

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF MAY 11, 2010

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JEFFREY K. BARTON

Clerk to the Board



May 11, 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, May 11, 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

Father Tri Tang Pham, St. Helen Catholic Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chairman Solari 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 13.A. COUNTY ATTORNEY MATTERS - SHARK BAITING/CHUMMING
DISCUSSION TO BE HEARD IN CONJUNCTION WITH ITEM 5.E. PRESENTATION BY RICHARD
GRANT GILMORE, JR., PHD.*

*ADD: ITEM 14.E. COMMISSIONER GARY C. WHEELER - DISCUSSION ON HOLDING A
WORKSHOP WITH THE CITY OF VERO BEACH AND THE TOWN OF INDIAN RIVER SHORES TO
DISCUSS COUNTYWIDE CONSOLIDATION OF WATER/SEWER/IRRIGATION (WSI) UTILITY
SERVICES*

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 DESIGNATING THE WEEK OF MAY 18- 22, 2010, AS EMERGENCY MEDICAL SERVICES WEEK

Commissioner Wheeler read and presented the Proclamation to Brian Burkeen, Assistant
Chief of Fire Rescue.

**5.B. PRESENTATION OF PROCLAMATION HONORING THE 30TH YEAR
ANNIVERSARY OF THE GENERAL FEDERATION OF WOMEN'S CLUBS,
TREASURE COAST WOMEN**

Chairman O'Bryan read and presented the Proclamation to the following representatives of the General Federation of Women's Clubs, Treasure Coast: Bobbi Burdick, Mary Ann Penque, Lorrie Fahey, Weasy Carmack, Carolyn Aldhizer, and Gail Bridwell-Brattain.

**5.C. PRESENTATION OF GOVERNMENT FINANCE OFFICERS ASSOCIATION
CERTIFICATE OF RECOGNITION FOR BUDGET PREPARATION TO OFFICE
OF MANAGEMENT AND BUDGET, INDIAN RIVER COUNTY, FLORIDA**

County Budget Director Jason Brown, through use of a PowerPoint presentation, addressed the Board regarding the Distinguished Budget Presentation Award, which was presented to the County by the Government Finance Officers Association (GFOA). He reported that the Budget Document can be reviewed at the County's website, www.ircgov.com.

**5.D. UPDATE FROM DIRECTOR OF EMERGENCY SERVICES, JOHN KING,
REGARDING THE OIL SPILL IN THE GULF OF MEXICO**

Director of Emergency Services John King used a PowerPoint presentation (on file) to update the Board on the status of the oil spill in the Gulf of Mexico. He said that thus far, Florida's beaches were still open, and that further information is available at the County's website, www.ircgov.com, and at the Department of Environmental Protection's website, dep.state.fl.us/deepwaterhorizon/.

(Clerk's Note: County Attorney Matters, Item 13.A. Shark Baiting/Chumming Discussion was heard in conjunction with Item 5.E., as follows).

**5.E. PRESENTATION BY RICHARD GRANT GILMORE, JR., PHD, PRESIDENT,
SENIOR SCIENTIST, ESTUARINE, COASTAL AND OCEAN SCIENCE, INC.,
REGARDING SHARK BAITING AND CHUMMING OFF COUNTY BEACHES**

Richard Grant Gilmore, Jr., PhD, related that Attorney Alan Polackwich had requested him, subsequent to Board directive at the April 20, 2010 County Commission meeting, to present a professional opinion on whether the practice of shark fishing from County beaches would increase the potential dangers of shark attacks. He displayed several types of shark jaws to report on the various shark species found in the local waters and their feeding habits. Dr. Gilmore thereafter responded to questions from the Board regarding the factors precipitating shark attacks; seasonal migration patterns; and the practices of chumming and baiting.

Lengthy deliberations ensued on how to achieve a balance between public safety and the rights of the fisherman who practice good sportsmanship. Chairman O'Bryan sought Attorney Polackwich's opinion regarding the effectiveness of developing an Ordinance regulating shark fishing.

Dr. Gilmore provided opinion that in order to ascertain the true dangers of shark fishing, the Board should have a study undertaken, utilizing the current databases of historical information and obtaining information from expert shark fisherman. He advised that the cost of said study would be approximately \$50,000.

Ocean Rescue Captain John Frazier, who was asked to provide his input, suggested restricting the shark fishing area to 300 feet from the guarded portion of the beach.

Commissioner Flescher expressed grave concerns about the shark fishing and felt that a common sense approach should be used, supporting Captain Frazier's view.

Chairman O'Bryan felt that if the shark fishing was allowed, it would be best to have it near a guarded beach where emergency services could be provided if necessary.

Commissioner Davis believed that this issue should be addressed through the State.

Commissioners Solari and Wheeler expressed opposition to the idea of drafting a local Ordinance and supported Commissioner Davis's idea to contact the Florida Fish and Wildlife Conservation Commission and ask them to make a statewide ruling on whether or not shark fishing is permitted.

The Board CONSENSUS was to not take action on an Ordinance at this time. The Chairman directed the County Attorney to draft a request to the Florida Fish and Wildlife Conservation Commission for a statewide policy on the issue of shark fishing off the beaches.

