

JEFFREY K. BARTON  
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS  
OF JANUARY 5, 2010

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**JEFFREY K. BARTON**

Clerk to the Board



**January 5, 2010**

**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, January 5, 2010. Present were Chairman Peter D. O'Bryan, Vice Chairman Bob Solari, and Commissioners Wesley S. Davis, Joseph E. Flescher, 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 O'Bryan called the meeting to order at 9:00 a.m.

**2. INVOCATION**

~~Deputy Teddy Floyd, Indian River County Sheriff's Office,~~ Commissioner Davis delivered the Invocation.

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

Commissioner Gary C. Wheeler 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 8.G. COMPROMISE OF BARTON CODE ENFORCEMENT LIEN TO ITEM  
13.B. COUNTY ATTORNEY MATTERS*

*DELETION: ITEM 8.P. SANDRIDGE GOLF COURSE SNACK BAR CONTRACT MODIFICATION*

ON MOTION by Commissioner Davis, SECONDED by  
Commissioner Flescher, the Board unanimously approved  
the Agenda as amended.

### **5. PROCLAMATIONS AND PRESENTATIONS-NONE**

### **6. APPROVAL OF MINUTES**

#### **6.A. REGULAR MEETING OF NOVEMBER 3, 2009**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of November 3, 2009. There were none.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Davis, the Board unanimously approved the Minutes of the Regular Meeting of November 3, 2009, as written.

**6.B. REGULAR MEETING OF NOVEMBER 10, 2009**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of November 10, 2009. There were none.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the Minutes of the Regular Meeting of November 10, 2009, as written.

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

**7.A. CITY OF SEBASTIAN, ORDINANCE NO. 0-09-06 – BRIDGETON REAL FUND LP ANNEXATION; ORDINANCE NO. 0-09-07-BRIDGETON REAL FUND LP LAND USE; AND ORDINANCE NO. 0-09-08-BRIDGETON REAL FUND LP REZONING ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD**

**7.B. CITY OF FELLSMERE ORDINANCE 09-22, ANNEXATION OF .58 ACRES MORE OR LESS, LOCATED AT 12645/12665 COUNTY ROAD 512, IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD**



## **8. CONSENT AGENDA**

Vice Chairman Solari requested Item 8.R. be pulled for discussion.

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

### **8.A. APPROVAL OF WARRANTS AND WIRES DECEMBER 4, 2009 TO DECEMBER 10, 2009**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of December 4, 2009 to December 10, 2009, as recommended in the memorandum of December 10, 2009.

### **8.B. APPROVAL OF WARRANTS AND WIRES DECEMBER 11, 2009 TO DECEMBER 17, 2009**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of December 11, 2009 to December 17, 2009, as requested in the memorandum of December 17, 2009.

**8.C. AUTHORIZATION FOR COMMISSIONERS AND STAFF TO TRAVEL TO THE  
CRISIS LEADERSHIP FOR LOCAL OFFICIALS EMERGENCY MANAGEMENT  
TRAINING PROGRAM AT INDIAN RIVER STATE COLLEGE, FT. PIERCE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved out-of-County travel for Commissioners and staff to attend the Crisis Leadership for Local Officials Emergency Management Training Program to be held at the Indian River State College Ft. Pierce campus, on January 25-26, 2010, as recommended in the memorandum of December 21, 2009.

**8.D. AUTHORIZATION FOR COMMISSIONERS AND STAFF TO TRAVEL TO THE  
ANNUAL FLORIDA REGIONAL COUNCILS ASSOCIATION CONFERENCE IN  
TALLAHASSEE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved out-of-County travel for Commissioners and staff to attend the annual "Florida Regional Councils Association" (FRCA) conference, to be held in Tallahassee, Florida on January 14-15, 2010, as recommended in the memorandum of December 18, 2009.

**8.E. AUTHORIZATION TO ATTEND CONFERENCE**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized Commissioners and staff to attend the “NACo’s (National Association of Counties) 2010 Legislative Conference”, to be held on March 6-10, 2010, in Washington, D.C., as recommended in the memorandum of December 10, 2009.

**8.F. PROCLAMATION AND RETIREMENT AWARD HONORING ROGER DION ON HIS RETIREMENT FROM INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS DEPARTMENT OF SANDRIDGE GOLF CLUB**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Proclamation and Retirement Award honoring Roger Dion on his retirement from the Indian River County Board of County Commissioners Department of Sandridge Golf Club.

