

JEFFREY K. BARTON

Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

OF JUNE 9, 2009

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JEFFREY K. BARTON

Clerk to the Board



June 9, 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, June 9, 2009. Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, 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

Pastor Doug Vogt, First Church of God, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Wheeler led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

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

Addition: Emergency Item 14.C. Commissioner Wheeler requested County Attorney William Collins provide an update on Senate Bill 360 Relating to Growth Management, the "Community Renewal Act"

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the above change to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS - NONE

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF MAY 12, 2009

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of May 12, 2009. There were none.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Minutes of the Regular Meeting of May 12, 2009, as written.

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

7.A. APPOINTMENT OF TAXPAYERS' ASSOCIATION APPOINTEE TO THE LAND ACQUISITION ADVISORY COMMITTEE

The Taxpayers' Association of Indian River County unanimously selected Daniel C. Stump to the Taxpayer's Association position on the Land Acquisition Advisory Committee. This position has been vacant since April 1, 2009, with the passing of James Granse. The term will expire in 2010.

8. CONSENT AGENDA

Commissioner Solari requested to pull Items 8.D., 8.Q., 8.R., and 8.S. for discussion.

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

8.A. APPROVAL OF WARRANTS AND WIRES MAY 22, 2009 THRU MAY 28, 2009

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the list of Warrants and Wires, issued by the Clerk to the Board for the time period of May 22, 2009 to May 28, 2009, as requested in the memorandum of May 28, 2009.

8.B. THIRD UPDATED 2009 BCC COMMITTEE ASSIGNMENTS

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the third update to the 2009 Committee Assignments for each Commissioner, as recommended in the memorandum of June 2, 2009.

8.C. ABANDONMENT OF ACCESS EASEMENT ALONG C. R. 512

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Release of Easement (Romar Subdivision), and authorized the Chairman to execute same, as recommended in the memorandum of May 29, 2009.

COPY OF RELEASE OF EASEMENT ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.D. AMENDMENT TO TOWER AND GROUND SPACE LEASE VERIZON WIRELESS
– GIFFORD WATER TOWER**

Commissioner Solari expressed this to be a better deal for the County than what was expected, and Senior Assistant County Attorney Marian E. Fell provided the negotiated details.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved the Amendment to Tower and Ground Space Lease with Verizon Wireless Personal Communications LP d/b/a Verizon Wireless, and authorized the Chairman to execute same, as recommended in the memorandum of May 29, 2009.

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

**8.E. PROPERTY ACQUISITION – TAX ROLL REMOVAL & TAX CANCELLATION,
PROPERTIES ACQUIRED BY INDIAN RIVER COUNTY BETWEEN MARCH 17,
2009 AND MAY 27, 2009**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-076**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*66th Avenue – Cherry Lane Cattle LLC*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-077**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*73rd Street – Vero Grove Land, LLC*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-078**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*49th Street and 66th Avenue – Brian Murphy*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-079**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*CR510 – Steven Jones and Linda Jones*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-080**, canceling taxes upon

publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*82nd Avenue – Stephen Bailey Trust et al.*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-081**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*66th Avenue R/W – John A. Jackson, Jr.*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-082**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*43rd Avenue – Jansu Adams, Inc.*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-083**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*12th Street – Dogs for Life, Inc.*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-084**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*49th Street and 66th Avenue – Don Groves and Pam Groves*)

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-085**, canceling taxes upon

publicly owned lands, pursuant to Section 196.28, Florida Statutes. (85th Street – Allen Chapel AME Church Trs.)

8.F. MEDIATED SETTLEMENT; EGAN V. INDIAN RIVER COUNTY

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the mediated settlement of \$70,000.00 for J.B. Egan and Karen Egan, as recommended in the memorandum of June 2, 2009.

**8.G. WORK ORDER NO. 4, ADDITIONAL SERVICES (ENGINEERING/SURVEYING)
MORGAN & EKLUND, INC. – FINAL PAY, RELEASE OF RETAINAGE OLD
DIXIE HIGHWAY (NORTH), US 1 TO 69TH STREET, LOCAL AGENCY
PROGRAM (LAP) SIDEWALK IMPROVEMENTS PROJECT RIGHT-OF-WAY
MAPPING (+/- 4 MILES) IRC PROJECT NO. 0845**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment of Morgan & Eklund, Inc. Invoice No. 1-09-1037, dated 05/26/09, in the amount of \$1,567.50, for final payment and release of retainage for Work Order No. 4, for additional services, as recommended in the memorandum of June 1, 2009.

