

JEFFREY K. BARTON

Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF MAY 12, 2009

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JEFFREY K. BARTON

Clerk to the Board



May 12, 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 12, 2009. 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 Leona Adair Allen.

1. CALL TO ORDER

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

2. INVOCATION

Stan Boling, Planning Director, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chairman Joseph E. Flescher 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.A. Emergency Item – Proclamation for National Police Week
2. Addition: Item 10.B.1. Request to Speak by Helene Caseltine, Director of Economic Development, Indian River Chamber of Commerce Regarding Project Osprey
3. Addition: 14.A.1. Emergency Item Requested by Chairman Davis to Discuss Pointe West Bond Issues

Commissioner O'Bryan inquired whether the Board wanted to table Item *12.1.1. Upland Sand Permitting and Bidding Options, Sector 3 Beach Restoration* until Commissioner Wheeler was present to discuss and vote on it. County Administrator Joseph Baird reported that Commissioner Wheeler had just informed him to move ahead.

Chairman Davis informed the audience that Commissioner Wheeler was absent due to surgery and recovery.

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION HONORING THE VERO BEACH HIGH SCHOOL'S GIRLS' LACROSSE TEAM

Commissioner Solari read and presented the Proclamation honoring the Vero Beach High School's Girls' Lacrosse Team. Coach Dean, Jessica Frederick, and Cassidy Bartholomew thanked the Board and accepted the Proclamation on behalf of the coaches, players, and school.

5.B. PRESENTATION OF PROCLAMATION FOR NATIONAL POLICE WEEK

Chairman Davis read and presented the Proclamation to Sheriff Deryl Loar, designating the week of May 10 through May 16, 2009 as National Police Week. Sheriff Loar thanked the Board, and recognized Shirley Roseman for organizing the Victims' Rights Memorial Ceremony that was held on May 11, 2009.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF APRIL 7, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of April 7, 2009. There were none.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the Minutes of the Regular Meeting of April 7, 2009, as written.

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

7.A. RESIGNATION OF BCC APPOINTEE TO THE METROPOLITAN PLANNING ORGANIZATION CITIZENS ADVISORY COMMITTEE

Roger Sherwood, Board of County Commission Appointee, tendered his resignation from said Committee.

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES, APRIL 24, 2009 THRU MAY 1, 2009

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the list of Warrants and Wires, issued by the Clerk to the Board for the time period of April 24, 2009 to May 1, 2009, as requested in the memorandum of May 1, 2009.

8.B. FIRST REVISION TO OPEB INVESTMENT POLICY

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the first revision to the OPEB Investment Policy, as recommended in the memorandum of May 6, 2009.

8.C. FIRST OPEB TRUST REPORT FOR THE PERIOD 10/1/08 THROUGH 3/31/09

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the first OPEB Trust Report for the Period 10/1/08 through 3/31/09, as recommended in the memorandum of May 6, 2009.

8.D. RETIREMENT AWARD HONORING JOHN KRUPP FOR NINETEEN YEARS OF SERVICE INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS DEPARTMENT OF GENERAL SERVICES

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board approved the retirement of John Krupp.

8.E. RETIREMENT AWARD HONORING SYLVIA MEZZINA FOR ELEVEN YEARS OF SERVICE INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS DEPARTMENT OF GENERAL SERVICES MAIN LIBRARY

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board approved the retirement of Sylvia Mezzina.

8.F. DELORES MCDONALD MEYER REQUEST FOR PARTIAL RELEASE OF AN EASEMENT AT 2135 5TH STREET (LAURELWOOD SUBDIVISION UNIT 1)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-060**, releasing a portion of an Easement on Lot 9, Laurelwood Subdivision Unit 1.

8.G. OSLO ROAD WIDENING PHASE I – SHELTRA & SON CONSTRUCTION CO., INC., CHANGE ORDER NO. 1, FINAL PAYMENT AND RETAINAGE RELEASE

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved Change Order No. 1 and payment of Sheltra and Son Construction, Inc. Payment Application No. 18, dated 03/27/09, as recommended in the memorandum of April 13, 2009.

8.H. WORK ORDER NO. 2 (SIDEWALK/SOD) – H & D CONSTRUCTION CO., INC.,
THE FOUNTAINS AT AMBER LAKES SUBDIVISION

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved Work Order No. 2, with H & D Construction Co., Inc., authorizing the project; and authorized the Chairman to execute same, as recommended in the memorandum of April 27, 2009.

