

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

JULY 6, 2010

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JEFFREY K. BARTON

Clerk to the Board



July 6, 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, July 6, 2010. Present were Chairman Peter D. O'Bryan, Vice Chairman Bob Solari, Joseph E. Flescher, and Gary C. Wheeler. Commissioner Wesley S. Davis was absent. Also present were County Administrator Joseph A. Baird, County Attorney Alan S. Polackwich, Sr., and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

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

2. INVOCATION

Reverend Shelly Satran, Our Savior Lutheran Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chairman Bob Solari led the Pledge of Allegiance to the Flag.

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. UPDATE FROM DIRECTOR OF EMERGENCY SERVICES, JOHN KING,
REGARDING THE DEEPWATER HORIZON OIL SPILL

Emergency Services Director John King used a PowerPoint presentation (on file) to update the Board on the current status of the oil spill in the Gulf of Mexico. He reported on the current location of the spill, County and State impacts/actions, the forecasted location, and the tropical conditions. He thereafter addressed Board questions and concerns.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF MAY 18, 2010

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of May 18, 2010. There were none.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the Minutes of the Regular Meeting of May 18, 2010, as written.

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

**7.A. SURVEY SERVICES: PURCHASE ORDERS PROCESSED NOVEMBER 3, 2009
THROUGH JUNE 15, 2010 (MEMO NO. 4)**

Noted for the record were the following Purchase Orders for survey services processed from November 3, 2009 through June 15, 2010:

- 1) 58th Avenue and 45th Street Intersection Improvement Project, Right-of-Way Acquisitions, Buckner Boundary Survey
- 2) River Park Phase 2, Indian River Boulevard, Conservation Lands, Public Access Easement Surveys and Sketch and Descriptions, Complete Public Access Pathway Easements over River Park Place Conservation Lands
- 3) Parks Maintenance Complex, Florida Power and Light / Utility Construction, Site Placement and Easement Preparations
- 4) 66th Avenue, SR60 to 57th Street, Right-of-Way Acquisition Parcel 144
- 5) Oslo Boat Ramp, Proposed Channel Improvements, PO No. 60524
- 6) Recreational Trails Program, Trans Florida Greenway at Sebastian River Middle School
- 7) Oslo Boat Ramp, Proposed Channel Improvements, PO No. 60565

**7.B. LAWSUIT RELATED TO LEWIS BARTON CODE ENFORCEMENT BOARD
LIEN**

Noted for the record was the background pertaining to a recorded \$253,000.00 Code Enforcement Board lien on the Surfside Terrace property, then owned by Lewis Barton or his relatives; the loan from City First Mortgage Corporation to Mr. Barton in the amount of \$900,000.00; City First's ownership of the property through a foreclosure sale; and City First's lawsuit against the County seeking to establish its 2003 mortgage under equitable subrogation.

8. CONSENT AGENDA

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the Consent Agenda, as presented.

8.A. APPROVAL OF WARRANTS AND WIRES JUNE 11, 2010 TO JUNE 17, 2010

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of June 11, 2010 to June 17, 2010, as requested in the memorandum of June 17, 2010.

8.B. APPROVAL OF WARRANTS AND WIRES JUNE 18, 2010 TO JUNE 24, 2010

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of June 18, 2010 to June 24, 2010, as requested in the memorandum of June 24, 2010.

8.C. REQUEST TO CONVEY AFFORDABLE HOUSING PROPERTY BACK TO INDIAN RIVER COUNTY FROM EVERY DREAM HAS A PRICE, INC.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), accepted the two Quit-Claim Deeds from Every Dream Has a Price, Inc., and authorized the Chairman to execute same, indicating acceptance by the County, as recommended in the memorandum of June 23, 2010.

Lot 2, Block 5, Spruce Park Subdivision – 4256 25th Avenue,
Vero Beach

Lot 194, Block 8, Hall, Carter & James Subdivision – 1016
Booker Street, Fellsmere

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

8.D. AUTHORIZATION TO ATTEND

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved out of County travel for: (1) the County Administrator to attend the Florida Shore and Beach Preservation Association Conference in Clearwater, Florida from September 22 - 24, 2010, and (2) the County Administrator and/or staff to attend the Association of Public Treasurers 45th Annual Conference in Charleston, South Carolina from July 25 - 28, 2010, as recommended in the memorandum of June 28, 2010.

