

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF JULY 20, 2010

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JEFFREY K. BARTON

Clerk to the Board



July 20, 2010

**REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS**

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, July 20, 2010. Present were Chairman Peter D. O'Bryan, Vice Chairman Bob Solari, and Commissioner Joseph E. Flescher. Commissioners Wesley S. Davis and Gary C. Wheeler were absent. 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

Deputy Teddy Floyd, Indian River County Sheriff's Office, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Alan S. Polackwich, Sr., County Attorney, led the Pledge of Allegiance to the Flag.

Chairman O'Bryan recognized members of Boy Scout Troop 578, who were in attendance.

Brian Alcott, Senior Patrol Leader, disclosed that Troop 578 was working on the Citizenship in the Community Merit Badge, through attendance at a local government meeting.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman O'Bryan advised that due to the absences of Commissioners Davis and Wheeler, any Board action taken today requires approval by a vote of 3-0. He thereafter requested the following changes to the Agenda:

ADDITION: ITEM 10.B.2. PUBLIC DISCUSSION BY GLENN HERAN

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Flescher, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved the Agenda as amended.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION DESIGNATING JULY 18 – 24, 2010 AS PROBATION, PAROLE AND COMMUNITY SUPERVISION WEEK

Commissioner Flescher read and presented the Proclamation to the following Department of Corrections staff members: John Thompson, Michael Graham, David Cherry, and Barbara Villarose.

5.B. 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 Day 92 of the Deepwater Horizon Oil Spill, reporting that a new well cap was installed by British Petroleum (BP) on July 15th, 2010, and the oil leak has essentially been stopped. He noted the Louisiana coast continues to be the area most impacted by the spill and that some tar balls have appeared on the west coast of Florida, but all Florida beaches remain open. He described actions being taken by the State of Florida and by the County, and revealed that County staff has discussed a regional oil spill strategy plan with the U.S. Coast Guard.

6. APPROVAL OF MINUTES-NONE

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

**7.A. ENVIRONMENTAL SERVICES: PURCHASE ORDERS PROCESSED FEBRUARY
6TH, 2010 THROUGH JUNE 25TH, 2010 (MEMO NO. 2)**

Noted for the record were Purchase Orders for the following projects: (1) Oslo Boat Ramp; (2) 12th Street Sidewalk; (3) Two Site Assessments on CR510; and (4) Old Dixie Highway Sidewalk at North Relief Canal.

8. CONSENT AGENDA

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved the Consent Agenda, as presented.

8.A. APPROVAL OF WARRANTS AND WIRES – JULY 2, 2010 TO JULY 8, 2010

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of July 2, 2010 to July 8, 2010, as requested in the memorandum of July 8, 2010.

8.B. SEGOVIA LAKES PD – TEMPORARY BLANKET UTILITY EASEMENT

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved, accepted, and authorized the Chairman to execute the temporary blanket utility easement with VB Development, Inc., for the Segovia Lakes PD, as recommended in the memorandum of July 9, 2010.

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

8.C. AUTHORIZATION FOR OUT OF COUNTY TRAVEL FOR COUNTY ADMINISTRATOR

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved out of County travel for the County Administrator to attend the South Florida Government Finance Officers and City Clerks Association Annual Investment Seminar on August 25, 2010, in Davie, Florida, as requested in the memorandum of July 13, 2010.

8.D. TRAFFIC CONTROL DEVICE LEDGER

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved

Resolution 2010-060, approving traffic control devices authorized by the Director of Public Works.

8.E. INDIAN RIVER COUNTY BID #2010035, REMOVE AND REPLACE AN UNINTERRUPTIBLE POWER SYSTEM

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved staff's recommendation to reject all bids. After completing the review process, staff has determined that the bid responses do not effectively detail the vendors' ability to provide emergency repairs with factory trained technicians within a reasonable period of time. The bid specifications will be revised and rebid, all as stated and recommended in the memorandum of July 7, 2010.

8.F. AMENDMENT NO. 4 TO THE PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES AGREEMENT WITH EDLUND, DRITENBAS, BINKLEY ARCHITECTS AND ASSOCIATES, P.A., INDIAN RIVER COUNTY PARKS MAINTENANCE COMPLEX – IRC PROJECT NO. 0701

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved and authorized the Chairman to execute Amendment No. 4 to Edlund, Dritenbas, Binkley Architects and Associates, P.A., in the amount of \$690.00, as outlined in the Scope of

Services (Exhibit A), as recommended in the memorandum of July 6, 2010.