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

8.I. STEPHEN M. BAILEY, 26TH STREET (82ND AVENUE TO 74TH AVENUE)
PAVING PROJECT

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved Alternative No. 1, the \$112,842 purchase along with the legal fees of \$3,500; and authorized the Chairman to execute same, as recommended in the memorandum of May 1, 2009.

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

8.J. FINAL PAYMENT AND RELEASE OF RETAINAGE, APPLIED TECHNOLOGY AND MANAGEMENT, INC., WORK ORDER #12

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the application for final payment and release of retainage to Applied Technology and Management, Inc. for Work Order No. 12, as recommended in the memorandum of April 28, 2009.

8.K. FINAL PAYMENT AND RETAINAGE RELEASE, APPLIED TECHNOLOGY AND MANAGEMENT INC., WORK ORDER #13

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the application for final payment and release of retainage to Applied Technology and Management, Inc., for Work Order No. 13, as recommended in the memorandum of April 28, 2009.

8.L. FINAL PAYMENT AND RELEASE OF RETAINAGE, APPLIED TECHNOLOGY AND MANAGEMENT, INC., WORK ORDER #6

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the application for final payment and release of retainage to Applied Technology and Management, Inc., for Work Order No. 6, as recommended in the memorandum of April 28, 2009.

8.M. WORK ORDER NO. 18 (ENGINEERING/SURVEYING) CARTER ASSOCIATES, INC., 66TH AVENUE ROAD-WAY IMPROVEMENTS PROJECT, RIGHT-OF-WAY ACQUISITION, BOUNDARY SURVEYS – FULL AND FINAL PAY

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved payment of Carter Associates, Inc., Invoice No. 08497-1, dated April 28, 2009 for full and final payment of Work Order No. 18, in the amount of \$18,450.00, as recommended in the memorandum of April 30, 2009.

**8.N. GEOTECHNICAL SERVICES WORK ORDER #6 – RELEASE OF RETAINAGE,
DUNKELBERGER ENGINEERING & TESTING, INC., FOR THE ENCLAVE
SUBDIVISION – PROJECT #0816**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved release of retainage to Dunkelberger Engineering & Testing, Inc., for Work Order No. 6 in the amount of \$138.00, as recommended in the memorandum of May 4, 2009.

**8.O. FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) HIGHWAY
MAINTENANCE MEMORANDUM OF AGREEMENT (MOA) AND
AUTHORIZING RESOLUTION FOR ROADWAY IMPROVEMENTS TO OLD DIXIE
HIGHWAY (A COUNTY-MAINTAINED ROADWAY) FROM 12TH STREET TO
20TH STREET (SR 60 WEST BOUND), FM # 426250-1-52-01**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-061**, authorizing the execution of District Highway Maintenance Memorandum of Agreement for Old Dixie Highway from 12th Street to 20th Street (SR 60 West Bound), FM# 426250-1-52-01.

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

**8.P. FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) HIGHWAY
MAINTENANCE MEMORANDUM OF AGREEMENT (MOA) AND
AUTHORIZING RESOLUTION FOR ROADWAY IMPROVEMENTS TO COUNTY
ROAD 507 (CR-507) FROM NORTH FELLSMERE CITY LIMIT TO BREVARD
COUNTY LINE FM, # 426249-1-52-01**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-062**, authorizing the execution of District Highway Maintenance Memorandum of Agreement for County Road 507 (CR507) from Fellsmere City Limit to Brevard County Line, FM# 426249-1-52-01.

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

**8.O. FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) HIGHWAY
MAINTENANCE MEMORANDUM OF AGREEMENT (MOA) AND
AUTHORIZING RESOLUTION FOR ROADWAY IMPROVEMENTS TO 20TH
AVENUE (A COUNTY-MAINTAINED ROADWAY) FROM OSLO ROAD (9TH
STREET SOUTHWEST / SOUTH TERMINUS) TO SR-60 (20TH STREET / NORTH
TERMINUS), FM # 426248-1-52-01**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-063**, authorizing the execution of District Highway Maintenance Memorandum of Agreement for 20th Avenue from Oslo Road (9th Street Southwest) (Southerly Terminus) to SR-60 (Northerly Terminus), FM# 426248-1-52-01.

