIS BROWN**

Deputy County Attorney William K. DeBaal reviewed the backup memorandum of April 27, 2009, pertaining to a stipulation set forth in an Order of Taking, by which the County would obtain title to parcels owned by the ten above-listed landowners, in exchange for allowing the landowners a period of extended stay on the property. After providing an aerial projection depicting the various right-of-ways and their relevance to the 66th Avenue Road Widening project, Attorney DeBaal presented staff's recommendation to approve the Stipulation, and enter into lease agreements with the individual land owners, and asked the Board to consider how it would like to handle the rental property on one of the Stanbridge parcels.

Chairman Davis asked why, since Eminent Domain lawsuits had already been filed for some of the cases, this item was not going before the Court, rather than coming before the Commission.

Attorney DeBaal clarified that the stipulation was worked out between the County's outside Counsel, Tony Policastro, of Policastro & LeRoux, P.A., and the landowners' Attorney, Brent Simon, of Tileston, Simon and Holloway, P.A. He stated that the landowners have agreed to this part of the lawsuit, where we do not have to go to court to contest the matter, and that the County can take title to the property in exchange for the extended possession.

Attorney DeBraul confirmed for Commissioner Solari that Attorney Simon had seen and agreed to the Stipulation.

A brief discussion ensued among Commissioners and staff, during which it was established that the deposit amounts representing the appraised value of the land (listed on page 176), were not the agreed upon final terms for which the parcels would be purchased, as the exact compensation due the landowner may differ from the appraised value, depending on a mediated agreement or a jury trial.

Attorney Collins clarified for Commissioner Solari that the Stipulation speaks to a one-year lease agreement, which would be extended in six-month increments, until such time as the County notifies the landowners that the project is going to be put out to bid in the next 120 days.

Responding to Commissioner Solari's inquiry, Public Works Director Jim Davis provided a timeline for the 66th Avenue Road Widening Project.

Ruth Stanbridge, 4835 66th Avenue, recalled that at the March 24, 2009, Commission meeting, Deputy County Attorney Bill DeBraul had reported that the County's outside Counsel, Policastro and LeRoux, P.A., would be filing the lawsuits on the condemnation of the properties owned by William Bethel, William and Ruth Stanbridge, and Mary Charlene Brown, within 30 days, and proceeding to an Order of Taking. Mrs. Stanbridge noted that the landowners being sued had not agreed to, or seen, the Stipulation or Lease Agreements, prior to viewing them on today's Agenda. She had also been advised by Tileston, Simon and Holloway, P.A. that neither they, nor Policastro and LeRoux, P.A., had seen the Lease Agreements.

Attorney DeBraul informed the Board that he had in his file, a letter from Attorney Policastro to Attorney Simon, confirming the details of the stipulation, to which the lease agreement was also attached. Moreover, Attorney DeBraul had, on May 4, 2009, received from Attorney Policastro a mark-up of the Lease, sent from Attorney Simon. Attorney DeBraul revealed that this was the first time he has learned that the three landowners might not be on

board with the Stipulation; for the last two or three weeks, they have been on board, according to the County's outside Counsel and the landowners' Attorney.

Attorney Collins stated that the Board of County Commissioners was staff's client, and that staff could not settle without the Commission knowing and approving the terms of the Stipulation.

Commissioner Solari questioned the value of proceeding any further today (May 5, 2009), before the attorneys and the involved parties come to an agreement on the basic components of the Stipulation and Lease Agreement.

The Board and staff continued to discuss the rationale for seeking Board approval for the Stipulation and Lease Agreement. Attorney Collins advised Mrs. Stanbridge that she would need to let her attorney know if the Stipulation and Lease Agreement is not acceptable to her, at which time, a counterproposal or other remedy could be proposed by her attorney.

Mrs. Stanbridge set forth that the Stanbridges have not stipulated to anything, and she was not selling her property; the County would have to take it from her. She would continue deliberations through her attorneys.

Vice Chairman Flescher asked if there was any written confirmation that the seven remaining landowners had assented to the Stipulation, and learned that Attorney DeBral had a copy of a letter from Attorney Policastro to Attorney Simon confirming the Stipulation which he had laid out, pertaining to the ten landowners (listed on page 174 of the backup).

