

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF JUNE 23, 2009

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JEFFREY K. BARTON

Clerk to the Board



June 23, 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 23, 2009, at 9:00 a.m. 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 Maureen Gelfo.

1. CALL TO ORDER

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

2. INVOCATION

Rabbi Michael Birnholz, Temple Beth Shalom, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

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

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

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

CORRECTION: ITEM 8H. ADJUSTMENT OF REVISED CONTRACT AMOUNT, FROM \$839,328 TO \$839,935, TO PHASE I ENERGY PERFORMANCE CONTRACT WITH FPL ENERGY SERVICES

MOVE: ITEM 13.A. ATTORNEY'S MATTER ON "EXTENSION TO CONTRACT FOR LOT FILL RELATING TO HUNTINGTON PLACE SUBDIVISION" TO BE HEARD FOLLOWING ITEM 10.A.2.

ON MOTION by Commissioner Wheeler, SECONDED
by Vice Chairman Flescher, the Board unanimously
approved the above changes to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION HONORING SEBASTIAN POLICE CHIEF JIM DAVIS ON HIS RETIREMENT EFFECTIVE JUNE 24, 2009

After recognizing the incoming Sebastian Police Chief, Michelle Morris, Commissioner Wheeler read and presented the Proclamation to retiring Sebastian Police Chief Jim Davis. Chief Davis thanked the Commissioners for recognizing him, and for assisting Sebastian with its 911 Public Safety Answering Point (PSAP).

5.B. PRESENTATION OF YOUTH GUIDANCE MENTORING & ACTIVITIES
PROGRAM BY BARBARA SCHLITT FORD, EXECUTIVE DIRECTOR

Barbara Schlitt Ford, Executive Director, thanked the Commission and the citizens for supporting the Youth Guidance Program, which serves at-risk youth from Kindergarten through Grade 12. She outlined the program offerings, which included the ongoing Summer Camp Scholarship Program, and conveyed that anyone wishing to sponsor a child or make a donation, may visit the website, *ircyouth.com*; send a check to P.O. Box 121, Vero Beach, 32961; or telephone Ms. Ford at 772-770-5040. Ms. Ford also provided information on another organization, the Connected for Kids Coalition, which is comprised of multiple groups working together to meet the needs of the community's children.

5.C. PRESENTATION OF STATUS OF STORM PREPAREDNESS IN THE UPPER ST.
JOHNS RIVER BY MAURICE STERLING, DIRECTOR OF PROJECT
MANAGEMENT, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Jeff Cole, Director of Communications and Governmental Affairs for St. John's River Water Management District (SJRWMD), acknowledged the presence of **Ann Benedetti**, Intergovernmental Coordinator. He then introduced **Maurice Sterling**, Director of Project Management, who would be providing an update on the St. Johns River Basin Project.

Mr. Sterling used a PowerPoint presentation to outline the background, goals and objectives of the St. Johns River Basin Project (Upper Basin Project), which begins in western Indian River County and continues to Jacksonville. He conveyed that flood damage prevention is the primary purpose of the project. He reported that the project improves flood protection to adjacent lands and lives upstream of US 192; accommodates flooding events for the 250+ year frequency rain event; restores river floodplain functions and ecological values; reduces freshwater discharges to the Indian River Lagoon; and enhances public recreational opportunities.

Mr. Sterling discussed some recent upgrades to the Project, including the Fellsmere Farms addition (currently under construction), which will provide tremendous ability to manage water more effectively. He explained that although the Water Management District does not like to use Canal 54 [C-54], (part of the original Upper Basin Project), because of deleterious impacts to the Lagoon, it would be used in a significant flood event. Mr. Sterling concluded his presentation with assurances that the Upper Basin Project is working very well, and that things are in shape for the 2009 tropical storm season. He affirmed that St. Johns River Water Management District would cooperate with the County prior and subsequent to a storm, and would also provide any necessary assistance with the County's water management practices. He divulged that more information and a primer on flooding can be found on the website, www.sjrwmd.com.

Chairman Davis requested that Mr. Sterling provide a future presentation on the basin reconnect project of the South Florida and St. John's River Water Management Districts; examine the possibility of increasing the water levels at the Blue Cypress Lake Basin by one foot; and affect modifications to the water structures west of the M-Canal, so that water can be discharged through the Kenansville Grade.

Mr. Sterling, responding to Commissioner Solari's inquiries about the C-54 Canal, disclosed that after the Fellsmere Farms addition is completed, the SJRWMD should not have to use the C-54 Canal again.

**5.D. PRESENTATION OF HURRICANE PREPAREDNESS BY JOHN KING,
DIRECTOR OF INDIAN RIVER COUNTY EMERGENCY SERVICES**

John King, Director of Emergency Services, noted that Indian River County has received a designation from the National Weather Service as a "StormReady" community. He used a PowerPoint presentation (copy on file) to update the Board on County storm preparedness activities. He discussed the importance of community cooperation, citing the Special Needs

Shelter wherein multiple agencies are involved, and of inter-County cooperation in matters such as evacuation prior to a storm. Director King divulged that staff has concluded its NIMS (National Incident Management System) training, a requirement for receiving federal funds subsequent to a presidentially-declared disaster. He reported that public notification updates and information were provided through Comcast Cable, Channel 27; WSCF 91.9 Christian FM; the County's webpage at www.ircgov.com; and the Florida Division of Emergency Management's webpage at www.floridadisaster.org-good. Concluding, Director King reported that staff was working on establishing a pet-friendly shelter, and he stressed the importance of developing a family and/or business disaster plan, prior to a storm.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF JUNE 2, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of June 2, 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 June 2, 2009, as written.