COPY OF AGREEMENT 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 MASS

TRANSIT CAPITAL AND OPERATING ASSISTANCE (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, conveyed that this was the annual request for the 2008/09 Grant application for Section 5307 Mass Transit Capital and Operating Funds. He recapped his memorandum dated May 4, 2009, and requested the Board's approval to submit the application.

In response to Commissioner O’Bryan’s query, Director Matson clarified that there were no line items for bus shelters in this Grant; however, there were in the two previous. He related that bus shelters would be considered in order to offer maximum protection in locations where large groups of people gather, but where there are small groups, consideration would be given to purchasing benches for under trees, or possibly looking for safe alternatives, depending on the stop.

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-064**, authorizing the filing of a FY 2008/09 Grant Application for 49 USC CH. 53, Section 5307 Mass Transit Capital and Operating Assistance.

10.B. PUBLIC DISCUSSION ITEMS - NONE

10.B.1. REQUEST TO SPEAK BY HELENE CASELTINE, DIRECTOR OF ECONOMIC DEVELOPMENT, INDIAN RIVER CHAMBER OF COMMERCE REGARDING PROJECT OSPREY

Ms. Caseltine shared the good news of a national award that had been received from the *Trade and Industry Development Magazine*. She explained how there was a national competition in search of a project that had local community impacts, and that the Chamber and Enterprise Florida had submitted the nomination for Project Osprey, also known as the retention of Piper Aircraft. She read a portion of the magazine article which highlighted Piper Aircraft as

the largest source of employment; and pointed out that we were only one of fifteen communities across the country who received the award.

10.C. PUBLIC NOTICE ITEMS

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

COUNTY INITIATED REQUEST TO REDESIGNATE ±16.22 ACRES FROM L-1, LOW-DENSITY RESIDENTIAL-1 (UP TO 3 UNITS/ACRE), TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±16.22 ACRES FROM A-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT /5 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); REDESIGNATE ± 47.25 ACRES FROM C-2/C-3, CONSERVATION-2 AND CONSERVATION-3 DISTRICTS (1 UNIT/40ACRE AND 1 UNIT/2.5 ACRES), TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ± 47.25 ACRES FROM A-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT / 5 ACRES), AND CON-2, CONSERVATION-2 DISTRICT (UP TO 1 UNIT /40 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY) (LEGISLATIVE)

County Attorney Will Collins read the Notice into the record.

NO BOARD ACTION REQUIRED OR TAKEN

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. UPLAND SAND PERMITTING AND BIDDING OPTIONS, SECTOR 3
BEACH RESTORATION**

Jonathan Gorham, Ph.D., Coastal Resource Manager, explained the consideration to abandon the Statement of Qualifications (SOQ) process, which is currently underway to identify an upland sand source(s) that would be best suited for the Sector 3 Beach Restoration Project. The alternative being considered would put the project out to bid to both upland sources and offshore sources at the earliest possible date, in advance of final permit issuance, and seek to

modify the State and Federal permits that authorize an upland sand source. He outlined the advantages and disadvantages of the alternative options listed on pages 172 and 173 in the Backup.

Dr. Gorham proposed suspending the Request for Qualifications (RFQ) process, and issuing a Request for Proposal (RFP) for upland sand suppliers to provide beach sand on a contingency basis for all County projects; conveyed the advantages of the RFP process; and responded to questions from the Board regarding the RFP processes.

Commissioner O'Bryan proposed breaking down the bid into two parts -- bid everyone offshore and onshore for delivery of sand above mean high water, and once the permit is final, go out for competitive bids.

Dr. Gorham further explained how the RFP would allow more bid participation from upland sand source suppliers, as compared to the RFQ process, which would narrow the potential suppliers prior to the bidding process; and that putting the project out for bid would also open it up to all qualified bidders.

Chairman Davis mentioned that he would like to bid the project specific, tell Great Lakes Dredge to compete for Sector 3, and bid out the sand (like a commodity).

The Chairman opened the floor for public input.

Bill Glenn, 1802 East Barefoot Place, President of the North Beach Civic Association, felt this would be a compromise approach. He voiced concern for the Barrier Islands, and stressed that residents want sand on the beach before the hurricane season begins.

Steve Smith, Vero Beach, emphasized the importance of the bid process for Sector 3 being fair for everyone.

Chuck Kramer, 10761 US 1, Sebastian, wanted the Board to take advantage of the competitive bidding process on Sector 3, and believed commodity pricing would work.