**8.G. COMPROMISE OF BARTON CODE ENFORCEMENT LIEN**

Moved and referred to hereinafter as Item 13.B. County Attorney Matters

**8.H. REQUEST TO ADVERTISE FOR PUBLIC HEARING TO AMEND ORDINANCE  
NO. 98-27 REGARDING PAYMENT OF BOND FEE FOR CERTAIN  
CONSTITUTIONAL OFFICERS**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized advertisement of the draft Ordinance, amending Ordinance No. 98-27 pertaining to surety bond requirements for certain Constitutional Officers, for a Public Hearing on February 2, 2010, as recommended in the memorandum of December 23, 2009.

**8.I. APPROVAL OF AMENDMENT NO. 2 TO DEP AGREEMENT NO. LP6734  
FOR EGRET MARSH REGIONAL STORMWATER PARK**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Amendment No. 2 to DEP Agreement No. LP6734 (for Egret Marsh Regional Stormwater Park) and authorized the Chairman to execute it on behalf of the County; afterwards, the agreement will be executed by the Florida Department of Environmental Protection, as stated and recommended in the memorandum of December 14, 2009.

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

**8.J. AWARD OF BID # 2010014 – IRC PROJECT NO. 0541 ROAD WIDENING OF  
20<sup>TH</sup> AVENUE SW FROM 25<sup>TH</sup> STREET SW TO 21<sup>ST</sup> STREET SW, TIMOTHY  
ROSE CONTRACTING, INC.**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved to award the contract for road widening of 20<sup>th</sup> Avenue SW to Timothy Rose Contracting, Inc., in the amount of \$529,633.22 as recommended in the memorandum of December 8, 2009.

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

**8.K. FINAL PAYMENT TO MORGAN AND EKLUND, INC. WORK ORDER NO. 6,  
CONTINUING PROFESSIONAL SURVEYING & MAPPING/GIS SERVICES  
CONTRACT 0725, SECTOR 3 BEACH RESTORATION – LEGAL  
DESCRIPTIONS AND SKETCHES FOR TEMPORARY CONSTRUCTION  
EASEMENTS**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved final payment of Invoice No. 1-09-1100 in the amount of \$26,800 to Morgan and Eklund, Inc. for Sector 3 Beach Restoration Temporary Construction Easements, as recommended in the memorandum of December 18, 2009.

**8.L. CHANGE ORDER NO. 2 – SHELTRA AND SON CONSTRUCTION, INC., 12<sup>TH</sup> STREET SIDEWALK – 43<sup>RD</sup> AVENUE TO 27<sup>TH</sup> AVENUE (SIDEWALK EXTENSION) BID NUMBER 2008080, PROJECT NUMBER 0604**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Change Order No. 2 to Sheltra and Son Construction, Inc., for 12<sup>th</sup> Street sidewalk expansion, thereby increasing the contract amount by \$99,969.25 to the new contract amount of \$397,223.25, as recommended in the memorandum of December 17, 2009.

**8.M. RIGHT-OF-WAY ACQUISITION, JACK AND JENNETTE BUCKNER, 5755 58<sup>TH</sup> AVENUE, VERO BEACH**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Alternative No. 1, the \$5,000.00 purchase, and authorized the Chairman to execute the Agreement to Purchase and Sell Real Estate with Jack Buckner and Jennette Buckner, for right-of-way at 45<sup>th</sup> Street and 58<sup>th</sup> Avenue, as recommended in the memorandum of December 17, 2009.

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

**8.N. APPROVAL OF MASTER AGREEMENT AND WORK ORDER NO. 1 FOR  
SEDIMENTATION SYSTEM DREDGING AT THE MAIN RELIEF CANAL  
POLLUTION CONTROL FACILITY**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved and authorized the Chairman to execute the revised Master Agreement and Work Order No. 1 with EMC, Inc. for dredging at the Main Relief Canal Pollution Control Facility; and (2) authorized staff to enter into future Work orders up to the cumulative yearly contract amount, without the need to first request Board approval, as recommended in the memorandum of December 17, 2009.

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

**8.O. REQUEST FOR QUALIFICATIONS FOR HEALTH INSURANCE/EXCESS LOSS  
REINSURANCE BROKERAGE AND ACTUARIAL SERVICES**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized staff to issue a Request for Qualifications (RFQ) for Health Insurance/Excess Loss Reinsurance Brokerage and Actuarial Services, as recommended in the memorandum of December 23, 2009.

