

JEFFREY K. BARTON  
Clerk to the Board



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OF APRIL 20, 2010

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**JEFFREY K. BARTON**

Clerk to the Board



**April 20, 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, April 20, 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 Alan S. Polackwich, Sr., and Deputy Clerk Maureen Gelfo.

**1. CALL TO ORDER**

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

**2. INVOCATION**

Chaplain Kenneth Jones, VNA Hospice of Indian River County, delivered the Invocation.

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

Commissioner 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:

*ADDITION: ITEM 13.C. COUNTY ATTORNEY MATTERS - USE OF KARLIN DANIEL & ASSOCIATES TO HOLD AUCTION TO SELL SURPLUS/EXCESS COUNTY PROPERTY AND EQUIPMENT ON MAY 8, 2010*

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

### **5. PROCLAMATIONS AND PRESENTATIONS**

**5.A. PRESENTATION OF PROCLAMATION RECOGNIZING APRIL 23 – 24, 2010 AS RELAY FOR LIFE EVENT IN INDIAN RIVER COUNTY**

Chairman O'Bryan read and presented the Proclamation to Kathy Taylor of the American Cancer Society.

**5.B. PRESENTATION OF PROCLAMATION DESIGNATING MAY 1, 2010 THROUGH MAY 7, 2010 AS LAW WEEK IN INDIAN RIVER COUNTY**

Vice Chairman Solari read and presented the Proclamation to Jason L. Odom, Esquire, of Gould, Cooksey, Fennell, P.A.

**5.C. A PRESENTATION BY THE ENVIRONMENTAL LEARNING CENTER  
REGARDING THEIR DEDICATION CEREMONY ON MAY 1, 2010**

Doug Graybill, Board of Trustees of the Environmental Learning Center (ELC), spoke about the Environmental Learning Center, which incurred fire damage in June 2008, and is scheduled to have a Grand Re-Opening on May 1, 2010. He described the attributes which make the rebuilt center one of the greenest facilities in the County, and reported that the ELC will be applying for Green Globes classification.

Chairman O'Bryan wanted to look into designating the ELC laboratory as the County's official Green Education Center.

**6. APPROVAL OF MINUTES**

**6.A. REGULAR MEETING OF MARCH 9, 2010**

**6.B. REGULAR MEETING OF MARCH 16, 2010**

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meetings of March 9, 2010 and March 16, 2010. There were none.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis the Board unanimously approved the Minutes of the Regular Meetings of March 9, 2010, and March 16, 2010, as written.

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

**7.A. 2010 ELECTION OF SCHOOL PLANNING CITIZENS OVERSIGHT  
COMMITTEE CHAIRMAN AND VICE CHAIRMAN**

Noted for the record was the re-election of Charles Searcy as Chairman, and Mary Wolff as Vice Chairman, of the School Planning Citizens Oversight Committee (SPCOC) for the year 2010.

**8. CONSENT AGENDA**

Chairman O'Bryan requested Item 8.C. be pulled for discussion.

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

**8.A. APPROVAL OF WARRANTS AND WIRES, APRIL 5, 2010 TO APRIL 8, 2010**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of April 5, 2010 to April 8, 2010, as recommended in the memorandum of April 8, 2010.

**8.B. WORK ORDER NO. 5 (ENGINEERING/SURVEYING), KIMLEY-HORN AND ASSOCIATES, INC., SR60 & 58<sup>TH</sup> AVENUE INTERSECTION IMPROVEMENTS AND RIGHT-OF-WAY PROJECT**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved payment of Kimley-Horn and Associates, Inc. Invoice No. 4120064, dated March 31, 2010 in the amount of \$574.95 for release of retainage, as requested in the memorandum of March 31, 2010.

**8.C. 2010/2011 BUDGET WORKSHOP CHANGE OF DATES**

Chairman O'Bryan read into the record the new Budget Workshop dates of Wednesday, July 14, and Thursday, July 15, 2010, noting that the dates are one week earlier than previously scheduled.

ON MOTION by Commissioner Davis, SECONDED by Chairman O'Bryan, the Board unanimously approved the change in the 2010/2011 Budget Workshop dates from Wednesday, July 21, and Thursday, July 22, 2010, to Wednesday, July 14, and Thursday, July 15, 2010, as recommended in the memorandum of April 13, 2010.