Jens Tripson, Vero Beach, expressed how the bidding process should be as fair as possible; voiced concern over the impact to the number of trucks crossing the Wabasso bridge; and advocated that the bid be awarded to a local vendor.

Tuck Farrell, 12546 North Highway, A1A, Vero Beach, wanted the Board to do whatever it takes to move forward, and stressed the importance of protecting beaches and homes.

MOTION WAS MADE by Vice Chairman Flescher,
SECONDED by Chairman Davis, to move forward with a
Request for Proposal (RFP) for Sector 3, to include upland
sand sources.

Chairman Davis asked Vice Chairman Flescher if he wanted to add commodity bids to the Motion but Vice Chairman Flescher felt commodity bids should be considered separately, and that commodity sand should be brought back at a later date.

Discussion ensued regarding the probability of sand on the beach by November 1st.

Dr. Gorham related timelines for various options, and emphasized that the major impetus behind staff's proposal was that there would be permits and contracts in place to build in 2009.

Michael Walther, President of Coastal Tech, County Consultant for the Sector 3 Project, and Engineer of record for the Project, laid out a timeline scenario and indicated that the path they had been on with County staff would enable them to obtain a permit to build the Sector 3 Project (using an offshore sand source and upland sand source) by November 1st; while the path that the Board had suggested would go to construction around November 1st, and then only be in a position to build only part of the project by January 1, 2010. Mr. Walther supported staff's recommendation since it would give the County multiple options and flexibility to build the project sooner than if they were to pursue the Board's suggestion. He believed the key would be to solicit bids from upland sand source providers, to provide sand in the event of an emergency, and for the County to use the contract to build the Sector 3 Project.

Discussion ensued regarding the RFP process for upland sand, the probability of slowing down the permit, the bid process, fair competition, the cost of an offshore source, and the economic feasibility.

County Administrator Baird informed the Board that the money which was appropriated now has a shortfall of about \$6.5 million because of State cutbacks, due to the economic condition. He noted that after the bids are received, and there is a firm number, that the Board could make the decision to move the project forward, or prioritize the projects coming from the optional sales tax.

Commissioner O'Bryan pointed out that under the current request for qualifications, the upland sources would have to spend considerable dollars to have all the testing and certification accomplished without even knowing if they were awarded the bid. He cautioned that delay until receipt of the final permit, and going out to bid for 30 to 60 days, could result in it being close to October before they would even get the bid award, which would not be enough time to stockpile the required sand for emergency purposes.

Vice Chairman Flescher expressed that no matter what source or path is chosen, the fuel prices would dictate what is going to happen; and believed that we would obtain the best possible price for the delivery of the sand if the Board moves forward today, as opposed to delaying it further.

Penny Chandler, County Chamber of Commerce, voiced concern over the project being put out for bid, and asked the Board to consider moving forward with whatever course of action necessary to ensure equal and fair opportunity to all companies.

Steve Smith, Vero Beach, wanted the Board to move forward, believing that the longer the delay, to see the winning bid, the shorter the time it would take for the upland providers to "put the material on the hill." He commented on the Sector 3 long term contract situation, and informed the Board that his fuel suppliers had informed him that fuel prices would increase soon.

Discussion continued regarding the Motion.

Commissioner O'Bryan wanted to know if the Motion would bid out the entire project, which is sand and construction, and Vice Chairman Flescher affirmed. Commissioner O'Bryan

wanted to avoid going through this exercise and get a more permanent solution. He said he would work with staff to write a letter to the Florida Department of Environmental Protection (DEP) informing them of the need for a more permanent solution to beach erosion.

Commissioner Solari wanted to know, if the Board were to move ahead with the first Motion, whether there could be a second Motion asking for the RFP for the commodity upland sand source, and the Chairman affirmed.

Scott Bayman, 40 Beachside Drive, Vero Beach, commended the Board for moving forward quickly, and announced that residents were ready and available to help with anything required at the State level.

Seeing no further speakers, the Chairman ended the public comments.

Chairman Davis reiterated that the Motion would be to bid out Sector 3 for upland and offshore sources, and to come back with a RFP for the commodity of sand, for emergency purposes and dune restoration.

Administrator Baird informed the Board that Commissioner Wheeler (telephonically) voiced concerns over the quality of sand, and he also wanted the Commissioners to know that he supported Mr. Walther's suggestion.