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

**7.A. RESIGNATION OF INTERESTED IN TOURIST DEVELOPMENT APPOINTEE TO
THE TOURIST DEVELOPMENT COUNCIL**

Noted for the record was the resignation of Ervin G. Roberts as a member of the Tourist Development Council.

**7.B. RESIGNATION OF RESIDENT OF THE ENTERPRISE ZONE APPOINTEE TO
THE ENTERPRISE ZONE DEVELOPMENT AGENCY**

Noted for the record was the resignation of Mr. William Shelly, Resident of the Enterprise Zone Appointee to the Enterprise Zone Development Agency (EZDA), who submitted his resignation on June 11, 2009. His term would have expired in 2012.

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES JUNE 5, 2009 THRU JUNE 11, 2009

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of June 5, 2009 to June 11, 2009, as requested in the memorandum of June 11, 2009.

8.B. APPROVAL TO AUTHORIZE DIRECT PURCHASE OF SOD AND FUMIGATION SERVICES IN CONJUNCTION WITH THE RENOVATION AND RE-GRASSING OF GREENS AT SAND RIDGE (SANDRIDGE) GOLF COURSE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously: (1) approved to waive the standard bidding procedures and authorized the County (Sand Ridge [Sandridge] Golf Course) to make direct owner purchases with both vendors, Champion Turf Farm and the fumigation vendor, Hendrix and Dale, for the purpose of saving the applicable sales tax; and (2) authorized the County Administrator to sign an amendment to the existing agreement between the County and International Golf Maintenance, Inc. that provides for the direct purchase of materials and/or services after review and approval by appropriate staff and the County Attorney's office, all as recommended in the memorandum of June 15, 2009.

8.C. MISCELLANEOUS BUDGET AMENDMENT 015

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-091**, amending the Fiscal Year 2008-2009 Budget.

**8.D. OSLO ROAD WIDENING FROM 43RD AVENUE TO EAST OF 27TH AVENUE,
PHASE 2, ENGINEERING SERVICES, KIMLEY-HORN AND ASSOCIATES, INC.
AMENDMENT NO. 3**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved and authorized the Chairman to execute Amendment No. 3 with Kimley-Horn and Associates, Inc., authorizing the Project as outlined in the Scope of Services, and as recommended in the memorandum of June 15, 2009.

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

8.E. F.D.O.T. LOCAL AGENCY PROGRAM (LAP) AGREEMENT – FPN No. 426383-1-58-01 AND RESOLUTION AUTHORIZING THE CHAIRMAN’S SIGNATURE, LANDSCAPING ON 58TH AVENUE FROM OSLO ROAD (9TH STREET S.W.) TO 16TH STREET, IRC PROJECT No. 0916

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-092**, authorizing execution of a Local Agency Program Agreement for the landscaping on 58th Avenue from Oslo Road (9th Street S.W.) to 16th Street, with the State of Florida, Department of Transportation (FDOT), and providing for an effective date.

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

**8.F. AMENDMENT NO. 3 TO PROFESSIONAL ARCHITECTURAL AND
ENGINEERING SERVICES AGREEMENT WITH EDLUND, DRITENBAS,
BINKLEY ARCHITECTS AND ASSOCIATES, P.A. – IRC PROJECT NO. 0701,
IRC PARKS MAINTENANCE COMPLEX**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved and authorized the Chairman to execute Amendment No. 3 to the Professional Architectural and Engineering Services Agreement with Edlund, Dritenbas, Binkley Architects and Associates, P.A., as recommended in the memorandum of June 9, 2009.

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

**8.G. SUPPLEMENT NO. 3 TO WORK ORDER NO. 1 WITH CARTER ASSOCIATES,
INC. PROFESSIONAL CIVIL ENGINEERING SERVICES AGREEMENT, INDIAN
RIVER COUNTY PARKS MAINTENANCE COMPLEX, IRC PROJECT NO. 0701**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved and authorized the Chairman to execute Supplemental No. 3 to Work Order No. 1 to the Professional Civil Engineering Services Agreement with Carter Associates, Inc., in the amount of \$2,956.00, as outlined in the Scope of Services, and as recommended in the memorandum of June 10, 2009.

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

8.H. ACCEPTANCE OF CHANGE ORDER #1 TO PHASE I ENERGY PERFORMANCE CONTRACT WITH FPL ENERGY SERVICES AND REVISED ENERGY SAVINGS GUARANTEE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved: (1) Change Order No. 1 to the Phase I Energy Savings Contract with FPL Energy Services, Inc., in the amount of \$152,539, with the revised contract amount to become ~~\$839,328~~; \$839,935; and (2) authorized the Chairman to execute the revised Energy Savings Guarantee, as recommended in the memorandum of June 15, 2009.