**8.P. SANDRIDGE GOLF COURSE SNACK BAR CONTRACT MODIFICATION**

Deleted

**8.Q. APPROVAL OF SELECTION COMMITTEE'S RANKING FOR DESIGN SERVICES FOR TRANSIT FACILITY TO BE LOCATED ON 43RD AVENUE (SENIOR RESOURCE ASSOCIATION)**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the final ranking as submitted: (1) *Schulke, Bittle and Stoddard, LLC*, Vero Beach, Florida; (2) *Donadio and Associates*, Vero Beach, Florida; and (3) *Edlund Dritenbas Binkley*, Vero Beach, Florida, and authorized staff to initiate contract negotiations with the top ranked firm, *Schulke, Bittle & Stoddard, LLC*, Vero Beach, Florida (for design services for transit facility for the Senior Resource Association f/k/a/ Council on Aging), with the understanding that should no agreement be reached, staff would proceed to the next ranked firm, etc. Upon the conclusion of such negotiations, staff will return with a draft contract for the Board's review and approval, all as stated and recommended in the memorandum of December 28, 2009.



**8.R. MISCELLANEOUS BUDGET AMENDMENT 003**

Vice Chairman Solari was uncertain of the value that the outside law firm of Shubin and Bass, P.A., was currently contributing to the DiVosta/Waterway litigation process, which has been ongoing for some time. He referred to fees already disbursed to the Shubin and Bass, P.A., and questioned the appropriation of an additional \$11,000 from the M.S.T.U. Fund/Reserve/Reserve for Contingency fund for further legal expenses associated with the subject attorney's handling of the DiVosta/Waterway lawsuit.

MOTION WAS MADE by Vice Chairman Solari, SECONDED by Commissioner Wheeler, to approve Miscellaneous Budget Amendment 003, *except for Item 5, the proposed \$11,000 appropriation from the M.S.T.U. Fund/Reserve/Reserve for Contingency fund to the M.S.T.U. Fund/County Planning/Legal Services fund for legal service expenses for Shubin and Bass, P.A.,* and to direct the County Attorney to come back on January 12, 2010, with a recommendation on whether the Board should continue retaining Shubin and Bass, P.A., for the DiVosta/Waterway Village lawsuit.

County Attorney Collins provided a brief update on the DiVosta/Waterway litigation and explained the function of Shubin and Bass, P.A., relative to the subject lawsuit. He pointed out that Shubin and Bass was working on three other County cases which are close to being finalized, and he did not want to remove them from those cases.

Commissioner Wheeler agreed with Attorney Collins that it was not the time to discontinue the services of Shubin and Bass, P.A., as the DiVosta case needs to be brought to a conclusion; however, he concurred with Vice Chairman Solari's Motion to approve the budget

amendment without *Item 5*, which could be deferred until next week.

Responding to questions from Commissioner O’Bryan, staff provided estimates of anticipated costs for Shubin and Bass, P.A. for wrapping up the lawsuit this year, and advised that although about 90% of the remainder of the work on the lawsuit can be done in-house, Shubin and Bass, P.A. would be required to close out the case in court.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved: (1) Resolution **2010-001**, *except for Item 5, the proposed \$11,000 appropriation from the M.S.T.U. Fund/Reserve/Reserve for Contingency fund to the M.S.T.U. Fund/County Planning/Legal Services fund for legal service expenses for Shubin and Bass, P.A.*, amending the Fiscal Year 2009-2010 Budget; and (2) directed the County Attorney to come back on January 12, 2010, with a recommendation on whether the Board should continue retaining Shubin and Bass, P.A., for the DiVosta/Waterway Village lawsuit.

**8.S. COMMITTEE MEMBER REAPPOINTMENT/REPLACEMENT AND VACANCY REPORT**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) reappointed or replaced 2009 Advisory Committee members listed on page 119 of staff’s report; and (2) reappointed and/or directed staff to solicit/provide applications for those positions chosen for replacement.

Staff recommends that the Board review the vacancies and have recommendations for appointees in order to take action at the January 19, 2010 Board of County Commission meeting, all as stated and recommended in the memorandum of December 29, 2009.

**8.T. 2010 COMMITTEE ASSIGNMENTS**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the 2010 Committee Assignments for each Commissioner (copy on file) as recommended in the memorandum of December 28, 2009.