Mrs. Stanbridge made a Public Records Request for a copy of the above-mentioned letter.

Bill Bethel, 66th Avenue, opposed the Board agreeing to the Stipulations prior to an Order of Taking; discussed the high costs involved in a contested Order of Take; and stated that he wanted to keep the Lease Agreements separate from the Stipulation.

Commissioner Solari wondered what would be the harm in waiting a week, to decide whether each attorney has received copies of all the subject documents.

Attorney DeBraal saw no reason not to go forward with the other seven remaining parties, while removing the three in question.

Commissioner Solari clarified for Mr. Bethel that the Board was not stipulating anything; rather, County staff was asking the Commission, as one of the two involved parties, to say it would agree to this, when the Stipulation is put together. He emphasized that until the Board gives its agreement, staff cannot move this forward.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to authorize staff to move forward with the Stipulation for the seven parties, excluding the three in question; to authorize staff to deposit the specified amounts into the registry of the Court for the seven parties; and to direct staff to get clarification regarding the three excluded parties, from the two other attorneys involved.

After a brief discussion, it was confirmed that Attorney DeBraal would obtain further information from Attorneys Policastro and Simon regarding the three excluded parties, and present an update at the May 12, 2009 Commission meeting.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Commissioner Wheeler absent), the Motion carried.

The Board: (1) approved for the Deputy County Attorney to move forward with the terms of the Stipulation, excluding the three parties William Bethel, Charlene Brown, and Ruth and William Stanbridge, for the following seven parties only: Harris Groves, John and Debra Marotta, Erma Lee Lewis, Matthew and Hilda Harbourt, Stephen and Shelly Ryan, Paul and Rennie Thompson, Jr., and Lawrence and Phyllis Brown; (2) authorized deposit of the appraised value of the needed property, accordingly, for the seven above-listed parties, into the registry of the Court; (3) authorized the Chairman to execute the Lease for the seven above-named parties; and (4) directed staff to provide an update and clarification from the two attorneys involved, regarding the three excluded parties, at the May 12, 2009 Commission meeting.

13.C. ADDITION: ATTORNEY-CLIENT SESSION: DiVOSTA HOMES, L.P. AND DiVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER COUNTY, CASE No. 20070109-CA-19

County Attorney William Collins informed the Commission that he desired an Attorney-Client Session to receive advice concerning the litigation with DiVosta Homes, L.P. and DiVosta Homes Holdings, L.L.C., on the topic of Waterway Village concurrency. The session will be held at 11:30 a.m. on May 12, 2009 in the County Administrator's Conference Room. In attendance will be Commissioners Wesley Davis, Joseph Flescher, Peter O'Bryan, and Bob Solari (Commissioner Wheeler will be absent due to medical reasons); County Administrator Joseph A. Baird, County Attorney William G. Collins II, County Outside Counsels John Shubin and Juan Farach, of Shubin and Bass, P.A.; and a certified Court Reporter.

14. COMMISSIONER ITEMS

14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN-NONE

14.A.1. ADDITION: SECTOR 3 BEACH RESTORATION PROJECT: UTILIZATION OF UPLAND SAND SOURCES

Chairman Davis posed the following questions regarding the Sector 3 Beach Restoration Project:

- (1) Would the County be able to utilize the upland sand sources, in view of the timeframes associated with permitting?
- (2) As there is no cost-sharing agreement with the State this year, if the County could move ahead with the offshore sources in a timely fashion, is it affordable?
- (3) What information could be provided to the residents of the Island and the Beach and Shore Advisory Committee, who are seeking an update on the beach restoration project?

Chairman Davis proposed going directly to an RFP (Request for Proposal), instead of going for an RFQ (Request for Qualifications), so that both *Great Lakes Dredge and Dock Company*, and the upland sand source providers could provide their bids on the project, and costs could be determined.

Jonathan Gorham, Coastal Resource Manager, explained that staff was taking two paths, the first of which is to get the permit authorization, and the second to bid the Project. He stated that the RFQ is the first step in identifying the upland sand source/s which would be most appropriate for the Project, and then moving forward with their permitting.

