

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF OCTOBER 13, 2009

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JEFFREY K. BARTON

Clerk to the Board



October 13, 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 13, 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

Planning Director Stan Boling 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

Chairman Davis requested the following changes to the Agenda:

DELETION: ITEM 10.B.1. REQUEST TO SPEAK FROM SPENCER SIMMONS REGARDING COUNTY ORDINANCE 201.22

MOVED: ITEM 11.A. (VERO BEACH FIGHTING INDIANS BAND BOOSTERS, INC.) TO BE HEARD AFTER 12.G.1. (POLICY FOR PARKS EQUIPMENT AND FACILITY RENTAL RATES – FOR PROFIT AND NON-PROFIT)

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the above changes to the Agenda.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION BY CHUCK MECHLING ON COUNTY COOPERATIVE PROGRAMS “SCREEN ON THE GREEN”, ANNUAL INDIAN RIVER COUNTY FIREFIGHTERS’ CHILI COOK-OFF, AND OTHER COMMUNITY EVENTS TO BE HELD AT POINTE WEST

Recreation Director Cliff Crawford, on behalf of Pointe West and Indian River Recreation Department, welcomed the Board and community to the seventh annual “Screen on the Green”, Saturday, October 17, 2009, starting at dusk.

Chairman Davis thanked the Recreation Department for working with Pointe West to create the various community events.

**5.B. PRESENTATION BY DEPUTY JEFF LUTHER, CHAIRMAN OF THE CENSUS 2010
COMPLETE COUNT COMMITTEE**

Deputy Jeff Luther, Chairman of the Census 2010 Complete Count Committee, provided the Board with a report on the Complete Count Committee and 2010 Census by using a PowerPoint Presentation (on file). He spoke about the role of the Committee, their objectives, and the different activities that could enhance awareness and promote participation. He also outlined staff's recommendations: (1) to call the local committee the "Indian River County Census 2010 Community Action Committee", (2) activate the committee through June 2010, and (3) assign nineteen members.

Deputy Luther recalled that the 2000 Census Count Committee's budget was \$3,200, of which \$1,000 came from the Census Bureau, and \$2,200 came from the County. He said he would appreciate help from the Board since the Census Bureau would not be offering funding for the project this year.

Vice Chairman Flescher acknowledged the financial shortage of the Census Count Committee, and noted that \$3,000 would help the Committee with supplies and materials, and that there could be a government reimbursement.

MOTION WAS MADE by Vice Chairman Flescher to allocate \$3,000 to the Census Count Committee. There was no SECOND. Motion FAILED for lack of a SECOND.

Commissioner O'Bryan suggested Vice Chairman Flescher bring this item back to the Board to show how the money would be spent.

Chairman Davis suggested the County Administrator identify where the funds would come from at the October 15, 2009 Board of County Commission Meeting.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Chairman Davis, for the County Administrator to bring this item back at the October 15, 2009 Board of County Commission Meeting for discussion as to where the funds will come from.

Commissioner Wheeler opposed the Motion and suggested writing letters to financial institutions requesting stimulus money.

Administrator Baird conveyed that the money would come from General Fund Contingencies.

Discussion ensued regarding the possibility of government reimbursement.

Commissioner Solari voiced concern that the government would not find the money for a Constitutional requirement.

The Chairman CALLED THE QUESTION. By a 3-2 vote (Commissioners Wheeler and Solari opposed), the Board directed the County Administrator to bring this item to the October 15, 2009 Board of County Commission Meeting for discussion as to where the funds will come from.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF SEPTEMBER 8, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of September 8, 2009. There were none.

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the Minutes of the Regular Meeting of September 8, 2009, as written.

6.B. PRELIMINARY BUDGET MEETING OF SEPTEMBER 9, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Preliminary Budget Meeting of September 9, 2009. There were none.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the Preliminary Budget Meeting of September 9, 2009, as written.

6.C. SPECIAL CALL – SHERIFF AND PBA IMPASSE OF SEPTEMBER 10, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Special Call – Sheriff and PBA Impasse of September 10, 2009. There were none.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the Special Call – Sheriff and PBA Impasse of September 10, 2009, as written.

6.D. SPECIAL CALL – SHERIFF AND PBA IMPASSE OF SEPTEMBER 14, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Special Call Meeting – Sheriff and PBA Impasse of September 14, 2009. There were none.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O’Bryan, the Board unanimously approved the Minutes of the Special Call Meeting – Sheriff and PBA Impasse of September 14, 2009, as written.

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

The Chairman read the following informational items into the record.

7.A. ELECTION OF COMPLETE COUNT COMMITTEE CHAIRMAN AND VICE CHAIRMAN

Noted for the record was the election of Mr. Jeff Luther as Chairman, and Mrs. Laura Vazquez as the Vice Chairman of the Complete Count Committee (CCC).