**8.D. F.D.O.T. DISTRICT FOUR (4) MAINTENANCE MEMORANDUM OF AGREEMENT AND RESOLUTION AUTHORIZING THE CHAIRMAN'S SIGNATURE FOR INSTALLATION OF ELLIPTICAL REINFORCED CONCRETE PIPE (ERCP) ON STATE ROAD 5/US-1 SOUTH OF 53<sup>RD</sup> STREET, IRC PROJECT NO. 0107**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously: (1) approved the District Four (4) Maintenance Memorandum of Agreement with the State of Florida Department of Transportation; and (2) approved **Resolution 2010-031**, authorizing execution of a District Four (4) Maintenance Memorandum of Agreement for the installation of 231 feet, 12” x 18” elliptical reinforced concrete pipe (ERCP) within the right of way on State Road 5/US 1 South of 53<sup>rd</sup> Street in Indian River County with the State of Florida, Department of Transportation, and providing for an effective date.

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

**8.E. DECLARE ADDITIONAL EXCESS EQUIPMENT SURPLUS FOR SALE OR PROPER DISPOSAL**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the additional listed items surplus, as presented on pages 27-29 of the backup, and authorized its sale and/or proper disposal at the public auction to be held on May 8, 2010 at the County fairgrounds, as recommended in the memorandum of April 14, 2010.

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

## **10. PUBLIC ITEMS**

### **10.A. PUBLIC HEARINGS**

#### **10.A.1. CONSIDERATION OF ESTABLISHING A BROWNFIELD AREA NEAR 74<sup>TH</sup> AVENUE AND 9<sup>TH</sup> STREET SW (LEGISLATIVE)**

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

County Attorney Alan Polackwich stated that this item was of a quasi-judicial nature; thus, the Deputy Clerk administered the Oath, pursuant to quasi-judicial requirements.

Community Development Director Robert Keating, through a PowerPoint presentation (on file), provided background history and analysis on the request for the Board to establish, through the Brownfields Redevelopment Act, a Brownfield area near 74<sup>th</sup> Avenue and 9<sup>th</sup> Street SW. He explained that INEOS New Planet BioEnergy (which is not yet the official owner of the Ocean Spray site where they propose to locate their facility), had originally requested that the Board consider designating the property as a Brownfield area. Staff had thereafter thought it would be beneficial to apply the designation to a broader area. Director Keating displayed the boundaries of the proposed Brownfield designation, after which he requested that the Board open the public hearing. He noted that a second public hearing would be required if the Board decides to pursue the Brownfield Designation.

*The Chairman opened the Public Hearing.*

The following individuals spoke in opposition to the Brownfield Area designation for the proposed area:

**B.J. McClure**, 395 Nieuport Drive, Indian River Aerodrome

**Eugene O'Neill**, Esquire, Gould, Cooksey, Fennell, P.A., 979 Beachland Blvd.  
representing Katherine and John Schumann, Jr.

**Joseph Paladin**, President, Black Swan Consulting

**Jeffrey Scott Shapiro**, 7625 5<sup>th</sup> Street

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

**George Houston II, PG**, Brownfields Redevelopment Coordinator, Central District, Department of Environmental Protection (DEP), addressed Commissioner Davis's inquiry about public input in other communities considering Brownfield Area designations.

Commissioner Wheeler was opposed to designating the proposed site as part of a Brownfield Area without actual contamination being present on the site. Further, he did not think that INEOS would suffer from the lack of the Brownfield Area designation.

MOTION WAS MADE by Commissioner Wheeler,  
SECONDED by Commissioner Flescher, to not move  
forward with the second Brownfield Area public hearing,  
and to not continue to pursue the proposed Brownfield  
Area designation near 74<sup>th</sup> Avenue and Oslo Road.

Commissioner Flescher expressed concerns about existing property owners being negatively impacted by the stigma of contamination, which is implicit in a Brownfield Area designation. He also spoke about a site he had toured in the Gifford area, which contains identified contamination, and would thus be eligible for a Brownfield Area designation.

Commissioner Davis felt that the negatives outweigh the positive aspects of the Brownfield Area designation for the proposed area.

