

JEFFREY K. BARTON

Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

OF JULY 21, 2009

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**JEFFREY K. BARTON**

Clerk to the Board



**July 21, 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 27<sup>th</sup> Street, Vero Beach, Florida, on Tuesday, July 21, 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 Emory Polley, Central Assembly Church of God, delivered the Invocation.

**3. PLEDGE OF ALLEGIANCE**

Commissioner Solari led the Pledge of Allegiance to the Flag.

**4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS**

Administrator Baird requested the following change to the Agenda:

**DELETION: ITEM 10.B.3.REQUEST TO SPEAK FROM SPENCER SIMMONS,  
MEADOWS COUNTRY SQUARE HOME OWNERS ASSOCIATION PRESIDENT**

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

**5. PROCLAMATIONS AND PRESENTATIONS**

**5.A. PRESENTATION OF PROCLAMATION DESIGNATING AUGUST 9, 2009 AS  
SMOKEY BEAR DAY**

Chairman Davis read the Proclamation recognizing August 9, 2009 as "Smokey Bear Day".

**5.B. PRESENTATION OF PROCLAMATION COMMENDING TEAMSTERS LOCAL 769  
MEMBERS SUPPORT OF THE CURRENT ECONOMIC CONDITION**

Commissioner Wheeler read the Proclamation commending Teamsters Local 769 members for their cooperation and goodwill in forgoing their contractual increases and for their decision to be a part of the solution in dealing with the County's budgetary challenges.

**5.C. PUBLIC ANNOUNCEMENT FOR SEBASTIAN ELECTRONICS RECYCLING  
EVENT ON AUGUST 1, 2009 BY HIMANSHU MEHTA, MANAGING DIRECTOR,  
SOLID WASTE DISPOSAL DISTRICT**

Managing Director of the Solid Waste District Himanshu Mehta announced Sebastian's first Electronics Recycling Event scheduled for Saturday, August 1<sup>st</sup>, 2009, from 9:00 a.m. to 3:00 p.m., behind the Sebastian City Hall on Main Street. He also provided a PowerPoint presentation showing the results of the Electronics Recycling Event held at the Indian River Mall on January 24, 2009.

**6. APPROVAL OF MINUTES**

**6.A. REGULAR MEETING OF JUNE 23, 2009**

The Chairman asked if there were additions or corrections to the Minutes of the Regular Meeting of June 23, 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 23, 2009, as written.

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

**7.A. CITY OF SEBASTIAN ORDINANCE 0-09-09 – ANNEXATION OF 3 ACRES WEST OF U.S.1 BETWEEN SHADY REST MOBILE HOME PARK AND THE ST. SEBASTIAN CATHOLIC CHURCH; ORDINANCE 0-09-10 – LAND USE; AND ORDINANCE 0-09-11 – ZONING; ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD**

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

Jeff Thompson, Business in Enterprise Zone Appointee to the Enterprise Zone Development Agency (EZDA) submitted his resignation on July 14, 2009. His term would have expired in 2013.

**7.C. RESIGNATION OF MEMBER AT LARGE APPOINTEE TO THE ENTERPRISE ZONE DEVELOPMENT AGENCY**

Scott Stradley, Member at Large Appointee to the Enterprise Zone Development Agency (EZDA) submitted his resignation on July 14, 2009. His term would have expired in 2012.

**8. CONSENT AGENDA**

**8.A. APPROVAL OF WARRANTS AND WIRES, JULY 3, 2009 THRU JULY 9, 2009**

ON MOTION by Commissioner O'Bryan, 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 July 3, 2009 to July 9, 2009, as requested in the memorandum of July 9, 2009.

**8.B. APPOINTMENT OF MEMBER-AT-LARGE APPOINTEE TO THE ENVIRONMENTAL CONTROL HEARING BOARD**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the appointment of Dr. Richard Baker as the member-at-large appointee to the Environmental Control Hearing Board, as recommended in the memorandum of July 13, 2009. This position was vacated on April 7, 2009 with the resignation of Clete Deller.

**8.C. LIST OF ERRORS, INSOLVENCIES, DOUBLE ASSESSMENTS AND DISCOUNTS FOR THE 2008 TAX ROLL**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously authorized all County Commissioners to execute the two original recapitulation reports, forward the reports to the Clerk of Court for execution, and return one original to the Tax Collector, as requested in the memorandum of July 14, 2009.

LIST OF ERRORS, INSOLVENCIES, DOUBLE ASSESSMENTS AND DISCOUNTS FOR THE 2008 TAX ROLL ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.D. DORI SLOSBERG DRIVER EDUCATION SAFETY ACT, INDIAN RIVER  
COUNTY TRAFFIC EDUCATION PROGRAM TRUST FUND**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously accepted the Report of the Indian River County Traffic Education Program Trust Fund from the inception of the \$3 fee (October 1, 2002) through June 30, 2009, as recommended in the memorandum of July 15, 2009.