Commissioner Flescher, although preferring to see a bit stronger action, acknowledged that moving forward with a letter to the State is a step towards finding a solution to this issue.

6. APPROVAL OF MINUTES

6.A. PUBLIC HEARING WORKSHOP OF APRIL 5, 2010

The Chairman asked if there were any corrections or additions to the Minutes of the Public Hearing Workshop of April 5, 2010. There were none.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved the Minutes of the Public Hearing Workshop of April 5, 2010, as written.

6.B. SPECIAL CALL MEETING OF APRIL 9, 2010

The Chairman asked if there were any corrections or additions to the Minutes of the Special Call Meeting of April 9, 2010. There were none.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved the Minutes of the Special Call Meeting of April 9, 2010.

6.C. REGULAR MEETING OF APRIL 6, 2010

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of April 6, 2010. There were none.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Wheeler, the Board unanimously approved the Minutes of the Regular Meeting of April 6, 2010.

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

**7.A. RESIGNATION OF DISTRICT 5 APPOINTEE TO THE BOARD OF ZONING
ADJUSTMENT (BZA)**

Noted for the record was the resignation of Tom Yonge, District 5 Appointee, effective on April 28, 2010.

8. CONSENT AGENDA

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

8.A. APPROVAL OF WARRANTS AND WIRES, APRIL 23, 2010 TO APRIL 29, 2010

ON MOTION by Commissioner Flescher, 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 23, 2010 to April 29, 2010, as requested in the memorandum of April 29, 2010.

**8.B. OUT OF COUNTY TRAVEL TO ATTEND THE FLORIDA ASSOCIATION OF
COUNTIES ANNUAL CONFERENCE AND EDUCATIONAL EXPOSITION**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Out-of-County travel for Commissioners and staff to attend the Florida Association of Counties (FAC) Annual Conference and Educational Exposition in Hillsborough

County on June 29 through July 2, 2010, as recommended in the memorandum of May 4, 2010.

8.C. PROCLAMATION HONORING LINDA JONES ON HER RETIREMENT FROM INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS DEPARTMENT OF COMMUNITY DEVELOPMENT BUILDING DIVISION

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the Proclamation and Retirement Award honoring Linda Jones on her retirement from the Department of Community Development, Building Division.

8.D. CONSIDERATION OF A RESOLUTION OF SUPPORT AND A MEMORANDUM OF UNDERSTANDING FOR PARTICIPATION IN THE DEVELOPMENT OF A GRANT APPLICATION FOR FUNDING UNDER THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S SUSTAINABLE COMMUNITIES INITIATIVE

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved: (1) **Resolution 2010-036**, supporting the Regional Planning Councils of Southeast Florida in preparing a Comprehensive Joint Application under the Federal Sustainable Communities Initiative and establishing a Working Partnership Agreement with appropriate Water Resource, Housing, Environmental and Transportation Agencies, Local Governments, Nonprofits,

Academia, and Private Sector Organizations; and (2) the Sustainable Communities Initiative Memorandum of Understanding for the Southeast Florida Region, as recommended in the memorandum of May 7, 2010.

MEMORANDUM OF UNDERSTANDING IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.E. APPROVAL OF EMERGENCY MANAGEMENT STATE FUNDED SUB-GRANT (#09-BG-20-10-40-01-098) EXPENDITURES

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the expenditures for FY 09/10 Emergency Management Performance Grant (EMPG) #09-BG-20-10-40-01-098 Sub-Grant, as recommended in the memorandum of May 4, 2010.

8.F. APPROVAL OF RENEWAL FOR A CLASS “E1” CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR HEALTHSOUTH TREASURE COAST REHABILITATION HOSPITAL, TO PROVIDE WHEELCHAIR AND COMFORT STRETCHER SERVICES

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved renewal of the Class “E1” Certificate of Public Convenience and Necessity for HealthSouth Treasure Coast Rehabilitation Hospital, to be effective for a period of two (2) years from May 16, 2010 to May 16, 2012, as recommended in the memorandum of May 3, 2010.

**8.G. AWARD OF BID # 2010038, OLD DIXIE HIGHWAY BRIDGE REPLACEMENT
OVER THE SOUTH RELIEF CANAL IRC PROJECT No. 0205**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the contract be awarded to Dickerson Florida, Inc., in the amount of \$1,949,922.76, for the Bridge Replacement at Old Dixie Highway, as recommended in the memorandum of May 3, 2010.

**8.H. CHANGE ORDER No. 2 AND RELEASE OF RETAINAGE – MICHAEL SCHLITT
CONSTRUCTION CORP., LANDSCAPE IMPROVEMENTS TO 58TH AVENUE
FROM OSLO ROAD TO 16TH STREET, IRC PROJECT #0916, BID NUMBER
2009053, FDOT LOCAL AGENCY PROGRAM (LAP) AGREEMENT – FPN
No. 426383-1-58-01**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Change Order No. 2 and payment of Michael Schlitt Construction Corporation Application for Payment No. 4, dated April 25, 2010, in the amount of \$11,287.15, as recommended in the memorandum of April 29, 2010.