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

8.I. RIGHT-OF-WAY ACQUISITION, 66TH AVENUE PROJECT # 0370, 6630 49TH STREET, VERO BEACH, FL 32967 (LOCATED ON THE NORTH SIDE OF 49TH STREET WEST OF 66TH AVENUE), OWNER: RICHARD L. GALLAGHER, JR.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved Option 1, the purchase of the needed right-of-way located at 6630 49th Street, at a price of \$25,461, and authorized the Chairman to execute the Purchase and Sale Agreement with Richard L. Gallagher, Jr., as recommended in the memorandum of June 15, 2009.

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

8.J. MISCELLANEOUS BUDGET AMENDMENT 016

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-093**, amending the Fiscal Year 2008-2009 Budget.

8.K. REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO AMEND SECTIONS 305.13 AND 305.14 OF THE CODE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously authorized staff to advertise for a public hearing to be held on July 7, 2009, to amend Sections 305.13 and 305.14 of The Code, as recommended in the memorandum of June 17, 2009.

8.L. PERMISSION TO ADVERTISE FOR PUBLIC HEARING ON JULY 14, 2009, TO ADOPT ORDINANCE TO AMEND CHAPTER 105 OF THE CODE TO IMPLEMENT LOCAL BIDDING PREFERENCE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously authorized staff to proceed with the required advertisement to hold a public hearing on July 14, 2009 to adopt the proposed ordinance, as recommended in the memorandum of June 17, 2009.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

9.A. DERYL LOAR, INDIAN RIVER COUNTY SHERIFF

U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE BULLETPROOF VEST PARTNERSHIP PROGRAM GRANT APPLICATION

Kimberly Poole, Planner from the Sheriff's office, was available to answer any questions regarding the Bulletproof Vest Grant. There being none, the following action was taken:

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously authorized the Sheriff's Office to submit its Application for Funding Form under the *Bulletproof Vest Partnership Grant Act*, as requested in Sheriff Deryl Loar's letter of June 8, 2009.

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. WILLIAM GREGORY CONSTRUCTION INC'S REQUEST TO AMEND THE FUTURE LAND USE MAP TO REDESIGNATE ± .32 ACRES, LOCATED AT 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)

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

Community Development Director Robert Keating provided description, conditions and background on William Gregory Construction Inc's request to redesignate a less than one-third acre parcel at the northwest corner of Indian River Boulevard and 37th Street, from *M-1, Medium-Density Residential-1* to *C/I, Commercial/Industrial District*, and to rezone the property from *RM-8, Multiple-Family Residential-1 District* to *OCR, Office, Commercial, Residential District*, to allow for commercial development. He discussed some of the difficulties which the developer would encounter in developing the small property, but felt it would be less problematic to develop it commercially, rather than residentially. He thereafter presented the recommendations of staff and the Planning and Zoning Commission (PZC), to approve the small scale land amendment request and the rezoning, by adoption of the proposed Ordinances.

Director Keating responded to Board questions on how the property would be accessed, on the conservation easement, and on whether the applicant knew how difficult it would be to develop the property.

The Chairman opened the Public Hearing.

Scott McGuire, Mike McGuire & Associates, representing William Gregory Construction, acknowledged the small size of the site, but felt it could accommodate a small single-user office building, or be combined with the property to the west for potential expansion of that facility. He remarked that they were not creating any new issues with their proposed plans, just changing the use of property.

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

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously adopted **Ordinance 2009-007**, amending the future Land Use Element of the Comprehensive Plan by changing the land use designation for ± .32 acres located at the northwest corner of Indian River Boulevard and 37th Street from M-1, Medium Density Residential-1 (up to 8 units per acre), to C/I, Commercial/Industrial; and providing codification, severability, and effective date; and **Ordinance 2009-008**, amending the Zoning Ordinance and Zoning Map for ± .32 acres located at the northwest corner of Indian River Boulevard and 37th Street from RM-8, Multi-Family Residential District-1 (up to 8 units per acre), to OCR, Office, Commercial, Residential District; and providing codification, severability, and effective date.

The Chairman called a break at 10:05 a.m. and reconvened the meeting at 10:16 a.m., with all members present.

10.A.2. PROPOSED ORDINANCE AMENDING 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 (LEGISLATIVE)

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

County Attorney William Collins presented the request to adopt the proposed Ordinance, which would authorize the tax collector to begin selling tax receipts (formerly known as Occupational Licenses), commencing on July 1, rather than on August 1, of each year. This would amend Section 207.05 of the Code to be consistent with the Florida Legislature's 2007 amendment.

The Chairman opened the Public Hearing. Seeing none, the Chairman closed the Public Hearing.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously adopted **Ordinance 2009-009**, amending Indian River County Code Section 207.05 "Term of Business Tax Receipt; Due Dates; and Penalties" to change the beginning sale date of business tax receipts from August 1st to July 1st of each year; providing for codification; providing for severability; and providing effective date.

10.B. PUBLIC DISCUSSION ITEMS

**10.B.1. REQUEST TO SPEAK FROM MARK C. FOSTER, FOSTER I.R.C., LLC
REGARDING HUNTINGTON PLACE LOT FILL**

(Clerk's Note: Item 13.A. Attorney's Matters - Extension to Contract for Lot Fill Relating to Huntington Place Subdivision was heard immediately prior to, and in conjunction with, Item 10.B.1. Please see item 13.A. for staff's presentation).

