

JEFFREY K. BARTON

Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

OF JUNE 16, 2009

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JEFFREY K. BARTON

Clerk to the Board



June 16, 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 16, 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 Athena Adams.

1. CALL TO ORDER

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

2. INVOCATION

Reverend Dawn Reichard, Christ by the Sea United Methodist Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

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

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

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

- 1. REQUEST BY COUNTY ADMINISTRATOR TO PULL ITEM 12.A,
"CONSIDERATION OF CODE CHANGE RECOMMENDATIONS FROM
DEVELOPMENT REVIEW COMMITTEE."*

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

- 5.A. PRESENTATION OF THE LAGOON GREENWAY PROJECT, A PROPOSED
PARTNERSHIP BETWEEN INDIAN RIVER LAND TRUST AND INDIAN RIVER
COUNTY, BY KEN GRUDENS, EXECUTIVE DIRECTOR, INDIAN RIVER LAND
TRUST.*

Mr. Ken Grudens of the Indian River Land Trust provided detailed background on the proposed Lagoon Greenway (partnership) project. He reported that the Land Trust is a non-profit, land and water conservation organization, working solely in Indian River County, and has been working here for twenty years.

Mr. Grudens disclosed that a Greenway is a multi-purpose trail system that often runs through or by natural areas such as a river or a bay, and the proposed Lagoon Greenway project area, as noted on the map, situates south of the 17th Street Bridge, and in between Indian River Boulevard and the Lagoon. He outlined the purpose of the Greenway project, which is to create a trail system for public access to the lagoon for a variety of recreational and educational uses. He listed the primary goals of the project, and briefly described the project, which spanned from the 1990s when the County acquired the 38-acre property, the Flinn Tract. He said the Florida Inland Navigation District (FIND) and the St. Johns River Water Management District (SJRWMD) each holds a 25% interest in that property.

Mr. Grudens outlined the Lagoon Greenway timeline regarding the project's development; outlined via overhead site map the lagoon plan area; listed the total cost of the project (which is not expected to exceed \$460,000); and outlined the scope of services for the Land Trust and the County, among which the County is responsible for obtaining outside funding.

Commissioner Solari thanked Mr. Grudens and the Indian River Land Trust for a great project and for their work, to date.

Chairman Davis acknowledged the benefits of the project and the work of the Land Trust.

Commissioner O'Bryan also acknowledged the great job done by Mr. Grudens and the Land Trust, and inquired whether the Board needed to direct staff to start developing a Memorandum of Understanding (MOU) for the implementation of this program.

Chairman Davis agreed the Board should authorize the County Administrator to direct staff to draft a MOU so they could move forward in implementing this program and for staff to fully cooperate with the Land Trust to make this Greenway a reality.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O'Bryan, the Board unanimously authorized the County Administrator to direct staff to draft a Memorandum of Understanding (MOU) to begin implementing the Lagoon Greenway Project and for staff to fully cooperate with the Land Trust to make this Greenway a reality.

Mr. Gruden's Presentation will be posted to the County's website for all interested parties.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF MAY 19, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of May 19, 2009. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Minutes of the Regular Meeting of May 19, 2009, as written.

7. INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS NOT REQUIRING BOARD ACTION - NONE

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES, MAY 29, 2009 THRU JUNE 4, 2009

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved the list of Warrants and Wires, issued by the Clerk to the Board for the time period of May 29, 2009 to June 4, 2009, as recommended in the memorandum of June 4, 2009.

8.B. OUT OF COUNTY TRAVEL TO ATTEND THE ST. JOHN'S WATER MANAGEMENT DISTRICT'S (SJRWMD) PUBLIC MEETING: WATER CONSERVATION SUBGROUP

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved out-of-County travel for one or more Commissioners and staff to attend the St. Johns River Water Management District's (SJRWMD) public meeting, to be held July 30, 2009, at the SJRWMD Headquarters in Palatka, Florida, as requested in the memorandum of June 9, 2009.

8.C. FINAL PAY/RELEASE OF RETAINAGE – DETENTION DOOR OPERATOR UPGRADE RFP 2008038

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved final pay release of retainage to Willo Products

of Decatur, Alabama, as recommended in the memorandum of June 9, 2009.

8.D. APPROVAL OF FLORIDA POWER & LIGHT (FPL) EASEMENT, FIRE STATION #12 PROJECT

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Chairman to execute the FPL Easement, as submitted and as recommended in the memorandum of June 5, 2009.