8.I. WORK ORDER NO. 3 (SIDEWALK/SOD) H & D CONSTRUCTION CO. INC.,
OAKS OF VERO SUBDIVISION PHASE 2 – SIDEWALK, RELEASE OF
RETAINAGE AND FINAL PAY

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Contract Change Order No. 1 and payment of Contractor's Application for Payment No. 2 in the amount of \$9,773.43 for full and final payment of Work Order No. 3 with H & D Construction Co., Inc., as recommended in the memorandum of April 26, 2010.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL
AGENCIES-NONE

The Chairman called a break at 10:26 a.m. and reconvened the meeting at 10:39 a.m., with all members present.

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10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

**10.A.1. DIVOSTA HOMES L.P.'S REQUEST FOR A CHANGE TO THE WATERWAY
VILLAGE DRI DEVELOPMENT ORDER AND DEVELOPER'S AGREEMENT
AND FOR ADOPTION OF A RESOLUTION APPROVING A SETTLEMENT
AGREEMENT (QUASI-JUDICIAL)**

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

Planning Director Stan Boling, through a PowerPoint presentation, provided background and analysis on DiVosta Homes, L.P.'s request to amend the Waterway Village Development of Regional Impact (DRI) Development Order (D.O.) through a Notice of Proposed Change (NOPC); to amend the Developer's Agreement; and to approve a Settlement Agreement, which would settle a lawsuit with the County regarding concurrency vesting. Director Boling explained that the Settlement Agreement would allow DiVosta to unbundle concurrency and prepay the impact fees for traffic only, whereas staff's position is that all concurrency facilities should be addressed as a bundle (pursuant to concurrency regulations), with all impact fees paid by December 31, 2015. Staff recommended that all of the above documents be approved, conditioned upon a change to the Amended Developer's Agreement, to require vesting of all concurrency components and payment of all impact fees by December 31, 2015. He acknowledged that the Planning and Zoning Commission (P & C) recommends Board approval of the draft documents as presented, and said that the Board has the option to approve the documents by finding that the NOPC does not constitute a substantial deviation from the D.O.

Director Boling responded to questions from Commissioner O'Bryan regarding drainage easements and the currency stipulations in the original settlement agreement with DiVosta.

County Administrator Joseph Baird disagreed with staff's position, and explained why he felt the settlement with DiVosta would be advantageous at this time.

Attorney Polackwich observed that the draft settlement documents represent a compromise between DiVosta's position that they are fully vested and staff's position that they are not vested at all. He explained that a DRI is subject to special laws, and that since the applicant has presented a Bert Harris claim and there are mechanisms under Bert Harris law to reach a settlement which may not neatly fit within existing code, he believed the Board has the legal authority to reach a conclusion in the middle.

The Chairman opened the Public Hearing.

Commissioner O'Bryan and staff responded to questions and comments from **Tom Norman**, 4955 Eleuthra Circle, Waterway Village, regarding the 53rd Street improvements.

Bruce Barkett, Esquire, representing DiVosta Homes, L.P., invited questions from the Board. None were forthcoming.

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

MOTION WAS MADE by Vice Chairman Solari, SECONDED by Commissioner Davis, to (1) determine that the request does not constitute a substantial deviation; (2) approve **Resolution 2010-037**, making findings of fact and conclusions of law pertaining to Waterway Village, a Development of Regional Impact, and constituting this resolution as an amended and restated Development Order by Indian River County in compliance with law; providing for an effective date and providing a termination date; (3) approve the Amended Developer's Agreement with DiVosta Homes, L.P., for Waterway Village; (4) and approve **Resolution 2010-038**, approving the settlement of a lawsuit and claims relating to

Waterway Village, a Development of Regional Impact, including, without limitation, claims under the Bert J. Harris, Jr., Private Property Rights Protection Act; making certain findings; approving settlement documents; and providing for an effective date upon court approval.

Commissioners O'Bryan, Davis, and Solari presented brief commentary in support of the Motion.

Attorney Polackwich confirmed with the Chairman that the Motion was to approve the entire settlement package, including the Amended Developer's Agreement with the unbundled impact fees. He noted that the settlement is contingent upon court approval, which staff would now move forward to seek.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board: (1) determined that the request does not constitute a substantial deviation; (2) approved **Resolution 2010-037**, making findings of fact and conclusions of law pertaining to Waterway Village, a Development of Regional Impact, and constituting this resolution as an amended and restated Development Order by Indian River County in compliance with law; providing for an effective date and providing a termination date; (3) approved the Amended Developer's Agreement with DiVosta Homes, L.P., for Waterway Village; and (4) approved **Resolution 2010-038**, approving the settlement of a lawsuit and claims relating to Waterway Village, a Development of Regional Impact, including, without limitation, claims under the Bert J. Harris, Jr., Private Property Rights Protection Act; making

certain findings; approving settlement documents; and providing for an effective date upon court approval.

