

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF JUNE 1, 2010

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JEFFREY K. BARTON

Clerk to the Board



June 1, 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, June 1, 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

Planning Director Stan Boling delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

County Attorney Alan S. Polackwich, Sr., 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:

**ADD: ITEM 5.E. PRESENTATION BY DAVID KING REGARDING INEOS
NEW PLANET BIOENERGY**

**ADD: ITEM 10.B.4 REQUEST TO SPEAK FROM AL BENKERT REGARDING
SHARK FISHING**

**DELETE: ITEM 8.P. APPROVAL OF REVISED ADDENDUM TO THE
MEMORANDUM OF UNDERSTANDING BETWEEN ADDRESS N' MAIL, INC.,
AND INDIAN RIVER COUNTY TO HAVE COUNTY MAIL PRE-SORTED AND
TRANSPORTED TO ORLANDO IN EXCHANGE FOR REDUCED POSTAGE
CHARGES**

**MOVE: ITEM 13.C. COUNTY ATTORNEY MATTERS – FELLSMERE CODE
ENFORCEMENT PROCEEDINGS – 2010 CHARGES, TO A TIME CERTAIN OF
10:30 A.M.**

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

5. PROCLAMATIONS AND PRESENTATIONS

**5.A. PRESENTATION OF PROCLAMATION HONORING GORDON MURPHY ON
HIS RETIREMENT FROM THE PROPERTY APPRAISER'S OFFICE OF INDIAN
RIVER COUNTY**

Commissioner Wheeler read and presented the Proclamation to Gordon Murphy.

**5.B. PRESENTATION OF PROCLAMATION HONORING GLEN HESSLER ON HIS
RETIREMENT FROM THE PROPERTY APPRAISER'S OFFICE OF INDIAN
RIVER COUNTY**

Commissioner Davis read and presented the Proclamation to Glen Hessler.

**5.C. PRESENTATION BY HIMANSHU H. MEHTA, P.E., MANAGING DIRECTOR,
SOLID WASTE DISPOSAL DISTRICT, PUBLIC ANNOUNCEMENT FOR
HURRICANE PREPAREDNESS**

Himanshu Mehta, P.E., Managing Director of the Solid Waste Disposal District (SWDD), noting that June 1st was the beginning of hurricane season, provided an overview of measures which homeowners should take prior to a storm, and reminded citizens to have their hurricane preparedness kits ready. He invited everyone to attend the 2010 Hurricane Exposition at Indian River Mall on Saturday, June 5, 2010, from 10 a.m. to 3 p.m.

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

Emergency Services Director John King presented a PowerPoint (on file) to update the Board on Deepwater Horizon. He described the estimated scope of the spill, containment measures being taken by authorities, and possible impacts on hurricane season. He conveyed that staff is planning for the possibility that the spill will spread to Florida's east coast, but currently people are still being encouraged to use Florida beaches. Director King announced that updated information will be posted at the County's webpage, www.ircgov.com. Information is also available at the Department of Environmental Protection's website, www.dep.state.fl.us/deepwaterhorizon/, and volunteer information can be found at www.VolunteerFlorida.org or British Petroleum's (BP)'s community information line at 866-448-5816.

**5.E. ADDITION: PRESENTATION BY DAVID KING REGARDING INEOS NEW
PLANET BIOENERGY**

David King, President, INEOS New Planet BioEnergy, showed a video and used a PowerPoint Presentation (on file) to provide background and a detailed status report of the new BioEnergy Plant which INEOS New Planet BioEnergy plans to construct at the former Ocean Spray site. He explained the biofuel process for converting vegetative waste (biomass) into bioethanol, and conveyed how beneficial the project will be for the environment, as well as for the County.

6. APPROVAL OF MINUTES-NONE

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

7.A. CONTRACT EMPLOYEE POLICY

7.B. SHARK BAITING OR CHUMMING

**7.C. UPDATE ON NEGOTIATIONS FOR GRAVES BROTHERS DEVELOPER
AGREEMENT – C.R. 510 / U.S. HIGHWAY 1 INTERSECTION**

8. CONSENT AGENDA

Chairman O'Bryan requested Item 8.Q. Tourist Development Council 2010/2011 Budget Recommendations be pulled for discussion.

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

8.A. APPROVAL OF WARRANTS AND WIRES, MAY 7, 2010 TO MAY 13, 2010

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of May 7, 2010 to May 13, 2010 as requested in the memorandum of May 13, 2010.