**8.H. DUNKELBERGER ENGINEERING & TESTING, INC. FOR 53RD STREET
ROADWAY IMPROVEMENTS IRC PROJECT #0107 RELEASE OF RETAINAGE**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment to Dunkelberger Engineering & Testing, Inc. for the Request for Release of Retainage in the amount of \$3,133.00, as recommended in the memorandum of May 29, 2009.

**8.I. PROFESSIONAL SERVICES WITH G. K. ENVIRONMENTAL, INC. FOR 16TH
STREET (BETWEEN 66TH AVENUE AND 74TH AVENUE) ROADWAY
IMPROVEMENTS IRC PROJECT NO. 9920**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Agreement with G.K. Environmental, Inc., authorizing the project as outlined in the scope of services, and authorized the Chairman to execute same, as recommended in the memorandum of May 29, 2009.

**8.J. CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR BRIDGE
REPLACEMENTS AND WIDENING OF 66TH AVENUE FROM SOUTH OF SR60
TO 59TH STREET, AMENDMENT NO. 7, IRC PROJECT NO. 0545**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved Amendment No. 7 with Arcadis G & M, Inc., authorizing the professional services, and authorized the Chairman to execute same, for a fee not-to-exceed \$15,000.00, as recommended in the memorandum of May 29, 2009.

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

**8.K. APPROVAL TO ALLOW THE EXHIBITION OF A PHOTO DISPLAY ON BEHALF
OF THE CHILDREN'S HOME SOCIETY IN THE COUNTY ADMINISTRATION
BUILDING "B"**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the photo display from Friday, July 24 through Friday August 21, 2009, as recommended in the memorandum of June 3, 2009.

**8.L. CONSIDERATION OF NEIGHBORHOOD STABILIZATION PROGRAM (NSP)
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SERVICE PROVIDERS
SELECTION COMMITTEE RECOMMENDATION FOR NONPROFIT HOUSING
ORGANIZATIONS/GOVERNMENTAL AGENCIES**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Selection Committee's ranking, agreed to award NSP funds to both ranked proposers, and authorized staff to begin contract negotiations with both the Treasure Coast Homeless Services Council, Inc., and the Indian River County Housing Authority, as recommended in the memorandum of May 28, 2009.

**8.M. CNL NET LEASE FUNDING 2001, LP, A DELAWARE LIMITED
PARTNERSHIP STATE ROAD 60/58TH AVENUE INTERSECTION
IMPROVEMENTS PROJECT #0632**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved Alternative No. 1 with CNL Net Lease Funding 2001, LP, the \$61,475.00 purchase, and authorized the Chairman to sign the Agreement, as recommended in the memorandum of June 1, 2009.

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

8.N. EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
PROGRAM – AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 –
GRANT DISTRIBUTION

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the recommendations submitted by the local units of government: Indian River County Sheriff's Office, City of Vero Beach Police Department, City of Sebastian Police Department, City of Fellsmere Police Department, and the Town of Indian River Shores Public Safety Department; and authorized the Chairman to sign the grant application for the Indian River County Sheriff's Office and the letter approving distribution of the funds to the local units of government for submittal to the state prior to the deadline of Friday, June 19, 2009, as recommended in the memorandum of June 3, 2009.

COPY OF GRANT APPLICATION ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.O. FINAL PAYMENT AND RETAINAGE RELEASE WORK ORDER #11, APPLIED
TECHNOLOGY AND MANAGEMENT INC.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the final payment and release of retainage for Work Order No. 11. The post-construction physical and biological monitoring contained in Work Order No. 11 is eligible for 46.65% cost sharing with the Florida Department of Environmental Protection under Grant

Agreement 07IR3. Local funding of beach restoration includes a portion of local option tourist tax revenue as well as allocations of the one-cent sales tax, as recommended in the memorandum of June 1, 2009.

