

JEFFREY K. BARTON  
Clerk to the Board



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OF DECEMBER 8, 2009

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**JEFFREY K. BARTON**

Clerk to the Board



**December 8, 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, December 8, 2009. Present were Chairman Peter D. O'Bryan, and Commissioners Wesley S. Davis, Joseph E. Flescher, and Gary C. Wheeler. Vice Chairman Bob Solari was absent. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Maureen Gelfo.

**1. CALL TO ORDER**

Chairman O'Bryan called the meeting to order at 9:00 a.m.

**2. INVOCATION**

Reverend Jack Diehl, Our Savior Lutheran Church, delivered the Invocation.

### **3. PLEDGE OF ALLEGIANCE**

Commissioner Wesley S. Davis led the Pledge of Allegiance to the Flag.

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

Chairman O'Bryan requested the following changes to today's Agenda:

*MOVE: ITEM 7.D. INCREASING BID THRESHOLD, REVISING PURCHASE REQUISITION GUIDELINES AND INCREASING BLANKET PURCHASE ORDER THRESHOLDS TO CONSENT AGENDA, ITEM 8.H.*

*DELETION: ITEM 8.E. CHANGE OF SCHEDULED DAYS OPENED AND CLOSED AT SHOOTING RANGE*

*ADDITION: ITEM 13.A. FELLSMERE FIRE HYDRANT FINDINGS*

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Vice Chairman Solari absent), the Board approved the Agenda as amended.

Chairman O'Bryan conveyed that Vice President Solari was unable to be present at today's meeting.

**5. PROCLAMATIONS AND PRESENTATIONS**

**5.A. PRESENTATION OF 2009 COOPERATOR OF THE YEAR PROCLAMATION TO BRIAN AND VALERIE QUANT OF WHITE RABBIT ACRES BY DAVID E. GUNTER, CHAIRMAN, THE INDIAN RIVER SOIL AND WATER CONSERVATION DISTRICT**

*(Clerk's Note: This item was heard following Item 5.B. and is placed here for continuity).*

**David E. Gunter**, Chairman of the Indian River Soil and Water Conservation District, read and presented the Proclamation to Brian and Valerie Quant of White Rabbit Acres.

**5.B. PRESENTATION OF PROCLAMATION DESIGNATING DECEMBER 18, 2009 AS "SANTAS FOR SENIORS" DAY**

*(Clerk's Note: This item was heard following Item 4, and is placed here for continuity).*

Commissioner Wheeler read and presented the Proclamation to Jennifer Jones, Director of Corporate & Workplace Giving for United Way, and Jenna O'Connor, Program Director at the Senior Resource Association. Ms. Jones described the Santas for Seniors program and the Fill-the-Bus Challenge and on behalf of the Senior Resource Association, Ms. O'Connor thanked Commissioners and the United Way for helping the community's senior citizens.

**6. APPROVAL OF MINUTES-NONE**

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

**7.A. CITY OF VERO BEACH APPOINTMENTS TO COUNTY COMMITTEES AND REGIONAL BOARDS FOR 2009-2010**

The list of newly appointed council members and appointments from the City of Vero Beach to County committees and regional boards for the period of November 2009 to November 2010 is on file in the Office of the Clerk to the Board.

**7.B. TREASURE COAST REGIONAL PLANNING COUNCIL 2009/2010 MEMBER AND ALTERNATE MEMBER APPOINTMENTS**

The list of annual appointments for Indian River County and its Alternates to the Treasure Coast Regional Planning Council for 2009/2010 is on file in the Office of the Clerk to the Board. They are as follows: Commissioner Gary C. Wheeler, Member; Commissioner Bob Solari, Member; City of Vero Beach Vice Mayor Sabin Abell, Member; and Commissioner Peter D. O'Bryan, Alternate; Commissioner Joseph E. Flescher, Alternate; and City of Sebastian Vice Mayor Jim Hill, Alternate.