Commissioner Flescher felt there should be two separate bids, due to the fluctuation of fuel prices, and did not think that the upland sources could be held accountable for a continued process for several years.

The Chairman CALLED THE QUESTION, and the Motion carried by a 4-0 vote (Commissioner Wheeler was absent). The Board approved to put Sector 3 out to bid for upland and offshore sources.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent), directed staff to issue a RFP for an upland sand commodity product, keeping in-line with the price at the source, and a formula whereby the price of diesel can be added when the request is made.

Chairman Davis clarified that the Motion was for the commodity for upland sources for dune restoration and emergency purposes.

The Chairman called a recess at 10:27 a.m., and reconvened the meeting at 10:39 a.m., with all members present.

12.I.2. LEASING OF RESIDENTIAL PROPERTIES

Assistant Public Works Director Chris Mora recapped his Memorandum of May 6, 2009, explaining the leaseback agreements of residential properties that have been purchased by the

County in conjunction with roadway improvement projects, then leasing them back to the former owners. He provided a brief background of typical leasebacks, and how they come about. He reported that leasebacks are considered on a case-by-case basis, and are becoming more common as the County purchases more right-of-way earlier in the road building process. He requested the Board consider the following policy as proposed, discussed, or amended:

1. A leaseback may be offered by the County if no phase of the upcoming road project is within 12 months of advertisement for bidding. Eligible phases of road construction include utility relocation, drainage work, or any work related to road clearing and/or construction.
2. Initial leaseback term shall be limited to one year. Renewals may be granted in 6-month increments, subject to restrictions listed in #1 above.
3. Rent during the initial term (one year) shall be one dollar per month. Beyond the initial one year term, rent shall be increased to fair market rate.
4. Leasebacks and/or renewals shall not be automatic, but may be granted by the County.
5. Leasebacks and/or renewals may be authorized by the County Administrator or his designee, and reported to the Board under “Informational” BCC Agenda Items.
6. The leaseback policy described in items #1 through #5 above shall not apply to any of the following situations: (a) Commercial property, (b) Rental property, (c) Income-producing property, (d) Non-homestead property.

Chairman Davis was concerned that the leaseback agreement did not include a mechanism for security, particularly when the renter was not maintaining the property, and they request to rent beyond the one year lease. He wanted a first and last security deposit, or some type of insurance, similar to a regular lease.

Commissioner Solari proposed adding to Item 3, new language to read that “The tenant is responsible for all repairs”, to provide some flexibility.

Chairman Davis proposed further modification to Item 3, to include “rent agreed upon at the time of purchase”. Commissioner Solari agreed.

Commissioner Solari also proposed modifying Item 5 to provide that the lease extension (renewal) should be written by the Legal Department and placed on the Consent Agenda.

Further discussion ensued regarding Item 5 and whether the renewals should be an Administrator decision or a decision for the Board.

Commissioner O’Bryan suggested deleting the word “Leaseback” from Item 5, leaving renewals to be the decision of the County Administrator. He added, he would like to see them establish a fair market rate at time of sale, and proposed withholding six months of rent in escrow, to avoid going through an eviction process.

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the policy as amended by the Board: *to modify Items 3 and 5; add language that “tenant is responsible for all maintenance and repairs”; establish the fair market rate and agree on the rent at the time of sale; retain six months of rent in escrow; provide provisions for security to renewals only; renewals may be authorized by the County Administrator and drafted by the County Attorney; and placed on the*

Consent Agenda for approval by the Board. Items 1, 2, 4, and 6 were approved as written.

12.J. UTILITIES SERVICES

**12.J.1. BIOSOLIDS DEWATERING FACILITY – UCP-2697 – DEDUCTION
CHANGE ORDER FOR DIRECT PURCHASE OF MATERIALS**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved the change to contract price to \$2,486,015.57, and authorized the Chairman to execute Change Order No. 1, as recommended in the memorandum of March 27, 2009.

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

13. COUNTY ATTORNEY MATTERS

**13.A. TIME SPECIFIED 11:30 A.M.: ATTORNEY-CLIENT SESSION: DIVOSTA
HOMES, L.P. AND DIVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER
COUNTY, CASE No. 20070109-CA-19**

(Clerk's Note: This Item was heard after Item 15.B.5. At 11:31 a.m., the Chairman announced that the Board of County Commission Meeting would recess and reconvene as the Attorney-Client Session in the Board Conference Room.)