8.P. TOURIST DEVELOPMENT COUNCIL 2009/2010 BUDGET

RECOMMENDATIONS

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the funding amounts recommended by the Tourist Development Council, as recommended in the memorandum of June 3, 2009.

8.Q. LEASE EXTENSION, 7135 66TH AVENUE – 66TH AVENUE WIDENING AND IMPROVEMENTS, COUNTY PROJECT NO. 0370, JUSTO MANUEL AND BLANCA LLEO HERNANDEZ, TENANT

(Clerk's Note: Items 8.Q., 8.R., and 8.S. were discussed as one item)

Commissioner Solari wanted clarification regarding the extension of leases on properties that the County had purchased for widening improvements on 66th Avenue. He voiced concern that road projects were taking too long to complete and that the tenants of County leased property were getting two or more years of free rent, at the expense of taxpayers. He felt it was only right that tenants be charged rent after one or two years.

Assistant Public Works Director Chris Mora recalled that the three parcels were all purchased by the County in 2006, and that on May 12th, 2009, at the Board of County Commission Meeting, the Board approved a revised leaseback policy where the first year of leaseback would be at the rate established at closing, then later staff would strive to obtain market-rate rent for the properties. He pointed out that these purchases pre-date the leaseback policy approved by the Board, and recommended that the existing zero to \$1.00 per month lease be extended until the road project comes within 12 months of construction.

To Chairman Davis's query, Director Mora confirmed that the properties were being maintained in an appropriate fashion.

There was a brief discussion regarding maintenance of the properties, property rights, and the intent of the Board when this decision (regarding rent) was made.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously approved Alternative No. 1, the Lease Renewal Agreement allowing Justo Manuel and Blanca Lleo Hernandez to remain in the premises and amending the lease to terminate once the 66th Avenue project is within twelve months of commencement of construction, and authorized the Chairman to execute same, as recommended in the memorandum of May 27, 2009.

LEASE EXTENSION ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.R. LEASE EXTENSION, 8865 91ST AVENUE, VERO BEACH, FL, CR510
WIDENING AND IMPROVEMENTS, COUNTY PROJECT NO. 0610, GINA
HOWER, TENANT**

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously approved Alternative No. 1, Lease Renewal Agreement, allowing Gina Hower to remain on the premises and amending the lease to terminate once the 89th Street and CR510 project is within twelve months of commencement of construction, and authorized the Chairman to execute same, as recommended in the memorandum of June 1, 2009.

LEASE EXTENSION ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.S. LEASE EXTENSION, 5165 66TH AVENUE – 66TH AVENUE WIDENING AND
IMPROVEMENTS, COUNTY PROJECT NO. 0370, DAVID ROBERT GEARY,
TENANT**

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously approved Alternative No. 1, the Lease Renewal Agreement, allowing David Robert Geary to remain on the premises and amending the lease to terminate once the 66th Avenue project is within twelve months of commencement of construction, and authorized the Chairman to execute same, as recommended in the memorandum of June 1, 2009.

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

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

Sheriff Deryl Loar recalled this to have been brought before the Board of County Commission Meeting on May 19, 2009, seeking approval to charge a fee for the sexual predators, sexual offenders, and career criminals that come to this County and register.

Commissioner Solari asked the Sheriff which option was preferred, and **Jim Harpring**, Indian River County Sheriff's General Counsel recommended the Board approve the Ordinance with Optional 1 language, and provided the reasons why.

The Chairman opened the public hearing, and stated the proposed registration fees: \$50.00 for the initial registration, \$25.00 for each annual registration, and \$10.00 for a change of address or other information. There being no speakers, the Chairman closed the public hearing.

Commissioner Wheeler asked for a clarification between an offender and predator, and Legal Counsel told him that the difference depends on the nature of the offense, and he provided examples of the categorizations.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously approved Optional language 1 under Subsection 7 of the proposed Ordinance [or for crime prevention, school resource officer programs, safe neighborhood programs, programs and training in protecting children from harm by Sexual Offenders and Sexual Predators, drug abuse and prevention programs or for other law enforcement purposes. Any surplus funds remaining in the revenue account established for this program at the end of each fiscal year shall be transferred to the County's general fund] and adopted **Ordinance 2009-006**, adopting Indian River Code Section 306.07, establishing the requirement for the collection of registration fees from individuals identified by Florida Statute as a convicted felon, career offender, sexual offender or sexual predator, providing for codification, providing for severability, and providing for an effective date.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously approved **Resolution 2009-086**, establishing registration fees for

convicted felons, career offenders, sexual offenders and sexual predators.