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

Noted for the record was the resignation of Susan B. Hunt from the Tourist Development Council. Her term would expire in 2011.

8. CONSENT AGENDA

Commissioner Solari requested to pull Item 8.C. for discussion

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

8.A. APPROVAL OF WARRANTS AND WIRES, SEPTEMBER 25, 2009 THRU SEPTEMBER 30, 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 September 25, 2009 to September 30, 2009, as requested in the memorandum of September 30, 2009.

8.B. APPROVAL OF WARRANTS AND WIRES, OCTOBER 1, 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 October 1, 2009, as requested in the memorandum of October 1, 2009.

8.C. RETENTION OF ENGINEER FOR ASSISTANCE ON RIGHT-OF-WAY ACQUISITION

Commissioner Solari explained that when this item had previously come up he had voted against it because he did not like the idea of setting up a system which mandated an out-of-town attorney and an out-of-town engineer.

Deputy County Attorney Bill DeBaal affirmed that if there was a local engineer or attorney that was an expert in Eminent Domain law, he would be happy to retain them. He conveyed that Harold Collins, a professional engineer, is experienced with litigation assistance, engineering, and testimony in Eminent Domain. He clarified that Mr. Harold Collins would be retained for four cases, and that if the County wants to go to trial and prevail, then experts needed to be hired.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, to approve the Agreement with Kelly Collins & Gentry, Inc., for professional civil engineering services.

Commissioner Wheeler asked for clarification regarding what areas were considered local.

THE Chairman CALLED THE QUESTION. By a 4-1 vote (Commissioner Solari opposed), the Board approved the Agreement with Kelly Collins & Gentry, Inc., for professional civil engineering services, as recommended in the memorandum of October 6, 2009.

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

8.D. APPROVAL OF BID AWARD FOR IRC BID No. 2010010, ANNUAL BID FOR STREET SWEEPING SERVICE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously:
(1) approved the bid award to International Sweeping, Inc.

d/b/a Facilities Pro Sweep, 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 beginning October 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, all as recommended in the memorandum of October 5, 2009.

8.E. APPROVAL OF RENEWAL OF A CLASS "E" CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR ARC OF INDIAN RIVER COUNTY TO PROVIDE WHEELCHAIR SERVICES

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the renewal of Class "E" Certificate of Public Convenience and Necessity for Abilities Resource Center (ARC) of Indian River County, to be effective for a period of two (2) years commencing October 5, 2009, and expiring October 5, 2011, as recommended in the memorandum of September 30, 2009.

8.F. ACCEPTANCE OF EMERGENCY MANAGEMENT FEDERALLY-FUNDED SUBGRANT AGREEMENT 09-BG-03-10-40-01-141

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Federally Funded Subgrant Agreement (09-BG-03-10-40-01-141), and authorized the Chairman to accept the additional funding between Indian River County Emergency Management and the State of Florida, Division of Emergency Management, as recommended in the memorandum of October 2, 2009.

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

8.G. REQUEST FOR AGENDA; THIRD PARTY CLAIMS ADMINISTRATION AGREEMENT

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Third Party Claims Administration Agreement with Johns Eastern Company, Inc. (JEC), to perform third party claims administration services for the self-insurance program, as recommended in the memorandum of September 24, 2009.

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

8.H. MOORINGS CLUB AND INDIAN RIVER COUNTY SEAWALL REPAIRS; PROJECT 0822, BID 200870, CHANGE ORDER NO. 1, RECONCILIATION CHANGE ORDER, ADDITIONAL WORK AND TIME EXTENSION 3RD AND FINAL PAYMENT AND RELEASE OF RETAINAGE

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved Change Order No. 1 with Summerlin's Marine Construction, LLC, for the Moorings Club and Indian River County seawall repairs, and authorized the Chairman to execute same, as recommended in the memorandum of September 30, 2009.

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

8.I. RESOLUTION TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REQUESTING ESTABLISHMENT OF AN EROSION CONTROL LINE FOR THE SECTOR 3 BEACH RESTORATION PROJECT

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-160**, requesting that the trustees of the Internal Improvement Trust Fund establish an Erosion Control Line on the shoreline for approximately 6.6 miles between FDEP monuments R-20 and R-55, setting forth findings; and providing for an effective date.

**8.J. CHANGE ORDER NO. 1 – 12TH STREET SIDEWALK FROM 16TH AVENUE TO 11TH PLACE,
BID NUMBER 2008081 – TIMOTHY ROSE CONTRACTING, INC., IRC PROJECT NO.
0216**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved Change Order No. 1 to Timothy Rose Contracting, Inc., for a sidewalk project, increasing the contract amount by \$26,016.00, as recommended in the memorandum of October 1, 2009.