**8.U. BLANKET AUTHORIZATION FOR COMMISSIONERS TO TRAVEL OUT OF COUNTY**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved for Commissioners to travel out of County for all current and any future assigned committee meetings, including travel to Tallahassee, Florida, as recommended in the memorandum of December 28, 2009.

**8.V. CHOOSE LIFE LICENSE PLATE FUNDING ANNUAL AUDIT**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Annual Choose Life Specialty License Plate Report

and authorized the Chairman to execute the Report for submittal to the Department of Highway Safety and Motor Vehicles, as recommended in the memorandum of December 21, 2009.

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

**8.W. FINAL PAYMENT TO KIMLEY-HORN AND ASSOCIATES, INC. FOR WORK ORDER NO. 14 – UPGRADE OF THE SOUTH RO PLANT MEMBRANE & HIGH SERVICE PUMP REPLACEMENT**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved payment for Work Order No. 14 to Kimley-Horn and Associates, Inc. for a final payment of \$690.00, for upgrade of the South RO Plant, as recommended in the memorandum of December 22, 2009.

**8.X. CONTINUING SERVICES FOR WATER AND WASTEWATER ENGINEERING CONSULTANTS REQUEST FOR QUALIFICATIONS – UCP-4042**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the solicitation of Request for Qualifications (RFQs) for Continuing Consulting services (water and wastewater engineering), as recommended in the memorandum of December 2, 2009.

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

**10. PUBLIC ITEMS**

**10.A. PUBLIC HEARING**

**10.A.1. CONTINUED LDR AMENDMENT: CONSIDERATION OF PROPOSED**

**AMENDMENTS TO THE RS-6, RT-6, RM-6, RM-8, AND RM-10 MAXIMUM**

**BUILDING COVERAGE REGULATIONS CHAPTER 911 (LEGISLATIVE)**

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

Planning Director Stan Boling recapped the memorandum of December 15, 2009 to provide background and analysis on the requests of Jim Adams, Vice President of Ameritrend Homes, and Chuck Mechling, representing Onsite Management Group, to increase the maximum building coverage requirements for single-story homes on RS-6 lots from 30% to 40% of the lot area. Director Boling conveyed that this item was opened at the December 15, 2009 Board of County Commission meeting, and deferred until January 5, 2010, and that the Professional Services Advisory Committee (PSAC) and the Planning and Zoning Commission (PZC) had both recommended adoption of the proposed amendments to the Land Development Regulations, and that PZC's recommendation that homes with "bonus rooms" be treated as two-story homes, has been incorporated into the draft Ordinance. He thereafter conveyed staff's recommendation for Board adoption of the proposed Ordinance, amending Chapter 911, to increase the maximum building coverage regulations for single-story homes, for zoning districts RS-6 (as requested by Mr. Mechling and Mr. Adams), RT-6, RM-6, RM-8, and RM-10.

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

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously adopted **Ordinance 2010-001**, concerning an amendment to its Land Development Regulations (LDR); providing for amendments to Chapter 911, Zoning, by amending Single Family Residential District size and dimension criteria Section 911.07(7), and by amending Multi-Family Residential District size and dimension criteria Section 911.08(7); by providing for repeal of conflicting provisions; codification; severability; and effective date.

## **10.B. PUBLIC DISCUSSION ITEMS**

### **10.B.1. REQUEST TO SPEAK FROM CHARLIE WILSON REGARDING VERO ELECTRIC COUNTY CUSTOMERS**

**Charles Wilson**, 1057 6<sup>th</sup> Avenue, used a PowerPoint presentation (copy on file) to provide background information and supporting data on his request for the Board to help find a solution to the problem of the high rates being imposed by the Vero Beach Electric Utility on County residents living outside of the Vero Beach City Limits. He reported that recently, the City of Vero Beach contracted with the Orlando Utilities Commission (OUC) as its new electric provider; however, there have been some concerns about the validity of the contract, which he requested the Board review.

Vice Chairman Solari recapped some of the Board's prior actions relating to utility issues with Vero Electric, including the Board's approval on December 1, 2009, of Resolution 2009-175, which assigned additional powers and duties to the Utility Advisory Committee (UAC),

including authority to consider utility matters, including electric franchise matters. He advised Mr. Wilson that the proper course of action would be to make a presentation to the Utility Advisory Committee UAC, who could, after its deliberations, suggest a path forward for the County Commission.