10.B. PUBLIC DISCUSSION ITEMS - NONE

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING JUNE 16, 2009:

BOARD CONSIDERATION OF THE APPROVAL OF A PLAN OF FINANCE TO PROVIDE CAPITAL, INCLUDING THE ISSUANCE FROM TIME TO TIME BY THE ESCAMBIA COUNTY HOUSING FINANCE AUTHORITY, ON BEHALF OF INDIAN RIVER COUNTY AND OTHER PARTICIPATING COUNTIES, OF NOT EXCEEDING \$150,000,000 SINGLE FAMILY MORTGAGE REVENUE BONDS (LEGISLATIVE)

Attorney Collins read the Notice into the record.

11. COUNTY ADMINISTRATOR'S MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. CONSIDERATION OF AGREEMENTS FOR DONATION OF COUNTY OWNED SURPLUS PROPERTIES TO NON-PROFIT HOUSING ORGANIZATIONS FOR THE PROVISION OF AFFORDABLE HOUSING

Community Development Director Robert Keating recapped his memorandum of May 28, 2009, conveying how this item relates to the County donating surplus property to non-profit

organizations for the provision of affordable housing; and he spoke briefly of the draft agreement provisions between the County and the three organizations - (1) Habitat for Humanity, Inc., (2) the Coalition for Attainable Homes, Inc., and (3) Every Dream Has A Price, Inc.

Commissioner O'Bryan questioned whether lot 6 was truly unbuildable, and if the non-profit agencies were happy with the distributions. Director Keating spoke affirmatively to both.

There was a brief discussion regarding the structure of the properties, if they would remain affordable in perpetuity, and whether the perpetual source/opportunity would continue.

In response to Commissioner Solari's question, Director Keating related the current annual median low income and very low household income. Commissioner Solari felt this was a great use for the property, and believed that without the non-profits standing behind the lots, that they would not be able to continue using them as affordable housing, for any length of time.

Vice Chairman Flescher spoke about the limited resources of the non-profits, and agreed that this was a great use for the property in delivering affordable, attainable housing.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Chairman's execution of the Agreements with Habitat for Humanity, Inc., the Coalition of Attainable Homes, Inc., and Every Dream Has a Price, Inc., and directed the General Services Director to coordinate with the County Attorney's Office to transfer the ownership of the referenced properties to these

organizations with deed restrictions which indicate that affordable housing units must be built on the donated properties for very low or low income households within three (3) years or the properties will revert to the County; and authorized the Chairman to execute the County Deeds after approval of the County Attorney's Office, as recommended in the memorandum of May 28, 2009.

AGREEMENTS AND COPY OF DEEDS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

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. WORK ORDER #5, COASTAL TECHNOLOGY CORPORATION INC.,
SECTOR 3 BEACH RESTORATION PRE-CONSTRUCTION SERVICES

Coastal Resource Manager Jonathan Gorham, Ph.D., recapped his memorandum of June 1, 2009, outlining the proposed Work Order, and the three major tasks related to bidding and permit modification for the Sector 3 Beach Restoration Project. He explained the critical nature of scheduling work on the beach, since it can only be conducted from November 1st through May 1st of each year, to avoid the sea turtle nesting season. He outlined the tasks and descriptions, and provided the anticipated start and completion dates for each task phase. Dr. Gorham recommended the Board approve Work Order No. 5 with staff issuing the Notice to Proceed to Coastal Technology Corporation, Inc. for only Task No. 1 at this time; and to issue a Notice to Proceed with Tasks 2 and 3 at a later date.

Commissioner Wheeler wanted to know if funding was in place for the project, and Dr. Gorham informed him that the County had not received State cost-sharing for construction, but thought the National Oceanographic and Atmospheric Administration (NOA) stimulus money (if approved), or available local funds could be used.