8.E. IRC Bid No. 2010027, CANCELLATION OF ORIGINAL AWARD AND RE-AWARD DEMOLITION OF TWO (2) COUNTY OWNED STRUCTURES

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), (1) approved cancellation of the award and Purchase Order No. 60510 to SRD Construction & Development Corporation; (2) approved the re-award to John O'Connell, Inc. in the amount of \$8,500.00 as the lowest most responsive and responsible bidder, meeting the specifications as set forth in the Invitation to Bid; and (3) authorized the Purchasing Division to issue a purchase order to John O'Connell, Inc. after receipt and approval of the appropriate certificate of insurance, all as recommended in the memorandum of June 16, 2010.

8.F. 2011 HOLIDAY SCHEDULE

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the 2011 proposed schedule of holidays for Indian River County employees, as recommended in the memorandum of June 21, 2010.

8.G. RESOLUTION CANCELING TAXES ON PROPERTY DEDICATED FOR RIGHT OF WAY – 41ST STREET EAST OF 66TH FROM PHILIP M. SEMENUCK AND JOANNE A. SEMENUCK

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved **Resolution 2010-057**, canceling certain taxes upon publicly owned lands, pursuant to Sections 196.28, Florida Statutes.
(6480 41st Street – Philip M. Semenuck and Joanne A. Semenuck)

8.H. APPROVAL OF WORK ORDER NO. 3 WITH HYDROMENTIA, INC. FOR MONITORING AND REPORTING SERVICES FOR 319(H) GRANT FOR EGRET MARSH STORMWATER PARK

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved Work Order No. 3 with Hydromentia, Inc. for monitoring and reporting services for 319 (h) Grant for Egret Marsh Stormwater Park, and authorized the Chairman to execute it on behalf of the County, as recommended in the memorandum of June 25, 2010.

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

**8.I. DEVELOPER'S POSTING OF ESCROW AS ITS FAIR SHARE FOR JOINT
PAVING PROJECT FOR 47TH STREET**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the Agreement Concerning Cash Deposit and Escrow for the Joint Paving Project for 47th Street, with Tot Spot of Vero, Inc., and Clinton Barker Land Development LLC, and authorized the Chairman to execute same, as recommended in the memorandum of June 18, 2010.

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

**8.J. OSLO ROAD WIDENING FROM 43RD AVENUE TO EAST OF 27TH AVENUE,
PHASE 2, ENGINEERING SERVICES, KIMLEY-HORN AND ASSOCIATES, INC.
AMENDMENT NO. 4**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis), approved Amendment No. 4, with Kimley-Horn and Associates, Inc., authorizing the project as outlined in the Scope of Services, and authorized the Chairman to execute same, as recommended in the memorandum of June 24, 2010.

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

**8.K. RIVER CLUB AT GRAND HARBOR WATER SERVICES REPLACEMENT
PROJECT, UCP No. 4037, FINAL PAYMENT TO SHELTRA AND SONS SON
CONSTRUCTION Co., INC. AND RELEASE OF RETAINAGE**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the total project labor cost of \$37,813.71, Application for Payment No. 2, Final as final payment to Sheltra and Son Construction Company, Inc., in the amount of \$1,890.69, as recommended in the memorandum of June 22, 2010.

8.L. AUDITOR SELECTION COMMITTEE RECOMMENDATION OF AUDIT FIRM

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the re-appointment of Harris, Cotherman, Jones, Price & Associates as the County's auditing firm, and authorized the Clerk's office to proceed with contract negotiations, as recommended in the memorandum of June 29, 2010.

8.M. MISCELLANEOUS BUDGET AMENDMENT 014

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved **Resolution 2010-058**, amending the Fiscal Year 2009-2010 Budget.

**8.N. RELEASE OF SHIP MORTGAGE, PNC BANK, ETC. V. INDIAN RIVER
COUNTY – CASE #3120 10 CA01 0946**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), authorized the Chairman to execute the Release of Mortgage with Steven W. Cocchia and Jamie Lyn Rouse, in order to resolve the re-foreclosure action, as recommended in the memorandum of June 11, 2010.