Mark C. Foster, President of Foster I.R.C., LLC, presented background history on the Huntington Place subdivision, which currently has four lot owners. Attesting that there were no drainage problems, he showed slides depicting the rapid drainage which had occurred at the site subsequent to Hurricane Fay. He said that a national homebuilder was interested in the subdivision; described Foster I.R.C., LLC's goal of maintaining the property aesthetic by removing the trees only where necessary; and presented slides contrasting Huntington Place with a typical "scorched earth" subdivision. Mr. Foster explained the bank's refusal to extend his Letter of Credit, and discussed the ramifications to the County and to Foster I.R.C., LLC, if the Letter of Credit is called. He implored the Commission to do the right thing as a Green County - - to let the Letter of Credit expire, and to not allow Huntington Place to become another dead scorched earth project.

Commissioner O'Bryan, who had twice walked the property, conveyed that it was a nice property with slash pines and palmetto hammock. He declared that as local government, the County needed to find a solution that does not involve bulldozing and fill.

Vice Chairman Flescher had also walked the property, and conveyed that it was a beautiful environment. He wondered why the County would call the Letter of Credit and tear down green space with natural drainage, and asked the County Attorney if a Developer's Agreement could instead be initiated.

Attorney Collins responded that a Developer's Agreement would be an unsecured agreement with nothing to fine the developer. He felt that the real issue was drainage, and protecting the future residents.

Chairman Davis relayed the contents of an e-mail sent by Public Works Director Jim Davis, which contained opinion that there was not a big drainage issue at Huntington Place.

Commissioner Solari asked County Engineer Chris Kafer whether staff foresaw any needs over the next several years, for cutting down the trees and for lot filling, or whether he thought the property should be left natural and be developed slowly. Mr. Kafer responded that he would hate to see the property denuded, and there was no reason to do the cut and fill now; however, as homes are built, there may be some ponding onto the undeveloped sites.

Commissioner Wheeler, who had viewed the subject property, did not want to see it become an eyesore, such as a desert-like site he had seen at U.S.1 and CR 510. He wondered whether the Letter of Credit could be set aside and reinstated when the property is ready to be developed, so the County would have a secure agreement with the developer.

Attorney Collins questioned why the County has the Lot Fill Agreement and Letter of Credit, and could not think of another subdivision where there have been contracts to fill lots. He noted that it must have something to do with the drainage requirements.

Administrator Baird remarked that, based upon the professional opinions of Jim Davis and Chris Kafer, the Letter of Credit is probably not necessary; however, some type of agreement might be necessary as the property is developed.

Mr. Foster divulged that aside from the four existing lot owners, the remainder of the property would be developed by professional builders, and he did not see drainage problems resulting from building a house next to a private lot.

Chairman Davis wanted to see the trees kept on the property for as long as possible.

MOTION WAS MADE by Vice Chairman Flescher to allow the Letter of Credit to expire, and to direct legal staff to work out a Developer's Agreement on any

drainage issue which may arise, until the project is reinstated.

Attorney Collins saw no point in having an unsecured Developer's Agreement. He said the control would be when the Certificate of Occupancy (CO) is issued for each individual house, at which time it would be determined if the lot has been filled to the proper grade.

MOTION WAS AMENDED by Vice Chairman Flescher, SECONDED by Chairman Davis, to allow the Letter of Credit with Foster I.R.C., LLC, to expire.

Commissioner O'Bryan noted that although Vice Chairman Flescher's Motion would vacate the Letter of Credit, the requirement for the lot fill remains. He felt it would be clearer to have the Motion specify vacating the Contract for Lot Fill; the Letter of Credit could expire on its own, and the lots could be filled individually as a builder/owner moves forward.

Attorney Collins confirmed that Commissioner O'Bryan was correct, and if the Board vacates the Letter of Credit (the security), the Contract being secured by the Letter of Credit should also be vacated.

Vice Chairman Flescher assented.

Attorney Collins added that, since the County would be deleting a time requirement on the lot fill, Mr. Foster should amend his deed restrictions for the four lot owners accordingly, to require lot fill at the time of development.

Commissioner Solari wanted to add an amendment to Vice Chairman Flescher's Motion such that the four lot owners would be excluded from having to fill prior to building.

Pursuant to Administrator Baird's request, Public Works Director Jim Davis explained the reason for originally placing the requirement for lot fill on the subject property, and opined that drainage at this site does not seem to be a problem.

MOTION WAS AMENDED by Vice Chairman Flescher, SECONDED by Chairman Davis, to allow the Letter of Credit to expire; to vacate the fill order; and to not hold the four lot owners to the lot fill as required.

Attorney Collins stated that the County could not grant the four lot owners the right to not fill the lots; Mr. Foster would have to amend his deed restrictions accordingly. Upon request from the Chairman, he clarified that the Motion would be to allow the Letter of Credit to expire; to rescind the Contract for Lot Fill; and to ask Mr. Foster to amend his deed restrictions so the four lot owners don't have to put in lot fill until the time of building.