**Mr. Wilson** acknowledged the support of the County Commission in this matter thus far; however, he felt the Board needed to become an active participant at this time due to the following deadlines: (1) On January 1, 2010, the City of Vero Beach entered into a 20-year contract with the Orlando Utilities Commission (OUC) , which could be voided if challenged in Circuit Court; and (2) the Board has a unique opportunity to join the action initiated by Dr. Stephen J. Faherty and Glenn F. Heran, who have recently filed suit against the City of Vero Beach Electric Utility to the Public Service Commission.

The Commissioners discussed Mr. Wilson's presentation and considered his requests.

County Attorney William Collins responded to Mr. Wilson's first entreaty, and provided legal opinion that the County would have no legal standing to initiate an action to invalidate the contract between the City of Vero Beach and the Orlando Utilities Commission.

Commissioners continued to discuss this matter, with no support given for Mr. Wilson's second request for the Commissioners to join the Faherty/Heran lawsuit against the City of Vero Beach.

Commissioner Flescher, Commissioner Liaison to the Utility Advisory Committee, invited Mr. Wilson to make a presentation at the next UAC meeting.

Commissioner Davis agreed with Commissioners Solari and Flescher, that the right path would be to have Mr. Wilson speak to the UAC.

Commissioner Wheeler wanted to see the County, State Legislature, the City of Vero Beach, and the Town of Indian River Shores, work together to resolve the utility issues in a positive manner.

Chairman O'Bryan reviewed Section 12 of the County's Franchise Agreement with the City of Vero Beach, which allows the franchise territory to be amended, if approved by the Public Service Commission. He asked Mr. Wilson to bring before the UAC, the possibility of the County asking Florida Power and Light (FPL) to conduct a study on what would be required for FPL to service the unincorporated areas of the County currently being served by the City of Vero Beach. If that looks reasonable, the County would ask FPL to petition the Public Service Commission to amend the Service Territory Agreement as allowed by State law, which would place the aforementioned County residents into FPL territory. Commissioner O'Bryan also requested that the County Attorney review the Franchise Agreement between the County and the City of Vero Beach to see whether the City can use County land for their utilities services if the Franchise Agreement is not renewed.

MOTION WAS MADE by Commissioner Davis,  
SECONDED by Chairman O'Bryan, to direct the  
County Attorney to review the County's Franchise  
Agreement with the City of Vero Beach, including  
exploring what would the legal ramifications be if the  
Franchise Agreement is not extended after 2017.

Chairman O'Bryan noted that the County must decide by March 2012 whether to renew the Franchise Agreement with the City of Vero Beach.

The Chairman CALLED THE QUESTION, and the  
Motion carried unanimously. The Board directed the  
County Attorney to review the County's Franchise  
Agreement with the City of Vero Beach, including



exploring what would the legal ramifications be if the Franchise Agreement is not extended after 2017.

Chairman O'Bryan thanked Mr. Wilson for his presentation and asked him to ensure that he is placed on the agenda for the next Utility Advisory Committee meeting.

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

**11. COUNTY ADMINISTRATOR MATTERS-NONE**

**12. DEPARTMENTAL MATTERS**

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

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

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

**12.D. HUMAN RESOURCES**

**12.D.1. COUNTY ATTORNEY SELECTION**

Director of Human Resources Jim Sexton reported that each Commissioner has interviewed the three top candidates, Alan S. Polackwich, Thomas Spencer, and Michael Zito, for the position of County Attorney, which becomes vacant in March 2010 when current County Attorney William G. Collins II retires. He invited the Commissioners to proceed with their selection of the top candidate for the position.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Flescher, to select Alan S. Polackwich for the position of County Attorney, which will become vacant upon the retirement of current County Attorney William G. Collins II, on March 17, 2010.

Commissioner Davis suggested ranking the remaining candidates in order of preference should negotiations with Attorney Polackwich fail. The Commissioners accordingly agreed to make a second Motion, following the vote on Commissioner Wheeler's Motion.

Under discussion, Board members confirmed the suitability of all three candidates; affirmed support for Attorney Polackwich; and praised Director Sexton for his expeditious handling of this matter.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved the selection of Alan S. Polackwich for the position of County Attorney, which will become vacant upon the retirement of current County Attorney William G. Collins II, on March 17, 2010.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Wheeler, the Board unanimously approved the selection of Thomas Spencer as the Number 2 choice, and Michael Zito as the Number 3 choice, for the position of County Attorney, should negotiations fail with Attorney Polackwich.

