

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF MARCH 9, 2010

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JEFFREY K. BARTON

Clerk to the Board



March 9, 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 27th Street, Vero Beach, Florida, on Tuesday, March 9, 2010. Present were Chairman Peter D. O'Bryan, Vice Chairman Bob Solari, Commissioners Wesley S. Davis, Joseph E. Flescher, and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorneys William G. Collins II and Alan Polackwich, Sr., and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

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

2. INVOCATION

Pastor Billy McLeod, Central Assembly of God, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Administrator Baird led the Pledge of Allegiance to the Flag.

Commissioner Davis welcomed students from the Indian River Home Schoolers Association, and Mrs. Bradley, their representative.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS - NONE

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman Solari, the Board unanimously approved the Agenda as presented.

5. PROCLAMATIONS AND PRESENTATIONS - NONE

6. APPROVAL OF MINUTES - NONE

**7. INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS
NOT REQUIRING BOARD ACTION - NONE**

8. CONSENT AGENDA

Commissioner Davis requested to pull Item 8.B. from the Consent Agenda for discussion.

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

8.A. APPROVAL OF WARRANTS AND WIRES, FEBRUARY 19, 2010 TO FEBRUARY 25, 2010

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of February 19, 2010 to February 25, 2010, as requested in the memorandum of February 25, 2010.

8.B. OUT OF COUNTY TRAVEL ~~AT~~ TO ATTEND MEETINGS IN WASHINGTON, DC

Commissioner Davis did not feel it was necessary to go to Washington, D.C. this week; therefore, he requested Board guidance and consideration for broadening the time parameters.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Solari, the Board unanimously approved out of County travel for Commissioner Wesley S. Davis to attend one meeting with the Legislative Representatives in Washington, D.C., whenever necessary.

8.C. PROCLAMATION AND RETIREMENT AWARD HONORING GEORGE BOUGH ON HIS RETIREMENT FROM INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS DEPARTMENT OF PUBLIC WORKS ROAD & BRIDGE DIVISION FOR TWENTY-FIVE YEARS SERVICE

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved the retirement of George Bough.

8.D. SANDRIDGE GOLF CLUB SNACK BAR LEASE AGREEMENT

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved the Contract with Peggy Cardel and Associates, Inc., and authorized the Chairman to execute same, as recommended in the memorandum of February 26, 2010.

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

8.E. JOINT PARTICIPATION AGREEMENT (JPA) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR TRAFFIC SIGNAL MAINTENANCE AND COMPENSATION

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved and authorized execution of the Joint Participation Agreement with the Florida Department of Transportation, and **Resolution 2010-015**, authorizing a Joint Participation Agreement for traffic signal maintenance and compensation.

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

8.F. EAGLE TRACE SUBDIVISION PHASE II, TIMOTHY ROSE CONTRACTING, INC., CHANGE ORDER #3, FINAL PAY AND RELEASE OF RETAINAGE

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved Change Order No. 3, increasing the Contract amount by \$198.14; and final payment including release of retainage in the amount of \$34,361.27, to Timothy Rose Contracting, Inc., as recommended in the memorandum of February 25, 2010.

8.G. MISCELLANEOUS BUDGET AMENDMENT 008

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved **Resolution 2010-016**, amending the Fiscal Year 2009-2010 Budget.

8.H. APPROVAL OF ENGINEERING/ARCHITECTURAL DESIGN SERVICES CONTRACT WITH SCHULKE, BITTLE AND STODDARD FOR THE INDIAN RIVER COUNTY TRANSIT FACILITY TO BE BUILT ON 43RD AVENUE

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved the proposed Contract for \$182,400 with Schulke, Bittle and Stoddard, LLC, for design services, and authorized the Chairman to execute same, as recommended in the memorandum of March 3, 2010.

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

**8.I. BOARD CONSIDERATION TO APPROVE A STATE SUBMERGED LANDS
LEASE FOR PUBLIC ACCESS IMPROVEMENTS ON BOAT CLUB ISLAND
(A.K.A. SPOIL ISLAND IR25)**

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Solari, the Board unanimously approved the Boat Club Island Submerged Lands Lease, and authorized the Chairman to execute same, as recommended in the memorandum of March 2, 2010.

