

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF OCTOBER 6, 2009

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JEFFREY K. BARTON

Clerk to the Board



October 6, 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, October 6, 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 Maureen Gelfo.

1. CALL TO ORDER

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

2. INVOCATION

Commissioner Wesley S. Davis, Chairman, 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-NONE

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Agenda as presented.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION DESIGNATING OCTOBER 4 – 10, 2009 AS INDIAN RIVER COUNTY FIRE PREVENTION WEEK

Commissioner O'Bryan read and presented the Proclamation to Emergency Services Director John King and Fire Marshall Brian Nolan. Director King thanked the Commission for acknowledging Fire Prevention Week and Emergency Services Department staff, and relayed the Department's commitment to providing fire safety services and information to the County's citizens.

5.B. PRESENTATION OF PROCLAMATION DESIGNATING OCTOBER 4 – 10, 2009 AS MENTAL HEALTH AWARENESS WEEK

Vice Chairman Flescher read and presented the Proclamation to John Romano, CEO of New Horizons of Treasure Coast, who thanked the Commissioners for their help and support over the years.

**5.C. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF
OCTOBER AS NATIONAL ARTS AND HUMANITIES MONTH**

Commissioner Solari read and presented the Proclamation to Executive Director Mary Jayne Kelly and Board Members Susan Smith, Barbara Hoffman, and Mary Schenkel of the Cultural Council of Indian River County. Ms. Smith thanked the Commissioners for supporting the Arts. Commissioner O'Bryan noted that the 2009/2010 Cultural Event Planner was available in the Chamber lobby, and Ms. Smith advised that it was also available at the Cultural Council office or on the website at www.cultural-council.org.

The Chairman called a break for photos at 9:19 a.m. and reconvened the meeting at 9:21 a.m., with all members present.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF AUGUST 18, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of August 18, 2009. There were none.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Minutes of the Regular Meeting of August 18, 2009, as written.

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

**7.A. SEBASTIAN INLET STATE PARK – BIENNIAL REPORT OF INDIAN RIVER
COUNTY ENTRANCE FEES AND EXPENSES IS ON FILE IN THE OFFICE OF
THE CLERK TO THE BOARD**

8. CONSENT AGENDA

Commissioner O’Bryan pulled for discussion, Item 8.E.

ON MOTION by Commissioner O’Bryan, SECONDED
by Commissioner Solari, the Board unanimously approved
the Consent Agenda, as amended.

**8.A. APPROVAL OF WARRANTS AND WIRES, SEPTEMBER 11, 2009 THRU
SEPTEMBER 17, 2009**

ON MOTION by Commissioner O’Bryan, SECONDED
by Commissioner Solari, the Board unanimously approved
the list of Warrants and Wires as issued by the Clerk to the
Board for the time period of September 11, 2009 to
September 17, 2009 as recommended in the memorandum
of September 17, 2009.

**8.B. APPROVAL OF WARRANTS AND WIRES, SEPTEMBER 18, 2009 THRU
SEPTEMBER 24, 2009**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of September 18, 2009 to September 24, 2009, as requested in the memorandum of September 24, 2009.

**8.C. APPOINTMENT OF LOCAL FAITH-BASED REPRESENTATIVE TO THE
CENSUS 2010 COMPLETE COUNT COMMITTEE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the appointment of Pastor Buddy Tipton as the local faith-based representative to the Census 2010-Complete Count Committee, as recommended in the memorandum of September 30, 2009.

**8.D. PERMISSION TO ADVERTISE FOR PUBLIC HEARING: AN ORDINANCE
AMENDING THE COUNTY CODE OF INDIAN RIVER COUNTY, REQUIRING
REGISTERED SEX OFFENDERS TO NOTIFY TO OPERATORS OF TEMPORARY
EMERGENCY SHELTERS**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously directed staff to advertise for a Public Hearing for an Ordinance

amending the County Code to require registered sex offenders to notify to operators of temporary emergency shelters, as recommended in the memorandum of September 22, 2009.