8.B. APPROVAL OF WARRANTS AND WIRES, MAY 14, 2010 TO MAY 20, 2010

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of May 14, 2010 to May 20, 2010, as requested in the memorandum of May 20, 2010.

8.C. TERMINATION OF COVENANT DEFERRING SIDEWALK DEVELOPMENT FOR WESTFIELD SUBDIVISION

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously authorized the Chairman to execute the Termination of Covenant Deferring Sidewalk Development with Westfield of Vero Development Company II, LLC, for recording in the Public Records of Indian River County, Florida, as recommended in the memorandum of May 14, 2010.

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

8.D. RESOLUTION DESIGNATING THE DISCOVERY STATION AND CLASSROOM AS INDIAN RIVER COUNTY'S SUSTAINABLE EDUCATION CENTER

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2010-042**, designating the Discovery Station and Classroom at the Environmental Learning Center as the County's "Sustainable Education Center."

8.E. FEDERAL FISCAL YEAR 2010 EDWARD BYRNE MEMORIAL JUSTICE

ASSISTANCE GRANT (JAG) PROGRAM CERTIFICATE OF PARTICIPATION

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) accepted the invitation to serve as the coordinating unit of government in the Florida Department of Law Enforcement (FDLE) Edward Byrne Memorial Justice Assistance Grant (JAG) Program; (2) authorized the Chairman to execute the Certificate of Participation naming Jason E. Brown, Director, Management & Budget, as the contact person; (3) accepted the total amount of the grant, which is \$117,686; and (4) directed the Substance Abuse Council Advisory Board to recommend a distribution of these funds among local applications, as recommended in the memorandum of May 21, 2010.

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

8.F. REQUEST FOR AUTHORIZATION OF INCUMBENT ACKNOWLEDGEMENT FOR

LEGAL COUNSEL REGARDING 800MHZ REBANDING PROJECT

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Incumbent Acknowledgment Request and authorized that goods and services identified on the invoice have been performed by Shulman, Rogers, Gandal, Pordy, & Ecker, P.A., for services provided to Sprint Nextel (a.k.a. Nextel South Corporation) as recommended in the memorandum of May 17, 2010.

8.G. SHELL LANE EAST GRAVITY SEWER ASSESSMENT PROJECT, UCP No. 4039, APPROVAL OF FINAL PAYMENT TO CONTRACTOR AND RELEASE OF RETAINAGE, W.I.P. No. 473-169000-10501, BID NUMBER 2010023

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the total project construction cost of \$41,511.00 and the Application for Payment No. 2 – Final as final payment to the Contractor, R.K. Contractors, Inc., in the amount of \$2,075.55, as presented and recommended in the memorandum of May 18, 2010.

8.H. APPROVAL OF APPLICATION FOR WETLAND DEVELOPMENT GRANT

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the application for the Environmental Protection Agency (EPA) Grant under the Region 4 Wetlands Development Program (for partial funding for the Spoonbill Marsh Project). Once the application has been completed, the application will be submitted for the Board's approval and the Chairman's execution, prior to submittal to the United States Environmental Protection Agency (USEPA), all as stated and recommended in the memorandum of May 12, 2010.

**8.I. 82ND STREET/LATERAL 5A CANAL, FLORIDA DEPARTMENT OF
TRANSPORTATION (FDOT) PROPERTY ACQUISITION, SPECIFIC PURPOSE
OF PROPERTY RESOLUTION**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2010-043**, authorizing the Chairman to request the Florida Department of Transportation (“FDOT”) to convey surplus property to Indian River County (“County”) to be utilized for the public purpose of providing drainage and improving 82nd Street, such property being identified in the legal description and sketch attached to this Resolution labeled as Exhibit “A”; providing an effective date; and for other purposes.

**8.J. DEVELOPER’S AGREEMENT BETWEEN INDIAN RIVER COUNTY AND THE
MOORINGS CLUB, GRANT OF EASEMENT AND REQUEST FOR COUNTY
COST SHARE PAYMENT FOR CONSTRUCTION OF HARBOUR DRIVE
SIDEWALK**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved and authorized the Chairman to execute the Developer’s Agreement and Grant of Easement with the Moorings Club, Inc.; and (2) authorized payment of the Moorings Club, Inc. invoice in the amount of \$14,321.93, as recommended in the memorandum of May 19, 2010.