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

10.A.2. CONSIDERATION OF EAR (EVALUATION AND APPRAISAL REPORT) BASED AMENDMENTS TO THE COUNTY'S COMPREHENSIVE PLAN (ADMINISTRATIVE)

Community Development Director Robert Keating announced that today's public hearing was for the Board to consider transmitting to the State Department of Community Affairs (DCA) for review, the Evaluation and Appraisal Report (EAR) based amendments to the Comprehensive Plan. He advised that any citizens who would be speaking could leave their name and address with Chief of Long-Range Planning Sasan Rohani, if they wished to receive information regarding the amendments throughout the review process. He conveyed that the most non-controversial elements would be discussed first, and began his PowerPoint presentation by outlining the following 10 elements and sub-elements which had no changes subsequent to the April 19, 2010 Joint Public Workshop of the Board of County Commissioners and the Planning and Zoning Commission (P&Z).

INTRODUCTORY ELEMENT - CHAPTER 1
POTABLE WATER SUB-ELEMENT - CHAPTER 3B
SOLID WASTE SUB-ELEMENT - CHAPTER 3C
STORMWATER MANAGEMENT SUB-ELEMENT - CHAPTER 3E
TRANSPORTATION ELEMENT - CHAPTER 4
ECONOMIC DEVELOPMENT ELEMENT - CHAPTER 5
CAPITAL IMPROVEMENTS ELEMENT - CHAPTER 6
HOUSING ELEMENT - CHAPTER 7
INTERGOVERNMENTAL COORDINATION ELEMENT - CHAPTER 11
PUBLIC SCHOOL FACILITIES ELEMENT - CHAPTER 12

The Chairman opened the Public Hearing.

Bob Johnson, Coral Wind Subdivision, addressed the Board regarding residential designations in the Comprehensive Plan, and the Oslo Plan Corridor.

Continuing his presentation, Director Keating began his review of the changes which had been made to six elements and sub-elements since the BCC/P&Z Joint Workshop.

SANITARY SEWER SUB-ELEMENT - CHAPTER 3A

(Clerk's Note: Please refer to pages 228 and 229 of the backup to view the following changes).

Director Keating reported that under Objective 7 Septic Tank Systems, Policy 7.5, for a feasibility study of a County-initiated septic tank maintenance program, has been deleted. Staff has also revised the data and analysis section found on page 28 of this sub-element to be consistent with the Board directive to place the emphasis on education, rather than regulation.

There was no public comment on Chapter 3A.

CONSERVATION ELEMENT - CHAPTER 8

(Clerk's Note: Please refer to pages 230 and 231 of the backup to view the following changes).

Director Keating outlined the following changes to Chapter 8:

Policy 2.19, under Objective 2 Surface Water Quality, has been revised to delete the proposed on-site disposal system (OSDS) maintenance program, and to place the focus on education, rather than regulation.

Objective 6 Upland Vegetation Communities has been revised to change the target amount of upland land plant communities to be preserved from a minimum of 5,000 acres (as presented in draft document at April 19, 2010 Joint Workshop) to 500 acres.

Director Keating noted that Policy 9.4, in Objective 9 Commercial Uses of Natural Resources, pertains to the prohibition of planting host plants in development projects, and is also found in Future Land Use Element-Chapter 2. The policy has been revised to rely on state regulations and remove the requirement to have landowners remove dead citrus trees in groves. He noted that in accordance with Commissioner Davis's request at the April 19, 2010 meeting, he would be discussing this matter further, and would do so during his presentation on Chapter 2.

In Policy 10.8, under Objective 10 Soil Erosion, the requirement for new oceanfront developments to hook up to public sewer, if available, has been eliminated.

There was no public comment on Chapter 8.

COASTAL MANAGEMENT ELEMENT - CHAPTER 9

(Clerk's Note: Please refer to page 231 of the backup to view the following changes).

Under Objective 4 Beaches and Dunes, Policy 4.13, for all new oceanfront developments to hook up to public sewer if available, was deleted.

There was no public comment on Chapter 9.

NATURAL GROUNDWATER AQUIFER RECHARGE

SUB-ELEMENT - CHAPTER 3D

(Clerk's Note: Please refer to page 231 of the backup to view the following changes).

Director Keating directed Board attention to the analysis section of this sub-element which has been amended to promote public education, rather than enforcement, on water conservation measures. He noted that under Objective 2 Preserving the Quantity of the Surficial Aquifer, Policy 2.2 relating to the County's adoption of a water conservation ordinance has been deleted.

There was no public comment on Chapter 3D.

RECREATION AND OPEN SPACE ELEMENT - CHAPTER 10

(Clerk's Note: Please refer to Appendix A to view the following policies).

Continuing his presentation, Director Keating said that Policies 9.1 through 9.9, were found under Objective 9 Arts and Cultural Programs. He stated that although there had been a lot of discussion at the April 19, 2010 meeting, staff had not been directed to make any specific changes. He noted that several Board members had questioned the Quasi-Nonprofit designation afforded the Cultural Council, as set forth in the first sentence of draft Policy 9.5 below:

“The County shall consider the Cultural Council of Indian River County (CCIRC) as the County's designated cultural agency and a Quasi-Nonprofit Agency. As such...”