Vice Chairman Solari agreed with former speakers that the proposed site should not be given a Brownfield designation because it is not a contaminated area. He wanted to make sure that the Brownfields Redevelopment Act would be used to help areas in which contamination has been identified.

Chairman O'Bryan, although cognizant of the economic benefits of a Brownfield Area designation, felt that he had not heard enough compelling evidence to move forward at this time.

The Chairman CALLED THE QUESTION, and the Motion unanimously carried. The Board directed staff to not schedule a second public hearing to consider the Brownfield Area designation; and to discontinue pursuing the establishment of a proposed Brownfield Area designation near 74<sup>th</sup> Avenue and Oslo Road.

The Chairman called a break at 10:20 a.m. and reconvened the meeting at 10:30 a.m., with all members present.

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

### **10.B.1. REQUEST TO SPEAK FROM KEN FELTEN, BROWN & BROWN**

#### **INSURANCE, VERO BEACH, REGARDING INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSION INSURANCE RENEWAL**

**Ken Felten**, 111 Prestwick Circle, Vice President of Brown & Brown Insurance, addressed the Board with his request to consider the Property Insurance package developed by Brown & Brown Insurance for the County. He used a PowerPoint presentation (on file) to provide detailed background information and comparison data on Brown & Brown's proposal versus that of Arthur J. Gallagher (AJG), the current insurance broker for the County, whose contract is up for renewal today.

**Brian Henderson**, Peachtree Special Risk Brokers, LLC, responding to Mr. Felten's request, provided a brief commentary on commercial property insurance.

Discussion ensued between Mr. Felten and County Administrator Joseph Baird regarding the bidding process; the timeframe of the County's insurance renewal; and comparisons of the property insurance coverage proposed by Brown and Brown Insurance versus that offered by Arthur J. Gallagher.

Administrator Baird suggested that further discussion on this item be held under Item *12.G.1. Office of Management and Budget- Property/Casualty Insurance – May 1, 2010 through April 30, 2011.*

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved to hear *Item 12.G.1. Office of Management and Budget - Property/Casualty Insurance – May 1, 2010 through April 30, 2011*, following Item 10.B.1., and to continue discussion therein.

Concluding his presentation, Mr. Felten outlined the benefits that the County would derive by awarding the property insurance coverage to Brown & Brown.

**10.B.2. REQUEST TO SPEAK FROM CITY OF VERO BEACH COUNCILMEMBER**  
**BRIAN HEADY REGARDING UPDATE ON LATEST DEVELOPMENTS**  
**REGARDING CITY OF VERO BEACH ELECTRIC UTILITY**

(Clerk's Note: This item was heard following 11.A. County Administrator Matters and is placed here for continuity).

**Brian Heady**, City of Vero Beach Council Member (speaking in his capacity as a County resident, and not as a member of the Council), advised that he would be making three requests at the City of Vero Beach Council Meeting of April 20, 2010, as follows:

- (1) To add Glenn Heran's presentation on the Electric Utility to the City's Agenda
- (2) To have a presentation of the economic model of the Vero Beach Electric Utility be brought to the County Commission
- (3) To request that the City agree to a Joint Meeting with the County to discuss the Utility, and either set a date or contact the Commission regarding same

**J. Rock Tonkel**, 5055 North Harbor Drive, Grand Harbor, presented a public records request to have a copy of the County's invitation to the City of Vero Beach, to attend a Joint Meeting with the County, and to additionally receive any other correspondence received back from the City related to the issue of the Electric Utility.

**10.C. PUBLIC NOTICE ITEMS**

**10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING MAY 4, 2010:**

**AMENDMENT TO SECTION 100.03(4) OF THE CODE OF INDIAN RIVER COUNTY, CODIFYING AND PUBLISHING THE ORDINANCES TO READOPT THE CODE UP TO AND INCLUDING SUPPLEMENT 78 (LEGISLATIVE)**

**10.C.2. NOTICE OF SCHEDULED PUBLIC HEARING MAY 4, 2010:**

**APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR A CLASS B CERTIFICATE FROM COASTAL HEALTH SYSTEMS OF BREVARD TO PROVIDE NON-EMERGENCY ALS/BLS AMBULANCE INTERFACILITY TRANSPORTS (QUASI-JUDICIAL)**

**10.C.3. NOTICE OF SCHEDULED PUBLIC HEARING MAY 4, 2010:**  
**ORDINANCE AMENDMENT TO PROVIDE FOR SUNSETTING**  
**COMMITTEES CREATED PURSUANT TO ORDINANCE (LEGISLATIVE)**

County Attorney Alan S. Polackwich, Sr., read the notices into the record.