**8.E. PROPERTY ACQUISITION – TAX ROLL REMOVAL & TAX CANCELLATION  
PROPERTIES, ACQUIRED BY INDIAN RIVER COUNTY BETWEEN MAY 22,  
2009 AND JULY 6, 2009**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-107**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*66<sup>th</sup> Avenue – Thomas Lester O'Neal, Jr.*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-108**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*66<sup>th</sup> Avenue – Vista Properties of Vero Beach, Inc.*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-109**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*53<sup>rd</sup> Street and 66<sup>th</sup> Avenue – Herbert T. James, Jr., Trust*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-110**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*CR 510 Arthur Lee Jones*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-111**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*CR 510 R/W – Darius William Rigby*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-112**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*53<sup>rd</sup> Street and 66<sup>th</sup> Avenue – Douglas Fleisher and Janice Fleisher*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-113**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*CR 510 – Richard Rentschler and Maryann Rentschler*)

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-114**, canceling taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes. (*58<sup>th</sup> Avenue – CNL Net Lease Funding 2001, LP*)

**8.F. TEMPORARY DRAINAGE EASEMENT FOR 20<sup>TH</sup> AVENUE SOUTHWEST, FALCON TRACE, PHASE III**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the temporary drainage easement for Falcon Trace, Phase III, and authorized the Chairman to execute same, as recommended in the memorandum of July 14, 2009.

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

**8.G. PERMISSION TO PROCEED WITH LEGAL ACTION AGAINST WHISPERING  
PALMS MOBILE HOME PARK FOR UNPAID UTILITY CHARGES**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously authorized the County Attorney's Office to proceed in collecting the outstanding utility charges from Whispering Palms, as recommended in the memorandum of July 14, 2009.

**8.H. RESCISSION OF OFFER ON PARCEL 135 ON 66<sup>TH</sup> AVENUE**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously rescinded its Unconditional Offer and Resolution of Necessity to the Abazis's for right-of-way Parcel 135, and directed staff to notify the Abazis's accordingly, as recommended in the memorandum of July 14, 2009.

**8.I. RESOLUTIONS TO CALL LETTERS OF CREDIT AND TO ACT ON BEHALF OF  
INDIAN RIVER COUNTY DURING THE TIME FRAMES OF JULY 22, 2009,  
THROUGH AND INCLUDING AUGUST 17, 2009, AND AUGUST 19, 2009,  
THROUGH AND INCLUDING SEPTEMBER 7, 2009**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-115**, delegating authority to the County Administrator or the Assistant County Administrator to execute Resolutions calling Letters of Credit as necessary during the period commencing July 22, 2009, through and including August 17, 2009, and further delegating to the County Administrator, the Assistant County Administrator, and the Emergency Services Director the authority to execute all documents necessary to the proper functioning of the County during the period commencing July 22, 2009, through and including August 17, 2009.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-116**, delegating authority to the County Administrator or the Assistant County Administrator to execute Resolutions calling Letters of Credit as necessary during the period commencing August 19, 2009, through and including September 7, 2009, and further delegating to the County Administrator, the Assistant County Administrator, and the Emergency Services Director the authority to execute all documents necessary to the proper functioning of the County during the period commencing August 19, 2009, through and including September 7, 2009.

**8.J. AMENDMENT NO. 1 TO PROFESSIONAL CIVIL ENGINEERING SERVICES  
AGREEMENT WITH SCHULKE, BITTLE & STODDARD, LLC – THE ENCLAVE**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Amendment No. 1 to the Professional Civil Engineering Services Agreement with Schulke, Bittle & Stoddard, LLC, and authorized the Chairman to execute same, as recommended in the memorandum of July 6, 2009.

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

**8.K. FINAL PAY ARDAMAN & ASSOCIATES, INC., AMENDMENT NO. 1 TO WORK  
ORDER NO. 6 (ENGINEERING), 12<sup>TH</sup> STREET SIDEWALK PROJECT, FROM  
43<sup>RD</sup> AVENUE TO 27<sup>TH</sup> AVENUE, IRC PROJECT #0604**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment of Ardaman & Associates, Inc. Invoice No. SL-008069, dated June 18, 2009, in the amount of \$4,777.50 for final payment of Work Order No. 6, as recommended in the memorandum of July 9, 2009.

**8.L. AMENDMENT NO. 1 TO WORK ORDER NO. 2 (ENGINEERING) WITH  
ARDAMAN & ASSOCIATES, INC., 53<sup>RD</sup> STREET BRIDGE OVER LATERAL H  
CANAL – IRC PROJECT NO. 0107**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously: (1) approved Amendment No. 1 to Work Order No. 2 (Engineering) with Ardaman & Associates, Inc., authorizing the project as outlined in the proposal; (2) authorized the Chairman to execute same for a not-to-exceed fee of \$123.00; and (3) authorized payment of Invoice No. SL-008101, dated June 30, 2009, in the amount of \$488.00, for full and final payment, as recommended in the memorandum of July 9, 2009.

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

**8.M. REQUEST FOR BOARD APPROVAL OF A TWO-YEAR EXTENSION TO AN  
ESCROW AGREEMENT WITH SHADOWBROOK ESTATES, INC. FOR  
REMEDICATION OF GROUND CONTAMINATION ON THE SHADOWBROOK  
PARCEL OF THE SOUTH PRONG PRESERVE LAAC SITE**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Amendment to Escrow Agreement, and authorized the County Administrator to execute same on behalf of the County, as recommended in the memorandum of July 13, 2009.