Chairman O'Bryan acknowledged the work being done by the Cultural Council in order to fulfill the objective to have a comprehensive Cultural Plan by 2012. He supported inclusion of the Cultural Plan in the Comprehensive Plan, but questioned whether the Cultural Council should be called the designated “cultural agency”, as set forth under Policy 9.5 (above), or have some other description.

Susan Grandpierre, 765 Ocracoke Square SW, Chair of the Cultural Council, spoke to the advantages of including the Cultural Plan in the Comprehensive Plan. She provided an

overview of the Cultural Council's objectives and assured the Board that the organization was confident of raising the funds to do the plan by 2012.

Commissioner Wheeler supported the Cultural Plan, but wanted to make sure that the policies were written so the County does not end up being required to provide financial support to the Cultural Council. He also questioned whether the Quasi-Nonprofit status would lead to the expenditure of funds by the County.

Discussion followed on the ramifications of providing the quasi-nonprofit status to the Cultural Council.

Administrator Baird explained that commonly, the quasi-nonprofit designation is given to agencies that provide governments services that are necessary or required.

Commissioner Davis understood the need for the Cultural Council to be designated as the County's partner, but asked the Council representatives to what extent they would be affected if the Quasi-Nonprofit designation was removed from the Comprehensive Plan.

Mary Jayne Kelly, Executive Director of Cultural Council, 2036 14th Avenue #103, Vero Beach, FL 32960, explained the original intent for seeking the Quasi-Nonprofit designation in 2005, and acknowledged that while the Council preferred to maintain it, removing the designation would not greatly impact them.

Commissioner Wheeler requested that Policy 9.5 be amended as follows: "The County shall consider the Cultural Council of Indian River County (CCIRC) as the County's designated cultural agency ~~and a Quasi-Nonprofit Agency~~. As such..."

Vice Chairman Solari suggested amending the wording in Policy 9.5 as follows: "The Cultural Council...In so doing, the Cultural Council ~~shall~~ may annually submit a funding request to the County..."

(Clerk's Note: These changes will be incorporated into the Motion to transmit the EAR based amendments to DCA).

FUTURE LAND USE ELEMENT - CHAPTER 2

(Clerk's Note: Please refer to page 227 of the backup to view the following changes).

Director Keating directed the Board's attention to Policy 4.5 in Objective 4 Efficient Mix of Uses to Reduce Traffic Demand and Greenhouse Gas Emissions. He reported that the P&Z had recommended that interconnectivity between proposed developments should be only for bicycles and pedestrians. At the April 19, 2010 Workshop, the Board decided there should also be vehicular interconnectivity, so the Policy has been revised to include vehicular, pedestrian, and bicycle connections between development projects. He noted that there are some exceptions to the policy.

Director Keating recalled that Policy 6.5, found in Objective 6 Agricultural Protection, which Commissioner Davis wished to discuss, had been mentioned during discussion on the Conservation Element. The policy relates to the prohibition of planting host plants in new development projects that are in agricultural areas and having that structured as a deed restriction. Staff has amended the policy to reflect the fact that the deed restriction can be sunsetted if there is no further need for the prohibition.

Commissioner Davis acknowledged the need for protection, but objected to the permanency of the deed restriction, which he believed could render productive agricultural land fallow.

Extensive discussion ensued.

Attorney Polackwich suggested that perhaps the policy could be structured in a manner other than requiring the deed restriction, which tends to be quite permanent and difficult to remove.

Director Keating affirmed that staff could revise the policy to say a “legal document” and put in more specificity when the Land Development Regulations are rewritten.

Attorney DeBraul felt that adopting an Ordinance regulating the host plants might work better than the deed restriction, because the Ordinance can be repealed if no longer needed.

Attorney Polackwich agreed with Director Keating, and said that changing “deed restriction” to “legal document” would enable the amendments to go forward.

Attorney Barkett supported Attorney DeBraul’s suggestion to restrict the host plants by Ordinance.

The Board CONSENSUS was to amend the wording in Policy 6.5 as follows: “A ~~deed restriction~~ legal document acceptable to the County Attorney’s office, shall be...on the subject site. That ~~deed restriction~~ legal document shall prohibit the occurrence of host plants for either the Caribbean Fruit Fly or ...The ~~deed restriction~~ legal document may be structured...”

(Clerk’s Note: This change will be incorporated into the Motion to transmit the EAR based amendments to DCA).

Director Keating addressed Chairman O’Bryan’s questions and comments regarding the Affidavit of Exemptions in Policy 6.5.

The Chairman invited public comment.

Attorney Barkett suggested that Policy 5.4 of Objective 5 Diversity of Development, which pertains to mixed-use development of residential and commercial areas, be amended to allow the developers to put in 50% commercial first, if that makes better financial sense in today's economy.

Joseph Paladin, President Black Swan Consulting, supported Attorney Barkett's suggestion, believing that it would give a developer the opportunity to obtain financing, in order to move ahead with the mixed-use development.

Mr. Johnson felt the mixed-use development would lower property values.

After further discussion, the Board CONSENSUS was to retain the mixed-use policy as presented.

Seeing no further speakers, the Chairman closed the Public Hearing.