Commissioner O'Bryan wanted to see the timeline moved up; voiced concern that the work would not be completed by the season of November 2009 to April 2010; and questioned why the \$150,000 fee to resubmit the application with an alternate sand source was necessary, since the project is nearly approved – he did not think there should be any Requests for Additional Information (RAI's) for this work season.

Dr. Gorham explained that the consultant had budgeted for three RAI's in the Work Order as a contingency, and in the event they are not needed, the line item fees would not be billed.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Work Order No. 5 with Coastal Technology Corporation, with the stipulation that Notice to Proceed only be granted for Task 1 at this time, as recommended in the memorandum of June 1, 2009.

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

12.I.2. RESOLUTION AUTHORIZING THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TO FABRICATE AND INSTALL "STAN MAYFIELD MEMORIAL HIGHWAY" SIGNS ON SR-60 WEST OF I-95

Assistant Public Works Director Chris Mora announced that this request, from the FDOT, is to install signs on SR60, beginning immediately west of I-95 and ending at SR441 in Osceola County, designating a portion of the roadway as the "Stan Mayfield Memorial Highway". He said this action requires a Resolution, and he provided two options – to defer action on the Resolution, or pass the Resolution and make it contingent upon Legislative approval.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Davis, to approve, contingent upon Legislative approval, **Resolution 2009-087**, authorizing the Florida Department of Transportation to fabricate and install signs on SR-60, designating the roadway as the Stan Mayfield Memorial Highway.

Commissioner Wheeler wanted to know if there was a third option, and questioned why a Resolution was needed since SR60 is a State Highway. He did not support the Resolution because he did not think it was appropriate to memorialize individuals for simply doing the jobs they were hired/elected to do.

Director Mora responded to Commissioner Wheeler and explained that the Resolution was required in order to show local support.

Chairman Davis gave the reasons why he agreed to support the Resolution.

Commissioner Solari pointed out that Stan Mayfield did die in office, and believed that it separates this case from others. He felt a sign on SR60 was appropriate.

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

12.J. UTILITIES SERVICES

12.J.1. VERO LAKE ESTATES MASTER PLAN WATER PHASE II PROJECT

TIMOTHY ROSE CONTRACTING, CHANGE ORDER 1 & FINAL

PAYMENT – UCP 2958

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, the Board unanimously: (1) approved Change Order No. 1 with Timothy Rose Contracting, to decrease the contract amount by

\$118,901.00; (2) approved Final Pay Application in the amount of \$34,118.20; and (3) authorized the Chairman to execute same, as recommended in the memorandum of May 29, 2009.

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

13. COUNTY ATTORNEY MATTERS

13.A. ACQUISITION OF RIGHT-OF-WAY ALONG 66TH AVENUE, GARY D. BROWN REVOCABLE TRUST

Deputy County Attorney William DeBraal displayed an aerial map to depict the property along 66th Avenue and 53rd Street where the County needs to acquire 6.33 acres from the Gary D. Brown Revocable Trust. The property would consist of a 1.376 acre pond site, 2.271 acres of right-of-way, and 2.686 acres of Murphy Reservation that exists on the property. He said Mr. Brown had agreed to sell the property to the County for a purchase price of \$55,600 per acre, for a total of \$352,003.60; engineering costs of \$7,000; and attorney fees of \$26,400.27. He acknowledged that this acquisition would complete the necessary right-of-way between 53rd and 57th Streets.

Commissioner O'Bryan pointed out that the original agreement with Attorney Maguire was for him to bring sellers to the County at the appraised value, then he would receive a 5.5 to 5.7 percent commission for his efforts. He emphasized that the agreement never included engineering fees or value-added fees. He voiced opposition to the County being charged \$7,000 for engineering fees on raw land; and concern over the appraisals.

Commissioner Solari indicated that recent purchases have had a number of problems, appear repetitive, and are being addressed in a "piece meal" fashion. He suggested directing

staff to make a complete review of the way the properties are purchased and analyze whether there is a better way to move forward.

Attorney DeBral emphasized that according to Statute, landowners are entitled to hire experts to provide their opinions and input as to the purchase through the Eminent Domain process, so engineering costs on a six-acre purchase, including the pond and everything that goes into the analyzations of this type of purchase, is going to continue as long as there are unwilling sellers.