**11. COUNTY ADMINISTRATOR MATTERS**

**11.A. UTILIZATION OF COUNTY FAIRGROUNDS, 7955 58<sup>TH</sup> AVENUE, VERO**  
**BEACH, FL 32967, PARCEL I.D. #31-39-32-00000-7000-00002.0**

County Administrator Joseph Baird announced that pursuant to the Board's directive at the Economic/Goal Summit II on February 18, 2010, staff would be making a presentation on better utilization of the County Fairgrounds, possibly through a private/public partnership. He informed the Board that because State funding was used to construct the facility, the County must adhere to certain requirements governing use of the Fairground property.

Michael Zito, Assistant County Administrator, through a PowerPoint presentation (on file), provided background history and a cost analysis regarding Fairground expenses/revenues, as applicable to both non-profit and for-profit organizations. Relative to increasing usage of the Fairgrounds, he presented two alternatives for the Board to consider, as outlined on page 49, and presented staff's recommendation to retain the present rate structure and maintenance function, with an increased emphasis on advertising to attract users.

Discussion ensued as Commissioners and staff debated what would be the best options for optimizing Fairground usage and increasing revenues. Suggestions were made to use the facility for summer camps; to have different groups use or rent all three facilities (the Expo Center Building, Main Pavilion, and Agricultural Pavilion) at the same time; to make the livestock scales more easily accessible for the 4-H Club; to encourage realtors to use the facility; and to bring in more sporting events.

Commissioner Davis wanted to see the private sector come forward with some ideas for maximizing utilization of the Fairgrounds. He wanted to see the Fairgrounds run in the same manner as Dodgertown.

Commissioner Flescher spoke in support of having the County retain and operate the facility, although he would like to see a better strategy developed to encourage greater usage of the Fairgrounds.

MOTION WAS MADE by Commissioner Flescher,  
SECONDED by Chairman O'Bryan, for discussion, to  
approve staff's recommendation.

Further discussion ensued regarding optimization of Fairground usage.

Commissioner Davis felt that stepping up advertising would not address the problem of the underutilized Fairgrounds, and wanted to see staff return with some type of incentive for the private sector to bring opportunities into the Fairgrounds.

Commissioner Wheeler felt that it was a good idea for the County to advertise and promote fairground usage, but he did not wish to see the County in competition with private enterprises who offer similar venues. He advised that the County maintain competitive rental rates, and not undercut private facilities.

Chairman O'Bryan observed that there is currently no marketing plan for the Fairgrounds, so staff's recommendation to develop an aggressive marketing plan would be the first step.

Commissioner Davis reiterated his opposition, believing that the private sector could do a better job.

Further discussion ensued.

**Charles Wilson**, Vero Beach, suggested that the Board approach the local business community for ideas on a marketing plan.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Davis & Wheeler opposed), the Motion carried. The Board approved retaining the present facilities rental rate structure and maintenance function with an increased emphasis on additional promotion through placement on the County website, direct mail, and word-of-mouth advertising to new and existing end user targets, as recommended in the memorandum of April 12, 2010.

## **12. DEPARTMENTAL MATTERS**

### **12.A. COMMUNITY DEVELOPMENT**

#### **12.A.1. APPROVAL OF CONTRACT AWARD FOR THE REHABILITATION OF SEVEN HOMES APPROVED UNDER THE HURRICANE WILMA COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY INITIATIVE**

Community Development Director Robert Keating explained that this was the proposed Contract Award for rehabilitation work activities for damage incurred from one of the 2005 hurricanes to seven homes approved under the Hurricane Wilma Community Development Block Grant (CDBG) Disaster Recovery Initiative. He confirmed staff's recommendation of the Contract Award, providing there are no conflicts of interest between the Board Members and the contractors performing the rehabilitation work.