Penny Chandler, IRC Chamber of Commerce, spoke of the County's goals to be more business-friendly, and observed that creating another non-attractive parcel of development land, is not where the County wants to head. She suggested that the solution might be Senate Bill 360 (SB 360), which contains provisions for local communities to deal with development issues.

Joseph Paladin, President of Black Swan Consulting and Atlantic Coast Construction and Development, Inc., citing his subdivision Parkland Estates as an example, talked about the benefits of building out a subdivision slowly, so that new trees can be planted as others are removed, and felt that leaving the trees on the subject property benefits not only the developers and lot owners, but all area residents.

Peter Robinson, 315 Greytwig Road, Rd; Vice President of Laurel Homes, spoke of the benefits of doing things the old way, before all the different LDR requirements. He asked the

Board to review the Letters of Credit requirements, remarking that “if you kill the developer up front, then everything goes away.”

Michael Thorpe, 4303 Sunset Drive, lot owner at Huntington Place, related that he had bought his lot because Huntington Place was one of few available wooded subdivisions. He briefly described Foster I.R.C., LLC’s intent to create a landmark property in the County, and urged the Commission to allow them to continue with their goal, and not be forced to clear-cut the property.

Public Works Director Jim Davis and Chairman Davis engaged in further discussion about why the requirements for lot fill had initially been placed upon the subject property.

Aaron Bowles, MVB Engineering, 2455 14th Avenue, described drainage analysis which had been done on the subject lot, affirming that he did not anticipate any problems with poor drainage creating wetlands.

Upon request, Attorney Collins repeated the Motion for clarity: to allow the Letter of Credit with Foster I.R.C., LLC to expire; rescind the Contract for Lot Fill with Foster I.R.C., LLC; and request Mr. Foster to amend his deed restrictions for Huntington Place so the four lot owners don’t have to fill until the time of building.

Commissioner O’Bryan and staff briefly discussed potential ponding at the subject site.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board (1) approved to allow the Letter of Credit with Foster I.R.C., LLC to expire; (2) approved to rescind the Contract for Lot Fill with Foster I.R.C., LLC; and (3) requested Mr. Foster to amend his deed restrictions for Huntington Place so the

four lot owners do not have to fill until the time of building.

10.C. PUBLIC NOTICE ITEMS-NONE

11. COUNTY ADMINISTRATOR MATTERS

11.A. DOLLARS FOR SCHOLARS REQUEST FOR USE OF EQUIPMENT

County Administrator Joseph Baird brought before the Board a request from E. Michael Stutzke, Athletic Director of Sebastian River High School, for the County to waive its non-profit fee and donate three sets of bleachers for the Dollars for Scholars Kick-Off Classic on August 28, 2009. He stated that staff has no problem with the request, and recalled that the fees had been waived for almost every non-profit agency this year.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, to waive the standard rental fees for the use of three sets of County bleachers for the Dollars for Scholars Kick-Off Classic scheduled for August 28, 2009, as requested in the letter submitted by E. Michael Stutzke, CMAA.

Commissioner Wheeler remarked that everyone should be treated equally, and wanted to see a policy established to provide consistency on whether or not the fee is waived for non-profits. He also wanted to see a line-item for this fee in the budget, and wanted to know what the annual cost to the County was.

County Administrator Joseph Baird divulged that this year, the County has waived about \$23,000 in non-profit fees. He noted that most of the costs charged are for the labor, which is provided by the Park Maintenance staff, and for the fuel required to set up.

Chairman Davis did not know if a cost savings would result by having a staff member provide the labor on a compensatory time (comp time) basis, rather than on overtime.

The Board Consensus was to direct the County Administrator to return before the next fiscal year, with a policy on donating equipment to non-profits.

Chairman Davis confirmed with Vice Chairman Flescher that his Motion was to approve Mr. Stutzke's request for the donation of bleachers to the Dollars for Scholars.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board waived the standard rental fees for the use of three sets of County bleachers for the Dollars for Scholars Kick-Off Classic scheduled for August 28, 2009, as requested in the letter submitted by E. Michael Stutzke, CMAA.

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. CONSIDERATION OF PSAC'S (PROFESSIONAL SERVICES ADVISORY COMMITTEE) RECOMMENDATION TO AMEND THE LAND DEVELOPMENT REGULATIONS (LDRS) TO PROVIDE FOR PERMANENT EXCEPTIONS TO THE LDRS FOR INDIVIDUAL DEVELOPMENT PROJECTS

County Planning Director Stan Boling discussed recent economic development initiatives which the Board has been involved with, recalling that on May 19, 2009, the Board had adopted an Ordinance providing a temporary, 90-day suspension of compliance to the LDR's at the time

of Certificate of Occupancy. He briefed the Board on the Professional Services Advisory Committee's (PSAC) recommendation to amend the Land Development Regulations (LDR's) to provide for permanent exceptions for individual development projects, which would provide to the developers additional flexibility. He thereafter outlined three alternatives which included two recommendations, and conveyed that staff's preference was Recommendation 1, to direct the PSAC and staff to identify "problem LDR's" and develop proposed amendments to resolve the problems identified.