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

**8.N. AMENDMENT NO. 10 TO THE PROFESSIONAL SERVICES AGREEMENT WITH  
CARTER ASSOCIATES, INC. IRC PROJECT NO. 9810, 66<sup>TH</sup> AVENUE PAVING  
IMPROVEMENTS (4<sup>TH</sup> STREET TO SR 60)**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Amendment No. 10 in the amount of \$74,580.00 for engineering survey services by Carter Associates, Inc. as outlined in the Scope of Services, and authorized the Chairman to execute same, as recommended in the memorandum of July 8, 2009.

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

**8.O. CHANGE ORDER NO. 3, CR 512, PHASE IV, IRC PROJECT NO. 9611B, H  
& J CONTRACTING, INC.**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Change Order No. 3 to H & J Contracting, Inc., increasing the contract by \$121,692.58 with \$31,659.38 to be paid by RaceTrac Petroleum, Inc. per Developer's Agreement approved by the Board of County Commissioners on April 7, 2009. The new contract amount will now be \$9,061,687.41, as recommended in the memorandum of July 7, 2009.

**8.P. APPROVAL OF RENEWAL FOR A CLASS “B” CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AMERICAN AMBULANCE SERVICES INC. TO PROVIDE INTER-FACILITY AMBULANCE TRANSPORTATION SERVICES**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved renewal of the Class “B” Certificate of Public Convenience and Necessity for American Ambulance Services, Inc., to be effective for a period of two (2) years from July 21, 2009 to July 21, 2011, as recommended in the memorandum of July 14, 2009.

**8.O. MISCELLANEOUS BUDGET AMENDMENT 018**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-117**, amending the fiscal year 2008-2009 Budget.

**8.R. TRIPLE C & T INVESTMENTS, INC., DEVELOPER’S AGREEMENT FOR PAVING 47<sup>TH</sup> STREET EAST OF U.S. 1**

ON MOTION by Commissioner O’Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Alternative No. 1 – the Developer’s Agreement, with Triple C & T Investments, Inc., as recommended in the memorandum of July 13, 2009.

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

**8.S. AMENDMENT AND EXTENSION OF HURRICANE DEBRIS REMOVAL  
CONTRACTS FOR OMNI PINNACLE, LLC AND CERES ENVIRONMENTAL  
SERVICES, INC.**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Amendment and Extension of both Debris Removal Agreements, and authorized the County Administrator to execute the Amendment and Extension upon review and approval of the County Attorney and all applicable staff, as recommended in the memorandum of July 14, 2009.

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

**9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES**

**9.A. CAROLE JEAN JORDAN, INDIAN RIVER COUNTY TAX COLLECTOR**

**9.A.1. TAX COLLECTOR STATUS REPORT**

Indian River County Tax Collector Carole Jean Jordan spoke about the new challenges her office is facing: (1) an online auction (results of tax certificate sale on file); (2) the September 1, 2009 increase in motor vehicle fees; (3) the *Fast Title*, also known as *Expedia Title*, which is now available immediately at either the Sebastian or West office; and (4) the additional services that will be required due to the new *Real ID Act* which goes into effect January 2010. She emphasized customer service as their number one goal, and introduced her staff.

Commissioner Wheeler felt the increase in fees and taxes were inconsistent and inaccurate on the government's part.

Ms. Jordan acknowledged that none of the money for motor vehicle fee increases goes to the Tax Collector's office, and that the reason she wanted to address the Commissioners today was to provide information on the fee increase, and how to save money by taking advantage of renewing for two years at the current fees before August 31, 2009 (flier on file).

**10. PUBLIC ITEMS**

**10.A. PUBLIC HEARINGS - NONE**

**10.B. PUBLIC DISCUSSION ITEMS**

**10.B.1. REQUEST TO SPEAK FROM PHILIP WEILER REGARDING ROUTE 60**

**EXPERTECH LIQUIDATED DAMAGES**

**Philip Weiler**, 6243 Thames Place, asked a few follow-up questions from the meeting of June 2, 2009. He wanted to know if the liquidated damages against Expertech Network Installation (US), Inc., had been recovered, and if so, how much.

Administrator Baird conveyed that Expertech had a contract to do the work for \$113,727, liquidated damages of \$73,800 were exercised, with the County only paying them \$39,927.

NO BOARD ACTION REQUIRED OR TAKEN

**10.B.2. REQUEST TO SPEAK FROM FRED MENSING REGARDING BEACH SAND  
PROJECT PHASE 3 AND RAIL PASSENGER SERVICE**

**Fred Mensing**, 7580 129<sup>th</sup> Street, Sebastian, indicated that he was speaking for himself, not as the President of the Friends of Historic Roseland. He said he had attended the pre-bid conference regarding beach re-nourishment, and felt that the contract that was presented was one sided, and not on equal footing, between the local sand miners and the dredging contractors, as the Board had earlier requested. He requested the Board direct staff to ensure the contract be fair and on equal footing, that the sand size be a standard requirement of 2.3, and to penalize the appropriate parties if the grain size provided is not correct.