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

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the following contractors and total awards for each of the following applicants: (1) Bryant, Annie (5795 59<sup>th</sup> Ct.) to De La Hoz Builders, Inc., Sebastian, FL, for the total amount of \$7,594.80; (2) Carlyle, Juanita (4357 33<sup>rd</sup> Ave.) to Regan Construction, Inc., Vero Beach, FL, for the total amount of \$6,702.00; (3) Fersch, Monteen (3515 69<sup>th</sup> St.) to Regan Construction, Inc., Vero Beach, FL, for the total amount of \$8,665.92; (4) McGriff, Mack (4436 35<sup>th</sup> Ave.) to Regan Construction, Inc., Vero Beach, FL, for the total amount of \$4,392.00; (5) Brown, Willie Mae (2334 1<sup>st</sup> Ave, SE) to Regan Construction, Inc., Vero Beach, FL, for the total amount of \$5,738.40; (6) Stevenson, Dorothy (4385 23<sup>rd</sup> Ct.) to De La Hoz Builders, Inc., Sebastian, FL, for the total amount of \$6,294.00; and (7) Gillis, Joe (690 24<sup>th</sup> St. SW) to Regan Construction, Inc., Vero Beach, FL, for the total amount of \$8,610.00, as recommended in the memorandum of April 12, 2010.

**12.A.2. REQUEST FOR AUTHORIZATION TO ABATE RECURRENCE OF A PUBLIC  
NUISANCE ON AN UNMAINTAINED GOLF COURSE WITHIN VISTA  
GARDENS MULTIFAMILY DEVELOPMENT (LANDOWNER: VISTA GOLF  
LLC; CODE ENFORCEMENT CASE NO. 2009060086)**

MOTION WAS MADE by Vice Chairman Solari,  
SECONDED by Commissioner Flescher, to approve  
staff's recommendation.

Commissioner Flescher noted this was the second time this matter has come before the Board, and wanted to know if there was a more permanent solution for this issue.

Discussion ensued, with input from Attorney Polackwich, and Chief of Environmental Planning Roland DeBlois, regarding possible legal remedies for this situation.

Assistant County Attorney George Glenn informed the Board that the respondent in this matter, Vista Golf LLC, must be given the opportunity to defend him or herself.

Chairman O'Bryan asked if a representative was present and wished to speak. Seeing none, the Board took the following action:

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board authorized the County's employees, servants, agents, or contractors to again enter upon the Vista Golf, LLC property within Vista Gardens at all reasonable times, and take whatever action is necessary to abate the nuisance described in staff's report, with costs of the abatement to be recorded as a lien against the subject property, as recommended in

the memorandum of April 12, 2010.

Chairman O'Bryan directed the County Attorney to return with additional possible remedies on securing the cooperation of Vista Golf, LLC in maintaining the golf course within Vista Gardens.

**12.A.3. RE-CONSIDERATION OF REQUEST FOR A ONE-YEAR EXTENSION OF  
THE OCEAN CONCRETE SITE PLAN APPLICATION TO CONSTRUCT A  
CONCRETE BATCH PLANT**

In accordance with Attorney Polackwich's declaration that this matter was quasi-judicial in nature, the Deputy Clerk administered the Oath to all persons to appear before the Board.

Community Planning Director Stan Boling, through a PowerPoint presentation (on file), provided description, conditions, and analysis pertaining to Ocean Concrete Inc.'s request for a one-year extension of its site plan application to construct a concrete batch plant on a ± 7.6 acre site zoned Light Industrial (IL) located on the west side of Old Dixie Highway. He provided a timeline of Ocean Concrete's two site plan applications, and explained that while the second application was still valid, the Board had approved (in July 2007), to eliminate concrete plants as an allowable use in IL Districts, while allowing Ocean Concrete to continue with the application process to see if they could satisfy the regulations notwithstanding the new limitation. In December 14, 2007, Ocean Concrete filed a lawsuit against the County relating to the Board's denial of a site plan application extension request, and on January 7, 2008, a lawsuit was filed regarding staff's denial of a site plan for construction of the plant. Director Boling explained that the Circuit Court has rendered a decision directing the Board to hold a new hearing on the application extension using a "good cause" standard, and presented staff's recommendation to grant the one-year extension.