Concluding his presentation, Director Keating requested Board approval to transmit the EAR based amendments to DCA. He reiterated that the Amendments would be presented for final approval at a public hearing in August 2010.

Chairman O'Bryan recapped the changes requested by the Board as follows:

1. Strike from RECREATION AND OPEN SPACE ELEMENT-CHAPTER 10, Policy 9.5., the Quasi-Nonprofit designation of the Cultural Council of Indian River County.
2. Replace the word "shall" in RECREATION AND OPEN SPACE ELEMENT-CHAPTER 10, Policy 9.5., with the word "may".

3. Replace the words “deed restriction” in FUTURE LAND USE ELEMENT-CHAPTER 2, Policy 6.5 with the words “legal document.”

Attorney Polackwich noted that since the requirement to record a “deed restriction” required in Policy 6.5 was being replaced with a requirement for a “legal document”, the word “recorded” would also need to be stricken.

Commissioner Davis wanted to see a smart policy developed in conjunction with the issue of the host plants.

Commissioner Wheeler requested staff to develop and return to the Board with a definition of the term “Quasi-Nonprofit.”

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, the Board unanimously approved **Resolution 2010-039**, approving the transmittal of a proposed Indian River County Comprehensive Plan EAR based Amendment to the State of Florida Department of Community Affairs, amending RECREATION AND OPEN SPACE ELEMENT - CHAPTER 10, Policy 9.5., 1st sentence, “The County shall consider the Cultural Council of Indian River County (CCIRC) as the County’s designated cultural agency, ~~and a Quasi-Nonprofit Agency~~” and Policy 9.5, 2nd sentence, “In so doing, the Cultural Council ~~shall~~ may annually submit a funding request to the County...” and amending FUTURE LAND USE ELEMENT - CHAPTER 2, Policy 6.5, under the 2nd bullet point, ... “A ~~deed restriction~~ legal document acceptable to the County Attorney’s office, shall be ~~recorded~~ and established on the subject site. That ~~deed restriction~~ legal document shall prohibit the

occurrence of host plants for either the Caribbean Fruit Fly or ...The ~~deed restriction~~ legal document may be structured...”.

The Chairman called a break at 12:07 p.m. and reconvened the meeting at 12:22 p.m., with all members present.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM FRED MENSING REGARDING BUILDING PERMITS

Mr. Mensing was absent.

10.B.2. REQUEST TO SPEAK FROM RON O’CONNOR REGARDING INADEQUATE DRAINAGE SYSTEM AT 13895 122ND STREET

Ron O’Connor, 13995 122nd Street, showed a video regarding an inadequate drainage system located on a neighboring property at 13895 122nd Street, which is causing a large volume of run-off on his property. He stated that this issue has affected him for four years and urged the Board to require that the owners of the offending property fix their system so drainage no longer flows onto his property.

After an extensive discussion, with input from County Engineer Chris Kafer and Public Works Director Christopher Mora, the Board directed staff to locate and check all the culverts at the subject property, confirm their functionality, and report back to the Board.

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. HEALTH INSURANCE/EXCESS LOSS REINSURANCE BROKERAGE AND
ACTUARIAL SERVICES – APPROVAL OF CONTRACT BETWEEN GEHRING
GROUP AND INDIAN RIVER COUNTY**

ON MOTION by Vice Chairman Solari, SECONDED by
Commissioner Davis, the Board unanimously authorized
the Chairman to execute the contract with Gehring Group
for health insurance and excess loss reinsurance brokerage
services, as recommended in the memorandum of May 3,
2010.

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

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

Public Works Director Christopher Mora recapped staff's report (on file) to give the Board the final Sector 3 Beach Renourishment Project update for this year.

Staff addressed comments and questions from the Board regarding Phase I and Phase II of the project.

The Board directed staff to ensure that construction of Phase II could begin promptly on November 1, 2010.

Chairman O'Bryan stated that prior to the construction of Phase II, he wished staff to have a debriefing meeting to evaluate what was done correctly or incorrectly, and what lessons were learned. He also wanted staff to get a letter from the Department of Environmental Protection (DEP) affirming that the sand used by the County met DEP specifications.

**12.I.2. WORK ORDER #17, APPLIED TECHNOLOGY AND MANAGEMENT INC.,
SECTOR 7 BEACH RESTORATION POST-CONSTRUCTION MONITORING
(SUMMER 2010)**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute Work Order No. 17, related to the Sector 7 Beach Restoration Project, to the contract with Applied Technology and Management

Inc., as recommended in the memorandum of April 27, 2010.

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

**12.I.3. WORK ORDER #16, APPLIED TECHNOLOGY AND MANAGEMENT INC.,
SECTORS 1&2 BEACH RESTORATION, POST-CONSTRUCTION MONITORING
(SUMMER 2010)**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Work Order No. 16 to the contract with Applied Technology and Management Inc., related to Sector 1 and Sector 2 Beach Restoration, as recommended in the memorandum of April 27, 2010.