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

8.K. RESOLUTION AUTHORIZING SIGNATURE AUTHORITY TO THE PUBLIC WORKS DIRECTOR OR COUNTY ENGINEER FOR LOCAL AGENCY PROGRAM AGREEMENTS (LAPS), JOINT PARTICIPATION AGREEMENTS (JPAS), AND LOCALLY FUNDED AGREEMENTS (LFAS) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2010-044**, authorizing the Board to delegate specific signature authority to the Indian River County Public Works Director or the County Engineer for the request for extension of any Local Agency Program Agreements (LAPS), Joint Participation Agreements (JPAS), and Locally Funded Agreements (LFAS) with the Florida Department of Transportation (FDOT).

8.L. F.D.O.T. LOCAL AGENCY PROGRAM (LAP) AGREEMENT – FPN No. 420339-1-58-01 AND RESOLUTION AUTHORIZING THE CHAIRMAN’S SIGNATURE, 8TH STREET SIDEWALK EAST OF US1 TO 6TH AVENUE, IRC PROJECT No. 0744

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute: (1) the Local Agency Program (LAP) Agreement with the State of Florida Department of Transportation (FDOT); and (2) **Resolution 2010-045**, authorizing execution of a Local Agency Program Agreement for the sidewalk construction on 8th Street East of US1 to 6th Avenue, with the State of

Florida, Department of Transportation, and providing for an effective date.

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

8.M. APPROVAL OF WORK ORDER NO. 18 (ENGINEERING) WITH BRIDGE DESIGN ASSOCIATES, INC., OLD DIXIE HIGHWAY SIDEWALK FROM 38TH LANE TO 65TH STREET, IRC PROJECT NO. 0845

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute Work Order No. 18 (Engineering) with Bridge Design Associates, Inc., authorizing IRC Project No. 0845, as outlined in the Scope of Services, for the lump sum fee of \$10,495.00, as recommended in the memorandum of May 21, 2010.

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

8.N. AWARD OF BID # 2010034, 58TH AVENUE ROADWAY MODIFICATIONS, IRC PROJECT NO. 0550

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the contract be awarded to SPS Contracting Inc., Vero Beach, Florida; in the amount of \$295,727.85, as recommended in the memorandum of May 18, 2010.

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

8.O. RIGHT-OF-WAY ACQUISITION, 66TH AVENUE PROJECT (4TH TO 12TH STREET), OWNER: RAYMOND NADEAU

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the purchase of the needed right-of-way and storm water drainage easement at a price of \$230, and authorized the Chairman to execute the Purchase and Sale Agreement with Raymond Nadeau, as recommended in the memorandum of May 17, 2010.

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

8.P. APPROVAL OF REVISED ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING BETWEEN ADDRESS N' MAIL, INC., AND INDIAN RIVER COUNTY TO HAVE COUNTY MAIL PRE-SORTED AND TRANSPORTED TO ORLANDO IN EXCHANGE FOR REDUCED POSTAGE CHARGES

Deleted

8.Q. TOURIST DEVELOPMENT COUNCIL 2010/2011 BUDGET RECOMMENDATIONS

Chairman O'Bryan explained that normally, the Indian River and Sebastian Chambers of Commerce are eligible for a combined allocation of up to 70% of the available Tourist Tax revenues. He acknowledged the two Chambers for coming in below the allocation amount, allowing more projects to be partially or fully funded.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the funding amounts recommended by the Tourist Development Council, as recommended in the memorandum of May 21, 2010.

8.R. AWARD OF BID # 2010019, 8TH STREET SIDEWALK IMPROVEMENTS FROM 18TH COURT TO OLD DIXIE HIGHWAY, IRC PROJECT No. 0455

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved awarding the contract to SPS Contracting Inc., Vero Beach, Florida; in the amount of \$61,900.80, as recommended in the memorandum of May 21, 2010.