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

8.G. KIMLEY-HORN AND ASSOCIATES, INC. APPROVAL WORK ORDER NO. 1 TO THE ANNUAL PROFESSIONAL ENGINEERING SERVICES AGREEMENT OLD DIXIE HIGHWAY SIDEWALK FROM 38TH LANE TO 65TH STREET – IRC PROJECT NO. 0845

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved and authorized the Chairman to execute Work Order No. 1 (Engineering) with Kimley-Horn and Associates, Inc., in the amount of \$80,000.00, authorizing IRC Project No. 0845 as outlined, all as recommended in the memorandum of July 8, 2010.

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

8.H. RIGHT-OF-WAY ACQUISITION, 66TH AVENUE, PROJECT #0370, 6840/6810 41ST STREET (LOCATED WEST OF 66TH AVENUE ON 41ST STREET) OWNER: RICHARD L. AND LINDA WADDELL

ON MOTION by Commissioner Flescher, SECONDED by Chairman O’Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved the

purchase of the needed right-of-way at a price of \$11,509.20; and authorized the Chairman to execute the Purchase and Sale Agreement with Richard L. and Linda Waddell, as recommended in the memorandum of July 7, 2010.

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

8.I. DRAINAGE/TEMPORARY CONSTRUCTION EASEMENT ACQUISITION, OSLO ROAD (27TH AVENUE TO 43RD AVENUE), OWNER: BRUCE L. AND NANCY G. STAMILE

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved the purchase of the needed easements at a price of \$85,500, and authorized the Chairman to execute the Purchase and Sale Agreement with Bruce L. and Nancy G. Stamile, as recommended in the memorandum of June 21, 2010.

8.J. RESOLUTION REQUESTING ASSISTANCE FROM STATE OF FLORIDA BEACH EROSION CONTROL PROGRAM

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved **Resolution 2010-061**, requesting assistance from the State of Florida Beach Erosion Control Program.

8.K. APPROVAL OF AUDIT FIRM

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved the contract for the reappointment of Harris, Cotherman, Jones, Price & Associates, as the auditing firm for the next five (5) fiscal years, as recommended in the memorandum of July 12, 2010.

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

8.L. MISCELLANEOUS BUDGET AMENDMENT 015

ON MOTION by Commissioner Flescher, SECONDED by Chairman O'Bryan, by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board approved **Resolution 2010-062**, amending the fiscal year 2009-2010 budget.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. INDIAN RIVER COUNTY'S REQUEST FOR SPECIAL EXCEPTION USE

APPROVAL TO REBUILD THE OSLO CONVENIENCE CENTER/TRANSFER STATION (QUASI-JUDICIAL)

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

Community Development Director Bob Keating used a PowerPoint Presentation (on file) to present description and conditions of the County-initiated request for special exception use approval to rebuild the Oslo Convenience Center/Transfer Station on property located west of Old Dixie Highway. He stated that the site plan meets all of the land use criteria related to special exception uses, and requested that the Board approve the “findings” outlined in staff’s report (see page 117 of the backup), and grant the special exception use approval, with the condition that all required landscape buffers and opaque features be installed prior to issuance of the Certificate of Occupancy.

The Chairman opened the Public Hearing.

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

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

Responding to Commissioner Flescher’s query, County Administrator Joseph Baird divulged that the project is fully funded with no anticipated future costs.

The Chairman CALLED THE QUESTION, and by a 3-0 vote (Commissioners Davis and Wheeler absent), the Motion carried. The Board:

(1) **FOUND**, in conjunction with staff's recommended conditions, that:

[1] The Board is empowered under the provisions of Chapter 971 to review the special exception applied for;

[2] The granting of the special exception will not adversely affect the public interest;

[3] The application satisfies the general and specific criteria required for special exception approval; and

[4] The conditions stated below are adequate to ensure compatibility between the special exception use and surrounding land uses; and

(2) **GRANTED** special exception use approval for the Oslo Convenience Center replacement, with the condition that prior to issuance of a Certificate of Occupancy (C.O.), all required landscape buffers and opaque features shall be installed, all as recommended in the memorandum of July 6, 2010.