A brief discussion ensued between Commissioners and Director Sexton regarding the terms which would be written into the contract, including the starting date for Attorney

Polackwich, during which he would work for a short time concurrently with Attorney Collins. Director Sexton divulged that a total package of \$175,000 would be offered, with the contract terms to be ironed out with the candidate; after which, he (Director Sexton) would return with the employment contract at the January 19, 2010 Board of County Commission meeting.

**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 staff was currently finalizing both permit and contract items for the construction of Phase I of the Sector 3 Beach Restoration Project, with February 1, 2010, as the anticipated start date. He reported that the Florida Department of Environmental Protection (FDEP) issued a Notice of Completeness for the Sector 3 State Permit application on December 22, 2009, and has committed to issuing the County's Draft Permit and Notice of Intent to Issue (NOITI) by January 8, 2010. He noted that one more item, a Preconstruction Conference (which is being scheduled), is required prior to the FDEP's issuance of the Notice To Proceed. He also conveyed that the Erosion Control Line (ECL) process would be completed by February 1, 2010. Dr. Gorham stated that staff would, at a future date, be coming forward with several contractual items for Board approval, including a Contract Award to Ranger Construction and some Change Orders to reflect changes in the work since the Project was bid.

Dr. Gorham announced that he would be leaving the County's employ to work full-time on marine research and conservation. He praised the sound and environmentally responsible way the County has executed its coastal protection projects.

Chairman O'Bryan thanked and expressed appreciation to Dr. Gorham for his outstanding service to the County.

**12.J. UTILITIES SERVICES**

**12.J.1. RENEWAL OF LICENSE AGREEMENT FOR USE OF COUNTY PROPERTY**

**BETWEEN SEA OAKS PROPERTY OWNERS ASSOCIATION, INC. AND INDIAN RIVER COUNTY**

MOTION WAS MADE by Vice Chairman Solari, SECONDED by Commissioner Wheeler, to renew the License Agreement for use of County Property between Sea Oaks Property Owners Association, Inc. and Indian River County.

Vice Chairman Solari expressed his satisfaction with the contract language.

Responding to concerns expressed by Commissioner Davis, Director of Utilities Erik Olson provided further details about the length of the contract between the County and Sea Oaks Property Owners Association, Inc.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved and authorized the Chairman to execute the renewal of the License Agreement for use of County Property (unused

portion of the County's wastewater treatment facility) between Sea Oaks Property Owners Association, Inc. (SOPOA), and Indian River County, as recommended in the memorandum of December 28, 2009.

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

**12.J.2. RIVER CLUB AT GRAND HARBOR, REPLACE POLYBUTYL WATER SERVICES, APPROVAL OF WORK AUTHORIZATION DIRECTIVE No. 2009-003 BY SHELTRA & SONS SON CONSTRUCTION Co., INC. UCP No. 4032**

MOTION WAS MADE by Commissioner Flescher, SECONDED by Vice Chairman Solari, to approve the project (River Club at Grand Harbor replacement of water service lines) at a total estimated cost of \$88,308.18, and to authorize the Chairman to execute Work Authorization Directive No. 2009-003 to the Utilities Department Labor Contractor, Sheltra & Son Construction Co., Inc., for \$62,587.25.

Director Olson told Commissioners that some of the water service lines in River Club at Grand Harbor had been replaced by Utility Operations staff; however, because of the delayed timing for pavement repair, staff would like to have the remaining repairs completed by Sheltra & Son Construction Co., Inc.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved the project (River Club at Grand Harbor replacement of water service lines) at a total estimated cost of \$88,308.18, and

authorized the Chairman to execute Work Authorization Directive No. 2009-003 to the Utilities Department Labor Contractor, Sheltra & Sons Construction Co., Inc., for \$62,587.25.

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

**12.J.3. SPOONBILL MARSH WETLAND FACILITY – UCP 2785 CHANGE ORDER  
No. 4 FOR ~~TIM~~ TIMOTHY ROSE CONTRACTING, INC.**

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Flescher, to approve Change Order No. 4 to Timothy Rose Contracting, Inc., as presented for an amount of \$19,494.00.

Director Olson responded to the Commissioner's questions regarding the status of the project.

After checking with Attorney Collins on the propriety of having the Board members tour the Spoonbill Marsh Wetland Facility, Commissioners requested that Director Olson arrange to have a tour for them and to also invite the press.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved and authorized the Chairman to execute Change Order No. 4 to Timothy Rose Contracting, Inc., (for Spoonbill Marsh Wetland Facility mitigation project - Lost Tree Islands), as presented for an amount of \$19,494.00, as recommended in the memorandum of December 10, 2009.