**8.K. WORK ORDER NO. 7 (ENGINEERING/SURVEYING), KIMLEY-HORN AND ASSOCIATES,
INC., ROUND ISLAND RIVERSIDE PARK - NO-NAME ISLAND FDEP SURVEY, IRC
PROJECT NO. 0860, RELEASE OF RETAINAGE**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved payment of Kimley-Horn and Associates, Inc., Invoice No. 3970761, dated August 31, 2009, in the amount of \$3,599.00 for release of retainage, as recommended in the memorandum of October 5, 2009.

**9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL
AGENCIES - NONE**

10. PUBLIC ITEMS

10.A. PUBLIC HEARING

**10.A.1. CHURCH OF GOD BY FAITH'S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL
FOR AN EXPANSION TO AN EXISTING PLACE OF WORSHIP FACILITY (QUASI-
JUDICIAL)**

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

Community Planning Director Stan Boling recapped his memorandum of October 1, 2009, using a PowerPoint presentation and aerial map (copy on file). He explained the project and the application for special exception use approval for the expansion to an existing facility for the Church of God by Faith. He requested the Board grant special exception use approval with conditions that include: (1) the additions of property and easement for the project from the adjacent property owner (John's Island Club); (2) a five-foot wide drainage and utility easement as shown on the site plan to be dedicated to the County along 58th Avenue; and (3) coordination with the U.S. Fish and Wildlife Service on the Scrub Jay issue.

The Chairman opened the Public Hearing. There being no speakers, the Chairman closed the Public Hearing.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously granted special exception use approval for the expansion of the Church of God by Faith with the following conditions:

- (1) Prior to site plan release, the applicant shall provide the following items:
 - (a) a recorded Deed for the additional property
 - (b) a recorded 5 foot wide drainage and utility easement along 58th Avenue

(c) a recorded landscape easement on the north perimeter of the site

(d) verification from United States Fish and Wildlife Service (USFWS) that the project will have no adverse impacts, and

(2) Prior to the issuance of a Certificate of Occupancy, the north and east perimeter buffers shall be completed as shown on the approved Site Plan, all as recommended in the memorandum of October 1, 2009.

**10.A.2. APPROVAL OF AN AMENDMENT TO THE COUNTY NOISE AND VIBRATION CONTROL
ORDINANCE TO ADDRESS EMERGENCY POWER GENERATORS: LAND DEVELOPMENT
REGULATIONS CHAPTER 974 (LEGISLATIVE)**

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

Chief of Environmental Planning and Code Enforcement Roland DeBlois reviewed his memorandum dated October 6, 2009, providing background information on an Amendment that addresses emergency power generators. He spoke about a Code Enforcement Noise Ordinance violation case concerning a whole-house generator, and the fact that the Noise Ordinance does not address the use of emergency power generators. He explained the proposed Amendment, the exemption from noise restrictions, and the recommendations of the Professional Services Advisory Committee (PSAC) and the Planning and Zoning Commission (PZC).

There was a brief discussion regarding buffering, the Amendment changes, and issues pertaining to the specific time frames of generator operation.

The Chairman opened the Public Hearing.

Cathy McKinzie, AT&T Area Director, thanked the Board and staff for working with her company, and reiterated that the exemption from noise restrictions applies to all utilities.

Rene Renzi, Waverly Place, wanted to know if the noise restrictions apply to private home generators, and how the County would enforce it.

Chairman Davis and Chief DeBlois explained the operation testing guidelines, the procedures, and the minimum manufacturer specification range.

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

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously adopted **Ordinance 2009-016**, concerning an amendment to its Land Development Regulations (LDRs); providing for amendments to Chapter 974, Noise and Vibration Control, by creating an exemption for emergency power generators with certain conditions; and by providing for repeal of conflicting provisions; codification; severability; and effective date.

10.A.3. CONSIDERATION OF PROPOSED AMENDMENTS TO PROVIDE FOR PERMANENT EXCEPTIONS TO CERTAIN LDRS FOR INDIVIDUAL DEVELOPMENT PROJECTS: LAND DEVELOPMENT REGULATIONS CHAPTER 902 (LEGISLATIVE)

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

Director Boling outlined his memorandum of October 1, 2009 by using a PowerPoint presentation (on file). He provided the Board with background and updates to the temporary suspensions, and the recommendations for the permanent exceptions. He also spoke about the existing options for flexibility/exceptions, the proposed permanent exceptions, and the proposed process. Director Boling stated that the PSAC had recommended the Board adopt the proposed Ordinance with minor changes, the PZC had recommended opposition, and staff felt the proposed Ordinance represented the most workable approach for a permanent exception option.