County Attorney Will Collins gave Notice for an Attorney-Client Session to be held in accordance with the provisions of Florida Statute 286.011 (8), on May 12, 2009, at 11:30 a.m. in the County Commissioners' Conference Room, to receive advice concerning the potential settlement of litigation with DiVosta Homes, L.P. and DiVosta Homes Holdings, L.L.C. on the issue of Waterway Village concurrency.

Chairman Davis read the following into the record: "This is the commencement of the Attorney-Client Session. The estimated time of the Attorney-Client Session is 30 minutes. Present at the meeting will be Commissioners Joseph Flescher, Peter O'Bryan, Bob Solari, and me, Wesley Davis. Also present will be County Attorney William Collins, County Administrator Joseph Baird, County outside counsels John Shubin and Juan Farach of the firm of Shubin and Bass, P.A. (via telephone) and a Certified Court Reporter. At the conclusion of the Attorney-Client session this meeting will be reopened."

The Board returned to the Chambers at 12:21 p.m. and the Chairman closed the Attorney-Client Session.

13.B. CLARIFICATION ON BETHEL, BROWN AND STANBRIDGE – 66TH AVENUE
RIGHT-OF-WAY

Deputy County Attorney William DeBral reported that at the meeting of May 5th, the Board had requested clarification to the negotiations with Bethel, Brown, and Stanbridge. He

drew attention to the letter and e-mail in the Backup that he had referenced at the May 5, 2009 meeting.

Commissioner O'Bryan did not think that debating a legal case on the dais, once it goes into litigation, was appropriate. Chairman Davis concurred and gave reasons why it happened in a prior meeting.

NO ACTION REQUIRED OR TAKEN

**13.C. NECESSITY OF TAKE RESOLUTION FOR PARCEL OF PROPERTY LOCATED
AT THE CORNER OF 66TH AVENUE AND 57TH STREET, STEVEN, WILLIAM
AND EVAN ABAZIS, OWNERS. PARCELS 102 AND 401**

Attorney DeBaal recapped his Memorandum of May 4, 2009, and projected an aerial slide to identify the different parcels owned by the Abazis family, and the required right-of-way needed to widen 66th Avenue. He conveyed that the two parcels of right-of-way require separate Resolutions.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-065**, declaring a reasonable necessity to acquire certain real property for the purposes of improving and reconstructing 66th Avenue, including side street, intersection, sidewalk and water retention pond improvements; authorizing the County Attorney to acquire

the attached properties by the institution of proceedings in eminent domain, and providing an effective date. (*Parcel 102 – Steven, William and Evan Abazis*).

ON MOTION by Commissioner O’Bryan, SECONDED by Chairman Davis, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-066**, declaring a reasonable necessity to acquire certain real property for the purposes of improving and reconstructing 66th Avenue, including side street, intersection, sidewalk and water retention pond improvements; authorizing the County Attorney to acquire the attached properties by the institution of proceedings in eminent domain, and providing an effective date. (*Parcel 401 – Steven, William and Evan Abazis*).

13.D. NECESSITY OF TAKE RESOLUTION FOR PARCEL OF PROPERTY LOCATED AT 6800 57TH STREET, EVANGELOS AND ANN ABAZIS, PARCEL 134 (NON-HOMESTEAD)

Attorney DeBraal recapped the Memorandum of May 4, 2009, noting this to be a non-homesteaded parcel, in a downtrodden condition, with no structures on the property.

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-067**, declaring a reasonable necessity to acquire

certain real property for the purposes of improving and reconstructing 66th Avenue, including side street, intersection, sidewalk and water retention pond improvements; authorizing the County Attorney to acquire the attached properties by the institution of proceedings in eminent domain, and providing an effective date. (*Parcel 134 – Evangelos and Ann Abazis*).

13.E. NECESSITY OF TAKE RESOLUTION FOR PARCEL OF PROPERTY LOCATED AT 6880 57TH STREET, EVANGELOS AND ANN ABAZIS, PARCEL 135 (HOMESTEAD)

Attorney DeBral divulged this to be the Abazis' homesteaded parcel, which contains no structures in the take, only fencing and a driveway. He disclosed that the Abazis' had been offered \$44,200 in an unconditional offer, and that this parcel was part of the stipulation.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Davis, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-068**, declaring a reasonable necessity to acquire certain real property for the purposes of improving and reconstructing 66th Avenue, including side street, intersection, sidewalk and water retention pond improvements; authorizing the County Attorney to acquire the attached properties by the institution of proceedings in eminent domain, and providing an effective date. (*Parcel 135 – Evangelos and Ann Abazis*).