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

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

10. PUBLIC ITEMS

10.A. PUBLIC HEARING(S) - NONE

10.B. PUBLIC DISCUSSION ITEMS

**10.B.1. REQUEST TO SPEAK FROM CAROLINE D. GINN REGARDING THE
DISSOLVING AND SUNSETTING OF COMMITTEES AND BOARDS**

Caroline Ginn expressed her disappointment with the Board's recent decision to dissolve and sunset Advisory Committees and Boards. She explained why she could not attend the May 4, 2010 Board of County Commission Meeting where the sunsetting was decided. She spoke in strong opposition to dissolving the Advisory Committees and Boards, spoke to the

importance of the committees, provided reasons as to why they should remain intact, questioned the Board's vote, and requested the Board reconsider their Motion.

Chairman O'Bryan explained the Motion from the May 4, 2010 Board of County Commission Meeting, the committees' 60-day waiting period to be sunsetted, and how the committees were asked to meet one final time before being sunsetted to develop and present a list of what they consider to be their unmet needs. He thereafter invited and encouraged Ms. Ginn to attend the upcoming Board of County Commission Meeting, where the Board will address Advisory Committee and Board issues.

Discussion and debate ensued between Ms. Ginn and the Board regarding citizen input; setting up an appeal process; and the need, cost, expertise, and elimination of the committees.

NO BOARD ACTION REQUIRED OR TAKEN

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

Ron O'Connor, 13955 122nd Street, reported that he had come before the Board on May 11, 2010, to address inadequate drainage issues on a neighboring property located at 13895 122nd Street (his handout on file), and he was back today to readdress the issue. He responded to staff's letter concerning the review of culverts, referenced Statute Section 912.08, and used a PowerPoint presentation to describe the culverts and drainage problems which are causing water encroachment onto his property. He also spoke about staff's calculations before the Certificate of Occupancy (C.O.) was issued to his neighbors, and an e-mail he received from Mr. Wittenberg regarding the outfall that was identified.

Chairman O'Bryan inquired about the status of the situation, and what could be done since the C.O. had already been issued.

Public Works Director Chris Mora reported that staff had inspected the culverts along 122nd Street, that most were in an operational condition, and that a letter to this effect had been sent to Mr. O'Connor, as well as other property owners. He also said that the property owners were notified that said property was private property, not in public domain, and that suggestions were offered for eliminating the "ponding" onto Mr. O'Connor's property. He suggested the property owners pool their money and install an additional culvert between the O'Connor and Rizzoski property line to convey the water north into the 122nd Street ditch.

County Attorney Alan Polackwich surmised that it was too late for a County recourse since the C.O. had already been issued, and he clarified that Statute 912.08 deals with preconstruction approval of conceptual drainage.

Extensive discussion and debate ensued regarding the construction of the neighboring property, issuance of the C.O., what staff had originally approved and what currently exists on the property, unimproved swells, said property considered as private property, and whether the County should install a culvert under the road to obtain relief in accordance with Code 403.22 - which deals with storm drainage nuisance and/or a code enforcement point of view.

Vice Chairman Solari believed that unless it could be determined that a mistake had occurred, which would bring the situation to a level of nuisance, then the Government has no part in this situation, but rather a solution between the neighbors. He wanted Attorney Polackwich to provide a determination as to which options would be available.

Chairman O'Bryan informed Mr. O'Connor that this issue would be handled by the County Attorney for review of possible solutions and/or legal recourses, and that he would be kept informed of the situation.

The Chairman called a break at 10:36 a.m. and reconvened the meeting at 10:45 a.m. with all members present.

NO BOARD ACTION REQUIRED OR TAKEN

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING JULY 13, 2010

TO CONSIDER ADOPTION OF AN ORDINANCE ENACTING A NEW SECTION 205.09 OF THE CODE OF INDIAN RIVER COUNTY ENTITLED “SHARK FISHING ACTIVITIES IN CLOSE PROXIMITY TO SWIMMING ACTIVITIES” (LEGISLATIVE)

10.C.2. NOTICE OF SCHEDULED PUBLIC HEARINGS JULY 20, 2010

A. CONSIDERATION OF AMENDMENT TO COUNTY REQUIREMENTS FOR LOCATIONS OF LICENSED PREMISES WITH ALCOHOLIC BEVERAGES TO MATCH STATE LOCATIONAL REQUIREMENTS (LEGISLATIVE)

B. INDIAN RIVER COUNTY’S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL TO REBUILD THE OSLO CONVENIENCE CENTER/TRANSFER STATION (QUASI-JUDICIAL)

The County Attorney read the above Notices into the record.