Commissioner O'Bryan supported staff's recommendation, but felt the final authorization should be approved by the Board of County Commission or the Planning and Zoning Commission, which would expedite the process and allow for public input. He also believed that some of the items discussed were part of the initial site planning and should not carry as much urgency. Commissioner O'Bryan wanted the Public Notice to be sent out before the final authorization is approved.

Commissioners Davis, Flescher, and Wheeler concurred with Commissioner O'Bryan and expressed their concerns.

The Chairman opened the Public Hearing.

Joseph Paladin, President, Black Swan Consulting, supported a temporary exception, but felt a permanent exception would set "bad policy."

Discussion ensued regarding the purpose and intent of the regulation, and bringing this back to the Board after six to twelve months (after the first use) for reassessment.

Bob Johnson, Coral Wind Subdivision, questioned prior zoning on Oslo Road. Chairman Davis explained that this change would not apply to zoning or height restrictions.

Brian Carman, Indian River Neighborhood Association (IRNA), believed the process to be flawed. He encouraged transparency through Public Hearings and by Public Notices being sent to property owners.

Mr. Paladin reiterated that he did not support a permanent exception without the process going through the current policy.

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

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, to adopt **Ordinance 2009-017** inclusive of a Public Notice; a final approval by the Board of County Commission after a Public Hearing; and a one year reassessment of the LDR change, concerning an amendment to its Land Development Regulations (LDR); providing for amendments to Chapter 902, Administrative Mechanisms, by creating the role of Board of County Commissioners in Chapter 902 to hear requests for permanent exceptions for individual development projects; providing for other modifications in Chapter 902; and by providing for repeal of conflicting provisions; codification; severability; and effective date.

Discussion ensued pertaining to the Public Notice being mailed to each property owner prior to the public hearing, potential inconsistencies within the LDR, and timing issues.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board adopted **Ordinance 2009-017, inclusive of a Public Notice; a final approval by the Board of County Commission after a Public Hearing; and a one year reassessment of the LDR change,** concerning an amendment to its Land Development Regulations (LDR); providing for amendments to Chapter 902, Administrative Mechanisms, by creating the role of Board of County Commissioners in Chapter 902 to hear requests for permanent exceptions for individual development projects; providing for other modifications in Chapter 902; and by providing for repeal of conflicting provisions; codification; severability; and effective date.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM SPENCER SIMMONS REGARDING COUNTY ORDINANCE 201.22 - DELETED

10.B.2. REQUEST TO SPEAK FROM JOSEPH PALADIN, PRESIDENT, BLACK SWAN CONSULTING, REGARDING PUBLIC DISCUSSION AND PRESENTATION ITEMS

Joseph Paladin sought clarity of procedures regarding public discussion items. He recalled having brought an item relating to sidewalk issues to the Board, and Commissioner Solari opposing the Motion whereby he agreed to the substance but not the process. Mr. Paladin said he searched for a proper procedure, but realized there was none. He commented on the

current form which the Commission Office uses for *Public Discussion Items*, offered suggestions, and wanted to see their procedures in an outline format.

There was a brief discussion regarding the various actions of the Board, and the different procedures taken by the Board.

Attorney Collins advised the Commissioners that it was appropriate to take action on matters under *Public Discussion Items*. He said it would depend on what is being presented, how much information is given, and whether it is sufficient to take action. He acknowledged that the Chairman rules as to whether a Motion comes before the Board, and how the other three members could overrule.

Commissioner Solari believed there should be an informal portion to the Agenda, like *Public Speaking*, so the public could come before the Board without formal presentation or backup. Commissioner Solari used previous situations that occurred to emphasize the importance of an open transparent government.

The Commissioners voiced their feelings and concerns over items being brought back to the Board, giving staff direction, leaving the *Public Discussion Items* open for citizens to address their concerns, and the Board's openness and flexibility to the public.

Administrator Baird declared that as a general rule, items under *Proclamations and Presentations* should not be voted on.

Chairman Davis called a break at 10:54 a.m., and reconvened the meeting at 11:07 a.m., with all members present.

10.C. PUBLIC NOTICE ITEMS

County Attorney Collins read the following into the record:

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING OCTOBER 20, 2009 - COUNTY INITIATED REQUEST: CHANGE LAND USE DESIGNATIONS OF THE FOLLOWING PROPERTIES FROM VARIOUS LAND USE DESIGNATIONS TO C-1, CONSERVATION-1 (0 DENSITY) (LEGISLATIVE)

10.C.1.A. ±16.22 ACRES LOCATED AT 7770 JUNGLE TRAIL FROM L-1, LOW DENSITY RESIDENTIAL-1 DISTRICT TO C-1

10.C.1.B. ±47.25 ACRES LOCATED AT 800 GARDENIA STREET FROM C-2/C-3, CONSERVATION – 2 AND CONSERVATION -3 DISTRICTS, TO C-1