**13.F. NECESSITY OF TAKE RESOLUTION FOR PARCEL OF PROPERTY LOCATED
AT 3675 66TH AVENUE, MATHEW AND HILDA HARBOURT, PARCEL 122**

Attorney DeBral said this parcel sat at the corner of 37th Street and 66th Avenue, and explained the importance of acquiring the right-of-way. He recalled that the Harbours had received an unconditional offer of \$314,870; that this is their homestead (none of the structures lie within the area of take); and that there was citrus on the southern part of the property. He did not know if the Harbours wanted to maintain a lease on the citrus for harvesting, but said it would be brought back to the Board at a later time if they did.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board by a 4-0 vote (Commissioner Wheeler absent) approved **Resolution 2009-069**, declaring a reasonable necessity to acquire certain real property for the purposes of improving and reconstructing 66th Avenue, including side street, intersection, sidewalk and water retention pond improvements; authorizing the County Attorney to acquire the attached properties by the institution of proceedings in eminent domain, and providing an effective date. (*Parcel 122 – Mathew an Hilda Harbourt*).

14. COMMISSIONER ITEMS

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

14.A.1. POINTE WEST BOND ISSUES

Chairman Davis requested this Item be added as an Emergency Item because of an e-mail he received from Chuck Mechling, regarding expiring bond issues at Pointe West. Mr. Mechling has since received the check and was in agreement with staff's recommendation.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board by a 4-0 vote (Commissioner Wheeler absent): (1) approved modification to the contract for construction of required sidewalk and buffer improvements, to extend the sidewalk completion date to February 26, 2011, and to reduce the required security to \$34,247.24; and (2) authorized staff to only call the Wachovia Bank Irrevocable Letter of Credit on May 18th should acceptable alternate security not be received by 12:00 noon on Monday, May 18, 2009. Should the Wachovia Bank Irrevocable Letter of Credit need to be called, once the acceptable alternate security has been received, staff is authorized to return the Wachovia Bank funds, withholding the routine administrative fees including postage, all as recommended in the memorandum of May 11, 2009.

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

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

14.E.1. DISCUSSION CONCERNING SCHEDULE FOR BUDGET WORKSHOP

Commissioner Solari requested the Board of County Commission Budget Workshops be moved from July 15th and 16th to July 22nd and 23rd, 2009. He believed the additional time would allow the Board more time to review the budget package before voting.

Administrator Baird was in favor of moving the meeting to the following week. He felt that due to the recession, this year's budget would be more difficult, and decisions harder to make; justifying the additional time for review.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O'Bryan, the Board by a 4-0 vote (Commissioner Wheeler absent) approved moving the Board of County Commissioners Workshops from July 15th, and 16th to July 22nd and 23rd, 2009, as recommended in the memorandum of May 5, 2009.

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT

The Chairman announced that immediately upon adjournment, the Board of County Commissioners 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 OF MINUTES MEETING OF MARCH 3, 2009

15.A.2. APPROVAL OF MINUTES MEETING OF MARCH 17, 2009

**15.A.3. APPROVAL TO PURCHASE 2 CARDIAC MONITORS FOR FIRE
RESCUE DIVISION FROM MEDTRONIC EMERGENCY RESPONSE
SYSTEMS**

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 MEETING OF MARCH 24, 2009

15.B.2. APPROVAL OF MINUTES MEETING OF APRIL 7, 2009

**15.B.3. WORK AUTHORIZATION NO. 14 – FINAL PAY TO GEOSYNTEC
CONSULTANTS, INC. FOR 2008 COMPLIANCE MONITORING &
TECHNICAL SUPPORT**

**15.B.4. UTILITY EASEMENT DEDICATION TO FLORIDA POWER AND LIGHT
AT THE BIOSOLIDS DEWATERING FACILITY LOCATED AT THE
COUNTY LAND FILL – UCP # 2697**

15.B.5. REQUEST FOR ACQUISITION OF 80.94 ACRES WEST OF I-95

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

The Board returned from the Attorney-Client Session, reopened the Board of County
Commission Meeting, and proceeded to adjourn the meeting at 12:22 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/LAA/2009Minutes