**8.E. APPROVAL OF RESOLUTION OF SUPPORT FOR THE CITY OF SEBASTIAN
TAX ABATEMENT INITIATIVE**

Commissioner O'Bryan highlighted the County's support for this item, and encouraged Sebastian residents to vote for the initiative. He felt it was a great economic tool to help the City of Sebastian, and hoped it would be approved countywide in the November 2010 General Election.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-159**, supporting the City of Sebastian's Tax Abatement Initiative.

**8.F. AUTHORIZATION TO ATTEND FGFOA 2009 SCHOOL OF GOVERNMENTAL
FINANCE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously authorized the County Administrator to attend the Intermediate/Advanced portion of the 2009 FGFOA School of Governmental Finance in St. Petersburg, Florida, November 18 to November 20, 2009, as recommended in the memorandum of September 21, 2009.

**8.G. WORK ORDER NO. 2 (SIDEWALK/SOD) H & D CONSTRUCTION CO, INC.,
FOUNTAINS AT AMBER LAKES SUBDIVISION – RELEASE OF RETAINAGE
AND FINAL PAY**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board unanimously approved Contract Change Order No. 1 and payment of H & D Construction Co., Inc. Contractor’s Application for Payment No. 2 in the amount of \$31,001.80 for full and final payment of Work Order No. 2, as recommended in the memorandum of September 1, 2009.

**8.H. BRIDGE DESIGN ASSOCIATES, INC. WORK ORDER NO. 5 AND
AMENDMENT NO. 1 FOR BRIDGE CONSTRUCTION PHASE SERVICES FOR
53RD STREET BRIDGE OVER I.R.F.W.C.D. LATERAL H. CANAL (IRC
PROJECT NO. 0107-B) RELEASE OF RETAINAGE**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board unanimously approved payment of Bridge Design Associates, Inc. Invoice No. 05-623/CR1, dated 08/03/09 in the amount of \$3,088.30 and Invoice No. 05-623/AR1, dated 08/03/09 in the amount of \$150.00 for release of retainage for Work Order No. 5 and Amendment No. 1, as recommended in the memorandum of September 25, 2009.

**8.I. BRIDGE DESIGN ASSOCIATES, INC. WORK ORDER NO. 4 FOR BRIDGE
CONSTRUCTION PHASE 56TH PLACE BRIDGE OVER I.R.F.W.C.D. NORTH
RELIEF CANAL (IRC PROJECT NO. 0611-B) RELEASE OF RETAINAGE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved payment of Bridge Design Associates, Inc. Invoice No. 06-625-CR1, dated 08/03/09 in the amount of \$3,020.12 for release of retainage for Work Order No. 4, as recommended in the memorandum of September 25, 2009.

**8.J. BRIDGE DESIGN ASSOCIATES, INC. WORK ORDER NO. 6 FOR BRIDGE
CONSTRUCTION PHASE SERVICES FOR 16TH STREET BRIDGE OVER
I.R.F.W.C.D. RANGE LINE CANAL (AT 74TH AVENUE) (IRC PROJECT NO.
9920-B) RELEASE OF RETAINAGE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved payment of Bridge Designs, Inc. Invoice No. 05-624/C7, dated 03/03/09, in the amount of \$2,311.68 for release of retainage for Work Order No. 6, as recommended in the memorandum of September 25, 2009.

8.K. APPROVAL OF PROFESSIONAL SURVEYING AND MAPPING/GIS SERVICE AGREEMENTS FOR ANNUAL SURVEYING AND MAPPING/GIS CONTRACT, 2009-2010

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the fee schedules and Renewal of Professional Surveying & Mapping/GIS Services Agreements for Annual Surveying & Mapping/GIS with the following six (6) firms: (1) Carter Associates, Inc., Vero Beach; (2) Creech Engineering, Inc., Melbourne; (3) Kimley-Horn & Assoc., Inc.; Vero Beach; (4) Masteller, Moler & Reed, Inc., Vero Beach; (5) Morgan Eklund, Inc., Wabasso; and (6) Woolpert, Inc., Orlando, and authorized the Chairman to execute the Agreements, as recommended in the memorandum of September 22, 2009.