**7.C. RESIGNATION OF REPRESENTATIVE FROM THE UNINCORPORATED AREA SOUTH OF STATE ROAD 60 TO THE PARKS AND RECREATION COMMITTEE**

Noted for the record was the resignation of Mr. Scott Chisholm, representative from the unincorporated area south of SR60 to the Parks and Recreation Committee. Mr. Chisholm submitted his resignation November 30, 2009; his term would have expired in 2010.

**7.D. INCREASING BID THRESHOLD, REVISING PURCHASE REQUISITION GUIDELINES AND INCREASING BLANKET PURCHASE ORDER THRESHOLDS**

Moved to Item 8.H.

## 8. CONSENT AGENDA

Chairman O'Bryan pulled for discussion, Item 8.H.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved the Consent Agenda, as amended.

### 8.A. APPROVAL OF WARRANTS AND WIRES, NOVEMBER 20, 2009 TO NOVEMBER 30, 2009

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of November 20, 2009 to November 30, 2009, as recommended in the memorandum of November 30, 2009.

### 8.B. RESOLUTION ADOPTING THE FLORIDA STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS "POSITION PAPER" TO DELAY THE REQUIREMENT TO PURCHASE THE STATE CERTIFIED AUTOMARK VOTING SYSTEM UNTIL 2016

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved **Resolution 2009-181**,

adopting the Florida State Association of Supervisors of Elections (FSASE) "Position Paper" to delay the requirement to purchase the State Certified Automark voting system until 2016.

**8.C. REQUEST TO ENTER INTO A PUBLIC TRANSPORTATION JOINT PARTICIPATION AGREEMENT (JPA) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)**

ON MOTION by Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved Resolution **2009-182**, authorizing the execution of a Public Transportation Joint Participation Agreement with the Florida Department of Transportation.

**8.D. STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SALE OF SURPLUS LAND C.R. 512 FELLSMERE**

ON MOTION by Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved **Resolution 2009-183**, approving the purchase of real property from the State of Florida and declaring a public purpose, and providing an effective date.

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

**8.E. CHANGE OF SCHEDULED DAYS OPENED AND CLOSED AT SHOOTING**

**RANGE**

Deleted

**8.F. FLORIDA DEPARTMENT OF LAW ENFORCEMENT FY 2009/2010 EDWARD**

**BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM**

ON MOTION by Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved: (1) the Certificate of Acceptance of Subgrant Award for the Indian River County Substance Abuse Drug Testing Program Grant (FY 2009/2010 Edward Byrne Memorial Justice Assistance Grant [JAG] Program), in the amount of \$25,979; and (2) the Agreement with the Substance Abuse Council of Indian River County, as recommended in the memorandum of November 30, 2009.

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

**8.G. ACCEPTANCE OF PHASE II ENERGY SAVINGS AUDIT AND APPROVAL OF**

**SAVINGS**

ON MOTION by Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved: (Energy Conservation Measures) ECM 1, 2, and 4 included in the Phase II Technical Audit; and (2) authorized the Chairman to execute the Energy Savings

Guarantee and Implementation contracts with FPL Energy Services, Inc., after review and approval of the County Attorney's office, as recommended in the memorandum of December 1, 2009.

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

**8.H. INCREASING BID THRESHOLD, REVISING PURCHASE REQUISITION GUIDELINES AND INCREASING BLANKET PURCHASE ORDER THRESHOLDS**

Chairman O'Bryan requested a brief summary of staff's request to increase bid and blanket purchase order thresholds, and to revise purchase requisition guidelines.

General Services Director Thomas Frame updated the Board on the necessity to update and streamline current purchasing procedures set forth in the County's Purchasing Manual, which is currently being rewritten by staff. He recapped the memorandum of December 1, 2009 to provide background on staff's recommendations to increase the Minimum Bid Threshold amount from \$5,000 to \$25,000; to increase the Mandatory Bid amount to \$25,000; and to increase the amount of a Blanket Purchase Order from \$5,000 to \$25,000, and the amount of a single item in a Blanket Purchase Order from \$200 to a maximum of \$999.99. Director Frame said the aforementioned items were critical in providing some relief to the departments in the type of paperwork they process.