Although he liked the concept of having a permanent exception ordinance, Commissioner Wheeler was concerned that some individuals would try to cut costs by deviating from the LDR requirements at the permitted 10% allowance. He pointed out that when an applicant comes before a governing board to request an exemption, each Board member would have a different level of common sense and perception. He reminded the Commissioners that a temporary 90-day exception could already be granted, and presented his preference to have the problem LDR's identified and corrected.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, to accept staff's Recommendation No. 1, to direct PSAC and staff to identify "problem LDRs" and develop proposed amendments to resolve the problems identified.

Chairman Davis was opposed to unilaterally lowering the landscape requirements for development Countywide, and felt that common sense could be used. He felt that the County had a good, workable landscape ordinance, although there were parts of the County where every ordinance did not fit properly. He wanted the Board to have the ability to grant some permanent waivers, and to give some business-friendly relief to businesses, where appropriate.

To advance the discussion, Commissioner Solari asked the Board to consider combining PSAC's Recommendations 1 **and** 2 (see pages 176 and 177), where permanent exceptions from an LDR standard could be granted (with a deviation not to exceed 10%), and an alternative design or improvement could be proposed that would provide a "functionally equivalent" result. He also wondered whether the maximum deviation allowed in PSAC's Recommendation 1 could be increased from 10% to 20%.

Vice Chairman Flescher noted that most of the compliance issues have involved landscaping, which he felt should be staff's focus. He wanted to have the PSAC and staff identify the problem LDR's and develop proposed amendments to resolve those problems, and was opposed to not taking action, as presented as Alternative 1 in staff's memorandum.

Commissioner Wheeler felt that Recommendation 2, developing a permanent exception ordinance, would be a slippery slope leading to lower overall standards.

Commissioner O'Bryan opined that granting the permanent exemptions would unilaterally lower the LDR standards, and felt the Board should maintain consistency with the policy that was established. He recalled a decision made last year, when four Commissioners voted to not grant an exception to the rules and regulations for Ocean Concrete. Commissioner O'Bryan supported staff's Recommendation No. 1, observing that a bad LDR should be changed permanently, and not every time someone appeals to the Board.

Commissioner Solari wanted to know if the idea of having a "functional equivalent" could be built into the LDR's. He observed that there would be no lowering of standards -- the business owner could use a little creativity to do something which is a better match for the site and neighborhood.

Director Keating explained that most of the regulations are quantitative, and pointed out that the problem with the functional equivalent is that it is a qualitative standard, which requires a judgment.

Vice Chairman Flescher thought that a wider sense of what was acceptable needed to be brought into “functional equivalency,” citing as an example two businesses that might have benefitted from the application of “functional equivalency”, due to trees obscuring their signage.

Director Boling stated that some of the examples cited relate to pretty narrow parts of the landscape code. He discussed an emerging pattern with narrow buffers and canopy trees, and further clarified why staff supported Recommendation 1, the examination of the problem LDR’s.

Mr. Robinson, 315 Greytwig Rd., PSAC Committee Member, cited an instance where a permanent exception for in-store bathroom facilities had been granted at the Outlet Mall, and he noted that in some cases, a permanent exception beats the original building code.

Charles Wilson, 1057 6th Avenue, opined that one cause of the County’s escalating unemployment is that it is difficult for small businesses to operate in the County, and felt that today’s proposal was another step towards making us a more business-friendly community. He felt that it would be better to have a high standard, allowing unique exceptions, than a lower standard without exception allowances, and urged the Board to combine staff’s Recommendations 1 and 2.

Brian Carman, Executive Director, IRNA, did not feel that the unemployment problem was the result of the LDR requirements. He pointed out that the County wants to move into something permanent, when the results of the temporary 90-day variance have not yet been seen. He spoke of the difficulty of maintaining consistency and fairness from application to

application, and believed that, if the proposal is approved, it will be difficult to stop it once it gets going.

Mr. Paladin, President, Black Swann Consulting, alluded to Chapter 926, which governs landscaping, stating that four years of work went into its creation and some of it has not yet been used. He urged the Board to use caution when making any quick changes, and supported having staff review the LDR's to ascertain what the problems are, and to make any changes slowly.

Further deliberations ensued as Mr. Paladin and the Commissioners considered the 90-day temporary suspension ordinance; whether to develop a permanent exception ordinance or to identify the problem LDR's and develop amendments to resolve the problems; and the use of the "functional equivalent" to allow business people sufficient flexibility to meet the LDR standards.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Chairman Davis opposed), the Motion carried. The Board approved staff's Recommendation No. 1 (Alternative 2), to direct PSAC and staff to identify "problem LDRs" and develop proposed amendments to resolve the problems identified.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Wheeler, to direct staff to initiate the formal LDR amendment process to develop a Permanent Exception Ordinance that builds on PSAC's Recommendations 1 and 2, and to return to the Board with an LDR.

Commissioner O’Bryan, Chairman Davis, and Mr. Robinson continued discussing the incorporation of the “functional equivalent” into the LDR’s and the proposed permanent exception ordinance, after which the Board took the following action:

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

12.B. EMERGENCY SERVICES-NONE

12.C. GENERAL SERVICES-NONE

12.D. HUMAN RESOURCES-NONE

12.E. HUMAN SERVICES-NONE

12.F. LEISURE SERVICES-NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET-NONE

12.H. RECREATION-NONE

12.I. PUBLIC WORKS-NONE

12.J. UTILITIES SERVICES-NONE

13. COUNTY ATTORNEY MATTERS

13.A. EXTENSION TO CONTRACT FOR LOT FILL RELATING TO HUNTINGTON PLACE SUBDIVISION

(Clerk's Note: This item was heard immediately prior to, and in conjunction with, Item 10.B.1. and is placed here for continuity. Please see item 10.B.1. for discussion and Board action).