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

8.E. SUBORDINATION OF UTILITY INTERESTS – FLORIDA POWER & LIGHT Co. CUMBERLAND FARMS AT OSLO ROAD

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Subordination, and authorized the Chairman to execute same, as recommended in the memorandum of June 5, 2009.

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

**8.F. PROFESSIONAL ENGINEERING SERVICES MBV ENGINEERING, INC., FOR
COMPLETION OF QUAIL CREEK SUBDIVISION**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Professional Civil Engineering Services Agreement with MBV Engineering, Inc., for a contract lump sum amount of \$26,900.00, as recommended in the memorandum of June 5, 2009.

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

**8.G. APPROVAL OF SELECTION COMMITTEE'S RANKING FOR ARCHITECTURAL
SERVICES AT SHERIFF'S OFFICE**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved the ranking as submitted, and authorized staff to initiate contract negotiations with the top ranked firm, Donadio and Associates, with the understanding that should no agreement be reached, staff would proceed to the next ranked firm, etcetera. Upon conclusion of such negotiations, staff will return with a draft contract for the Board's review and approval, as recommended in the memorandum of June 5, 2009.

8.H. CODICIL TO DEVELOPER'S AGREEMENT BETWEEN THE COUNTY AND 510, LLC

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved the codicil to the Developer's Agreement and authorized the Chairman to execute the codicil, together with any documents necessary, to comply with the terms of the agreement, as recommended in the memorandum of June 3, 2009.

CODICIL 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. TAX EQUITY FISCAL RESPONSIBILITY ACT (TEFRA) PUBLIC HEARING, ESCAMBIA COUNTY HOUSING FINANCE AUTHORITY, SINGLE FAMILY MORTGAGE REVENUE BONDS [LEGISLATIVE]

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

There being no comments from Commissioners or staff, the Chairman opened the Public Hearing. There were no speakers and the Chairman closed the Public Hearing.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously

approved **Resolution 2009-088** authorizing the Escambia County Housing Finance Authority to operate within the boundaries of Indian River County, Florida, and approving a plan to finance qualifying single family mortgage loans on behalf of Indian River County, Florida; authorizing the Board of County Commissioners to enter into agreements with the Escambia County Housing Finance Authority and to execute and deliver certain documents and instruments in connection therewith; approving a form of Interlocal agreement; approving the issuance by the Escambia County Housing Finance Authority of not exceeding \$300,000,000 Single Family Mortgage Revenue Bonds, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended; providing that such Bonds constitute limited, special obligations; and providing an effective date.

**10.B. REQUEST TO SPEAK FROM BRIAN HEADY REGARDING THE ECONOMY,
AND WHAT WE CAN DO FOR ECONOMIC RECOVERY FOR INDIAN RIVER
COUNTY**

Brian Heady, Vero Beach, reminded the Board of his past request that the County adopt a policy to buy local, thus protecting the residents of the County. He believes the County should hire workers who legally live here, and thought it would be nice for us to highlight the assets of our community, our products or our workers, and that should start at the County Commission level. He asked the Board to reconsider Vice Chairman Flescher's proposal with an eye on implementing a program that gets all County tax dollars to be spent locally, on local products, and on workers with local companies. He urged the Board to look out for the people that they represent.

Chairman Davis apprised Mr. Heady of the Board's past direction to staff, to look at the probability of a local purchase/vendor program and to list the cost, if any; as well as, to look into St. Lucie County's model, to see where it is, and whether we could implement that program.

Mr. Heady reiterated his desire that all the money spent by the County (which is taxpayers money) to be spent locally, buying locally, and by ensuring that the contractors we use hire local people.

Vice Chairman Flescher thanked Mr. Heady for his time and assured him that our Legal Counsel would be examining not only the St. Lucie County model but some of the input resulting from the discussions on the initiative he (Mr. Heady) brought forward. He invited Mr. Heady to come back when the Board further discusses this matter.

Commissioner Wheeler acknowledged that what Mr. Heady said sounds really good, but felt we are "not big enough to be in a protectionism type environment" and whether we like it or not we live in a world economy and we are not going to survive by trying to protect American products or trying to protect local jobs; we are going to survive by being productive and competitive. He argued that competition and the free enterprise system is where the strength is, and not protectionism. Further, if we start shutting the market down here on competitiveness then we are doing the taxpayers a disfavor because we run a higher risk of getting an inferior product; and the real risk is paying a higher price for the product because you are eliminating competition.

The Chairman thanked Mr. Heady for his input.