10.C.2. NOTICE OF SCHEDULED PUBLIC HEARING NOVEMBER 3, 2009 - COUNTY INITIATED REQUEST: CHANGE LAND USE DESIGNATIONS OF THE FOLLOWING PROPERTIES FROM VARIOUS LAND USE DESIGNATIONS TO C-1, CONSERVATION-1 (0 DENSITY) (LEGISLATIVE)

10.C.2.A ±27.97 ACRES LOCATED AT 9700 WATER VLIET AVENUE FROM L-1, LOW DENSITY RESIDENTIAL – 1, AND C/I, COMMERCIAL/INDUSTRIAL DISTRICT, TO C-1

10.C.2.B ±37.48 ACRES LOCATED AT 7775 & 7780 85TH STREET FROM AG-1, AGRICULTURAL – 1 DISTRICT, AND R, RURAL RESIDENTIAL DISTRICT, TO C-1

10.C.2.C. ±70 ACRES LOCATED AT THE EAST END OF OSLO ROAD, SOUTH SIDE FROM C-2 CONSERVATION – 2 AND L-2, LOW DENSITY RESIDENTIAL -2 DISTRICT, TO C-1

10.C.2.D. ±457.86 ACRES LOCATED APPROXIMATELY 2 MILES WEST OF INTERSTATE 95 AND APPROXIMATELY 1.5 MILES NORTH OF SR 60 FROM AG-2, AGRICULTURAL-2 DISTRICT, TO C1

10.C.3. NOTICE OF SCHEDULED PUBLIC HEARING NOVEMBER 3, 2009 - 510, LLC'S REQUEST: CHANGE THE LAND USE DESIGNATION OF APPROXIMATELY ±6.4 ACRES LOCATED AT 4650 85TH STREET SEBASTIAN, FROM L-2, LOW DENSITY RESIDENTIAL – 2 (UP TO 6 UNITS/ACRE), TO C/I, COMMERCIAL/INDUSTRIAL (LEGISLATIVE)

10.C.4. NOTICE OF SCHEDULED PUBLIC HEARING NOVEMBER 3, 2009 - UNITED INDIAN RIVER PACKERS, LLC'S REQUEST: CHANGE THE LAND USE DESIGNATION OF APPROXIMATELY ±6.4 ACRES LOCATED AT 4310 77TH STREET VERO BEACH, FROM C/I, COMMERCIAL INDUSTRIAL, TO L-2, LOW DENSITY RESIDENTIAL – 2 (UP TO 6 UNITS/ACRE) (LEGISLATIVE)

NO BOARD ACTION REQUIRED OR TAKEN

11. COUNTY ADMINISTRATOR'S MATTERS

11.A. VERO BEACH FIGHTING INDIANS BAND BOOSTERS, INC.

(Clerk's Note: This Item was heard after Item 12. G.1. and is placed here for continuity.)

Administrator Baird announced that the Vero Beach High School Marching Band had requested to use and waive the fees for the Fair Ground AG Pavilion and bleachers, so they could raise funds to travel to Carnegie Hall.

The Commissioners discussed the Band Boosters utilizing the facilities that they already possess, and voiced concern about asking taxpayers to subsidize a trip that is more of a privilege than a necessity.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Wheeler, the Board by a 4-1 vote (Chairman Davis opposed), DENIED the request to reduce the non-profit rental fees, and approved renting the Indian River County Fair Grounds AG Pavilion and equipment to the Vero Beach Fighting Indians Band Boosters, Inc., at the published non-profit rate.

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. POLICY FOR PARKS EQUIPMENT AND FACILITY RENTAL RATES – FOR PROFIT AND
NON-PROFIT**

(Clerk's Note: This Item was heard prior to Item 11.A., and is placed here for continuity.)

Management and Budget Director Jason Brown recapped his memorandum dated October 7, 2009, reviewing the current equipment and facility rental rates for profit and non-profit organizations.

Commissioner Solari commented on For Profit/Private Rates, and competing with the private sector. He suggested using a blanket percentage instead of using a percentage which is less than our actual cost.

Discussion ensued pertaining to private entities wanting to use/rent various County equipment and fairground facilities, rental fee rates, the possibility of supporting private enterprise, and getting out of the rental business.

Vice Chairman Flescher wanted an accurate assessment of how many times the County equipment was used for County originated functions, how much the County is saving, and how much it has cost, before making a decision to sell the equipment.

Commissioner O'Bryan suggested that until staff can return with a cost benefit study, that the Board stick with the current rates as presented, and adopt the policy that disallows reductions or waivers.

Commissioner Solari asked the County Administrator to consider using a blanket percentage of 125% to 130% (instead of 110%) of the cost for private sector use.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board unanimously approved the current fee structure, which includes a lower fee for non-profit organizations, and adopted a policy that disallows reductions or waivers from the approved rates,

and using a blanket percentage of 125% to 130% for private sector use.