AGREEMENTS ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.L. SUPERVISOR OF ELECTIONS 2008/2009 BUDGET AMENDMENT

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved: (1) the use of \$13,462 from City election revenues to fund needed expenditures from the 2008/2009 budget, and (2) the transfer of \$100,000 from operating expenses to salaries, as recommended in the memorandum of September 29, 2009.

8.M. OSLO ROAD BETWEEN 27TH AVENUE AND OLD DIXIE HIGHWAY, FPL
AGREEMENT TO INSTALL STREET LIGHTS

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously authorized the County Administrator or his designee to execute the FPL Street Lighting Agreement, thereby authorizing FPL to proceed with the installation of street lights along Oslo Road, as recommended in the memorandum of September 28, 2009.

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

8.N. WORK ORDER NO. 4 (SIDEWALK/SOD) – H & D CONSTRUCTION CO, INC.
ASHLEY LAKES SUBDIVISION

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously: (1) approved Work Order No. 4 for Ashley Lakes Subdivision, with H & D Construction Co., Inc., authorizing the Project, and (2) authorized the Chairman to execute Work Order No. 4, as recommended in the memorandum of September 24, 2009.

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

**8.O. WORK ORDER NO. 3 (SIDEWALK/SOD) – H & D CONSTRUCTION CO, INC.,
OAKS OF VERO SUBDIVISION PHASE 2**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board unanimously approved Work Order No. 3 and Agreement for Oaks of Vero Subdivision Phase 2, with H & D Construction Co., Inc., authorizing the Project, and (2) authorized the Chairman to execute Work Order No. 3 and Agreement, as recommended in the memorandum of September 14, 2009.

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

**8.P. FINAL PAY TO SCHULKE, BITTLE & STODDARD FOR CONTINUING
CONSULTING SERVICES FOR WORK ORDER NO. 8 FOR ENGINEERING
DESIGN, SURVEYING AND CONSTRUCTION ADMINISTRATION SERVICES
FOR SR 60 PHASE 3 IMPROVEMENTS, BID NO. 2009027 – UCP #3098**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the total amount of engineering services of \$105,292.33 and Final Invoice number 08-123-8 for a total amount of \$8,063.48 (\$8,000.00 + \$63.48), as recommended in the memorandum of September 18, 2009.

**8.Q. APPROVAL OF BID AWARD FOR IRC BID NO. 2010008 MOWING AT
THREE (3) WATER TREATMENT PLANTS UTILITIES DEPARTMENT /
WATER TREATMENT DIVISION**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved: (1) the Bid Award to Mike's Lawn & Landscaping as the lowest and most responsive bidder meeting the specifications as set forth in the Invitation to Bid; (2) authorized the Purchasing Division to issue blanket purchase orders for the period of October 1, 2009 through September 30, 2010 with the recommended bidder; and (3) authorized the Purchasing Manager to renew this bid for two (2) additional one (1) year periods subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual bid is in the best interest of Indian River County, as recommended in the memorandum of September 29, 2009.

**8.R. APPROVAL OF BID AWARD FOR IRC BID NO. 2010012 ANNUAL BID FOR
TRAFFIC SIGNAL HARDWARE AND WIRE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously: (1) approved the Bid Award to American Wire Group as the lowest and most responsive bidder meeting the specifications as set forth in the Invitation to Bid; (2) authorized the Purchasing Division to issue blanket

purchase orders for the period of October 1, 2009 through September 30, 2010 with the recommended bidder; and (3) authorized the Purchasing Manager to renew this bid for two (2) additional one (1) year periods subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual bid is in the best interest of Indian River County, as recommended in the memorandum of September 29, 2009.

8.S. DECLARE EXCESS EQUIPMENT SURPLUS FOR SALE OR DISPOSAL

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously: (1) declared the items listed (on pages 135-139 of the backup) surplus, and authorized its sale and/or proper disposal; (2) authorized staff to have the excess equipment delivered to the City of Vero Beach Purchasing Warehouse located on Airport Industrial Drive to be sold at public auction at 10:00 a.m. on October 31, 2009; (3) approved and authorized the County Administrator to execute the Auction Agreement with Karlin Daniel & Associates, Inc. The County Attorney's office has approved the Agreement as to form and legal sufficiency, all as recommended in the memorandum of September 29, 2009.