No Board Action required or taken.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING JUNE 23, 2009:

Consider an Amendment to Section 207.05 of the Indian River County Code to change the beginning sale date of business tax receipts from August 1 to July 1 of each year so as to be consistent with current Florida Law [Legislative]

10.C.2. NOTICE OF SCHEDULED PUBLIC HEARING JUNE 23, 2009:

William Gregory Construction Inc's., Request to Amend the Future Land Use Map to Redesignate ± .32 Acres, Located on the Northwest corner of Indian River Boulevard and 37th Street, From M-1, Medium Density Residential-1 (up to 8 units/acre), to C/I, Commercial/Industrial District; and to Rezone that ± .32 Acres From RM-8, Multiple-Family Residential-1 District (up to 8 units/acre), to OCR, Office, Commercial, Residential District [Legislative]

Attorney Collins read the notices into the record.

11. COUNTY ADMINISTRATOR'S MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. CONSIDERATION OF CODE CHANGE RECOMMENDATIONS FROM DEVELOPMENT REVIEW COMMITTEE

This Item was pulled from the Agenda.

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

12.G.1. 2009/2010 BUDGET WORKSHOP CHANGE IN DATES

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the change in the Budget Workshop dates to July 23 and July 24, 2009, as recommended in the memorandum of June 10, 2009.

12.H. RECREATION - NONE

12.I. PUBLIC WORKS - NONE

12.J. UTILITIES SERVICES - NONE

13. COUNTY ATTORNEY MATTERS

13.A. REQUEST FOR RELEASE OF CODE ENFORCEMENT LIENS AGAINST PROPERTY FORMERLY OWNED BY LEWIS BARTON

County Attorney Will Collins recapped the backup memorandum dated June 9, 2009, and updated the Board on this request for release of code enforcement liens (totaling \$252,000.00) on the subject property located at 2525 Surfside Terrace, in consideration of the payment of \$5,000.00. Staff recommended that the Board decline the request.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner O'Bryan to approve
staff's recommendation.

Commissioner Solari remarked that for things that would not seem to bring much notice, this is one of the items that constituents in his District would be adamant against, meaning, any decline in the amount of this fee. He therefore readily supported staff's recommendation.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board declined the request to release the County Lien of \$252,000 in exchange for a \$5,000.00 payoff, as recommended in the memorandum of June 9, 2009.

13.B. GIFFORD YOUTH ACTIVITY CENTER/GIFFORD COMMUNITY CENTER LEASE MODIFICATIONS

County Attorney Will Collins recapped the backup memorandum of June 10, 2009 and provided background on this request for lease modification which would allow the Gifford Youth Activity Center to expand the area of their lease to the west of their existing building, to allow the siting of two (2) modular educational buildings, which the School Board has offered to make available, according to Architect John Dean.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved and authorized the Chairman to execute the Lease modifications for the Gifford Youth Activity Center and the Gifford Community Center, as recommended in the memorandum of June 10, 2009.

Freddie Woolfork, 4598 57th Avenue, briefly described how the subject Center has expanded over the years, since 1998, and the present need for more space to accommodate those in need of the services they provide. He acknowledged the donations from other organizations, and thanked the Commissioners, on behalf of their Executive Director, Ms. Angela Perry, and their Board of Directors, for approving this request.

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

13.C. UNCONDITIONAL OFFER FOR PARCEL OF PROPERTY OWNED BY BANK OF AMERICA, 5780 20TH STREET, VERO BEACH

Deputy County Attorney Bill DeBraal updated the Board on this request to acquire a small section of right-of-way (a .036 of an acre) from the parent tract of the subject parcel of property. He asked the Board to approve staff's recommendation for an unconditional offer to purchase the necessary right-of-way from the Bank of America.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously approved an unconditional offer to purchase the necessary right-of-way from the Bank of America at a price of \$49,500.00, as recommended in the memorandum of June 5, 2009.

**13.D. NECESSITY OF TAKE RESOLUTION FOR PARCEL OF PROPERTY LOCATED
AT 4785 66TH AVENUE, LAWRENCE AND PHYLLIS BROWN, PARCEL 112**

Deputy County Attorney Bill DeBraal updated the Board on this request for approval of the Resolution of Necessity, and authorization for staff to proceed with the necessary right-of-way acquisition through the County's power of eminent domain, pertaining to the subject parcel of property.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2009-089** 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.

**13.E. NECESSITY OF TAKE RESOLUTION FOR A PARCEL OF PROPERTY ON 66TH
AVENUE OWNED BY STEVEN AND SHELLY RYAN 6775 66TH AVENUE, VERO
BEACH, PARCEL 108**

Deputy County Attorney Bill DeBraal updated the Board on this request for approval of the Resolution of Necessity and authorization for staff to proceed with the necessary right-of-way acquisition through the County's power of eminent domain, relevant to the subject parcel of property.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-090** 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.