**10.A.2. CONSIDERATION OF AN AMENDMENT TO COUNTY CHAPTER 300 TO
MODIFY THE COUNTY'S LOCATIONAL REQUIREMENTS FOR PREMISES
SERVING ALCOHOLIC BEVERAGES TO CORRESPOND TO STATE
REQUIREMENTS (LEGISLATIVE)**

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE

OFFICE OF THE CLERK TO THE BOARD

Community Development Director Bob Keating used a PowerPoint Presentation (on file) to provide background and analysis on the request of Dr. Michael Rechter, President/CEO of Integra, Inc. (developer of Majestic Plaza, f.k.a. Luria's Plaza), to change the alcoholic beverage locational requirements stipulated in Chapter 300 of County Code, which ordain a minimum separation distance of 1,000 feet between a church and an alcohol sales establishment. He explained that Integra has a prospective tenant who wishes to establish a new business serving alcoholic beverages, but because of its proximity to Christ Church Vero Beach, another tenant at Majestic Plaza, the new establishment would conflict with Chapter 300. Director Keating thereafter contrasted the provisions in Chapter 300 with those in F.S. 562.45, which allow a 500-foot separation distance, and recommended that the Board adopt the proposed Ordinance, which would amend Chapter 300 to correspond to the locational requirements of F.S. 562.45.

Chairman O'Bryan wished to change the wording in Section 300.05 (c), "Establishments licensed for the sale of *beer or wine* for consumption off the premises only..." to "Establishments licensed for the sale of alcoholic beverages for consumption off the premises only..."

The Chairman opened the Public Hearing.

Bob Johnson, Coral Wind Subdivision, recommended that the Board make this a one-time exemption, examine this type of situation on a case-by-case basis, and leave in place the requirement for a 1,000-foot separation distance between a church and an alcohol sales establishment.

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

Chairman O'Bryan reiterated the change he would like to see, and directed staff to modify the language in Section 300.05(c) of the proposed Ordinance: "Establishments licensed for the sale of ~~beer or wine~~ alcoholic beverages for consumption off the premises only..."

ON MOTION by Vice Chairman Solari, SECONDED by Chairman O'Bryan, the Board by a 3-0 vote (Commissioners Davis and Wheeler absent), adopted Ordinance **2010-015**, *with a modification to the language in Section 300.05(c) "Establishments licensed for the sale of ~~beer or wine~~ alcoholic beverages for consumption off the premises only..."*, concerning an amendment to its Title I Code; providing for amendments to Chapter 300, Alcoholic Beverages; by revising restriction on location of licensed premises Section 300.05; providing for repeal of conflicting provisions; codification; severability; and effective date.

10.A.3. PAIN CLINIC MORATORIUM ORDINANCE (LEGISLATIVE)

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

County Attorney Alan S. Polackwich recalled the Board's adoption on June 8, 2010, of Emergency Ordinance 2010-013, imposing a 90-day moratorium on the issuance, transfer, or renewal of business tax receipts for pain clinics or pain management clinics. He stated that pursuant to Board direction, he was returning with a second Ordinance which would extend the moratorium for one (1) year from June 8, 2010 through June 7, 2011. He explained that under Ordinance 2010-013, the Tax Collector had been required to obtain an affidavit disavowing its operation as a pain clinic from a new medical or health facility seeking a business tax receipt, or from an existing facility seeking to transfer or renew its business tax receipt. Since renewals of the business tax receipts are typically done by mail, the affidavit requirements for renewals/transfers would not carry over to the proposed Ordinance; however, the Tax Collector retains the authority to deny renewal if the facility is in violation of applicable law.

The Chairman opened the Public Hearing.

Charlie Wilson, Vero Beach, related a personal experience attesting to the importance of addressing the issue of illegitimate pain clinics.

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

MOTION WAS MADE by Commissioner Flescher,
SECONDED by Chairman O'Bryan, to adopt the
proposed Ordinance.

Vice Chairman Solari noted that the County would be working on additional measures in addition to the moratorium, and voiced his support for the State's prospective computerized registry of drugs.

Attorney Polackwich acknowledged that after the conclusion of the moratorium, the County would be taking another look at State regulations; if local action is still required, he would suggest using some type of land development regulations to deal with the pain clinics.