12.H. RECREATION - NONE

12.I. PUBLIC WORKS

12.I.1. SECTOR 3 BEACH RESTORATION FDEP PERMIT MODIFICATION FOR UPLAND SAND

(Clerk's Note: Chairman Davis passed the gavel to Vice Chairman Flescher, who assumed the Chairman position, due to a declared voting conflict. Form 8B, Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers is on file in the office of the Clerk to the Board.)

Public Works Director Chris Mora recapped the memorandum dated October 7, 2009, and reported that he was bringing additional information to the Board on the Sector 3 Beach Project asking the Board to reconsider the Sector 3 Contract award. He stated that Ranger Construction did not have a formal written commitment with the County because as stated in the Contract, if an upland sand bidder is utilized, the County would hold off on awarding the project within five working days of receipt of the permit modification to utilize upland sand from the Florida Department of Environmental Protection (FDEP). He summarized the details of the project redesign, the 26% sand volume reduction, permit modification, impacts to the near shore reef, and the design from Coastal Technology Corporation (Coastal Tech).

Michael Walther, President of Coastal Technology Corporation, Inc. updated the Board on the project, explained the basis of the project modification, the permit application modification, FDEP rule requirements, possible reef impacts, the comparisons in sand grain size parameters, renourishment intervals, and permitting issues.

Director Mora acknowledged that the offshore sand source and the upland sand sources were informed of the sand volume reduction analysis.

The Commissioners posed questions to Mr. Walther regarding the different sand grain sizes, which sand would be closest to the native beach, the overfill ratio, the significance of the volume reduction, whether the existence of the reef was considered during the first analysis, and whether the reef would continue to be monitored.

Mr. Walther and Tim Fontaine, Coastal Technology Corporation, clarified that the original sand samples submitted by the bidders was being staged for submission to the agencies, with the exception of Fisher Mines, who had a slight modification in grain size.

Discussion ensued regarding the timing of the beach project, the process that would be required if the Board would change the sand source or sand quality, and model predictions of sand migration.

Vice Chairman Flescher called a break at 12:41 p.m. and reconvened the meeting at 1:16 p.m., with all members present.

Robert Brantley, P.E., FDEP Bureau of Beaches and Wetland Resources, (via teleconference) addressed the Commissioner's questions as to whether the project could be redesigned to put 472,000 cubic yards of sand on the beach in the upcoming season by using upland sand, placing more sand in the northern half of Sector 3 to allow for the sand to migrate south, if the shape of the sand grain (offshore versus upland) would give a natural sediment advantage, hardbottom impacts, responses to the threat of reef impacts, and whether armoring and hardening the beach would be the solution to protecting the beach from erosion.

Mr. Brantley related that Indian River County had established a long term program of managing and maintaining their beaches, and in the past had used upland source material, which performed very well. He made it known that County staff did an excellent job of getting the very

best material out of the sand mines and onto the beaches. He felt the upland source would not only be readily available, but also the best economic alternative.

Vice Chairman Flescher opened the floor to public comment.

Steve Smith, Ranch Road Lake Mine of Vero Beach, introduced **Dr. Gary Zarillo**, Professor, Florida Institute of Technology (FIT), who provided the Board with background and statistics on sand sources and grain size distribution. He clarified points relating to the suitability and expected performance of the upland sources, and believed both would perform equally well.

Commissioner Solari said he wanted to know what the County needs to do to persuade FDEP to provide the permit so we can protect our beach property.

Dr. Zarillo suggested staff ask the owners of the sand mines how to approach the situation. He spoke about the comparisons in sand sources, statistical pools, and suggested mixing and matching the sources to cure the “hot spots.”

Mr. Brantley agreed with Dr. Zarillo’s comments. He believed the engineering design tools that are available focus on the mean grain size and work very well. He emphasized that a 1/10mm difference in grain size has shown to be significant in the design and construction of the projects around the state. He acknowledged that reducing the amount of material due to the slope, agrees with generally accepted engineering practices in the monitoring of Florida constructed projects over the past couple decades.

Michael Ochsner, 130 Waterway Lane, emphasized the urgency of the project and supported the offshore sand source.

Nick Stewart, President of Stewart Mining, spoke about the mean grain sizes of the offshore cores and how they relate to the onshore cores.

William Troxell, 916 Orchid Point Way, was concerned that the profile of the reef was not mentioned in previous meetings. He asked that the original projection of sand be placed on the beach.