**13.F. STIPULATED ORDER OF TAKE AND EXTENDED POSSESSION AGREEMENT
WITH CUMBERLAND FARMS – OSLO ROAD AND 27TH AVENUE**

Deputy County Attorney Bill DeBaal updated the Board on this request for conceptual approval of the Stipulated Order of Take and the Lease Agreement with Cumberland Farms for extended possession. He thereafter responded to questions from Chairman Davis regarding the deposit of funds into the Court registry and whether we were getting charged a fee (2%) for such action.

Attorney DeBaal also responded to questions from Commissioner O'Bryan of whether or not we were buying two parcels from Cumberland Farms. Another concern of Commissioner O'Bryan was a statement in the backup that implies we would convey 1.6 acres to Cumberland Farms, which seemed like we were giving it to them. Attorney DeBaal assured him that was not the case.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the Stipulated Order of Take and the Lease Agreement with Cumberland Farms for extended possession, as recommended in the memorandum of June 11, 2009.

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.D. COMMISSIONER PETER D. O'BRYAN

14.D.1. FIRE OPS 101 TRAINING

Commissioner O'Bryan and Vice Chairman Flescher recently attended the Local Firefighters Union National Conference, in Miami, and participated in the "Fire Ops 101" training activity, which is similar to a day in the life of a firefighter. Commissioner O'Bryan described the various scenarios staged and said being involved in those activities made him appreciate more what firefighters go through on a daily basis. He deemed it a worthwhile event.

Vice Chairman Flescher also deemed it a great experience, and gave further details of their participation in the varied exercises staged. He also experienced some great new innovative equipment, some of which he hopes to see in our County, as well.

14.E. COMMISSIONER BOB SOLARI

14.E.1. FIRE HYDRANT MAINTENANCE CHARGES

MOTION WAS MADE by Commissioner Solari,
SECONDED by Chairman Davis, for discussion, to
suspend the fee the County charges the Emergency
Services District for fire hydrant maintenance.

According to Commissioner Solari, and pursuant to the Statutes governing hydrants, it is the owner's responsibility to maintain hydrants, and it is the Utility that owns the hydrants; therefore he believed this is a better path forward. Commissioner Solari discussed the difference in charges between the Cities of Fellsmere and Vero Beach for their hydrants, and believed the first step in rectifying the situation is to increase the power of our arguments to the other municipalities to suggest that either (a) they need to have a more reasonable fee or (b) let the County do the maintenance, because it would be more cost effective for us to do.

Commissioner Solari remarked that the municipalities have often used Enterprise funds to subsidize their General fund, and that is an important distinction with the County. He believes it serves the County residents better, to look at the utilities as just a service.

Chairman Davis asked if it was correct to assume that those funds would then come out of the Utilities Department, in the event we decide to not fund this out of the Emergency Services District. Administrator Baird replied that presently the Emergency Services District pays the utility for hydrant maintenance; and now we are going to absorb it in our utility fund.

Chairman Davis agreed that it would be more appropriate for it to be on the utilities side. He asked whether it was the intent that the Enterprise funds of the utilities would cover this; where were we in the discussions we are having with the municipalities; and what is the next step for us to move forward, if we legally can.

Attorney Collins said the City of Fellsmere took that check, identified it as partial payment, and put it in their Attorney's Trust Fund with direction that they explore their legal remedies to collect the balance. He said staff subsequently wrote back to them, being under the impression that they were seeking additional information on their updated rates study to address some of the comments made by our staff, but have not received that back. He therefore thinks

we are at an impasse, although he was not sure it could not be resolved through further discussion. He stated further that we are also going to have to modify our utility ordinance, which currently provides for an annual charge to be assessed to the fire district by the Utilities Department; so we will have to strike that provision from our ordinance.

Chairman Davis thought that should probably come first, and questioned whether it has gone before the Utility Advisory Board.

Administrator Baird said this item came before the Board of County Commissioners before we disputed the Fellsmere payment. Staff asked for backup to justify how they came up with the payment, and has written to Fellsmere twice, but has received no documentation.

Chairman Davis asked if Commissioner Solari wanted to include in his Motion the suggestion to strike the provisions from the ordinance, and Commissioner Solari was agreeable.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved to remove the language in the Ordinance that states that the Emergency Services District pays the Utility Department for the fire hydrants and maintenance.

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 10:17 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: __July 9, 2009_____