Chairman Davis believed it would be more cost efficient to go straight to an RFP to determine the affordability of the Project, and to then allocate the County's resources towards the direction the County chooses to go.

Commissioner Solari remarked that this is not a case of the lowest price, but whether or not the County can afford the price at all.

Commissioners and staff continued debating the pros and cons of issuing an RFP, rather than an RFQ, in order to expedite the Project. The Board also discussed the length of time for which a particular bid would be valid, and whether the use of the upland sand source/s would be viable for the Sector 3 Project.

Vice Chairman Flescher believed in view of the time parameters, and taking into consideration turtle nesting season and funding considerations, that working on parallel tracks and going forward with an RFP, would serve to accomplish the job quicker.

Commissioner O'Bryan noted that the original intention of evaluating the upland sand source/s had not been specific to the Sector 3 Project, but to provide an opportunity for the upland sand miners to qualify for future projects.

Commissioner O'Bryan proposed extending the deadline for issuing the RFQ to allow for Commissioner Wheeler's input.

(Clerk's Note: Commissioner Wheeler was on medical leave).

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, to extend the deadline for the Request for Qualifications (RFQ) to provide for Commissioner Wheeler's input.

Two upland sand source providers, **Charles Kramer**, 10761 U.S. 1, Sebastian, and **Steve Smith**, Ranch Road Lake Sand Mines, 82nd Avenue, provided their perspective on the complexity and cost of fulfilling the requirements entailed by the RFQ, without knowing that they would be getting the bid. They told the Board that they had received verbal assurance from

Mr. Brantley of the DEP that their sand would not be turned down; that some of their sand was already on Sector 3; and relayed Bob Brantley's comment that the majority of the Sector 3 job was a dune restoration.

Dr. Gorham explained why the Sector 3 Project is a Beach Restoration Project, which is authorized under a Joint Coastal Permit, and that the sand sources which are authorized for this Project must be done so through the Joint Coastal Permit process.

County Administrator Joseph Baird noted that the County had been unable to get a written assurance from Mr. Brantley that the DEP would permit the upland sand sources.

Mr. Kramer felt if the sand miners are not given a chance, the County would be missing a golden opportunity.

Mr. Smith believed that if the RFP is delayed, by default the upland providers would be excluded because they would be unable to put ½ million yards of sand up and have it dried and prepared for the beach placement in time, because of turtle season.

It was the Board's Consensus to put this item on the Agenda for the May 12, 2009 meeting, with the option to remove it if Commissioner Wheeler is not in attendance.

Public Works Director Jim Davis commented that 20% of the design work would have to be modified if the bids are accepted prior to receiving the permits, which would open up the whole Project to Change Orders, after the bids are in.

Commissioner O'Bryan reiterated the need for further information, and said that the Board members would weigh these matters at the May 12, 2009 Commission meeting.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Commissioner Wheeler absent), the Motion was

approved. The Board extended the deadline for the Request for Qualifications (RFQ) for the Sector 3 Beach Restoration Project until May 12, 2009, to provide for Commissioner Wheeler's input. If Commissioner Wheeler is not present on May 12, 2009, the item will be deferred to May 19, 2009, to allow Commissioner Wheeler to provide his input, either in person or via teleconference.

14.B. COMMISSIONER JOSEPH E. FLESCHER-NONE

14.C. COMMISSIONER GARY C. WHEELER-NONE

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

14.E. COMMISSIONER BOB SOLARI-NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT-NONE

15.B. SOLID WASTE DISPOSAL DISTRICT-NONE

15.C. ENVIRONMENTAL CONTROL BOARD

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 Environmental Control Board. Those Minutes are being prepared separately and appended to this document.

15.C.1. APPROVAL OF MINUTES MEETING OF FEBRUARY 3, 2009

15.C.2. REPORT OF ACTIVITIES FOR SECOND QUARTER (JANUARY THROUGH MARCH 2009)

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, on Motion duly made by Commissioner Solari, seconded by Commissioner O'Bryan, and carried, the Board adjourned at 11:01 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/MG/2009Minutes