Attorney Polackwich conveyed the necessity for ascertaining if Ocean Concrete can meet the requirements for site plan approval and whether they have a vested right to proceed under the previous regulations, or whether the new regulations would apply. He explained that the new LDR's apply unless there can be a demonstration of equitable estoppel or vested rights. He wished to get an answer to both of these items and have this issue resolved in a timely manner.

Discussion ensued as the Board sought and received additional details on Ocean Concrete's site plan application, and on Ocean Concrete's response to the discrepancy letters sent to them by the Technical Review Committee.

Attorney Polackwich observed that historically, the practice of the Planning Department has been to routinely grant extensions in situations similar to this, and that if it were not for the LDR change, the application for the extension would have been granted.

MOTION WAS MADE by Commissioner Wheeler,  
SECONDED by Vice Chairman Solari, to approve staff's  
recommendation.

Attorney Polackwich advised that he would meet with Ocean Concrete's Attorney to learn what criteria was used to establish Ocean Concrete's position that it is entitled to construct the plant under the old LDR's; he will subsequently analyze the data and return with an opinion to the Board.

**Todd Smith**, P.E., 121 Hinchman Avenue, Sebastian, Engineer for Ocean Concrete, for the record, voiced accord with staff's recommendation on Ocean Concrete.

**Rex Nelson**, Sebastian, presented arguments opposing the proposed Ocean Concrete Batch Plant, but acknowledged that the Board should undertake the steps necessary to make a decision on whether Ocean Concrete meets the criteria.

**George Maab**, 11085 Old Dixie Hwy, Ocean Concrete, for the record, discussed some of the issues which Ocean Concrete has been addressing in response to the discrepancy letters (pertaining to its site plan applications), which had been sent by the Technical Review Committee (TRC). He stressed that Ocean Concrete had been exercising due diligence on its design plan beginning in 2003, prior to closing on the subject property.

**AI** (last name and address inaudible), spoke in opposition to the proposed Ocean Concrete Batch Plant.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners O'Bryan and Flescher opposed), the Motion carried. The Board approved Ocean Concrete Inc.'s request to extend the site plan application (for Concrete Batch Plant) for one year, as recommended in the memorandum of April 12, 2010.

**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. PROPERTY/CASUALTY INSURANCE – MAY 1, 2010 THROUGH APRIL 30, 2011**

*(Clerk's Note: This item was heard following Item 10.B.1. Public Discussion Items- Request to Speak from Ken Felten, Brown & Brown Insurance, and is placed here for continuity).*

Office of Management and Budget Director Jason Brown recapped his memorandum of April 13, 2010 to provide background information on the renewal of the County's property and casualty insurance. He conveyed that in March 2009, Arthur J. Gallagher (AJG) had been approved as the County's insurance broker, with five one-year renewals, and that he intended to renew with Gallagher for the first of those five one-year renewals. He noted that although the County undergoes the RFP process for insurance services every few years to keep a check on the broker; it is not done every year. Director Brown provided a detailed comparison of the major differences in the insurance coverage offered by Brown and Brown Insurance, and by Arthur J. Gallagher, and addressed several points made earlier by Mr. Felten (see Item 10.B.1.). Director Brown spoke of the excellent customer service provided by AJG in the past, affirmed that the coverage provided by that firm was superior, and presented staff's recommendation to renew with Arthur J. Gallagher.

Director Brown, with input from Administrator Baird, responded to the Board's query regarding the reasons that Brown & Brown was presenting a property insurance proposal when they had not responded to the County's initial Request for Proposal (RFP) for insurance services, which had been advertised on January 21, 2009. He explained that due to a miscommunication with former Risk Management staff, Brown & Brown Insurance had the impression that the County was still accepting bids for the insurance broker services.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Solari, for discussion, to approve staff's recommendation of Alternative 2, the renewal with Arthur J. Gallagher for the first one-year renewal of broker services.

Staff addressed further questions from the Board regarding the circumstances which prompted Brown & Brown to submit its proposal.

Commissioner Flescher asked Commissioner Wheeler if his Motion included the County going through the RFP process for the insurance broker services for the following year, and Commissioner Wheeler affirmed that he did not mind going out for a bid.