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

8.T. FINAL PAYMENT (RETAINAGE) TO DUNKELBERGER ENGINEERING AND TESTING, INC.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the final payment request by authorizing the release of the retainage of \$2,199.12 to Dunkelberger Engineering and Testing, Inc., as recommended in the memorandum of September 29, 2009.

8.U. H.U.D. GRANT FOR SHELTER PLUS CARE GRANT, FL0113C4H090800

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the new Shelter Plus Care Grant, FL0113C4H090800 Grant Agreement with the United States Department of Housing and Urban Development (HUD), and authorized the Chairman to execute same, accordingly, as recommended in the memorandum of September 30, 2009.

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

8.V. RELEASE OF RETAINAGE FOR WORK ORDER NO. M1 WITH MALCOLM PIRNIE, INC. FOR THE MAIN RELIEF CANAL

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously authorized payment of Malcolm Pirnie's final invoice for release of retainage in the amount of \$7,630.18, as recommended in the memorandum of September 21, 2009.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARING-NONE

10.B. PUBLIC DISCUSSION ITEMS-NONE

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARINGS OCTOBER 13, 2009:

A. CHURCH OF GOD BY FAITH'S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL FOR AN EXPANSION TO AN EXISTING PLACE OF WORSHIP FACILITY (QUASI-JUDICIAL)

B. CONSIDERATION OF PROPOSED AMENDMENTS TO PROVIDE FOR PERMANENT EXCEPTIONS TO CERTAIN LDRs FOR INDIVIDUAL DEVELOPMENT PROJECTS: LAND DEVELOPMENT REGULATIONS CHAPTER 902 (LEGISLATIVE)

C. CONSIDERATION OF PROPOSED AMENDMENT TO THE COUNTY NOISE AND VIBRATION CONTROL ORDINANCE TO ADDRESS EMERGENCY POWER

GENERATORS: LAND DEVELOPMENT REGULATIONS CHAPTER 974
(LEGISLATIVE)

10.C.2. NOTICE OF JOINT MEETING OCTOBER 15, 2009:

JOINT MEETING WITH CITY OF VERO BEACH CITY COUNCIL AND
TOWN OF INDIAN RIVER SHORES TOWN COUNCIL

County Attorney William Collins read the notices into the record.

Chairman Davis's request to invite the City of Fellsmere to the Joint Meeting sparked discussion among the Commissioners on whether or not it would be appropriate to include Fellsmere at this time, after which the following action occurred:

MOTION WAS MADE by Commissioner Solari,
SECONDED by Vice Chairman Flescher, to include the
City of Fellsmere in the Joint Meeting to be held October
15, 2009, 9:00 to 1:00 p.m., at the Indian River State
College Richardson Center.

Commissioner O'Bryan confirmed with Attorney Collins that the City of Fellsmere could be included in this Joint Meeting.

The Chairman CALLED THE QUESTION and the
Motion Carried. The Board approved to include the City
of Fellsmere in the Joint Meeting with the City of Vero
Beach City Council, the Town of Indian River Shores
Town Council, and the Board of County Commissioners,
to be held October 15, 2009, 9:00 to 1:00 p.m., at the

Indian River State College Richardson Center, to discuss the possible consolidation of the water and sewer infrastructure.

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

12.D.1. DISCUSSION – COUNTY ATTORNEY RECRUITMENT/HIRING PROCESS

Director of Human Resources Jim Sexton said this item was a follow up to the Board of County Commission meeting of September 22, 2009, whereby staff was directed to make some changes to the job posting for the County Attorney position. He told Commissioners that the changes had been made and asked if the amended job posting was acceptable and whether it should include contract language; he also wanted the Board to define what the “total compensation” package would be.

Commissioner Wheeler observed that he had wanted to ask the candidates whether they would be willing to accept the County Attorney position without a contract.