State Representative Ralph Poppell believed the Commissioners did the “right thing” based on the information and technology that was presented at that time. He supported keeping the dollars local, and felt that as long as everything stays within the guidelines and meets the criteria, that FDEP would not have a problem expediting their portion of the permitting process. He felt the approach should be, “what can they do to help us solve our goals” of lowering employment, putting people to work, and accomplishing our goal of replenishing our beaches, not “will they approve what we send them.” He offered suggestions on the process, and conveyed that individuals in the Legislature, House, and Senate are willing to support the County’s goals. He thought the Board should codify their decision based on what they had already decided, decide on the best and most expedient way to address the situation, and consider the economy.

Bob Schafer, Ruby Avenue, Vice President of Ranger Construction Industries, Inc., voiced frustration with staff for not conveying their concerns over the reduced quantities of sand to him or his company, nor soliciting suggestions as to how to offset the reductions. He offered suggestions and solutions on the beach restoration and the permit process.

Bill Glynn, 1802 E. Barefoot Place, Vero Beach, serves on the Beach and Shores Advisory Committee, and is President of both the North Beach Civic Association and the Barrier Island Coalition. He expressed concern over the reduction of sand, assured the Board that the Governor’s office would support the project, and stressed the urgency of moving forward.

Penny Chandler, Indian River County Chamber of Commerce, agreed with State Representative Poppel and Mr. Glynn. She wanted the Commissioners to reaffirm the position

they had taken previously (using the upland sources), use the Legislature to help move this forward, and not jeopardize the tax base of the County.

Commissioner Wheeler said he needed to look at what is best for the entire County - the economy, the beach, and the residents, as well as the jobs it would provide.

MOTION was made by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, for discussion, to continue with Ranger Construction as the Contractor, pursue the permit, and to do everything possible, with the help of our Governor and Legislators, to put the maximum amount of sand on the beach.

Attorney Collins discussed the Board's previous intention to award the bid to Ranger, and mentioned that unless a Motion to reconsider is approved, the previous action stands.

(Clerk's Note: Commissioner Wheeler restated his Motion based on Attorney Collins' advice.)

MOTION was AMENDED by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, to DENY staff's recommendation to reconsider the Sector 3 contract award in light of the results of the project design.

Vice Chairman Flescher clarified with Attorney Collins that if there is no change today, a Motion would not be necessary.

Steve Smith, owner of the Ranch Road Lake Sand Mine, commented on the characteristics of the sand in Mr. Stewart's mine.

Commissioner Solari asked Attorney Collins what the Board would be moving forward with - 472,000 or 348,000 cubic yards of sand. Attorney Collins conveyed that it would be for the 348,000 cubic yards. Commissioner Solari believed the 348,000 cubic yards would be a different project, not the project that he had originally supported. He felt this was a material change which frustrates the purpose of the project.

Vice Chairman Flescher asked Mr. Brantley about the likelihood of the upland sand source following through with the original project of 472,000 cubic yards of sand, and getting it approved.

Mr. Brantley did not feel optimistic and explained his reasons why.

A lengthy discussion ensued as to maximizing the amount of sand (in the design), the mean grain size parameters in characterizing the reductions that would occur, a no impact profile, the consideration of a two phase project, and the possible delays in submitting two modifications.

Brian Davis, Sebastian, questioned Mr. Brantley about the overfill factor of one, and hard bottom encroachment issues.

Nick Stewart related the details of the sand samples that were submitted in his original package.

Commissioner Solari wanted to know if it would be possible to recompute the numbers or process in a way that would meet the required mean grain size for the project so we could match or exceed the offshore sand source and be able to place 472,000 cubic yards on the beach.

Chuck Cramer, 10729 US 1, Sebastian, responding to Commissioner Solari, felt that could be achieved by combining all the upland sand sources. He said that if he could make the identical material to the native beach, it would not fit in a template that was designed for the offshore borrow pits. He encouraged the Board to move this forward.

Mr. Brantley discussed the details and specifics of a composite grain size material that is courser than the upland source and of good quality material. He felt the upland source material is beach compatible and used within the County with much success. He said the differences are slight and by using the design tools, the final product is significant.

Commissioner Solari wanted to know how long it would take to develop a redesign so a permit package, for close to 472,000 cubic yards of sand, could be presented, while still making it cost effective.

Mr. Cramer believed it could happen quickly since the Consultant has the material readily available.

Administrator Baird explained how modeling was accomplished, acknowledged the time constraint involved with putting sand on the beach, and clarified that staff was bringing this forward today to relay the results and seek resolution.

Mr. Walther suggested the Board consider submitting the application as it currently stands, consistent with the design approach; then after Ranger and their suppliers find a better way to improve the quality of sand, amend the application to reflect the use of that sand.

Further discussion ensued regarding the amendments to permitting, possibly increasing the volume of sand, redesigning the template, and beach fill.

MOTION WAS AMENDED by Commissioner Wheeler,
SECONDED by Vice Chairman Flescher, to expeditiously
move this forward with the upland sand source.