MOTION WAS AMENDED by Commissioner Wheeler, SECONDED by Vice Chairman Solari, to include direction to staff to undergo the RFP (Request for Proposal) process for broker services for the following year.

Chairman O'Bryan thanked Mr. Felten for all of his work and the information he has provided to the County; however, he felt it was prudent to support staff's recommendation to renew with AJG for one year, and to subsequently issue an RFP for the following year.

The Board accepted input from the following speakers:

**Gerry Thistle**, Willis North America

**Joe Chiarella**, 350 15 Lane SW

**Calvin Kreigh**, 329 Main Street, Sebastian

Further discussion ensued, after which the Board took the following action:

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board: (1) approved to renew with Arthur J. Gallagher for the first one-year renewal of broker services as awarded March 1, 2009; (2) selected the optional program including additional hurricane coverage of \$25 million for a total hurricane limit of \$50 million; (3) authorized staff to bind coverage as approved for the May 1, 2010 effective date, resulting in a total premium of \$1,876,968.02, a decrease of \$90,476.98 or 4.6% from the current year; and (4) directed staff to undergo the RFP (Request for Proposal) process for broker services for the following year.

The Chairman called a break at 12:10 p.m. and reconvened the meeting at 1:00 p.m., with all members present.

**12.H. RECREATION-NONE**

**12.I. PUBLIC WORKS**

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

Public Works Director Christopher Mora used a PowerPoint Presentation (on file), to update the Board on the Sector 3 Beach Renourishment Project.

**12.J. UTILITIES SERVICES**

**12.J.1. FINAL PAYMENT – SURVEY FOR MITIGATION AT LOST TREE ISLANDS**

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved and authorized the Chairman to execute the final payment to Masteller, Moler, Reed and Taylor (MMRT) in the amount of \$1,387.50 (for mitigation at Lost Tree Islands – [Earman, Duckhead, and Hogshead Islands] as part of the Spoonbill March Project), as recommended in the memorandum of April 6, 2010.

**12.J.2. AMENDMENT NO. 1 TO WORK ORDER NO. 13 WITH CDM – DESIGN, PERMITTING, BIDDING AND CONSTRUCTION SERVICES FOR CONSTRUCTION OF WELL NO. 7 AND AT THE SOUTH COUNTY R.O. FACILITY**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute Amendment No. 1 to Work order No. 13 with Camp Dresser and McKee (CDM) in the amount not to exceed \$22,770.00, as recommended in the memorandum of April 14, 2010.

AMENDMENT NO. 1 ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

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

#### **13.A. AGREEMENT FOR PERSONAL PROPERTY AND TRADE FIXTURES AT CUMBERLAND FARMS SITE – OSLO ROAD IMPROVEMENT PROJECT**

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Chairman O'Bryan, for discussion, to approve staff's recommendation.

Attorney Polackwich, recapping the memorandum of April 9, 2010, provided background on Cumberland Farms' request to be allowed to remove their equipment and trade fixtures from the subject site prior to the County's demolition of the structure for the Oslo Road Improvement Project.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved and authorized the Chairman to execute the Agreement for Removal of Personal Property/Trade Fixtures with Cumberland Farms, Inc., as recommended in the memorandum of April 9, 2010.

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

#### **13.B. CITY OF FELLSMERE COURTESY WARNING, DATED APRIL 9, 2010**

County Attorney Alan S. Polackwich, Sr., reviewed the memorandum of April 13, 2010 to provide background and analysis on the Courtesy Warning sent to the County by the City of Fellsmere, pertaining to 2010 fire protection charges, for which the County has not yet paid. He requested Board approval for staff to ask Fellsmere to delay new code enforcement proceedings

relating to the 2010 bill until the appellate court makes a final decision on the County's appeal regarding the 2009 fire protection charges.

MOTION WAS MADE by Commissioner Wheeler,  
SECONDED by Chairman O'Bryan, to approve staff's  
recommendation.

A brief discussion ensued between Commissioner Davis and Attorney Polackwich regarding whether staff's recommendation was the best course of action.

Vice Chairman Solari made observations pertaining to Fellsmere's annual charges for the fire hydrant maintenance.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved to approach Fellsmere with a suggestion to stay code enforcement proceedings relating to the 2010 fire protection charges, until the appellate court has resolved the pending appeal relating to the 2009 fire protection charges, as recommended in the memorandum of April 13, 2010.