Director Sexton pointed out that should a candidate agree to accept employment without a contract, Section 101.06 of County Code, which specifies that all attorneys hired after March 2000 shall be “at will” contract employees, would need to be addressed.

ON MOTION by Commissioner Wheeler, SECONDED by Chairman Davis, the Board unanimously directed staff to insert into the job posting for the County Attorney position, a query regarding whether the applicant would be willing to accept the County Attorney’s position, without an employment contract.

Director Sexton advised that at this point, there was no need to take any formal action on whether or not to have the employment contract, and noted that the contract could work in the Board’s favor and did not need to include an extravagant salary and benefits. Director Sexton recalled that on September 22, 2009, the Board had discussed a “total compensation” range of \$125,000 to \$175,000 and he invited Budget Director Jason Brown to brief the Board on what “total compensation” means within the County.

Director Brown presented a PowerPoint providing three scenarios on the total cost of salaries and benefits for total salary packages of \$125,000, \$150,000 and \$175,000.

Further discussion ensued among Commissioners and staff regarding base salary and deferred compensation.

Renee Renzi, Waverly Place, questioned the expenditure of County funds on another attorney, when one attorney had recently been discharged. Chairman Davis informed her that the new attorney was a replacement for County Attorney William Collins, who will retire in March 2010.

It was the Board's CONSENSUS that Director Sexton was to post the job listing and begin the selection process.

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

**12.J.1. WORK ORDER NO. 19 FINAL PAY TO GEOSYNTEC CONSULTANTS, INC.
FOR GROUND WATER ASSESSMENT AND MONITORING PROPOSAL NORTH
COUNTY WATER FACILITY**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously authorized final payment to Geosyntec Consultants, Inc., in the amount of \$1,023.09, as recommended in the memorandum of September 18, 2009.

12.J.2. SPOONBILL MARSH – ADDITIONAL BENTHIC INVERTEBRATE SAMPLING

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O’Bryan, the Board unanimously: (1) approved extending the existing contract; (2) approved and authorized purchase of services with the Florida Atlantic University, c/o Harbor Branch, Ft. Pierce, FL, in the amount of \$10,303.89 (for Spoonbill Marsh Site); and (3) authorized the Chairman to execute same as presented, and as recommended in the memorandum of September 15, 1009.

DOCUMENTS ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

12.J.3. SPOONBILL MARSH WETLAND FACILITY – UCP 2785, MASTELLER & MOLER, INC. ENGINEERING SERVICES, ADDITIONAL ENGINEERING, REVIEW AND EVALUATION OF SUBSTITUTE MATERIALS USED IN CONSTRUCTION

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the Engineer’s Cost Reimbursement for a total of \$8,525.00, for payment to Masteller and Moler, Inc. (Spoonbill Marsh Site), and authorized the Chairman to execute same, as presented, and as recommended in the memorandum of September 24, 2009.

13. COUNTY ATTORNEY MATTERS

13.A. OCEAN CONCRETE LAWSUIT

Assistant County Attorney George Glenn related that in response to the *Petition for Writ of Certiorari* filed by Ocean Concrete regarding the denial of their site plan application extension request, the Circuit Court had issued an Order for the County Commission to hold a Good Cause Hearing relative to granting the extension request. He explained that the Order does not become final if the County requests a rehearing, and that staff has filed a Motion for Rehearing. Attorney Glenn explained why he thought the Court erred in their judgment and affirmed his belief that the County acted properly, since you cannot grant an extension for a use that is no longer permitted. He told the Board that should the County's Motion for Rehearing Request be denied, the options would be to appeal the decision to the Fourth District Court of Appeals, or hold a hearing to decide whether good cause exists to grant Ocean Concrete's application extension request.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, to direct the County Attorney's Office to take an appeal to the Fourth District Court of Appeals should the Circuit Court deny the County's Motion for Rehearing, as recommended in the memorandum of September 30, 2009.

Chairman Davis sought and received affirmation from Attorney Glenn that the above was the direction he was looking for from the Commission.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board directed the County Attorney's Office to take an appeal to the Fourth District Court of Appeals should the Circuit Court deny

the County's Motion for Rehearing, as recommended in the memorandum of September 30, 2009.