Donald Dansby stated that Stormwater and Underground, LLC (SUI), aka the Brian Davis Mine, had the best sand and the lowest price.

Mr. Walther did not believe a revised or redesigned template was needed. He felt the design template that was proposed for off shore sand could be used unless Ranger brings back a sand quality that is less, in which case it would need to be redesigned. He conveyed that he would need two to four weeks to incorporate the alternatives brought forward for consideration.

Commissioner Wheeler stressed that at the conclusion of today's Board of County Commission meeting, Mr. Walther and Dr. Gorham meet with the sand mining individuals to set up an immediate meeting to move this forward.

Administrator Baird stated that he would like to have a standard item on the Agenda every week in order to provide an update to the Board.

Charles Rowan, Rowan Construction, felt the SUI mine has the best grain size sand, and wanted the Board to include the SUI mine to put the 472,000 cubic yards of sand on the beach.

Attorney Collins indicated that this would not be an option; he considered it to be a different proposal.

Vice Chairman Flescher CALLED THE QUESTION and by a 4-0 vote (Chairman Davis recused himself), the Motion carried. The Board directed staff to expeditiously move forward with the Sector 3 Contract for beach restoration with Ranger Construction Industries, Inc.

(Clerk's Note: Vice Chairman Flescher returned the gavel to Chairman Davis.)

The Chairman called a break at 3:36 p.m. and reconvened the meeting at 3:47 p.m., with all members present.

12.J. UTILITIES SERVICES

12.J.1. 129TH PLACE PETITION WATER SERVICE, A PORTION OF INDIAN RIVER ACRES, INDIAN RIVER COUNTY PROJECT NO. UCP-4038, RESOLUTION IV – FINAL ASSESSMENT

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-0161**, certifying "as-built" costs for installation of water service to 129th Place (a portion of Indian River Acres) Indian River County, Florida, and such other construction necessitated by such project; providing for formal completion date, and date for payment without penalty and interest.

13. COUNTY ATTORNEY MATTERS - NONE

14. COMMISSIONER ITEMS

14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN

14.A.1. ASSISTANT COUNTY ATTORNEYS' CONTRACTS

Chairman Davis voiced concern over the County Attorney and County Administrator's severance packages. He found it interesting that the severance packages would allow up to 12 months for termination. He felt that one month of severance for every twelve months was a little more than what he felt comfortable with.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, for discussion to allow one month of severance for each year up to three years, then one additional month of severance for every additional five years of service, with a cap of six months.

A lengthy discussion ensued regarding contracts, severance packages, termination of employees, and whether certain individuals work/worked with a contract and/or severance package.

Chairman Davis questioned the governing Ordinance and wanted direction for future assistance for those who already have contracts. Attorney Collins conveyed that the Ordinance could be changed to reflect that Assistant County Attorneys do not require contracts, and that it would be applied as such when going forward, but that it could not be applied retroactively.

Commissioner O'Bryan suggested waiting until the new County Attorney is hired to see what his preference would be regarding contracts and severance packages.

Commissioner Solari agreed with Commissioner O'Bryan, and wanted to table or suspend his Motion until the new County Attorney is hired.

Commissioner Solari and Vice Chairman Flescher
WITHDREW the MOTION.

Commissioner Wheeler suggested bringing the Ordinance back for discussion.

Chairman Davis emphasized that the Board needs control over this because the template that was once approved by the Board, is obviously a template that is not being used by anyone else. He felt the Ordinance needed to be addressed since the templates under the Ordinance are different for each division.

MOTION WAS MADE by Vice Chairman Flescher to suspend or eliminate any future temporary or permanent contracts with the Assistant Attorneys or any future hiring of Assistant Attorneys or Assistant Administrators. Motion FAILED for lack of a SECOND.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Chairman Davis, to bring the Ordinance and template back for discussion.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

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

The Chairman announced that immediately upon adjournment of the Regular Board of County Commission Meeting, the Board would reconvene as the Board of Commissioners of the Solid Waste Disposal District Board. Those Minutes are being prepared separately.

15.B.1. REGULAR MEETING OF AUGUST 18, 2009

15.B.2. FINAL PAY & RELEASE OF RETAINAGE TO BARTH CONSTRUCTION, INC. RELATED TO THE EXPANSION OF THE FELLSMERE CUSTOMER CONVENIENCE CENTER

15.B.3. AMENDMENT NO. 1 TO WORK ORDER NO. 15 TO GEOSYNTEC CONSULTANTS, INC. FOR FUEL TANK RELOCATION FROM FORMER DOT FACILITY TO LANDFILL

15.B.4. CANCEL 2009 PETITION HEARING, SOLID WASTE DISPOSAL DISTRICT ASSESSMENT FEES

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 4:13 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/LAA/2009Minutes