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

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

10. PUBLIC ITEMS

10.A. PUBLIC HEARING(S) - NONE

10.B. PUBLIC DISCUSSION ITEMS - NONE

10.C. PUBLIC NOTICE ITEMS

NOTICE OF SCHEDULED PUBLIC HEARINGS MARCH 23, 2010:

10.C.1.A. CONSIDERATION OF PROPOSED AMENDMENTS TO LDR CHAPTERS 911, 926, AND 927 FOR LANDSCAPING AND TREE MITIGATION REGULATIONS. (LEGISLATIVE)

10.C.1.B. OFFICE PRODUCTS REQUEST TO REZONE ±91 ACRES FROM CH, HEAVY COMMERCIAL DISTRICT, TO CG, GENERAL COMMERCIAL DISTRICT. (QUASI-JUDICIAL)

10.C.1.C. 510, LLC'S REQUEST TO AMEND THE COMPREHENSIVE PLAN TO REDESIGNATE ± 6.4 ACRES FROM L-2, LOW-DENSITY RESIDENTIAL-2 (UP TO 6 UNITS/ACRE), TO C/I, COMMERCIAL/ INDUSTRIAL, AND TO REZONE THOSE ± 6.4 ACRES FROM RM-6, MULTI FAMILY RESIDENTIAL DISTRICT (UP TO 6 UNITS / 1 ACRE), TO CG, COMMERCIAL GENERAL; AND UNITED INDIAN RIVER PACKERS, LLC'S REQUEST TO AMEND THE COMPREHENSIVE PLAN TO REDESIGNATE ± 6.4 ACRES FROM C/I, COMMERCIAL/ INDUSTRIAL, TO L-2, RESIDENTIAL-2 DISTRICT (UP TO 6 UNITS / 1 ACRE), AND TO REZONE THOSE ± 6.4 ACRES FROM IL TO RM-6, MULTI FAMILY RESIDENTIAL DISTRICT (UP TO 6 UNITS / 1 ACRE). (LEGISLATIVE)

10.C.1.D. COUNTY INITIATED REQUEST TO REDESIGNATE ±27.97 ACRES FROM L-1, LOW-DENSITY RESIDENTIAL-1 (UP TO 3 UNITS/ACRE), AND C/I, COMMERCIAL / INDUSTRIAL, TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ± 27.97 ACRES FROM A-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT /5 ACRES), AND CL, LIMITED COMMERCIAL DISTRICT, TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); REDESIGNATE ± 37.48 ACRES FROM AG-1, AGRICULTURAL-1

DISTRICT (UP TO 1 UNIT/5 ACRES), AND R, RURAL RESIDENTIAL DISTRICT (UP TO 1 UNIT / 1 ACRE), TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±37.48 ACRES FROM A-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT / 5 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); AND REDESIGNATE ±457.86 ACRES FROM AG-2, AGRICULTURAL-2 DISTRICT (UP TO 1 UNIT /10 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±457.86 ACRES FROM A-2, AGRICULTURAL-2 DISTRICT (UP TO 1 UNIT /10 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); (LUDA 2009070035-64289). (LEGISLATIVE)

County Attorney Alan Polackwich, Sr., read the above Notices into the record.

11. COUNTY ADMINISTRATOR MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT - NONE

12.B. EMERGENCY SERVICES - NONE

12.C. GENERAL SERVICES - NONE

12.D. HUMAN RESOURCES - NONE

12.E. HUMAN SERVICES - NONE

12.F. LEISURE SERVICES - NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET - NONE

12.H. RECREATION - NONE

12.I. PUBLIC WORKS – NONE

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

Public Works Director Chris Mora, using a PowerPoint Presentation (on file), provided an update on the Sector 3 Beach Renourishment Project, and answered questions from the Board.

Chairman O’Bryan asked Director Mora to ensure his PowerPoint Presentation is posted to the website.

12.J. UTILITIES SERVICES

12.J.1. OSLO ROAD 8” WATER MAIN EXTENSION FROM 8TH COURT TO 9TH

**COURT, APPROVAL OF WORK AUTHORIZATION DIRECTIVE NO. 2009-004
BY SHELTRE & SONS CONSTRUCTION Co., INC., UCP No. 2362, WIP No.
472-169000-09519**

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Solari, the Board unanimously approved the project at a total estimated cost of \$31,797.21, and authorized the Chairman to execute Work Authorization Directive No. 2009-004 to the Utilities Department Labor Contractor, Sheltra and Son

Construction Co., Inc., for \$19,810.73, as recommended in the memorandum of February 17, 2010.