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 4-0 vote (Vice Chairman Solari absent), the Board approved to include the following specifications in the revised Purchasing Manual: (1) increase the Minimum Bid Threshold amount from \$5,000 to \$25,000; (2) increase the Mandatory Bid

amount in purchase requisition guidelines to \$25,000; and (3) increase the amount of a Blanket Purchase Order from \$5,000 to \$25,000, and the amount of an individual item in a Blanket Purchase Order from \$200 to a maximum of \$999.99, as recommended in the memorandum of December 1, 2009.

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

**10. PUBLIC ITEMS**

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

**10.B. PUBLIC DISCUSSION ITEMS**

**10.B.1. REQUEST TO SPEAK FROM WILLIAM M. WELLS REGARDING SETBACKS**

**William Wells**, 8800 44<sup>th</sup> Avenue, displayed slides of various documents heretofore provided to the Board in an informational packet (copy on file) containing details, pertinent sections of County Code, correspondence, maps, surveys, and assorted photographs and documents relative to his assertions of code violations and improper or after-the-fact permitting for improvements made to a neighboring property located at 8810 44<sup>th</sup> Avenue, owned by Mr. Chestnut. Mr. Wells outlined some of the alleged violations as follows: improper setback distance of the Chestnut's dock, dock extension, boat lifts, block wall fence, sea wall, and pool house from the mean high water line; riprap (fill) which had been placed along the wetland shoreline; no permit for the second of two underground propane tanks; and improper height of the front wall and gate.

Responding to Commissioner Wheeler's query, Mr. Wells clarified that his primary objective in pursuing his complaints was to bring certain structures on the subject property to code, by either removing them, or in the case of the fence, by taking it down to 4 feet, which he felt was consistent with code.

A lengthy discussion ensued during which Mr. Wells provided a detailed accounting on violations which he maintained had occurred at the subject property, and staff elaborated on the sections of County Code relating to the issues concerning Mr. Wells. Staff also explained County policy on after-the-fact permit violations.

Commissioners, staff, and Mr. Wells continued to discuss the alleged violations.

Commissioner O'Bryan felt that staff had been consistent in its analyses that Mr. Chestnut's permits are appropriate; however, the Board would have Code Enforcement look into the additional propane tank for which there is no permit. He advised Mr. Wells to contact the Department of Environmental Protection (DEP) for violations concerning the dock or the riprap, noting that the County has already notified them regarding Mr. Chestnut's failure to respond to DEP's directive to relocate one of his boat lifts.

*The Chairman called a break at 10:38 a.m. and reconvened the meeting at 10:47 a.m., with all members present.*

**10.C. PUBLIC NOTICE ITEMS**

**10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING DECEMBER 15,**

**2009:**

**CONSIDERATION OF PROPOSED AMENDMENTS TO THE RS-6, RT-6, RM-6,**  
**RM-8, AND RM-10 MAXIMUM BUILDING COVERAGE REGULATIONS**

**CHAPTER 911**

County Attorney Collins II read the notice into the record. He noted that on December 15, 2009, there would also be a Continuation of the Public Hearing on the Ordinance to Create a New Gifford Community Center Municipal Service Taxing Unit (M.S.T.U)

## **11. COUNTY ADMINISTRATOR MATTERS-NONE**

## **12. DEPARTMENTAL MATTERS**

### **12.A. COMMUNITY DEVELOPMENT-NONE**

#### **12.A.1. APPROVAL OF BID AWARD FOR REHABILITATION OF SEVEN HOMES**

#### **APPROVED UNDER THE HURRICANE WILMA COMMUNITY DEVELOPMENT**

#### **BLOCK GRANT DISASTER RECOVERY INITIATIVE**

Director Keating explained that this was the third group of recipients of the Hurricane Wilma Community Development Block Grant (CDBG) Disaster Recovery Initiative. He said that staff finds the bids acceptable, and explained that there was a requirement to ensure that no conflict of interest exists between the Commissioners and contractors performing the rehabilitation work.