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

12.J. UTILITIES SERVICES

**12.J.1. CONSTRUCTION OF TWO 6" FORCE MAIN BORES UNDER 66TH AVENUE
AND THE RANGELINE CANAL IN CONJUNCTION WITH THE 16TH STREET
PAVEMENT PROJECT NO. 9920 FROM 66TH AVENUE TO 74TH AVENUE –
UCP 4053**

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Davis, the Board unanimously: (1) approved the project cost of \$32,514.84; (2) approved retaining the Utility Department Labor Contractor, Sheltra

& Son Construction Co., Inc., for \$20,872.50 for labor; (3) approved the County's purchase of materials in the amount of \$11,142.34; (4) authorized the Chairman to execute Work Authorization Directive No. 2009-009 for labor in an amount of \$20,872.50; and (5) approved the line extension fees to be charged to future development to be served by the force main (as follows), all as recommended in the memorandum of May 3, 2010.

	Development	Area in Acres	Portion of Total	Line Extension Fee
1.	MJS Vero Land LLC	19.26	0.2425692	\$21,588.27
2.	Laurel Homes Inc.	29.83	0.3756926	\$33,436.03
3.	Leer Kathryn C	11.07	0.1394206	\$12,408.20
4.	Williams Geraldine, M Ozgowicz	2.22	0.0279596	\$ 2,488.36
5.	District BD of TR IRCC	2.00	0.0251889	\$ 2,241.77
6.	State Hwy 60/Kings Hwy LLC	14.48	0.1823677	\$16,230.43
7.	Terry R. Lyndell R Fleming	0.54	0.0068010	\$ 605.28
	TOTAL	79.40	1.0000000	\$ 88,998.34

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

12.J.2. FINAL PAYMENT – GRAND HARBOR LLC DEVELOPER’S AGREEMENT FOR PLACEMENT OF FILL FROM THE SPOONBILL MARSH WETLAND FACILITY

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute final payment to Grand Harbor LLC in the amount of \$21,300.00, as recommended in the memorandum of May 5, 2010.

**12.J.3. OYSTER COLONIZATION PILOT PROGRAM AT SPOONBILL MARSH
WETLAND FACILITY**

Director of Utility Services Erik Olson reviewed the memorandum of April 26, 2010 to provide details on the Oyster Colonization Pilot Program. He divulged that the oysters would play an important role in cleaning the lagoon water, and that if successful, the program could become part of a sustainable long-term aquaculture program.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Sembler and Sembler, Inc. Oyster Colonization Pilot Program proposal in the amount of \$13,964.00 as recommended in the memorandum of April 26, 2010.

**12.J.4. SPOONBILL MARSH WETLAND FACILITY – CHANGE ORDER No. 5 TO
TIMOTHY ROSE CONTRACTING, INC. FOR SEDIMENTATION BASIN DEBRIS
SCREEN**

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Change Order No. 5 to Timothy Rose Contracting, Inc. for a sedimentation basin debris screen at the Spoonbill Marsh Wetland Facility, in the amount of \$51,681.12, as recommended in the memorandum of May 5, 2010.

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

13. COUNTY ATTORNEY MATTERS

13.A. SHARK BAITING/CHUMMING DISCUSSION

(Clerk's Note: Please see Item 5.E. Presentation by Richard Grant Gilmore, Jr., PhD, for discussion).

14. COMMISSIONER ITEMS

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

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

14.C. COMMISSIONER WESLEY S. DAVIS-NONE

14.D. COMMISSIONER JOSEPH E. FLESCHER-NONE

14.E. COMMISSIONER GARY C. WHEELER

ADDITION: 14.E.1. DISCUSSION ON HOLDING A WORKSHOP WITH THE CITY OF VERO BEACH AND THE TOWN OF INDIAN RIVER SHORES TO DISCUSS COUNTYWIDE CONSOLIDATION OF WATER/SEWER/IRRIGATION (WSI) UTILITY SERVICES

Commissioner Wheeler wished to invite the City of Vero Beach and the Town of Indian River Shores to another Joint Meeting, such as the one held on October 15, 2009, to determine whether there is interest in moving forward with the possible consolidation of water, sewer, and reuse water services. He noted that the County Commission and two Municipalities could meet

for a lot less cost than the \$40,000 which would be charged to hire a consultant to explore the feasibility of the consolidation.

Commissioners Davis and Solari expressed agreement with Commissioner Wheeler, and Commissioner O'Bryan offered to extend the invitations personally.

The Board CONSENSUS was to extend an invitation for three possible dates: Wednesday, June 2; Thursday, June 3; or Friday, June 4, 2010.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Solari, to invite the City of Vero Beach and the Town of Indian River Shores to a Joint Meeting, proposed to be held on Wednesday, June 2; Thursday, June 3; or Friday, June 4, 2010, to ascertain whether there is an interest in moving ahead with the possible consolidation of water/sewer/irrigation utility services.