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

12.J.2. INDIAN RIVER COUNTY, INDIAN RIVER SHORES AND THE CITY OF VERO BEACH CONSOLIDATION OF UTILITIES STUDY

Utility Director Erik Olson recapped his Memorandum dated March 2, 2010, provided a brief history, and requested the Board provide affirmation to the selected ranking order from the Consolidation Committee of the top five firms – (1) GAI Consultants, Inc. (GAI), (2) Post, Buckley, Schuh, and Jernigan, Inc. (PBS&J), (3) Corollo Engineers, P.C., (4) Wade Trim, Inc., and (5) Keith and Schnars, P.A.

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, the Board unanimously approved GAI Consultants, Inc., as the number one ranked independent Consultant, and authorized staff to meet with the Consolidation Committee to establish a more detailed scope and cost for the project. This Contract would then be brought back to the respective Commission and Council for final approval, as recommended in the memorandum of March 2, 2010.

(Clerk’s Note: Item 14.B.1. Future of Sewer and Water in Indian River County, was heard prior to Item 13.)

13. COUNTY ATTORNEY MATTERS

13.A. UPDATE ON COURT'S DECISION REGARDING OCEAN CONCRETE AND THE NEED TO SET A HEARING DATE FOR THE SECOND HALF OF APRIL

Assistant County Attorney George Glenn outlined his Memorandum dated March 3, 2010, providing the Board with background, recent updates relating to the Ocean Concrete appeal, and the Court's decision to set a hearing date. He requested the Board set two hearing dates, one for the denial of the site plan application extension request, and the second on the denial of the site plan. He noted that Ocean Concrete's lawyers requested the hearings be set no earlier than the second half of April. Attorney Glenn inquired whether the Board wanted to hold the first hearing at a regularly scheduled meeting or at a special call meeting, and if the Commissioners wanted to schedule the second hearing at this time.

Attorney Polackwich clarified the specifics of the site plan application; the changing of the code between filing the second application for site plan approval and the expiration of the application; exceptions that deal with vested rights and constitution arguments; and setting a hearing on the extension to determine if there is good cause. He stated that if the Board, staff, or public cannot come up with a good reason for denying the extension, then the extension of the application must be granted.

Discussion ensued between the Commissioners and staff regarding the concerns over the plant, approving/denying the extension, the progress of the decisions that need to be made, the denial of the site plan, and whether to set both hearing dates today.

MOTION was made by Commissioner Wheeler,
SECONDED by Commissioner Flescher, for discussion,
to set the hearing date for April 20, 2010, the same day as
the Regular Board of County Commission Meeting.

After a brief discussion, Commissioner Davis voiced his preference for setting both hearing dates now.

MOTION was AMENDED by Commissioner Wheeler, SECONDED by Commissioner Flescher, to schedule the first hearing date for April 20th, 2010 to hear the application extension request; and the second hearing date for May 11th, 2010 to hear the denial of the site plan, if necessary.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

13.B. CONSIDERATION OF PROPOSED SETTLEMENT BETWEEN THE CITY OF FELLSMERE, DEPARTMENT OF COMMUNITY AFFAIRS, FELLSMERE JOINT VENTURE, AND INDIAN RIVER COUNTY

Attorney Glenn recalled that on December 15, 2009, the Board had authorized the Legal Office to intervene in the Division of Administrative Hearings (DOAH) proceedings with the City of Fellsmere's proposed comprehensive land use changes, which would have created an allowance for an additional 35,000 residential units. He highlighted the recent improvements and benefits to the Villages of Fellsmere (VOF), asked that the Board tentatively approve the Settlement Agreement, and emphasized the urgency.

Discussion ensued regarding the number of units/total property for Phase 1, how the entities are tied together, removal of the Anson 2500 parcel from the Comprehensive Plan Amendment, and the City of Fellsmere submitting the Villages of Fellsmere Comprehensive Plan Provision to DCA.