**Mr. Mensing** also spoke about bringing Amtrak services back to the County. He felt the Board needed to “integrate something strictly seeking Amtrak” to work with all the counties from Duval to Palm Beach, where in the past, proposals would re-route from the Florida East Coast (FEC) railway over to the tri-rail system. He wanted the Board to take the lead, and also create a medium that would allow all the proposed Counties to put the pressure on Washington.

Chairman Davis said that the Metropolitan Planning Organization (PLO) had passed a Resolution supporting Mr. Mensing’s proposal, and that it promogated through the Treasure Coast Regional Planning Council. He emphasized that the Resolution is doing what Mr. Mensing wants, only with a stronger voice.

Commissioner Solari informed Mr. Mensing that the Treasure Coast Regional Planning Council had recently noted that they had 74 Resolutions from different Counties and Municipalities throughout the region in support of this, and at their last meeting, two more Municipalities added their names to the list. He acknowledged that they were actively pursuing this, and believed they were the best group in the area to do so.

NO BOARD ACTION REQUIRED OR TAKEN

**10.B.3. REQUEST TO SPEAK FROM SPENCER SIMMONS, MEADOWS COUNTRY  
SQUARE HOME OWNERS ASSOCIATION PRESIDENT**

DELETED

**10.B.4. REQUEST TO SPEAK FROM J. WAYNE SCHASANE, PRESIDENT, IAFF  
LOCAL ~~2001~~ 2201 REGARDING IAFF CONTRACT**

**J. Wayne Schasane**, President of International Association of Fire Fighters (IAFF) Local 2201, and 36 year veteran with Indian River County Fire Rescue, provided a PowerPoint presentation (on file) identifying IAFF Contract budget issues and proposed cost cutting ideas. He pointed out that Local 2201 was the first bargaining unit to negotiate no Cost of Living Adjustment (COLA) for three years, as a result of the current economic crisis; and that they disagree with staff's recommendations to eliminate an ambulance and reduce staff, for fear that further cuts would jeopardize their level of service.

Administrator Baird defined the formula for administrative charges and the Fire Department's 2009 budget; affirmed that the ambulance was not eliminated from the budget; and disclosed that his goal, as set by the Board, was to try to keep millage rates low, tax less, and not roll-back since this is a roll-up year.

Commissioner Solari commented on administrative fees, and felt that now might be a good time to evaluate efficiencies in the Emergency Medical Services (EMS) system to determine whether the fee could be reduced. He told how the charges on fire hydrant services had been reduced by transferring the County fee from EMS to the County, and proposed that in August, staff inform the Municipalities that the inspection and maintenance of fire hydrants and water systems that they own, would become their responsibility. He also believed the County should take a stand against other Municipalities using portions of the County as sources for their revenue funds.

Human Resources Director James Sexton said he would meet with Local 2201 after the meeting to discuss their proposals.

Administrator Baird revealed that the County had eliminated the hydrant fees, and that the City needs to do the same to reduce expenses in the budget.

The Board sought and received details from staff regarding professional service billing charges, administrative costs, salaries and payroll.

Commissioner Solari reiterated that the fifteen year formula on which the fee is based, should be re-evaluated, and that this might be a good time to see if there are efficiencies that could be put in place.

Director Brown clarified that even though the formula was created fifteen to twenty years ago, the percentage rate is recalculated each year based on the prior year's history, which usually fluctuates between 10 to 11 percent.

Assistant County Administrator Michael Zito said the Board's direction would make negotiations more productive.

Commissioner O'Bryan thanked Local 2201 for coming forward, and for trying to save taxpayer's money; however, he did not agree that the millage rate should be increased at this time.

Commissioner Wheeler did not believe the fire truck should come out of sales tax, but rather the District.

Commissioner Solari and Administrator Baird emphasized that the EMS system had been participating in budget cuts, were trying to get the lowest possible tax for the citizens, and that they had cut as much as other organizations in the County.

NO BOARD ACTION REQUIRED OR TAKEN

**10.C. PUBLIC NOTICE ITEMS - NONE**

**11. COUNTY ADMINISTRATOR MATTERS - NONE**

**12. DEPARTMENTAL MATTERS**

**12.A. COMMUNITY DEVELOPMENT – NONE**

**12.B. EMERGENCY SERVICES – NONE**

**12.C. GENERAL SERVICES - NONE**

**12.D. HUMAN RESOURCES - NONE**

**12.E. HUMAN SERVICES - NONE**

**12.F. LEISURE SERVICES - NONE**

**12.G. OFFICE OF MANAGEMENT AND BUDGET**

**12.G.1. RESOLUTION AUTHORIZING \$30,000,000 WATER AND SEWER REVENUE  
REFUNDING BONDS SERIES 2009**

Management and Budget Director Jason Brown recapped his Memorandum dated July 14, 2009, explaining how the Resolution authorizes the refunding of the County's current outstanding 1993 Utility Water and Sewer Revenue Bonds that were issued in 1993. He revealed

how the Resolution contains certain parameters that include a net present value savings of five percent interest, which generates a savings of about \$125,000 in annual debt service, for the life of the Bonds for the Utility Department.