County Attorney William Collins recalled that on January 6, 2009, Foster I.R.C., LLC, the developer of Huntington Place, had requested a 2-year extension to its Contract for Lot Fill, and to the associated Letter of Credit. He provided background and outlined the conditions of the requested 2-year extension, and told the Commissioners that before them today was a draft Modification to the Contract for Lot Fill with Foster I.R.C., LLC. He added that he did not know what Mr. Foster, who was scheduled to speak at today's Commission meeting, wanted to discuss.

At this time, Chairman Davis invited Mark C. Foster, President of Foster I.R.C., LLC, to present his request to the Board.

13.B. FLORIDA ASSOCIATION OF COUNTIES' INQUIRY OF INTEREST IN JOINING SUIT TO CHALLENGE HOUSE BILL 227 – IMPACT FEES

County Attorney William Collins recapped the memorandum of June 16, 2009 to provide details on the request by Ginger Delegal, General Counsel of the Florida Association of Counties (FAC), to determine whether any counties would be interested in challenging a new law relating to impact fees, House Bill 227 (HB 227). He related the two primary bases for challenging the law (outlined on pages 228 and 229), and said that FAC was considering the following three options: (1) seek a declaratory action that the law was unconstitutional because it did not meet the constitutional requirement for two-thirds passage in both Houses; (2) wait until the law is

challenged and raise some of the issues in a defensive posture; or (3) wait until the next Legislative Session to see if there are any amendments.

Before making a determination, Chairman Davis wanted to discuss the matter with fellow Commissioners from around the State, at an upcoming meeting.

Commissioner Wheeler wanted to join FAC in the suit. He affirmed that FAC generally looks out for local home rule, and opined that there have been prior violations of the constitution at the Federal and State levels, such as unfunded State mandates. He felt that if we do not stand our ground now, we are going to lose more and more ability to have local rule, for every County.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Solari, to approve the Board of County Commissioners' participation as a named plaintiff in a suit challenging House Bill 227 (HB 227) – Impact Fees.

Attorney Collins clarified for Chairman Davis that FAC was not requesting any funding participation; they were just trying to ascertain which Counties might be interested in being named as a plaintiff in the potential lawsuit.

Commissioner Wheeler declared that Counties State-wide need to stand together on this issue, to look out for our interests.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Chairman Davis opposed), the Board approved the Board of County Commissioners' participation as a named plaintiff in a suit challenging House Bill 227 (HB 227) – Impact Fees.

**13.C. FLORIDA ASSOCIATION OF COUNTIES' INQUIRY OF INTEREST IN JOINING
SUIT TO CHALLENGE SENATE BILL 216 – LOCAL GOVERNMENT
CAMPAIGN FINANCE**

County Attorney William Collins related that Senate Bill 216 (SB 216), related to local government campaign finance, was a second new law which the Florida Association of Counties (FAC) was considering challenging. Reviewing the memorandum of June 16, 2009, he outlined the four primary bases for challenging the law (presented on pages 235 and 236), and said that FAC was trying to gauge interest on whether any Counties were interested in being included in the lawsuit, as a named plaintiff.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Solari, by a 4-1 vote (Chairman Davis opposed), the Board approved the Board of County Commissioners' participation as a named plaintiff in a suit challenging Senate Bill 216 (SB 216), with respect to local government campaign finance.

**13.D. ACQUISITION OF RIGHT-OF-WAY AND PROPERTY EXCHANGE ALONG 66TH
AVENUE, PARCEL 107, GLEN C. BESANCON, 6725 66TH AVENUE**

Deputy County Attorney William DeBraul used an aerial projection to describe the request for a right-of-way acquisition and property exchange with Glen Besancon, owner of 3.36 acres located on the west side of 66th Avenue. The transaction would involve the purchase of 0.8729 acres of right of way, and the conveyance to Mr. Besancon of a 1.05 acre parcel south of Mr. Besancon's property, currently owned by the County, and being leased by Robert and

Wendy Gardiner, the former owners. Attorney DeBraul enumerated the costs for the parcel, and disclosed that the County would receive a credit of \$96,923 for the property exchange, towards the total purchase price of \$170,511.75. He thereafter presented staff's recommendation to approve the contract for the purchase of the property and the property exchange, the latter which would be brought back to the Board for final approval, after the satisfaction of the advertising requirements.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Chairman Davis, for discussion, to
approve staff's recommendation to purchase the Besancon
parcel.

Commissioner O'Bryan opposed the purchase, objecting to the comparables which were used by the appraiser (valued at around \$100,000 per acre), when there were two comparables valued at about \$55,000 an acre located closer to the subject property. Further, the same appraiser had one year ago valued a near-by property, the Dowling parcel, at \$54,794 per acre. Commissioner O'Bryan voiced further objections which included Costs to Cure of \$2,000 for stabilized driveways, which he considered to be basically dirt ruts through the grass, and an additional charge of \$10,000, above and beyond the \$100,000 acre land value, for the grass.