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

8.S. SUPPLEMENT NO. 4 TO WORK ORDER NO. 1 WITH CARTER ASSOCIATES, INC., PROFESSIONAL CIVIL ENGINEERING SERVICES AGREEMENT, INDIAN RIVER COUNTY PARKS MAINTENANCE COMPLEX, IRC PROJECT No. 0701

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute Supplement No. 4, in the amount of \$2,675.00, to Carter Associates, Inc., as outlined in the Scope of Services (Exhibit A), as recommended in the memorandum of May 14, 2010.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL

AGENCIES

9.A. DAVID C. NOLTE, INDIAN RIVER COUNTY PROPERTY APPRAISER

BUDGETS

Property Appraiser David Nolte reported that the Property Appraiser's budget has been reduced by 8.7%, which he hoped was in line with the 10% budget cut requested by the Board. He outlined some of the cost-savings strategies that the Property Appraiser's office would be implementing to accomplish the budget cut, and conveyed that total personnel services were \$2,682,000; total operating expenses, \$297,780; and capital outlay funds, \$6,000. He announced that the estimated tax roll for the General Fund was around \$14,240,000,000.00, with a 20% reduction in the total value of the tax roll, and a 9% decrease in taxable values.

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS-NONE

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM FRANK L. ZORC REGARDING FUTURE BEACH SAND RENOURISHMENT USING TAX DOLLARS

Frank Zorc, 1695 20th Avenue, wanted to ascertain whether the Commissioners would support a voter referendum to see whether the majority of citizens were in favor of spending tax dollars on future beach renourishment projects. He provided an informational packet to the Board, and explained that he would be returning to address the Board on this matter after the Commissioners had reviewed the material.

**10.B.2. REQUEST TO SPEAK FROM JOE T. WIGGINS REGARDING SIDEWALK ON
11TH STREET, S.W.**

Mr. Wiggins was not present.

**10.B.3. REQUEST TO SPEAK FROM DR. STEPHEN FAHERTY & GLENN HERAN,
CPA, REGARDING WATER, IRRIGATION, SEWER, & REUSE (WISR)
ISSUES**

Dr. Stephen Faherty, 2120 Captains Walk, through a PowerPoint presentation (on file), began the Water, Irrigation, Sewer, and Reuse (WISR) update by advising the Board of the following occurrences: (1) the Town of Indian River Shores has withdrawn from the Consultants Competitive Negotiation Act Committee (CCNA) with the City of Vero Beach, the Shores, and the County; (2) Chairman O'Bryan would attend a meeting with FPL on June 3, 2010; and (3) the City of Vero Beach has proposed eliminating rate increases for 2010-2014, which appears to be a contradiction in view of the City's debt and the eventuality of losing the County utility customers. He highlighted the disparities between residential utility rates for customers within and outside of the City Limits.

Continuing the PowerPoint, **Glenn Heran**, 6985 67th Street, provided data and analysis pertaining to the savings that County customers would experience on their water, sewer, irrigation and electric bills, if they got off the City grid. He also briefed the Board on the financial predicament that would befall the City of Vero Beach, should it lose its County utility customers. Mr. Heran presented the following suggestions to the Board: (1) withdraw from the CCNA Committee; (2) have the County Attorney provide a legal opinion as to ownership of the water and sewer infrastructure in the County areas serviced by the City; (3) have the Utility Department identify alternatives and costs associated with acquiring infrastructure; and (4) provide the City of Vero Beach with notice, if the County intends not to renew the franchise agreement.

(Clerk's Note: At this time, the Chairman interjected that Jason Nunemaker and Warren Dill, the City of Fellsmere's Manager and Attorney, respectively, wished to speak during County Attorney Matters Item 13.C. Fellsmere Code Enforcement Proceedings-2010 Charges. He stated that after the impending break, the meeting would resume with Item 13.C., and then revert back to the current matter).

The Chairman called a break at 10:30 a.m. and reconvened the meeting at 10:41 a.m., with all members present.

(Clerk's Note: This discussion resumed after Item 13.C. was heard and is placed here for continuity).

Commissioner Flescher agreed with Mr. Heran that the County should withdraw from the CCNA Committee. He remarked that staff, rather than a consultant, should evaluate the costs for the infrastructure, and noted that Indian River Shores would be making its own determination on the best utility service provider for their town.

Erik Olson, Director of Utilities, noted that staff has already looked at the infrastructure data, but would like to work with Administrator Joseph Baird, Management and Budget Director Jason Brown, Dr. Faherty, and Mr. Heran to refine it further.

MOTION WAS MADE by Commissioner Flescher,
SECONDED by Chairman O'Bryan, for discussion, for
the County to withdraw from the Consultants Competitive
Negotiation Act Committee (CCNA) with the City of
Vero Beach.