Commissioner Solari voiced his appreciation and congratulations to Director Brown, staff, and the Utility Department for their efforts in obtaining an AA+ rating from Fitch Ratings, for the County's \$28.7 million Water and Sewer Revenue Bonds, Series 2009; and then read a short paragraph from the report. He compared the rate structure of the City of Vero Beach with that of Indian River County, and reported that the City of Vero Beach hired a consultant who suggested that over the next five years, water system rates be raised by 31.6% and wastewater system rates by 53%. Commissioner Solari applauded the work of the Utility Department, how they anticipated future needs, and how they represented the citizens of the County.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O'Bryan, the Board unanimously approved **Resolution 2009-118**, amending and supplementing Resolution No. 93-80, providing for the issuance of not exceeding \$30,000,000 Water and Sewer Revenue Refunding Bonds, Series 2009, to be applied to pay the costs of defeasing a portion of the County's Water and Sewer Revenue Bonds, Series 1993A; providing for the payment of the bonds from the net revenues of the County's water and sewer system and certain other moneys pledged therefor; providing for the rights of the holders of such bonds; making certain other covenants and agreements in connection therewith; authorizing the negotiated sale of not to exceed \$30,000,000 Indian River County, Florida, Water and Sewer Revenue Refunding Bonds, Series 2009 to RBC Capital Markets, subject to the

terms and conditions of a bond purchase contract; approving the form of such purchase contract relating to the negotiated sale; delegating the authority to execute and deliver the bond purchase contract to certain officers; authorizing the distribution and execution of a preliminary official statement and an official statement in connection with the delivery of the Series 2009 bonds; canceling the remaining authorized but unissued bonds; authorizing and approving the form of escrow deposit agreement; appointing an escrow holder, registrar and paying agent; authorizing the purchase of Municipal Bond Insurance; authorizing the funding of a Debt Service Reserve Fund; authorizing a continuing disclosure undertaking; providing certain other matters in connection therewith; and providing an effective date.

**12.H. RECREATION - NONE**

**12.I. PUBLIC WORKS - NONE**

**12.J. UTILITIES SERVICES**

**12.J.1. CONSULTING ENGINEERING SERVICES WORK ORDER NO. 11 WITH  
SCHULKE, BITTLE & STODDARD, L.L.C. FOR A MASTER PLAN 16" WATER  
MAIN LOOP EXTENSION ON 16<sup>TH</sup> STREET FROM 58<sup>TH</sup> AVENUE TO 74<sup>TH</sup>  
AVENUE AND THE INSTALLATION OF A 16" TEE AND VALVE ON 16<sup>TH</sup>  
STREET**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously: (1) approved Work Order No. 11 with Schulke, Bittle and Stoddard, LLC in the amount of \$21,750 for construction management and inspection services associated with the 16<sup>th</sup> Street Master Plan Water Main Loop Project; (2) approved the installation of a 16" tie-in tap for \$11,650; (3) approved \$206,700 for construction of the water main to the Kings Highway Tank; and (4) authorized the Chairman to execute same, as recommended in the memorandum of July 13, 2009.

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

**12.J.2. REQUEST PERMISSION TO ADVERTISE FOR PUBLIC HEARING ON AUGUST 18, 2009, TO AMEND PERMISSIONS TO ORDINANCE CODE CHAPTER 201 WATER AND SEWER**

Commissioner O'Bryan announced that this Public Hearing would allow for the review of commercial deposits, which are currently held indefinitely by the Utilities Department, and to make the necessary changes that would allow them to be treated like residential deposits.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Public Hearing date of August 18, 2009 for the proposed amendments to Code Chapter 201 Water and Sewer, and authorized staff to advertise for the Public Hearing to be held on August 18, 2009, as recommended in the memorandum of July 13, 2009.

**12.J.3. US1 AT 73<sup>RD</sup> STREET 16" WATER MAIN AERIAL CROSSING OF FDOT  
DITCH REPLACEMENT WITH DIRECTIONAL DRILL WATER MAIN,  
APPROVAL OF WORK AUTHORIZATION DIRECTIVE NO. 2009-002 BY  
SHELTRA & SONS CONSTRUCTION Co., INC., UCP No. 4032**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Wheeler, the Board unanimously approved the Project at a total estimated cost of \$32,634.66, and authorized the Chairman to execute Work Authorization Directive No. 2009-002 to the Utilities Department Labor Contractor, Sheltra & Sons Construction Co., for \$20,094.66, as recommended in the memorandum of July 8, 2009.

WORK AUTHORIZATION DIRECTIVE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**12.J.4. WORK ORDER No. 11 WITH CDM FOR A REUSE RATE STUDY**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved Work Order No. 11 with Camp Dresser & McKee, Inc. (CDM) and the associated fee of \$39,100.00, as recommended in the memorandum of June 30, 2009.