MOTION WAS MADE by Commissioner Solari to approve staff's recommendation, and direct staff to take four to eight weeks to review the purchases made over the past few months and to see if there is a better process when moving forward, that will address questions raised by the Board over the past six months. There was no SECOND. MOTION DIED.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board by a 4-1 vote (Commissioner Solari opposed) approved the Contract for Purchase of the parcel Gary D. Brown Revocable Trust for the purchase price of \$352,003.60, and the adjusted attorney fees (this price does not include the engineering fees nor the commission fees on the engineering fees).

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

14. COMMISSIONER ITEMS

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

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

14.C. COMMISSIONER GARY C. WHEELER - NONE

**14.C.1. ADDITION: COUNTY ATTORNEY WILLIAM G. COLLINS II
PROVIDED AN UPDATE ON SENATE BILL 360 RELATING TO
GROWTH MANAGEMENT, THE "COMMUNITY RENEWAL ACT"**

Commissioner Wheeler asked Attorney Collins to provide an update on Senate Bill 360.

Attorney Collins recapped his memorandum of June 8, 2009, highlighting growth management aspect changes to the Florida Statutes (see backup pages 243-A-1 and -2).

In response to Chairman Davis's inquiries, Director Keating acknowledged that trips are not reflected for the City of Sebastian, as they are for Vero Beach; and that throughout the State, most Counties and Municipalities who have their own Building Department, do not incorporate concurrency and traffic counts with the County's.

Commissioner Wheeler announced that the conference for Senate Bill 360 would be a virtual presentation, and that it was set for Friday, June 10th at 10:00 a.m.

NO ACTION TAKEN OR REQUIRED

The Chairman called a break at 10:05 a.m. and reconvened the meeting at 10:15 a.m. with all members present.

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

14.E. COMMISSIONER BOB SOLARI

**14.E.1. COUNTY ADMINISTRATOR JOE BAIRD, THE DUI AND THE
PROCESS GOING FORWARD**

Commissioner Solari, speaking for himself and fellow Commissioners, emphasized that the Board did not condone drinking and driving, and that they all recognize the dangers associated with it. He stressed that it is wrong, should not be done, and felt that if something good is to come out of this situation, it should be that the dangers of drinking and driving are made clearer to everyone, and that the publicity reduces further examples of irresponsible behavior.

Commissioner Solari summarized his Agenda Item and acknowledged that he had requested each Commissioner to pass any questions relating to this matter to the County Attorney so he would have time to formulate a response for this meeting. He pointed out that this is the first time that this matter has been discussed among the Commissioners, due to the Sunshine Law. Even though he recognized the Chairman as a great advocate for allowing the public to speak; he recommended the Board not have public discussion today, since it could increase the County's potential liability for the violation of the County Administrator's civil rights. He welcomed comments from the public through calls, e-mails, or writing.

Commissioner Solari explained why the process appears to be moving slowly, and why he felt it imperative that the citizens' representatives do what they can to ensure that the power of the State is not abused.

Attorney Collins provided clarification on the rights and duties of both the Administrator and the County Commission for proceeding through the process. He spoke about the Administrator's employment agreement with the County, existing County policies, and the benefits set forth in the Indian River County Administrative Policy Manual. Attorney Collins revealed that the only disciplinary offense Administrator Baird could be charged with, under our disciplinary offenses in the manual, would be unlawful conduct either on or off the job; however, any discipline based on unlawful conduct under the policy manual would have to await an adjudication of the charges in County Court. He said that currently there is an alleged unlawful conduct, and until Administrator Baird has his day in Court, there is not an adjudication of unlawful conduct. He described the provision that allows for termination, the benefits he would receive if the contract were to be terminated, specifics about the drug-free workplace policy, and the fact that the contract was silent on suspension.

Attorney Collins voiced concern with opening the discussion to the public, thinking that it would turn into a public forum to attack Administrator Baird. He said that in all likelihood, Administrator Baird's attorney had advised him to remain silent and not respond to comments until his case goes before the Court. People attacking him publicly, could create a public forum, damage his reputation at a time when he is not in a position to respond, and entitle him to a name clearing hearing that could linger several months.