Commissioner Davis agreed with Commissioner Flescher that Indian River Shores would be making the decision as to their service provider. He was concerned about finding out who owns the infrastructure on the South Barrier Island, and what the costs would be for serving

those residents. He wished to have the County Attorney provide an opinion on the County's legal standing.

Vice Chairman Solari observed that the County should not interfere with the franchise agreement between Indian River Shores and the City of Vero Beach; but the County would respond if the Shores issues a Request For Proposal (RFP). He remarked on future rising costs for the Vero Beach Utility, and noted the greater expense would have to be borne by a smaller customer base. He advocated having the Utilities Department provide several presentations, and disseminating as much information as possible.

Chairman O'Bryan stated that it would be premature for staff to come up with figures to provide services to Indian River Shores, prior to their issuance of an RFP. He observed that it might make sense to see if the City wants to continue working with the County through the Committee process for the South Barrier Island, and withdrew his SECOND to the Motion to withdraw from the CCNA Committee.

The MOTION DIED for lack of a Second.

Commissioner Wheeler discussed the importance of maintaining cooperation between the County and the City. He affirmed that the main focus of the County should be on the costs for the infrastructure and any additions to it.

Chairman O'Bryan observed that the first step would be to look at the franchise agreement with the City of Vero Beach, primarily for the South Barrier Island, and get a legal opinion on ownership of the infrastructure.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Commissioner Flescher, to direct staff to
make a determination on the County's legal standing with
relation to the Franchise Agreement with the City of Vero

Beach, including a legal determination regarding ownership of the infrastructure on the South Barrier Island.

Discussion ensued on the importance of establishing the true value, as well as the ownership, of the infrastructure.

Vice Chairman Solari believed that the costs for the infrastructure for the South Beach, even in the worst case scenario, would be less than the costs paid by the County to the City of Vero Beach for utility services. He affirmed the Board's desire to take care of the County customers.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board directed staff to make a determination on the County's legal standing with relation to the Franchise Agreement with the City of Vero Beach, including a legal determination regarding ownership of the infrastructure on the South Barrier Island.

Director Olson, who wanted to exchange information with Administrator Baird and Director Brown, advised that staff would be restricted in its communications as long as the County remained on the CCNA Committee.

Administrator Baird suggested that the Board re-establish Commissioner Flescher's earlier Motion to withdraw from the CCNA Committee so staff can exchange information, and Chairman O'Bryan confirmed that this was the desire of the Commissioners.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Solari, the Board unanimously

approved the County's withdrawal from the Consultants Competitive Negotiation Act Committee (CCNA) with the City of Vero Beach.

Dr. Faherty expressed the desire of the South Beach residents to receive utility services from the County.

Vince DeTurris, 595 Reef Road, representing the South Beach Board of Directors, urged the County to provide future utility services to the South Beach residents.

10.B.4. ADD: REQUEST TO SPEAK FROM AL BENKERT REGARDING SHARK FISHING

Al Benkert, 726 Silver Shores Road, Vero Beach, FL 32963, President of the Oceanside Business Association, addressed the Board with his request for the County to develop an Ordinance regulating the practice of shark fishing, baiting, and chumming, from the beaches. He related that Vero Beach is being promoted on the internet as a prime spot for boatless shark fishing from the shoreline. He read portions of an Ordinance (on file), developed by Volusia County, which regulates fishing and shark fishing, and asked Commissioners if they saw a downside to drafting a similar Ordinance.

Commissioner Flescher believed that an Ordinance would give the County a tool to mitigate any dangerous situations and keep the anglers away from bathers and swimmers. He noted that the intention of the Ordinance would not be to eliminate shark fishing.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Wheeler, to direct the County Attorney to review Volusia County's Ordinance, and to draft a proposed Ordinance regulating shark fishing

activities in close proximity to swimming activities in Indian River County.

Commissioner Davis voiced opposition to the proposed Ordinance. He stated that currently, there were already rules restricting fishing at the guarded beaches, the County's Ordinance would have no effect on the City's beaches, and the best option would be for the State to develop a policy regarding this matter.

Attorney Polackwich provided a legal opinion to the Board, conveying the State's preemption regulations on salt water fishing, problems he perceives with Volusia County's Ordinance, and the necessity to create a legally defensible Ordinance.