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

**12.J.5. WORK ORDER No. 14 WITH CDM – ENGINEERING CONSTRUCTION  
SERVICES DURING REIMBURSEMENT OF WELL No. 5 AND WORK**

**DIRECTIVE WITH AMPS TO REFURBISH WELL NO. 5 AT THE SOUTH  
COUNTY R.O. FACILITY**

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously: (1) approved Work Order No. 14 with Camp Dresser & McKee, Inc. (CDM); (2) approved design fees in the amount not-to-exceed \$14,950.00; (3) authorized AMPS, Inc., to construct the improvements to Well No. 5 at an amount not-to-exceed \$89,288.90; and (4) authorized the Chairman to execute same, as recommended in the memorandum of July 14, 2009.

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

**12.J.6. SR 60 UTILITY CONFLICT RESOLUTIONS WITH FDOT DRAINAGE,  
PAVEMENT AND TRAFFIC SIGNAL IMPROVEMENTS FROM 8300 SR 60 TO  
INDIAN CREEK BLVD., FINAL PAY TO SPS CONTRACTING, INC. AND  
REIMBURSEMENT TO RANGER CONSTRUCTION INDUSTRIES, INC. FOR  
DELAY CHARGES, UCP #3026**

Utilities Director Erik Olson disclosed the details of the construction delays for the SR60 road and drainage improvements. He made it clear that any delay in costs for this project would be absorbed by the Contractor, not the County.

Chairman Davis wanted to know if there was merit in bidding projects together, as a combined project. Director Olson felt that sometimes it was, depended on the project.

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved: (1) the total project construction amount of \$1,410,414.84; (2) the amount due for Application for Payment No. 6 before delay charges deduction as \$76,353.89; (3) hold \$29,559.88 for delay charges from Application for Payment No. 6; (4) payment of \$46,794.01 to SPS Contracting, Inc. for Application for Payment No. 6; and (5) payment of \$29,559.88 to Ranger Construction Industries, Inc., as recommended in the memorandum of June 4, 2009.

### **13. COUNTY ATTORNEY MATTERS**

#### **13.A. DiVOSTA HOMES L.P. AND DiVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER COUNTY, CASE NO. 20070109CA19 – SETTLEMENT PROPOSAL**

County Attorney William Collins recapped his memorandum of July 15, 2009, providing an update on the proposed terms of settlement of the lawsuit with DiVosta Homes, Inc., as a result of a number of meetings and Attorney Client Sessions, relating to a Development of Regional Impact, known as Waterway Village. Changes to the Development Order and Developer's Agreement were presented requiring two Public Hearings – one before the Planning Commission and one before the County Commission. He said the determination must be made at the hearings as to whether the changes constitute a substantial deviation (which would require further development of regional impact review at the regional and state levels), or whether they are a minor deviation (that can be approved at the local level with notice to the region and the state). He said that after reviewing the Statutes, it was his opinion that this would be a minor amendment, not a substantial deviation. He recommended the Board approve the findings and

the proposed settlement, and direct his office to work with outside Counsel to implement the settlement.

There was a brief discussion regarding the trips from the 1,596 units in Waterway Village; when they would be reserved and loaded into the road system for concurrency; and how 4-laning the segment of road would resolve the capacity issue.

Commissioner Solari supported Attorney Collins' comments, and believed the biggest issue was whether this should be viewed as a transportation issue or an economic development issue; he felt economic development was more prominent.

MOTION WAS MADE by Commissioner Solari,  
SECONDED by Commissioner O'Bryan, under  
discussion, to approve the findings and proposed  
settlement as outlined by Attorney Collins.

Discussion ensued as staff explained the increase in peak hour trips, capacity, concurrency, how this would impact segments of US1, the seven year vesting, and Senate Bill 360.

**Bruce Barkett**, Esquire, 756 Beachland Boulevard, clarified that WCI Communities, Inc. (WCI) had nothing to do with seven-year vesting. They had received five years, plus two additional years due to a currency certificate that expired under Senate Bill 360.

**Juan Farach**, Shubin and Bass, P.A., maintained that this was not vested through the DRI and depending on the policy directive of the Commission and the business terms of the proposed settlement, they can either implement the settlement or proceed and defend the County in the litigation because it is a defensible position.

Chairman Davis opened the floor to the public.

**Rene Renzi**, Waverly Place, wanted to know if the railroad crossing at 53<sup>rd</sup> Street would be a problem because she understood that if there would be a new crossing, two others on US1 would need to be closed.

Director Mora informed Ms. Renzi that only the 71<sup>st</sup> Street crossing would close, as a swap for the 53<sup>rd</sup> Street crossing. He said there would be a connection between 69<sup>th</sup> Street and 71<sup>st</sup> Street, by using 39<sup>th</sup> Avenue.

**Joe Paladin**, 730 Commerce Center Lane, Black Swan Consulting, supported the Board and DiVosta moving forward, but was concerned about all the trips being loaded at one time. He wanted to know if they would get credit for the improvements at the same time. Attorney Collins said impact fee credits were given as the work is completed; and Director Mora explained how capacity is added once the improvement is designed and ready to begin construction.