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

**13.C. ADDITION: USE OF KARLIN DANIEL & ASSOCIATES TO HOLD AUCTION TO SELL SURPLUS/EXCESS COUNTY PROPERTY AND EQUIPMENT ON MAY 8, 2010**

Attorney Polackwich reviewed the memorandum of April 15, 2010 to update the Board on staff's request to retain the auctioneer services of Karlin Daniel & Associates for the May 8, 2010 Auction, subsequent to learning that the contract (piggy-backed off the City of Port St.

Lucie), had not been the result of the competitive selection process, as staff had first believed. He explained that there was an option in the purchasing code to waive the competitive bid process under these circumstances, and conveyed staff's recommendation to exercise the waiver and proceed with the May 8th Auction. He additionally recommended that the Board authorize staff to proceed with a competitive bid process to line up an auctioneer for future auctions.

Commissioner Davis noted that there would be no additional expense to the County.

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman Solari, the Board unanimously authorized the auction for May 8, 2010, utilizing Karlin Daniel & Associates and authorized the issuance of a Request for Proposals (RFP) for the sale of both surplus/excess equipment and real property for future auctions, as recommended in the memorandum of April 15, 2010

## **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**

#### **14.D.1. SHARK FISHING**

Commissioner Flescher showed slides (supplied by Doug Distl) depicting the practice of shark fishing and chumming from the County's beaches. He reported that the County has

become a popular and widely-advertised spot for non-local sportspeople to participate in boatless shark fishing or chumming, which he believed were inappropriate and unsafe practices, in view of nearby bathers and swimmers at County beaches. He asked the Board if they wished to pursue the development of an enforceable Ordinance, such as the one adopted by Delray Beach, to prohibit shark fishing and chumming from the beaches.

MOTION WAS MADE by Commissioner Flescher to direct staff to draft an Ordinance to protect the citizens at the shoreline from nearby shark fishing and chumming activities. MOTION FAILED for lack of a second.

Board discussion ensued regarding the possible dangers to the bathers; the scope of the County's legal jurisdiction over the shorelines and ocean; the State Statutes governing saltwater fishing; and Delay Beach's Ordinance.

Attorney Polackwich explained that there were some areas of legislation reserved for the State, such as saltwater fishing, but that there were exceptions within those parameters for local governments to take action to protect the public. He related that the Board could adopt an Ordinance after a Public Hearing showing that sharks were literally being attracted into the bathing areas, and that this was creating a danger. He acknowledged that there was not 100% certainty that the Ordinance would survive a challenge, but affirmed staff's willingness to take up the challenge if the Board so desired.

A brief discussion ensued on the prevalence of sharks in County waters.

Commissioner Wheeler wanted to obtain further information on the factors precipitating shark attacks, and suggested inviting an expert on shark habits to find out if the shark fishing/chumming done on the shoreline, does, in fact, pose a hazard to bathers and swimmers.

Vice Chairman Solari supported Commissioner Wheeler in his desire for further information, although he voiced dismay that the government has to legislate what should be a common sense matter.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Solari, to direct staff to obtain more information and an expert opinion regarding the practice of shark fishing/chumming from County beaches, and to bring this item back to the Board.

Commissioners Davis, Flescher, and Wheeler wished to go on record as being opposed to banning the practice of shark fishing in Indian River County.

Further discussion ensued.

**Doug Distl**, representing Carlton Properties, provided background information on the practice of boatless shark fishing and urged the Board to be pro-active in addressing this dangerous situation.

Further discussion ensued regarding the dangerous aspects of the shark fishing from the beaches; the perception versus the reality of the dangers posed to citizens by the sharks; and how to balance the rights of beach goers and shark fishermen.

**Joseph Paladin**, suggested that the County obtain assistance from an expert, to assist with the drafting of the Ordinance, should the County move in that direction.

Discussion followed, with input from Assistant County Administrator Michael Zito, pertaining to the enforceability of the proposed Ordinance.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board directed staff to obtain further information and an expert opinion regarding the practice of shark fishing/chumming from County beaches, and to bring this item back to the Board.

**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 3:17 p.m.

ATTEST:

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

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

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

BCC/MG/2010Minutes