Vice Chairman Solari did not want to penalize the 99% of law abiding citizens for the thoughtless actions of a few, and declared that the County could not provide a protective envelope over all of the activities of its citizens.

Commissioner Wheeler, citing personal experiences as an angler, was not convinced that shark fishing poses a danger to the public, but acknowledged that it definitely creates that perception. He supported the Ordinance because it will not prohibit shark fishing, but will allow an officer or lifeguard to regulate unsafe situations.

Sheriff Deryl Loar provided input regarding enforcement of the proposed Ordinance.

Doug Distl, representing Carlton Properties, urged the Board to address this situation, and declared that the County would not wish to be known as the "Shark Fishing Capital" of Florida.

Chairman O'Bryan, while acknowledging the State preemption issues and the need for the State to examine this issue, supported directing the County Attorney to review the Ordinance to see if it would be legally defensible.

Further discussion occurred on the State preemption issue.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Solari and Davis opposed), the Motion carried. The Board directed the County Attorney to review Volusia County's Ordinance, and to draft a proposed Ordinance regulating shark fishing activities in close proximity to swimming activities in Indian River County.

The Chairman called a break at 12:16 p.m. and reconvened the meeting at 12:25 p.m., with all members present.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING JUNE 8, 2010:

LAZY J. LLC AND HENRY S. BUSSEY TRUSTEE'S REQUEST FOR A SMALL SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT TO REDESIGNATE ±1.05 ACRES LOCATED AT THE SOUTHWEST CORNER OF OLD DIXIE HIGHWAY AND 10TH LANE FROM L-2 TO C/I; AND TO REZONE THOSE ±1.05 ACRES FROM RM-6 TO CL (LEGISLATIVE)

Attorney Polackwich read the notice 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.J. UTILITIES SERVICES

12.J.1. WEST REGIONAL WASTEWATER TREATMENT PLANT EXPANSION FROM 2

MGD TO 6 MGD – CHANGE ORDER 5, FINAL PAY AND RELEASE OF

RETAINAGE – UCP-2621

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Change Order 5, final pay and release of retainage to Wharton-Smith, Inc., and authorized the Chairman to execute Change Order No. 5 to contract documents as

presented, as recommended in the memorandum of May 21, 2010.

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

12.J.2. AMENDMENT NUMBER 2 TO CONTINUING CONSULTING SERVICES WORK ORDER NO. 12 WITH MASTELLER & MOLER, INC. FOR ENGINEERING SERVICES – NORTH COUNTY REUSE STORAGE TANK – UCP-2747

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute as presented, Amendment Number 2 to Work Order No. 12 with Masteller and Moler, Inc., for an additional amount of \$6,900 for engineering services, bringing the new total for Work Order Number 12 to \$377,747, as recommended in the memorandum of May 13, 2010.

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

13. COUNTY ATTORNEY MATTERS

13.A. CONSIDERATION OF S.C.A.L.E. REPORT FOR 66TH AVENUE, 4TH STREET TO STATE ROAD 60

Deputy County Attorney William DeBraal presented staff's request for Board approval of the S.C.A.L.E. Report submitted by Carter and Associates, Inc. (CAI), which evaluates the proposed transportation improvements on 66th Avenue between SR 60 and 4th Street. He asked Commissioners to approve, in addition to the S.C.A.L.E. Report, the typical sections (as detailed on page 228 of the backup) for 66th Avenue.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Wheeler, to approve staff's recommendation.

Attorney DeBraal provided for Commissioner Davis, further details on right-of-way parcels that were being acquired by eminent domain, in conjunction with the 66th Avenue Roadway Improvement Project.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board unanimously approved the 66th Avenue S.C.A.L.E. Report for the segment of 66th Avenue from 4th Street north to SR 60 and the typical sections for that section of 66th Avenue, as recommended in the memorandum of May 24, 2010.

13.B. ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION ORDINANCE

Attorney Polackwich recapped the memorandum of May 21, 2010 to provide background and analysis on the Board's directive for staff to develop an Ordinance authorizing the Board to grant ad valorem tax exemptions to new and expanding businesses, to become effective only if approved by voter referendum at the November 2, 2010 General Election. He requested that the Board review the proposed draft Ordinance and provide input, after which staff will prepare the final Ordinance for adoption at a Public Hearing in June 2010.