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

**12.J.4. REGIONAL RESIDUALS DEWATERING FACILITY OPERATIONS CONTRACT**

**EXTENSION**

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner Davis, to approve the contract extension with Synagro South, LLC for a maximum of six (6) months through August 31, 2010.

Director Olson advised that the operations of the new County sludge/septic dewatering facility being constructed at the Landfill are being put out to bid. However, there is a two-month gap between the expiration of the existing contract with Synagro South, LLC, and the start up of the new facility, and Synagro has agreed to honor their existing contract in order to maintain operations through the transition period between the existing and new facilities.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved and authorized the Chairman to execute the contract extension with Synagro South, LLC, for a maximum of six (6) months through August 31, 2010 (for sludge dewatering and hauling services at the Landfill), as presented and recommended in the memorandum of December 22, 2009.

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

**12.J.5. REUSE RATE STUDY/RATE RECOMMENDATION**

Assistant Director of Utility Services Cindy Corrente recalled that on July 21, 2009, the Board had granted approval for Camp Dresser and McKee (CDM) to conduct a Reclaimed Water

Rate Study on the current reuse water system. She explained that reuse water had initially been regarded as a disposal process for wastewater plant effluent, but due to the current environment and the shortage of water supplies, reuse water is now regarded as a commodity; as such, staff feels it timely to review the rate structure and the reuse program, and look at recouping some of the expenses, as well as providing an alternate water supply.

**Dan Anderson**, representing Camp Dresser and McKee (CDM), provided an overview of the rate study and recommended that the County adopt a uniform reuse water rate of \$ .56 cents per thousand gallons for the five-year period of 2010, 2011, 2012, 2013, and 2014.

Chairman O'Bryan asked whether, with the current rate of \$ .15 cents per thousand gallons, the County was experiencing an annual deficit in the reuse budget, and Mr. Anderson confirmed that this was so.

Chairman O'Bryan said that it appears that the County would retain an operating deficit in 2010 at the suggested rate of \$ .56 cents per thousand gallons, but would have an operating surplus over the following four years, and wanted to know if the surplus would make up for the first year's deficit.

**Mr. Anderson** stated that it essentially would, but recommended reviewing the rate per thousand gallons every two years for fine-tuning as required.

Further discussion ensued, with Commissioners, staff, and Mr. Anderson emphasizing that reuse water was historically viewed as effluent disposal, but is now being recognized as a valuable resource.

Commissioner Davis's query on what created the deficit sparked a detailed discussion as Commissioners, staff, and Mr. Anderson provided comments and analysis on the reason for the deficit, and considered how to neutralize it.



Vice Chairman Solari explained why he felt the proposed \$ .56 cents per thousand gallon rate would not be sufficient to cover the costs of the reuse program, and suggested the County adopt a somewhat higher rate.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Wheeler, for discussion, to accept the Reclaimed Water Rate Study Report, amended to establish a reuse rate of \$.75 cents per thousand gallons.

Board members expressed their opinions on whether the \$ .75 cents per thousand gallon rate proposed by Commissioner Solari would be fair, or whether it would discourage existing and prospective reuse water customers from taking advantage of the alternative water resource.

Administrator Baird outlined some possible mechanisms to implement, in order to arrive at a fair and defensible reuse rate, such as increasing the allowance percentage for renewal and replacement (R&R) from 5% to 10%.

A brief discussion ensued regarding the City of Vero Beach's reuse utility, which has no problem disposing of their reuse water, and in fact, has a waiting list, despite the higher cost of their product.

Commissioner Wheeler wanted to get a better idea of the costs of the reuse water service, to better evaluate what a fair rate would be for the consumer and the County. He wanted staff to bring this item back with additional information on January 19, 2010, and asked Vice Chairman Solari if he would amend his Motion accordingly.

Vice Chairman Solari agreed, and the following action was taken:

MOTION WAS AMENDED by Vice Chairman Solari, SECONDED by Commissioner Wheeler, to direct staff to look forward over the five-year period of 2010, 2011, 2012, 2013, and 2014, and return with more information regarding the Reuse Water Rate Study to the BCC meeting of January 19, 2010.

The Chairman recapped the Motion and established that no further discussion was required.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board directed staff to look forward over the five-year period of 2010, 2011, 2012, 2013, and 2014, and return with more information regarding the Reuse Water Rate Study to the BCC meeting of January 19, 2010.