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 1:38 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Peter D. O'Bryan, Chairman

Minutes Approved: _____

BCC/MG/2010Minutes

OBJECTIVE 10: Adequate Funding

~~Through fiscal year 2003/04, all programs and facilities needed to maintain the adopted recreation levels of service will be adequately funded.~~

~~**POLICY 10.1:** The county shall continue to apply user fees for those facilities and programs where the benefit is quantifiable and where the fee can be effectively implemented.~~

~~**POLICY 10.2:** The county shall, as part of its user fee program, develop a method to subsidize recreation user fees for low income residents so that there will be minimal effects of user fees on participation at sites or programs.~~

~~**POLICY 10.3:** The county shall identify state and federal recreation grant programs. When applicable, the county shall apply for available grant funds, for recreation facility or program funding.~~

OBJECTIVE 11: Arts and Cultural Programs

~~By 2005, the number of activities and events sponsored each year by Indian River County cultural organizations will exceed by 20% the number of activities and events sponsored in 2001. The number of activities in 2001 will be identified in a report titled "America for the Arts Economic Impact Study" to be published in 2002. "The National Taxonomy of Exempt Entities Manual" (TNTEEM) or other appropriate sources shall be used to define cultural organizations.~~

OBJECTIVE 9: Arts and Cultural Programs

~~By 2012, the county will have a comprehensive cultural plan for the county (this plan will be developed by the Cultural Council of Indian River County (CCIRC)).~~

~~**Policy 11.1:** The County may support cultural activities by providing financial support through tourist tax revenue and the Tourist Development Council.~~

~~**Policy 9.1:** By 2012, the county shall participate with the Cultural Council of Indian River County in developing a comprehensive cultural plan for the county and shall encourage public/private partnerships, as appropriate.~~

~~**Policy 11.2** The County shall support cultural organizations' (as defined by TNTEEM or other appropriate sources) applications for state, federal, and private foundation grants. The County's support may include providing customized demographic information, leveraging the County's grant eligibility, providing letters of support, and providing other support as needed.~~

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~~Through fiscal year 2003/04, all programs and facilities needed to maintain the adopted recreation levels of service will be adequately funded.~~

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~~**Policy 11.2** The County shall support cultural organizations' (as defined by TNTEEM or other appropriate sources) applications for state, federal, and private foundation grants. The County's support may include providing customized demographic information, leveraging the County's grant eligibility, providing letters of support, and providing other support as needed.~~

Policy 9.2: The County shall, when possible, support cultural and heritage activities by providing financial support through tourist tax revenue.

~~Policy 11.3 The County shall consider arts and cultural activity funding requests only for organizations (as defined by TNTEEM or other appropriate sources) that submit the following information to the County Budget Office:~~

- ~~• detailed information about the organization’s accomplishments during the last fiscal year, specifically as related to funding received from the County;~~
- ~~• detailed budget information pertaining to any funds that the organization is requesting;~~
- ~~• the organization’s proposed goals and activities for the upcoming fiscal year; and~~
- ~~• a copy of the organization’s most recent audit, if applicable.~~

Policy 9.3: The County shall cooperate with the CCIRC to establish a program for art in public places. This will involve the coordination, administration and display of loaned, local artwork in appropriate public buildings and open spaces.

~~Policy 11.4 The County shall support cultural programs and events by allowing the use of County facilities when appropriate and not inconsistent with County needs.~~

Policy 9.4: The County shall support the sale of the “State of the Arts” License plates promoted by the Cultural Council of Indian River County. The CCIRC, as the County’s designated Local Arts Agency, will receive and dispense funds related to the sales of the Arts License Plates, as required.

~~Policy 11.5 The Board of County Commissioners will annually pass a resolution recognizing October as National Arts and Humanities Month.~~

Policy 9.5: The County shall consider the Cultural Council of Indian River County (CCIRC) as the county’s designated cultural agency and a Quasi-Nonprofit Agency. As such, the Cultural Council shall represent the various arts and culture groups in the County, serving as a liaison for all cultural requests to the county. In so doing, the Cultural Council shall annually submit a funding request to the county on behalf of the county’s arts and culture organizations. That funding request shall include the following information:

- Detailed information about the organization's accomplishments during the last fiscal year, specifically as related to funding received from the county.
- Detailed budget information pertaining to any funds that the organization is requesting;
- The organization’s proposed goals and activities for the upcoming fiscal year; and a copy of the organizations most recent audit, if applicable.

~~Policy 11.6 The County shall support the sale of the State of the Arts license plates through the distribution of flyers, and posters in license tag offices.~~

Policy 9.6: Through the Cultural Council, the County shall support cultural and heritage organizations' applications for state, federal and private foundation grants. The county's support may include providing customized demographic information, leveraging the County's grant eligibility, providing letters of support, and providing other support as appropriate.

Policy 9.7: The county shall assist the Cultural Council with the dissemination of a calendar of cultural events in Indian River County prepared by the CCIRC. This assistance will involve making information available at government facilities.

Policy 9.8: The county will assist the Cultural Council in providing avenues for nonprofit and artist networking such as:

- A. Providing workshops, seminars and one-on-one assistance for cultural organizations, artists and educators to enhance their effectiveness, viability and long-term survival.
- B. Promoting the use of its web-based tools to support and facilitate business transactions within the cultural community.
- C. Providing opportunities for cultural leaders of all kinds to meet and learn from each other, creating networks that foster collaboration and cooperation.

Policy 9.9: The Board of County Commissioners shall, upon request by the CCIRC, designate October of each year as National Arts and Humanities month.