Vice Chairman Solari wanted to provide notice of the pending referendum to the Chamber of Commerce, Realtor's Association, and as many civic groups as possible.

Commissioner Davis wished to include the Municipalities in the distribution.

Attorney Polackwich addressed Vice Chairman Solari's question regarding language in the draft Ordinance, in Section 1100.04, Definitions of Terms, Item (p) New Business, pertaining to the definition of an "industrial or manufacturing plant."

A brief discussion ensued on the possibility that a business such as a fast food establishment might wish to apply for the tax exemption. Attorney Polackwich clarified that the tax exemption is at the Board's discretion.

Chairman O'Bryan wanted to see a matrix established that would utilize a scoring system to determine what percent and for how long the tax abatement would be granted.

Attorney Polackwich affirmed that he would be preparing two different documents if the Ordinance is adopted – the actual exemption agreement with the business, and the matrix with the scoring system.

Further discussion ensued, as Attorney Polackwich assured Commissioners that everything was in place for the referendum to go on the November 2010 ballot.

ON MOTION by Commissioner Davis, SECONDED by Chairman O'Bryan, the Board unanimously directed the County Attorney to draft a final Ordinance authorizing ad valorem tax exemptions to new and expanding businesses, for adoption in late June 2010, and to become effective only if approved by voter referendum at the November 2, 2010 General Election.

13.C. FELLSMERE CODE ENFORCEMENT PROCEEDINGS – 2010 CHARGES

(Clerk's Note: This item was heard following Item 10 B.3. and is presented here for continuity).

Attorney Polackwich, recapping the memorandum of May 25, 2010, conveyed that the City of Fellsmere had filed code enforcement charges against the County, pertaining to an unpaid balance for 2009 fire protection charges. The City's Code Enforcement Special Master's ruling for payment of the balance was appealed by the County to the appellate court, which has not yet granted a decision. The County subsequently received Fellsmere's invoice for the 2010 fire protection charges, but wished to defer payment until the court rules on the 2009 charges. Fellsmere has once again initiated code enforcement charges for the 2010 charges, and has been requested to delay the new proceedings until the appellate court makes a final decision on the County's appeal on the 2009 charges. Attorney Polackwich thereafter presented for Board direction, three alternatives which the Board could pursue.

Discussion ensued among Commissioners and Attorney Polackwich on the best approach for the Board to take regarding both the 2009 and 2010 charges.

Commissioner Davis advocated paying off the 2009 charges to avoid accumulating further interest and penalties, provided that it does not adversely impact the County's appeal. If the court rules in the County's favor, Fellsmere could return the money.

Vice Chairman Solari suggested that the Board decide on the 2010 charges at this time, and have the County Attorney find out if Fellsmere would be amenable to Commissioner Davis's idea.

Chairman O'Bryan sought input from Fellsmere's City Attorney, Warren Dill, on what his recommendation pertaining to the 2010 charges would be.

Attorney Dill stated that he would recommend to the City Council on Thursday, at its June 3 meeting, acceptance of the agreement where the County pays the full amount of the 2010 charges. Afterwards, if the court determines that the 2009 charges are not owed, Fellsmere would refund the payment.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Vice Chairman Solari, to approve staff's recommendation, Alternative 1 – to pay the 2010 fire protection charges to the City of Fellsmere, under an agreement that Fellsmere will refund the payment if the appellate court determines that the 2009 charges are not owed.

Jason Nunemaker, City Manager, expressed a willingness to work out a more global alternative, in accordance with Commissioner Davis's wishes, prior to the City Council meeting.

Commissioner Davis advocated approving Alternative 1, but wanted to also work out an agreement with Fellsmere for the County to pay the 2009 charges.

After further discussion, with input from Attorney Dill, the Board Consensus was to keep the 2009 and 2010 agreements separate, and to not combine them in one Motion.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved staff's recommendation, Alternative 1 – to pay the 2010 fire protection charges to the City of Fellsmere, under an agreement that Fellsmere will refund the payment if the appellate court determines that the 2009 charges are not owed.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously directed the County Attorney to negotiate with the City of Fellsmere, a similar agreement to Alternative 1 that would apply to the 2009 charges, provided the County does not weaken its appeal by paying the 2009 charges.