The Chairman CALLED THE QUESTION, and by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board adopted **Ordinance 2010-016**, amending section 207 "Local Business Tax Receipts" of the Code of Indian River County, Florida, by enacting a new Section 207.15 entitled "Pain Clinics and Pain Management Clinics" establishing for one year from June 8, 2010, a moratorium and certain restrictions on the issuance, transfer and renewal of local business tax receipts for the operation of

pain clinics and pain management clinics; providing for severability, a general repealer and an effective date.

10.B. PUBLIC DISCUSSION ITEMS

**10.B.1. REQUEST TO SPEAK FROM JENNIFER LAHMAN REGARDING LIEN
IMPOSED AGAINST OAKS OF VERO DEVELOPMENT**

Jennifer Lahman, Oaks of Vero, explained that, independent of the Homeowners Association, the County had selected a contractor to complete the sidewalks at the Oaks of Vero Development. The County-selected contractor had failed to pay its subcontractors, and the latter subsequently placed two liens of \$23,544 and \$10,229 against the Oaks of Vero Homeowners Association. She requested that the Board assist the homeowners in releasing the liens, and that additionally, the County not place other Homeowners' Associations in this situation.

Following discussion among Commissioners and Ms. Lahman, with input from Attorney Polackwich, Chairman O'Bryan directed County Administrator Joe Baird and Attorney Polackwich to investigate this matter and follow up with Ms. Lahman.

10.B.2. REQUEST TO SPEAK FROM GLENN HERAN

Mr. Heran was not present.

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-NONE

13. COUNTY ATTORNEY MATTERS

13.A. UPDATE ON VISTA GARDENS CODE ENFORCEMENT ISSUES

Attorney Polackwich presented a history and update pertaining to one of two golf courses owned by Vista Golf, LLC, the 9-hole course at Vista Gardens, which the County has several times been forced to mow, due to overgrown grass and weeds on the property. He described the

liens which have been placed upon the subject property, which include a Florida Department of Revenue Tax Warrant and liens from the County's Code Enforcement Board, as well as liens arising from the County's mowing efforts. Attorney Polackwich advised that mediations are currently in process between Vista Golf, LLC, and the Vista Associations (Vista Gardens and Vista Royale, the neighboring community), and that if a settlement is reached, the Associations would likely buy the property from the owner, at which time, part of the sale proceeds could be used to pay off existing liens. He recommended that at this time, the Board: (1) take no further code enforcement actions; (2) urge the property owners to take care of the property; and (3) be prepared to mow if it is required and record the lien against the property, with the hope of an impending settlement.

No Board Action Required or Taken

13.B. HIRING OF OUTSIDE COUNSEL TO ASSIST IN ELECTRIC, WATER AND SEWER FRANCHISE ISSUES

Attorney Polackwich recapped his memorandum of July 9, 2010 to provide background and analysis on staff's request to hire an outside law firm to assist in matters relating to electric and water and sewer franchise issues. He advised that he has not yet found a law firm with expertise in both areas, and requested the Board approve hiring outside counsel, to assist in the aforementioned areas on a consultant-type basis, with fees not to exceed \$15,000.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Solari, to authorize the County Attorney to hire outside counsel to act as consultant to the County Attorney's Office on electric and water and sewer franchise issues, with fees not to exceed \$15,000, without further Board approval.

Attorney Polackwich stated that once a firm has been selected, staff would return with an update to the Board.

Bob Johnson, Coral Wind Subdivision, asked the County Attorney to make sure the County residents who are Florida Power and Light customers will not be charged an additional rate if Florida Power and Light purchases the City of Vero Beach Electric Utility.

The Chairman CALLED THE QUESTION, and by a 3-0 vote (Commissioners Davis and Wheeler absent), the Board authorized the County Attorney to hire outside counsel to act as consultant to the County Attorney's Office on electric, water and sewer franchise issues, with fees not to exceed \$15,000, without further Board approval, as recommended in the memorandum of July 9, 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-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

Chairman O'Bryan advised that the next County Commission Meeting would occur at 9:00 a.m. on August 17, 2010. There being no further business, the Chairman declared the meeting adjourned at 10:09 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Peter D. O'Bryan, Chairman

Minutes Approved: _____

BCC/MG/2010Minutes