Attorney DeBraul addressed the land value of the Dowling versus the Besancon parcels. He expressed confidence that no individual was doing anything unprofessional or unethical in dealing with the County, and reported that Bob Babcock, an Orlando-based MAI Certified Appraiser, has offered to speak to the Board members regarding the methodology used by an appraiser to arrive at his or her opinion.

Commissioner O'Bryan was interested in having Mr. Babcock attend a meeting and answer his questions about the appraisal.

Attorney DeBraal assured Commissioner O'Bryan that he would have the opportunity to pose his questions to Mr. Babcock, then addressed his other concern about Mr. Besancon's plans to create an additional lot.

Commissioner Wheeler WITHDREW his Motion to approve staff's recommendation to purchase the Besancon parcel.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Solari, to DENY staff's recommendation to purchase the Besancon property.

Attorney DeBraal requested that the Board give him specific direction, so that a counter-offer could be provided.

Commissioner Wheeler felt that it would be beneficial to have Commissioner O'Bryan, who has the interest and background, have some type of involvement in the right-of-way acquisitions. He noted that it might eliminate some of the momentary decisions with which the Commission is presented.

Vice Chairman Flescher disagreed with some of Commissioner O'Bryan's points about exaggerated prices. He felt that there was some value to the stabilized driveway, and asked staff to provide a cost-analysis, and to explain what constitutes a stabilized driveway.

Assistant Public Works Director Chris Mora provided clarification and cost-analysis for an eighteen-foot stabilized driveway, after which Vice Chairman Flescher voiced that the \$2,000 cost was not excessive.

Commissioner O'Bryan asserted that the subject driveway was not a stabilized driveway.

A lengthy discussion ensued as the Commissioners expressed approval or opposition to Commissioner Wheeler's suggestion to have Commissioner O'Bryan participate in the early stages of the eminent domain negotiations. Commissioner O'Bryan amended his Motion as follows:

MOTION WAS AMENDED by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to approve the purchase of the needed right-of-way from Glen Besancon, based upon a land value of \$55,000 per acre; inclusive of engineering fees of \$1,000, with no compensation paid for the driveways or grass, with all other terms of agreement to hold, and with the Attorney's fee to be based upon percentage of the revised total purchase price.

Mr. Paladin proposed to include in the bid process, the specification that an appraiser would attend a Board of County Commission meeting to provide answers to any questions which might arise on his or her appraisal.

County Administrator Joseph Baird suggested that the Board create a Negotiations Committee for right-of-way acquisitions, to be comprised of the County Attorney or his designee; Assistant County Administrator Michael Zito; a staff member from Engineering; and a Commissioner-Liaison.

Commissioners Wheeler and Solari supported Administrator Baird's suggestion, and Commissioner Wheeler suggested that Commissioner O'Bryan be appointed as the liaison.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved the

purchase of the needed right-of-way from Glen Besancon, based upon a land value of \$55,000 per acre; inclusive of engineering fees of \$1,000, with no compensation paid for the driveways or grass, with all other terms of agreement to hold, and with the Attorney's fee to be based upon percentage of the revised total purchase price.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Solari, to create a Negotiations Committee for right-of-way acquisitions, to be comprised of Commissioner O'Bryan as the Commissioner-Liaison; Deputy County Attorney William DeBaal; Assistant County Administrator Michael Zito; and one County Engineer.

Attorney DeBaal inquired whether the Negotiations Committee would be involved in each individual right-of-way transaction, and the Board Consensus was that the use of the Committee would be governed by common sense.

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

14. COMMISSIONER ITEMS

14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN

14.A.1. CONSIDERATION OF SUBMITTED APPLICATIONS FOR THE CITIZEN-AT-LARGE APPOINTEE ON THE HISTORIC RESOURCES ADVISORY COMMITTEE (HRAC)

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Chairman Davis, to approve the appointment of Paul Kuvshnikov, as the Citizen-At-Large appointee on the Historical Resources Advisory Committee (HRAC), as requested in the memorandum of June 23, 2009.

Paul Kuvshnikov, 2050 East Lakeview Drive, Sebastian, introduced himself, stating that he currently serves for the City of Vero Beach Historic Preservation Commission, and he had requested to serve also at the County level, to both protect and enhance the resources and the natural and cultural heritage of Indian River County. He expressed his desire to maintain the wonderful qualities and uniqueness of the County, and acknowledged the presence of his son John, who he had brought along, because history was the passing down from one generation to the other.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved the appointment of Paul Kuvshnikov, as the Citizen-At-Large appointee on the Historical Resources Advisory

Committee (HRAC), as requested in the memorandum of
June 23, 2009.

14.B. COMMISSIONER JOSEPH E. FLESCHER-NONE

14.C. COMMISSIONER GARY C. WHEELER-NONE

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

14.E. COMMISSIONER BOB SOLARI-NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT-NONE

15.B. SOLID WASTE DISPOSAL DISTRICT-NONE

15.C. ENVIRONMENTAL CONTROL BOARD-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 12:51
p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/MG/2009Minutes