Administrator Baird sought and received clarification on the items which the Board wished to have staff incorporate into its next presentation on this matter.

The Chairman called a break at 10:55 a.m. and reconvened the meeting at 11:06 a.m., with all members present.

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

#### **13.A. MCGRIFF SHIP LOAN**

County Attorney William Collins explained that Yolanda Elaine McCloud McGriff had been granted a SHIP Loan of \$20,330 on her property located at 343 7<sup>th</sup> Court SW as a second mortgage, and that she had subsequently passed away, leaving total estate assets of \$1,583.43.

He advised that the representatives of the McGriff Estate were asking the County to either accept the \$1,583.43 and record a satisfaction of the County mortgage, or to distribute the estate assets to Ms. McGriff's family, withdraw the County's claim against the estate, and take any available proceeds upon the sale of the house. He thereafter presented analysis of the request and staff's recommendation for the Board to accept the total McGriff Estate assets of \$1,583.43 and record a "Satisfaction of Mortgage."

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Solari, to take the total estate assets of \$1,583.43 for the Estate of Yolanda Elaine McCloud McGriff, and record a satisfaction of the County mortgage.

Commissioner Davis stated that before he was able to make a decision, he wanted to see if the non-profit organization, Habitat for Humanity, would be interested in purchasing the home.

A brief discussion ensued between Commissioners and Attorney Collins regarding the feasibility of Habitat for Humanity being interested in the home.

Attorney Collins pointed out that in order for the County to recoup its \$20,330, the McGriff home would have to sell for \$79,000 or \$80,000, and it was unlikely Habitat for Humanity would pay that much over the market value.

Commissioner Davis reiterated that he would like to explore the possibility of Habitat for Humanity finding a buyer for the home.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners O'Bryan and Davis opposed), the Board authorized Option 1, to take the total estate assets of \$1,583.43 (for the Estate of Yolanda Elaine McCloud

McGriff), and record a satisfaction of the County mortgage, as recommended in the memorandum of December 28, 2009.

**13.B. MOVED FROM 8.G.**

**COMPROMISE OF BARTON CODE ENFORCEMENT LIEN**

*(Clerk's Note: This item was moved from, and originally designated as Item 8.G., and was redesignated as County Attorney Matters, Item 13.B.)*

County Attorney William Collins provided a brief history of the property located at 2025 Surfside Terrace, formerly owned by Lewis Barton and acquired during foreclosure by City First Mortgage Corporation. He reported that the County currently holds a \$253,000 Code Enforcement lien on the subject property, and that City First has requested that the County reduce the lien to \$60,000. Attorney Collins had advised City First that the County would support a reduction to the \$80,000 to \$100,000 range, but subsequently, he had received a verbal offer (via telephone) of \$82,000 from a Title Company interested in satisfying the lien. After explaining why he supports the verbal offer, Attorney Collins presented staff's recommendation to authorize a Satisfaction of Lien upon receipt of the \$82,000 from the Title Company.

Commissioners Davis and Wheeler expressed the desire to see the property revert back to residential use; however, they did not want to take any action without obtaining further information to justify the price being offered.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Flescher, to deny staff's recommendation to accept the Title Company's verbal offer of \$ 82,000.

Responding to questions from the Commissioners, Attorney Collins provided further details on the lien, after which the following action was taken:

The Chairman CALLED THE QUESTION, and the Motion unanimously carried. The Board DENIED staff's recommendation to accept the Title Company's verbal offer of \$ 82,000 to satisfy the Code Enforcement lien on property located at 2025 Surfside Terrace and foreclosed by City First Mortgage Corporation.

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

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

**14.B. VICE CHAIRMAN BOB SOLARI-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-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. Those Minutes are being prepared separately.

**15.B.1. ENGINEERING WORK ORDER NO. 25 TO GEOSYNTEC CONSULTANTS FOR ENGINEERING AND PERMITTING SERVICES FOR FIVE YEAR LANDFILL OPERATIONS PERMIT RENEWAL**

**15.B.2. FINAL PAYMENT AND RELEASE OF RETAINAGE TO WASTE MANAGEMENT INC. OF FLORIDA FOR THE VERTICAL EXPANSION AND PARTIAL CLOSURE OF CLASS I LANDFILL AND BORROW POND CONSTRUCTION PROJECTS**

**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 11:17 a.m.

ATTEST:

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

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

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

BCC/MG/2009Minutes