Commissioners Flescher, Davis, O'Bryan, and Wheeler, respectively, attested there were no conflicts of interest.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Vice Chairman Solari absent), the Board approved the following contractors and total awards for each of the following applicants: 1. Ewar, Terry (3821 44<sup>th</sup> Street) to M.W. Patrick Jr., Ft. Pierce, FL for the total amount of

\$4,915.20; 2. Council, Ernie (4711 30<sup>th</sup> Ave.) to M.W. Patrick Jr., Ft. Pierce, FL for the total amount of \$5,250.00; 3. Johnson, Mary (4855 32<sup>nd</sup> Ave.) to M.W. Patrick Jr., Ft. Pierce, FL for the total amount of \$5,959.20; 4. Dillard, Henry (4726 28<sup>th</sup> Court) to M.W. Patrick Jr., Ft. Pierce, FL for the total amount of \$8,019.60; 5. Barton, Bertha (2836 48th Street) to McAlhany Construction Company, Vero Beach, FL for the total amount of \$2,262.00; 6. Simmons, Julia (1036 23<sup>rd</sup> Place SW) to McAlhany Construction Company, Vero Beach, FL for the total amount of \$3,564.00; and 7. Flemming, Trenisha (4445 28<sup>th</sup> Court) to McAlhany Construction Company, Vero Beach, FL for the total amount of \$3,192.00.

**12.B. EMERGENCY SERVICES-NONE**

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

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

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

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

**12.G. OFFICE OF MANAGEMENT AND BUDGET-NONE**

**12.H. RECREATION-NONE**

**12.I. PUBLIC WORKS**

**12.I.1. STAFF UPDATE – SECTOR 3 BEACH RENOURISHMENT PROJECT**

Coastal Resource Manager Jonathan Gorham advised that the County is on track for a permit issuance for the Sector 3 project in time for project construction this year. He stated that the U.S. Fish and Wildlife Service (USFWS) has issued its biological opinion, an important prerequisite for the issuance of the federal and state permits. He reported that: (1) permits from both the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection should be forthcoming by the end of December 2009; (2) the Archaeological and Cultural Survey of the project area has been concluded, with no adverse impacts found to permitting or scheduling; and (3) that temporary construction easement packets are being mailed out this week to every ocean front homeowner, which will allow staff to place sand on that portion of beach above the mean high water that is on private property. Concluding his update, Dr. Gorham said there was now a link directly from the County's website at <http://www.ircgov.com/> to the Sector 3 Beach Renourishment Project webpage.

Commissioner O'Bryan commended the U.S. Fish and Wildlife Service staff for their hard work in expediting the biological opinion.

**12.J. UTILITIES SERVICES**

**12.J.1. BARBER STREET FDOT DRAINAGE IMPROVEMENTS, RESOLUTION OF CONFLICTS WITH WATER MAIN, APPROVAL OF WORK AUTHORIZATION DIRECTIVE NO. 2009-005 BY SHELTRE & SONS CONSTRUCTION CO., INC., UCP No. 4041, WIP No. 47123536-044699-10503**

MOTION WAS MADE by Commissioner Davis,  
SECONDED by Commissioner Flescher, to approve the  
project (resolving conflicts - Barber Street FDOT Water

Main) at a total estimated cost of \$105,970.78, and authorize the Chairman to execute Work Authorization Directive No. 2009-005 to the Utilities Department of Labor Contractor, Sheltra & Sons Construction Co., Inc., for \$43,985.78.