13.B. ACQUISITION OF RIGHT-OF-WAY ALONG 66TH AVE., JANIE, ELLIS AND KATHLEEN GREENE, 66TH AVENUE AND 53RD STREET

Deputy County Attorney William DeBraul updated the Board on this request to acquire two parcels of property from Janie, Ellis and Kathleen Greene, to be used as right-of-way along 66th Avenue. He thereafter presented staff's recommendation to approve the purchase at the total acquisition price of \$50,243.50.

ON MOTION by Commissioner Wheeler, SECONDED by Chairman Davis, the Board unanimously approved the Agreement to Purchase and Sell Real Estate with Janie E. Greene, Ellis Greene, and Kathleen Greene, as recommended in the memorandum of September 25, 2009.

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

13.C. UPDATED UNCONDITIONAL OFFER FOR PARCEL 134 OWNED BY EVANGELOS AND ANN ABAZIS, 6800 57TH STREET, VERO BEACH

Attorney DeBraul provided background information on staff's request to purchase the subject right-of-way from Evangelos and Ann Abazis. He recalled that in February 2009, the Board had approved an unconditional offer of \$28,060, and conveyed that since that time, an updated appraisal done in June 2009 has placed the value at \$33,000. He thereafter requested that the Board approve the good faith estimate of value and extend an unconditional offer of \$33,000 to the Abazis.

ON MOTION by Vice Chairman Flescher, SECONDED by Chairman Davis, the Board unanimously approved an unconditional offer to purchase the necessary right-of-way from Evangelos Abazis and Ann Abazis at a price of \$33,000, as recommended in the memorandum of September 28, 2009.

13.D. STIPULATED ORDERS OF TAKE FOR 66TH AVENUE PROPERTY OWNERS
MATTHEW AND HILDA HARBOURT, PARCEL 122, EVANGELOS AND ANN
ABAZIS, PARCEL 134

Attorney DeBaal presented staff's request to stipulate to the Order of Take for two parcels owned by Matthew and Hilda Harbourt, and Evangelos and Ann Abazis, respectively, which are needed for right-of-way for the 66th Avenue Improvement Project. He outlined the advantages to the Order of Take (presented on page 245 and 246 of the backup), and noted that if the matter goes to trial and the County's appraiser finds the value of the property below the current appraised value, and the jury returns with a verdict below the amount deposited under the terms of the stipulation, the landowners would be required to pay back to the County the difference between the verdict and the deposit. He said that the Harbourts and the Abazis had requested that an additional term be included in the stipulation - that the County waive its right to receive said payback should this occur.

Attorney DeBaal clarified for Chairman Davis that the additional term requested by the landowners is not currently in the stipulation, but that it would be added if the Board approves the landowners' request.

County Attorney William Collins was not in agreement with the request of the landowners.

Commissioner Solari was also opposed to the additional term requested by the landowners.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Solari, to approve staff's recommendation, as presented and not inclusive of the additional term of stipulation requested by the landowners.

Staff provided further clarification on the additional stipulation for Commissioner Wheeler.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved the terms of the stipulation as presented, and not inclusive of the additional term of stipulation requested by the landowners; and authorized deposit of the appraised value of the needed property into the registry of the Court for property owners Matthew Harbourt and Hilda Harbourt, and Evangelos Abazis and Ann Abazis.

14. COMMISSIONER ITEMS

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

14.B. COMMISSIONER JOSEPH E. FLESCHER

**14.B.1. RECONSIDERATION OF THE TRACKING STATION BEACH LIFEGUARD
POSITION**

Vice Chairman Flescher asked the Board to reconsider its decision to dispense with the lifeguards at the Tracking Station Beach, which action had been taken because of the reduced budget. He reported that many citizens objected to the unguarded beach, and recalled that during the budget hearings for this fiscal year, public safety was determined to be the priority. He also questioned the cost and time factor of having to call in emergency personnel if the lifeguards are not on site to handle any emergencies occurring on the beach.