11. COUNTY ADMINISTRATOR MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

**12.A.1. 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)**

Attorney Polackwich conveyed that this item would be brought back to the Board on July 20, 2010 with an updated report.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Flescher, the Board, by a 4-0 vote (Commissioner Davis absent), approved County employees, servants, agents, or contractors to 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 the report, with costs of the abatement to be recorded as a lien against the subject property, as recommended in the memorandum of June 23, 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 - NONE

12.H. RECREATION - NONE

12.I. PUBLIC WORKS - NONE

12.J. UTILITIES SERVICES

12.J.1. 43RD AVENUE & 44TH AVENUE SOUTH OF SR 60 AND 16TH STREET

**WEST TO OLD SAVANNAH SUBDIVISION LOW PRESSURE FORCE MAIN
SYSTEM, RELEASE RETAINAGE HELD BY COUNTY TO CARTER ASSOCIATES
FOR SURVEYING, DESIGN, PERMITTING AND CONSTRUCTION PHASE
SERVICES**

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Commissioner Davis absent), approved the release of retainage being held from Carter Associates, Inc. for surveying, design, permitting, bidding and construction phase services for the force main project, and approved the Consultant's Application for Payment No. 7, in the amount of \$2,685.37, as recommended in the memorandum of June 24, 2010.

**12.J.2. APPROVAL OF FPL CONTRIBUTION IN AID OF CONSTRUCTION FOR
PROVISION OF POWER TO TWO (2) WELL SITES LOCATED AT THE NORTH
COUNTY RO PLANT**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Flescher, the Board, by a 4-0 vote (Commissioner Davis absent), approved payment in the amount of \$1,853.25 to Florida Power and Light (FPL) for provision of power to two (2) well locations at the North County RO Plant, as recommended in the memorandum of June 22, 2010.

13. COUNTY ATTORNEY MATTERS

**13.A. POND SITING REPORT FOR A PARCEL OF PROPERTY LOCATED ON 66TH
AVENUE SOUTH OF 16TH STREET**

Deputy County Attorney William DeBral recalled that at the June 1, 2010 Board of County Commission Meeting, the Board approved a S.C.A.L.E. Report concerning 66th Avenue between 16th Street and 4th Street, and today he was before the Board to request consideration of a Pond Siting Report for a stormwater pond located on the Laurel Homes property, on 66th Avenue. He mentioned that outside negotiations had taken place, a recent appraisal had valued the property at \$211,000.00, and that upon receiving an updated appraisal, an unconditional offer would be made, and the Attorney's Office would proceed with filing suit in eminent domain.

Attorney DeBral responded to questions regarding the pond site.

ON MOTION by Vice Chairman Solari, SECONDED by Chairman O'Bryan, the Board, by a 4-0 vote (Commissioner Davis absent), approved the Pond Siting Report and authorized staff to proceed with the Resolution of Necessity, Unconditional Offer and necessity right-of-way acquisition through the County's power of eminent domain, as recommended in the memorandum of June 28, 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 - NONE

14.E. COMMISSIONER GARY C. WHEELER - NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT - NONE

15.B. SOLID WASTE DISPOSAL DISTRICT

The Chairman announced that immediately upon adjournment of the Board of County Commission Meeting, the Board would reconvene as the Board of Commissioners of the Solid Waste Disposal District. Those Minutes are being prepared separately.

15.B.1. FINAL PAY TO GEOSYNTEC FOR WORK ORDER NO. 7 – THREE YEARS OF GROUNDWATER MONITORING AND REPORTING AT THE FORMER SOUTH GIFFORD ROAD LANDFILL

15.B.2. WORK ORDER NO. 29 TO GEOSYNTEC FOR ONE YEAR OF GROUNDWATER MONITORING AND REPORTING AT THE FORMER SOUTH GIFFORD ROAD LANDFILL

15.B.3. WORK ORDER NO. 28 TO GEOSYNTEC FOR PHASE I - SITE PREPARATION FOR CELL I OF SEGMENT 3 LATERAL LANDFILL EXPANSION

15.B.4. WORK ORDER NO. 16 TO CAMP DRESSER & MCKEE INC. (CDM) FOR CLASS I LANDFILL OPERATIONS CONTRACT REQUEST FOR PROPOSAL ASSISTANCE

15.C. ENVIRONMENTAL CONTROL BOARD - NONE

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

16. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 11:53 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Peter D. O'Bryan, Chairman

Minutes Approved: _____

BCC/LA/2010 Minutes