Chairman Davis felt comfortable with his abilities to keep the discussion on the issues of County policy and procedure.

Commissioner Solari informed the Board of his original intent – to get a public hearing on the rights and duties of the County Administration and the County, and to work towards a process when moving forward, not for public discussion of the situation.

MOTION WAS MADE by Commissioner Solari,
SECONDED by Commissioner O’Bryan, to not offer
public comments at this time.

Vice Chairman Flescher felt the public should express their opinions. He asked counsel if there would be any damage to the merits of the future application of this case, if the discussion were to be kept on course.

Attorney Collins said if the discussion goes to the process and to County policy, perhaps not, but he was apprehensive that the discussion would stray.

Commissioner Wheeler had mixed emotions. He felt the public should be heard since it is a public meeting, did not believe a purpose would be served by opening this to the public, and expressed that if it were to be opened to the public that comments should be kept strictly to policy, not personal attacks.

Commissioners O’Bryan and Flescher expressed their reasons for objecting to bringing this item forward as an Emergency Item at the May 19th Board of County Commission Meeting.

Commissioner Wheeler felt that if the Chairman could keep the discussion to the subject matter, he would support public input, even though he did not believe this to be the appropriate time.

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

Human Resources Director James Sexton provided background and details of the drug-free workplace policy as it applies to this case. He disclosed that the policy had been followed, wherein the employee notified the County, and because the employee is not in a safety sensitive position or in a special risk position, there was no need to transfer or move the employee to a different set of tasks.

A brief discussion ensued among the Commissioners regarding the discussion being limited to only County policy, not personalities.

Director Sexton said the next step in the process, according to the policy, is to wait on the disposition of the charges, and upon the disposition of the case. If it is an outcome that the Board is not favorable to, then they could decide at that point if any action is necessary. He reemphasized that there is no need to remove Administrator Baird from any tasks because it is not in a safety sensitive or special risk position.

Attorney Collins responded to questions regarding Administrator Baird's County vehicle/car allowance.

Chairman Davis opened the floor to the public. He asked speakers to stay on the specific issue of the County policy, and nothing related to the County Administrator.

Robert A. Bower, 7300 20th Street, Village Green, Lot 534, Vero Beach, wanted to discuss the current application, as opposed to the application that was applied to his grandson.

Director Sexton reiterated the County policy as it applied to Mr. Brower's grandson, and the sensitivity of the two positions.

Commissioner Wheeler reiterated to Mr. Bower that following Administrator Baird's Court date, this issue would be addressed in full detail, with full public disclosure, and with full public input.

Debbie K. Whitehouse, no address given, questioned travel allowances for employees, guidelines for rescinding travel expenses, and whether there was a policy that could rescind or continue a car allowance.

William Wells, 8800 44th Avenue, Sebastian, wondered if an individual would forfeit his pension if he was convicted of a crime.

Joe Lowder, 231 11th Avenue, asked a question that was not related to the County policy.

Reni Renzi, Waverly Place, wanted to know, if the contract called for 14 months of continued salary and benefits, if the contract is terminated would the same apply if the employee was fired.

Blades Robinson, 2126 Cavalla Road., Vero Beach, questioned whether the decision could be made now, as opposed to later.

Amy Thoma, 5060 Harmony Circle, #108, Vero Beach, wanted to know if there was a policy in place that would help employees with alcohol or drug related issues, if they requested help.

Steve Myers, Business Agent with Teamsters Local Union 769, questioned the disciplinary offense, a provision in the policy manual, and the guidelines that would be used in the future.

George Moore, 6285 33rd Manor, Vero Beach, made comments that were not related to the County policy.

Judy Saucerman, 625 11th Place, Vero Beach, said she was there to observe, not speak.

In conclusion, the Commissioners reiterated their earlier comments and thanked the speakers for their respectful comments, and speaking within the boundaries that were set forth.

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT - NONE

15.B. SOLID WASTE DISPOSAL DISTRICT - NONE

15.C. ENVIRONMENTAL CONTROL BOARD - NONE

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

16. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 11:18 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/LAA/2009Minutes