Budget Director Jason Brown used a PowerPoint (copy on file) to outline the key points of the Ocean Rescue Staffing alternatives for the Tracking Station Beach. He detailed Options A and B, which would effect estimated cost increases of \$91,121 and \$42,130 respectively. He revealed that Option C was revenue neutral and would entail placing three (3) lifeguards at Treasure Shores and Golden Sands Beaches, with the third lifeguard using an All Terrain Vehicle (ATV) to transfer between the two beaches as needed. Concluding, Director Brown reviewed the status quo budget, which had no increase to the budget, and the 2008/2009 budget, wherein it had cost \$110,628 to fully guard the Tracking Station Beach.

Administrator Baird, noting that the County would be facing another difficult budget in Fiscal Year 2010/2011, encouraged the Board to choose a revenue neutral option, should it decide to keep open the Tracking Station Beach.

Vice Chairman Flescher favored Option B. He remarked that the \$42,130 cost was about \$60,000 less than the \$110,628 required to maintain all five beaches with guarded double coverage, and spoke to the importance of having supervision for the lifeguards with the Official in Charge.

Commissioner Wheeler believed that there was plenty of public beach access without the Tracking Station Beach, and that the maximum protection afforded by having full coverage at the four (4) other beach parks would protect lives. Furthermore, he did not think it was prudent to begin withdrawing money from the contingency fund, which was normally reserved for emergencies.

MOTION WAS MADE by Commissioner Wheeler, to approve the Status Quo 2009/2010 Budget, having double coverage at four (4) guarded beaches, and not opening the Tracking Station Beach. MOTION FAILED for lack of a SECOND.

Commissioner Solari mentioned that he had attended a meeting of the City Council of Indian River Shores, where discussions on the Tracking Station Beach had focused on public safety, the lack of services provided by the County to Indian River Shores, and on tourism. He said that in view of the City Council's strong statement that they would like their sole beach covered, he would support Option B; however, he wanted staff to continue exploring for the future, Option C, with the rotation of the lifeguards.

Commissioner O'Bryan wondered what it would cost to add a part-time lifeguard for 16 hours per week, to be the fourth guard on weekends, when the beach was busier, and Director Brown advised that the cost would be about \$14,000. Commissioner O'Bryan believed the guards' schedules could be shifted around to accommodate peak swimming times, and voiced support for Option C, with the addition of a part-time lifeguard to ensure double coverage on the weekends.

The Board continued to discuss the merits of the various options.

Chairman Davis suggested that the County, at some point, present to Indian River Shores the option of their taking over the Tracking Station Beach.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Solari, to approve Option B, to have full double lifeguard coverage at all five (5) beaches.

Commissioner Wheeler reiterated his support for Option C, and his opposition to dipping into the contingency funds this early in the year.

The Chairman CALLED THE QUESTION, and by a 2-3 vote, the MOTION DIED (Commissioners Davis, O'Bryan and Wheeler opposed).

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, for discussion, to approve Option C, double coverage at most beaches and modified double coverage at Treasure Shores and Golden Sands, with the addition of one (1) part-time lifeguard at \$14,000.

Chairman Davis supported Commissioner O'Bryan's Motion, believing it would give the County the opportunity to see whether or not Option C was workable.

Joe Martorana, Indian River Shores, related an incident which occurred at the Tracking Station Beach, showing that emergencies may happen when least expected, and illustrating the importance of the lifeguards to public safety.

Bob Johnson, Coral Wind Subdivision, felt that Option C was a good compromise. He also suggested utilizing volunteers to help staff the beaches.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner Wheeler opposed), the Motion carried. The Board approved Option C, providing double coverage at most beaches and modified double coverage at Treasure Shores and Golden Sands, which would split three (3) lifeguards where there is currently a total of four (4). The third lifeguard could transfer between the two locations via an All Terrain Vehicle (ATV) as needed for backup, with an Official in Charge (OIC) up to two (2) days a week, depending upon sick and vacation usage, and the Ocean Rescue Lieutenant and the Ocean Rescue Captain sitting at a lifeguard station up to five (5) days per week, with the addition of one (1) part-time lifeguard to be hired at the cost of \$14,000.

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 10:48 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/MG/2009Minutes