Director of Utilities Erik Olson conveyed that he has requested reimbursement for this Federal Stimulus-funded project for Barber Street drainage improvements. The reimbursement may be handled either by incorporating the funding into the project, or by simple remuneration to the County.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Vice Chairman Solari absent), the Board approved the project (resolving conflicts - Barber Street FDOT Water Main) at a total estimated cost of \$105,970.78, and authorized the Chairman to execute Work Authorization Directive No. 2009-005 to the Utilities Department of Labor Contractor, Sheltra & Sons Construction Co., Inc., for \$43,985.78.

### **13. COUNTY ATTORNEY MATTERS-ADDITION**

#### **13.A. FELLSMERE HYDRANT FINDINGS**

County Attorney William Collins summarized the key points of this item, which relates to the County's contesting the constitutionality of the City of Fellsmere's Ordinance which holds the County responsible for payment for Fellsmere's fire hydrant maintenance, whereas State law requires the owners of the hydrants to maintain them. He advised Board members that on December 7, 2009, the County Attorney's office had received the City of Fellsmere Code Enforcement Special Master's ruling that the County must remit to the City of Fellsmere the

unpaid balance of approximately \$12,500 for hydrant inspection fees, and miscellaneous additional fees, bringing the assessment against the County to around \$25,000. Attorney Collins explained that the Special Master did not decide the issue of constitutionality in his ruling, and believed if the matter was appealed to Circuit Court, said matter would be addressed, and the County would have a strong argument. He thereafter requested authorization to file the appeal.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Flescher, to authorize the County Attorney to appeal to the Circuit Court, the City of Fellsmere Code Enforcement Special Master's ruling that the County must remit to the City of Fellsmere the unpaid balance of the Annual Fire Protection Charge for fire hydrant maintenance.

Chairman Davis asked whether it would be best to pay the outstanding fee before proceeding with the matter of the Fellsmere Ordinance's constitutionality, and Attorney Collins stated there was no benefit to paying the fee right now.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Vice Chairman Solari absent) the Board authorized the County Attorney to appeal to the Circuit Court, the City of Fellsmere's Code Enforcement Special Master's ruling that the County must remit to the City of Fellsmere the unpaid balance of the Annual Fire Protection Charge for fire hydrant maintenance.

#### **14. COMMISSIONER ITEMS**

**14.A. COMMISSIONER PETER D. O'BRYAN, CHAIRMAN-NONE**

**14.B. COMMISSIONER BOB SOLARI, VICE CHAIRMAN -NONE**

**14.C. COMMISSIONER WESLEY S. DAVIS-NONE**

**14.D. COMMISSIONER JOSEPH E. FLESCHER-NONE**

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

**15. SPECIAL DISTRICTS AND BOARDS**

**15.A. EMERGENCY SERVICES 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 Emergency Services District. Those Minutes are being prepared separately.

**15.A.1. APPROVAL OF MINUTES REGULAR MEETING OF SEPTEMBER 15, 2009**

**15.A.2. APPROVAL OF MINUTES REGULAR MEETING OF SEPTEMBER 22, 2009**

**15.A.3. APPROVAL TO ADD THREE (3) LP-12 AND TWO (2) LP-15 CARDIAC  
MONITORS TO EXISTING SERVICE AGREEMENT FOR FIRE RESCUE  
DIVISION FROM MEDTRONIC EMERGENCY RESPONSE SYSTEMS**

**15.B. SOLID WASTE DISPOSAL DISTRICT**

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

**15.B.1. APPROVAL OF MINUTES REGULAR MEETING OF SEPTEMBER 22, 2009**

**15.B.2. REQUEST TO USE THE GENERAL FUND TO COVER LANDFILL DISPOSAL FEES FOR PACE PROJECTS AND OTHER ILLEGAL DUMPING PROJECTS FOR FISCAL YEAR 2009 / 2010**

**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 11:04 a.m.

ATTEST:

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

\_\_\_\_\_  
Peter D. O'Bryan, Chairman

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

BCC/MG/2009Minutes