Commissioner O'Bryan voiced concern over loading 1,600 trips, and emphasized that it would handcuff future Commissions through the year 2024. He believed it was time to move forward, settle this, get out of the litigation business, and expedite opening 53<sup>rd</sup> Street.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved the findings and proposed settlement as outlined below:

## **THE PROPOSED TERMS OF SETTLEMENT**

### (1) 53<sup>rd</sup> Street

(a) Under the DRI Development Order (DO) and accompanying Development Agreement (DA), DiVosta is required to construct the portion of 53<sup>rd</sup> Street west of the new bridge, by the time of the 1000<sup>th</sup> certificate of occupancy at Waterway Village. Because of the current real estate market, DiVosta is selling homes in Waterway Village at the pace of approximately 100 per year. Based upon this pace, DiVosta would not reach the 1000<sup>th</sup> unit for approximately 7-8 more years. However, as a part of the settlement, DiVosta proposes to advance the construction

of that portion of 53<sup>rd</sup> Street to coordinate with the County's construction of the canal bridge and the portions of 53<sup>rd</sup> east of the bridge. Based upon bids that DiVosta has received, the cost of this construction will be approximately \$2.2 to \$2.5 million.

(b) Fill for 53<sup>rd</sup> Street – DiVosta will furnish to the County fill (not to exceed 100,000 cubic yards of fill) for use by the County in the construction of 53<sup>rd</sup> Street east of the lateral H Canal. The fill will be at no cost to the County, but the County will be responsible for the transportation. At the current price of fill of \$2.50 per yard, this is a savings to the County of \$250,000.

(c) Drainage – The Waterway Village DO contemplates that the drainage of 53<sup>rd</sup> Street would be accommodated in the drainage system for Waterway Village. The construction of 53<sup>rd</sup> Street is described in paragraph 1.a. above, and will require that DiVosta dig an approximate 3-acre lake to receive the drainage from 53<sup>rd</sup> Street. DiVosta will also install the required piping from the roadway to the lake and furnish required easements to the County. The cost of this work is estimated by DiVosta to be approximately \$200,000 without taking into account the land value of the three acres.

## (2) 58<sup>th</sup> Avenue

(a) DiVosta will, at its own cost and expense, construct 58<sup>th</sup> Avenue as a 4-lane roadway between 49<sup>th</sup> Street and 53<sup>rd</sup> Street.

(b) Said construction will be accomplished when the traffic model of the County determines that the construction is needed because of traffic volumes, the County and DiVosta to agree upon the methodology of any such model. However, in any event and irrespective of modeling, the construction will commence no later than January 1, 2015.

(c) DiVosta will receive 100% traffic impact fee credits for all design, engineering and construction costs for these 58<sup>th</sup> Avenue improvements, in addition to impact fee credits available for other offsite improvements as provided under the DA.

(3) DiVosta will prepay all impact fees for 1,596 units in Waterway Village by December 31, 2015 (except for those for which it has received impact fee credits) unless those impact fees are paid earlier at the time of issuance of building permit.

(4) The DO and Development Agreement will be amended to confirm that all 1,596 units for Waterway Village will be vested for traffic concurrency consistent with and for the periods set out in paragraph 5 below, provided DiVosta complies with its obligations in paragraphs 1-3 above and all other obligations under the DO and DA. If DiVosta does not comply with its obligation following written notice of such non-compliance and a 60-day opportunity to cure, then the vesting for traffic concurrency will terminate.

(5) Permits for units of Waterway Village will be issued in staged increments as follows:

(a) 711 of the 732 units in Phases I and II have already been vested (as it related to traffic concurrency only). Provided DiVosta complies with its obligations as described in paragraph 4 above, said units shall be vested for traffic concurrency through 2016.

(b) In 2012, 150 additional units shall be available to pull building permits by 2019. Provided DiVosta complies with its obligations as set forth in paragraphs 1-4 above, said units shall be vested for traffic concurrency through 2019.

(c) In 2013, 150 additional units shall be available to pull building permits. Provided DiVosta complies with its obligations as set forth in paragraphs 1-4 above, said units shall be vested for traffic concurrency through 2020.

(d) In 2014, 150 additional units shall be available to pull building permits. Provided DiVosta complies with its obligations as set forth in paragraphs 1-4 above, said units shall be vested for traffic concurrency through 2021.

(e) In 2015, 150 additional units shall be available to pull building permits. Provided DiVosta complies with its obligations as set forth in paragraphs 1-4 above, said units shall be vested for traffic concurrency through 2022.

(f) In 2016, 150 additional units shall be available to pull building permits. Provided DiVosta complies with its obligations as set forth in paragraphs 1-4 above, said units shall be vested for traffic concurrency through 2023.

(g) In 2017, 114 additional units shall be available to pull building permits. Provided DiVosta complies with its obligations as set forth in paragraphs 1-4 above, said units shall be vested for traffic concurrency through 2024.