AGREEMENT FOR 2010 CHARGES ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

14. COMMISSIONER ITEMS

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

14.B. COMMISSIONER BOB SOLARI, VICE CHAIRMAN

14.B.1. PAIN CLINICS

(Clerk's Note: This item was heard following Item 10.C.1. Public Notice Items, and is placed here for continuity).

Vice Chairman Solari asked the Commissioners if they wished to address the growing problem of Pain Clinics which are opening up here and in other counties, and which are dispensing prescription medications without checking on the medical necessity for them. He read from the Interim Report of the Broward County Grand Jury - The Proliferation of Pain Clinics in South Florida (on file), to provide statistics highlighting the seriousness of this situation. He remarked on the necessity to make a clear distinction between "pill mills" and legitimate chronic pain centers.

James Harpring, General Counsel, Sheriff's Office, conveyed that he had discussed this matter with the County Attorney, and there had been a consensus on the necessity for both a short-term remedy, and a long-term solution. He described legislation being enacted by the State, and invited Detective Bill Starr to provide further input.

Detective Bill Starr, MACE Unit, Sheriff's Department, described the operations of the pain clinics, and reported that many individuals were traveling from out-of-town to obtain the prescription drugs at the pain centers, and afterwards selling them. He provided statistics highlighting the gravity of this situation, and described preliminary actions being taken by the State. He advised the Board that the County will be inundated with the unethical pain clinics, unless some type of action is taken. He thereafter responded to questions from the Board regarding the proliferation of clinics in Florida, the requirements for setting up the clinics, and the tracking program for eliminating "doctor-shopping."

Commissioner Wheeler felt that a moratorium would give the Board time to see how the State is going to address this matter, and would provide breathing room to evaluate the best long-term solution for this problem.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner Flescher, to direct the
County Attorney to draft an Ordinance for a moratorium
on Pain Clinics.

Further discussion ensued regarding how to protect and differentiate the legitimate pain management clinics from the unscrupulous ones.

Attorney Harpring spoke in support of the Board adopting the proposed Ordinance.

Vice Chairman Solari suggested going ahead with the moratorium as soon as possible. He also advocated networking with the Florida Association of Counties (FAC) to draft the right type of legislation to subsequently be presented to the State.

Commissioner Wheeler agreed with working with the F.A.C., and advocated working also with other Counties, Agencies, and the State, to develop a long-term solution.

Attorney Polackwich verified that he would prepare an emergency Ordinance for a moratorium on the pain clinics, for presentation at the June 8, 2010 County Commission meeting, which could subsequently be followed by a non-emergency Ordinance. He noted that moratorium periods varied from six to twelve months. He reported that another strategy, being utilized by several other counties, would be to adopt a permanent Zoning Ordinance, restricting the location of the clinics.

MOTION WAS AMENDED by Commissioner Wheeler,
SECONDED by Commissioner Flescher, to direct the
County Attorney to draft an Emergency Ordinance for a
moratorium on Pain Clinics, to be presented at the June 8,
2010 County Commission meeting.

Further discussion ensued as the Board spoke to the importance of developing, in conjunction with the long-term solution, some type of protection for a legitimate pain clinic.

Commissioner Flescher remarked that there was a gross difference between a pill mill and a physician dispensing pain medication.

Debbie Gee, Tax Collector's office, reported on the phone inquiries that her office has been receiving about the legality of pain clinics in the County. She described the current requirements for obtaining a local business tax receipt (formerly called an occupational license), and expressed support for the proposed Ordinance as a quick temporary measure.

Attorney Polackwich, responding to concerns about clinics being established prior to adoption of the Ordinance, suggested the Board make a Motion to prohibit issuance of Business Tax receipts for Pain Management Clinics between now and June 8, 2010.

MOTION WAS AMENDED by Commissioner Wheeler, SECONDED by Commissioner Flescher to direct the Tax Collector's office to not issue any Local Business Tax receipts for Pain Management Clinics between now and June 8, 2010.

The Chairman CALLED THE QUESTION, and the Amended Motion carried unanimously. The Board: (1) directed the County Attorney to draft an Emergency Ordinance for a 12-month moratorium on Pain Clinics, for consideration at the Board of County Commission meeting of June 8, 2010; and (2) directed the Tax Collector's Office to not issue any Local Business Tax receipts for Pain Management Clinics between now and June 8, 2010.

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 1:13 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Peter D. O'Bryan, Chairman

Minutes Approved: _____

BCC/MG/2010Minutes