MOTION was made by Commissioner Wheeler, SECONDED by Commissioner Flescher, to approve the proposed Settlement Agreement between the City of Fellsmere, Department of Community Affairs, Fellsmere Joint Venture, and Indian River County.

Chairman O'Bryan wanted this pushed back to the March 16, 2010 Board of County Commission Meeting, so the Commissioners would have time to further review the documents.

MOTION was AMENDED by Commissioner Wheeler, SECONDED by Commissioner Flescher, to tentatively approve the proposed Settlement Agreement, subject to review of the final document, which will be available at the March 16, 2010 Board of County Commission Meeting.

Attorney Glenn clarified that according to the e-mail correspondence he received this morning, the City of Fellsmere had agreed to incorporate the one page of changes into the VOF, and the only other change was to change the word "will" to "may". He said this would settle the VOF, and that tomorrow staff would receive the final VOF draft.

Jason Nunemaker, City Manager, City of Fellsmere, confirmed that there would be no other changes and that all the major items had been settled. He requested Board approval for the proposed settlement.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board tentatively approved the proposed Settlement Agreement between the City of Fellsmere, Department of Community Affairs, Fellsmere Joint Venture, and Indian River County, subject to review of the final agreement, which will be available at the March 16, 2010 Board of County Commission Meeting.

13.C. REALIGNMENT OF 101ST AVENUE/102ND TERRACE

Deputy County Attorney Bill DeBraul recapped his Memorandum of March 3, 2010 providing background on the realignment of 101st Avenue and 102nd Terrace. He explained the two-part agreement saying that Phase I of the Exchange Agreement had been completed, and that Phase II would call for an equal exchange of properties and realignment of 101st Avenue, so it would line up with the entrance of Vero Lake Estates on the south side of the road. He reviewed the four options proposed by Staff and requested Board direction.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Solari, to choose Option No. 1 – to discontinue plans to construct 101st Avenue and leave the roadway in its current state with a traffic signal at 101st Avenue for the entrance into Vero Lake Estates and keep the open median cut at 102nd Terrace, with zero cost.

The Chairman opened the floor to public comment; there being no speakers, he closed the floor to public comment.

The Chairman CALLED THE QUESTION and by a 3-2 vote (Commissioners Davis and Flescher opposed), the Board approved Option No. 1 – to discontinue plans to construct 101st Avenue and leave the roadway in its current state with a traffic signal at 101st Avenue for the entrance into Vero Lake Estates and keep the open median cut at 102nd Terrace, with zero cost.

14. COMMISSIONER ITEMS

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

14.B. COMMISSIONER BOB SOLARI, VICE CHAIRMAN

14.B.1. FUTURE OF SEWER AND WATER IN INDIAN RIVER COUNTY

(Clerk's Note: This Item was heard following Item 12.J.2. and is placed here for continuity.)

Vice Chairman Solari requested the Board authorize the Utility Department to provide presentations regarding consolidation of wastewater services to Indian River Shores and the City of Vero Beach. This presentation would explain the opportunities available to them, attempt to make the process open and transparent, and recognize the complexity of consolidation.

MOTION was made by Vice Chairman Solari, SECONDED by Commissioner Wheeler, for discussion, to authorize staff to make presentations to Indian River Shores and the City of Vero Beach.

Under discussion, the Board discussed capacity, initiating dialogue between the entities, and what the presentation would/should entail.

Commissioner Davis suggested including the Southern Barrier Island residents in the earlier Motion.

Vice Chairman Solari AMENDED HIS MOTION, SECONDED by Commissioner Wheeler, to include the South Beach Property Association.

The Chairman opened the floor for public comment.

Bob Johnson, Coral Wind Subdivision, requested the Utilities Department make their most recent presentation to the Board and audience prior to visiting the entities.

MOTION WAS AMENDED by Vice Chairman Solari, SECONDED by Commissioner Wheeler, to authorize staff to give their presentation at the March 16th, 2009 Board of County Commission Meeting, and thereafter give the presentations to Indian River Shores, the City of Vero Beach, and the South Beach Property Association.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

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 - NONE

15.C. ENVIRONMENTAL CONTROL BOARD - NONE

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES

16. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 10:21 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Peter D. O'Bryan, Chairman

Minutes Approved: _____

BCC/LA/2010 Minutes