The above proposed settlement structure is designed to furnish the County with certainty as to the earliest date in which DiVosta will be entitled to draw down the 1,596 units, as to provide a deadline by which time DiVosta must pay to the County all impact fees. Additionally, DiVosta is agreeing to construction of 53<sup>rd</sup> Street substantially in advance of its present deadline under the DA at a time when, because of the economic hard times, funds are not easily available to do so. Finally, the County will receive a substantial benefit with the 4-laning of 58<sup>th</sup> Avenue, relieving the County of that responsibility and outlay of funds.

(6) Indian River County will load all trips from the 1,596 units in Waterway Village onto its road system for concurrency modeling. They shall remain reserved for the DRI until the timeframes to pull building permits set out in paragraph 5 above have expired.

(7) DiVosta will submit and County will process request to amend the DO and DA as they relate to intersection improvements at Kings Highway (58<sup>th</sup> Avenue) and 49<sup>th</sup> Street and 45<sup>th</sup> Street. Currently those intersection improvements are to be completed prior to the issuance of more than 337 building permits. These conditions shall be modified to tie the improvements to 49<sup>th</sup> Street to the mobilization for 4-laning of Kings Highway between 49<sup>th</sup> Street and 53<sup>rd</sup> Street. 45<sup>th</sup> Street intersection improvements shall commence when County acquires all necessary right of way to accommodate the designed intersection improvements and provides notice to proceed to DiVosta.

(8) Amend DO to incorporate the concurrency vesting provisions of this settlement agreement.

## **IMPLEMENTATION**

Upon approval of this proposed settlement by the parties, the following steps will be taken to implement the settlement:

(1) Counsel will file a joint motion for stay of case pending finalization and approval of settlement.

(2) DiVosta shall apply for, and County shall process, application to modify DO condition 20 with respect to timing of 45<sup>th</sup> Street and 49<sup>th</sup> Street intersection improvements on Kings Highway (58<sup>th</sup> Avenue) and to add the vesting provision of this Settlement Agreement to the DO.

(3) Upon finalization of 1 and 2 above, the parties will file a joint stipulation for dismissal of all litigation, including Bert Harris claims, with prejudice, with each party bearing its own attorney fees and costs.

## **FINDINGS**

- (1) A genuine dispute as to traffic concurrency vesting requirements exists;
- (2) Indian River County Code Sections 910.07(1)(e) and 910.08(2)(b) allows 7-year vesting if major capacity producing transportation improvements are committed to by developers agreement;
- (3) DiVosta will commit to advance DO timeframes for construction of 53<sup>rd</sup> Street and 58<sup>th</sup> Avenue 4-laning by virtue of this agreement;
- (4) DCA Declaratory Statement, Case No. 91-DS-8 advises if DO addresses vesting it is controlling; and
- (5) These settlement terms are consistent with existing state and local law, all as recommended in the memorandum of July 15, 2009.

Chairman Davis, upon noticing the Boy Scouts from Troop 578 in the audience, asked Scout Master Ben Pillow to introduce himself and his troop, as they were working to earn their *Citizenship and Community Merit Badge* by attending a local government meeting.

*The Chairman called a break at 10:57 a.m., and reconvened the meeting at 11:10 a.m., with all members present.*

**14. COMMISSIONER ITEMS**

**14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN**

**14.A.1. CONSIDERATION OF SUBMITTED APPLICATIONS FOR THE BOARD OF  
COUNTY COMMISSIONER'S APPOINTEE ON THE TOURIST DEVELOPMENT  
COUNCIL (TDC)**

Chairman Davis acknowledged that all three candidates were qualified, and asked the Commissioners for their nominations.

MOTION WAS MADE by Commissioner O'Bryan to nominate Renee L. Page as the Appointee to the Tourist Development Council (TDC). There was no SECOND. MOTION failed for lack of a SECOND.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board by a 3-2 vote (Commissioners O'Bryan and Davis opposed), approved the nomination of Daniel Fourmont as the Appointee on the Tourist Development Council (TDC).

**Charlie Wilson**, 1057 6<sup>th</sup> Avenue, felt that even though he was one of the three candidates for this position, the other participants were highly qualified, excellent choices, and he would support either one.

**14.B. COMMISSIONER JOSEPH E. FLESCHER, VICE CHAIRMAN -**

**NONE**

**14.C. COMMISSIONER GARY C. WHEELER - NONE**

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

**14.E. COMMISSIONER BOB SOLARI - NONE**

**15. SPECIAL DISTRICTS AND BOARDS**

**15.A. EMERGENCY SERVICES DISTRICT**

The Chairman announced that immediately upon adjournment, the Board of County Commission meeting, the Board would reconvene as the Board of Commissioners of the Emergency Services District. Those Minutes are prepared separately.

**15.A.1. APPROVAL OF MINUTES MEETING OF MAY 12, 2009**

**15.A.2. APPROVAL OF MINUTES MEETING OF JUNE 2, 2009**

**15.A.3. APPROVAL TO PURCHASE (1) INTERNATIONAL TYPE I MEDIUM DUTY  
AMBULANCE FROM ETC**

**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 11:13  
a.m.

ATTEST:

\_\_\_\_\_  
Jeffrey K. Barton, Clerk

\_\_\_\_\_  
Wesley S. Davis, Chairman

Minutes Approved: \_\_\_\_\_

BCC/LAA/2009Minutes