

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF OCTOBER 5, 2010

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JEFFREY K. BARTON

Clerk to the Board



October 5, 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, October 5, 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

Reverend Tom Harris, First Presbyterian Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chairman led the Pledge of Allegiance to the Flag.

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF OCTOBER AS NATIONAL ARTS AND HUMANITIES MONTH

Vice Chairman Bob Solari read and presented the Proclamation to the following members of the Cultural Council of Indian River County: Susan Grandpierre, Chairman; Barbara Hoffman, Vice Chairman; and Mary Jayne Kelley, Executive Director.

5.B. PRESENTATION ON THE TAX EXEMPTION REFERENDUM BY MRS. PENNY CHANDLER, INDIAN RIVER CHAMBER OF COMMERCE

Penny Chandler, Indian River Chamber of Commerce, provided a PowerPoint Presentation (on file) explaining the upcoming Tax Exemption Referendum which will appear on the November 2010 General Election ballot. She provided details on the tax incentive program and ballot question, and emphasized that the program, if passed, would underscore the business-friendly climate in Indian River County. Ms. Chandler clarified that the tax exemption program applies only to County taxes.

A brief discussion ensued regarding the best ways to disseminate the information provided by Ms. Chandler.

5.C. PRESENTATION BY MR. CHRIS RUSSELL, Oculina Bank

Chris Russell, Oculina Bank, discussed Oculina Bank's plans for expansion and creation of a new Operations Center in the heart of the Enterprise Zone. He told Commissioners how well the Tax Abatement program would dovetail with the bank's plans.

Chairman O'Bryan related how the business-friendly climate had been an important component in Oculina's selection of a site in Indian River County.

Mr. Russell affirmed that based on the County's welcome, Oculina had opted to expand in the County.

Commissioner Davis provided a brief history of the Enterprise Zone.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF JULY 20, 2010

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of July 20, 2010. There were none.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Solari, the Board unanimously approved the Minutes of the Regular Meeting of July 20, 2010, as written.

**7. INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS
NOT REQUIRING BOARD ACTION-NONE**

8. CONSENT AGENDA

Commissioner Davis requested Item 8.R. be pulled for discussion.

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

8.A. APPROVAL OF WARRANTS AND WIRES – SEPTEMBER 10, 2010 TO SEPTEMBER 16, 2010

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of September 10, 2010 to September 16, 2010, as recommended in the memorandum of September 16, 2010.

8.B. APPROVAL OF WARRANTS AND WIRES – SEPTEMBER 16, 2010 TO SEPTEMBER 23, 2010

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of September 16, 2010 to September 23, 2010, as requested in the memorandum of September 23, 2010.

8.C. APPOINTMENT OF BCC APPOINTEE TO THE METROPOLITAN PLANNING ORGANIZATION CITIZENS ADVISORY COMMITTEE

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the appointment of Kathleen “Cookie” Geyer to the Board of County Commissioner Appointee position on the Metropolitan Planning Organization Citizens Advisory Committee. The position was advertised and has been vacant since the resignation of Roger Sherwood on May 12, 2009, all as stated and requested in the memorandum of September 28, 2010.

8.D. ABC LIQUOR STORE PARTIAL RELEASE OF UTILITY AND LANDSCAPE EASEMENTS

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the revised Partial Release of Utility Easement and Partial Release of Landscape Easement with ABC Properties, Ltd., and authorized the Chairman to execute same for recordation in the public records of Indian River County, Florida, as recommended in the memorandum of September 27, 2010.

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

8.E. ENGAGEMENT LETTERS WITH BANKRUPTCY FIRMS

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the engagement letters with: (1) the Bush Ross law firm in Tampa, Florida to assist in the CRF – Panther IX, LLC bankruptcy filing; and (2) the Greenspoon Marder law firm to assist with general bankruptcy issues, as recommended in the memorandum of September 28, 2010.

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

8.F. LOST LAKE SUBDIVISION SIDEWALK EXTENSION REQUEST SUCCESSOR DEVELOPER: HIERS PROPERTIES, L.L.C.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the sidewalk extension at Lost Lake Subdivision, for an additional two years, to July 11, 2012, and authorized the Chairman to execute the Modification to Substitute Contract for Construction of Required Sidewalk Improvements with Hiers Properties, LLC, as recommended in the memorandum of September 28, 2010.

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

8.G. AUTHORIZATION TO ATTEND FGFOA 2010 SCHOOL OF GOVERNMENT

FINANCE

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously authorized the County Administrator to attend the Intermediate/Advanced portion of the 2010 FGFOA (Florida Government Finance Officers Association) School of Governmental Finance in St. Augustine, Florida, from November 8, 2010 to November 12, 2010, as requested in the memorandum of September 24, 2010.

8.H. RELEASE OF RETAINAGE FOR EDLUND, DRITENBAS, BINKLEY ARCHITECTS AND ASSOCIATES, P.A. AGREEMENT, INDIAN RIVER COUNTY PARKS MAINTENANCE COMPLEX – IRC PROJECT NO. 0701

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved payment of Edlund, Dritenbas, Binkley Architects and Associates, P.A. Invoice No. 5128, dated August 16, 2010 in the amount of \$1,265.83, as recommended in the memorandum of September 15, 2010.

8.I. RELEASE OF RETAINAGE FOR 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 Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved payment of Carter Associates, Inc. Application for Payment No. 33 in the amount of \$3,074.74 for release of retainage, as recommended in the memorandum of September 15, 2010.

8.J. APPROVAL OF BID AWARD FOR IRC BID No. 2011017 ANNUAL BID FOR ASPHALT PAVING AND RESURFACING

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously: (1) approved to award Bid Items 1 through 14 to Community Asphalt Corporation as the lowest most responsive and responsible bidder on these items; (2) approved Bid Item 15 as a dual award to Community Asphalt Corporation and Dickerson Florida, Inc. as the lowest and most responsive bidders on this item; (3) authorized the Purchasing Division to issue blanket purchase orders for the period of October 1, 2010 through September 30, 2011 with the recommended bidders; and (4) authorized the Purchasing Manager to renew this bid for two (2) additional one (1) year periods subject to satisfactory performance, vendor acceptance, and the determination

that renewal of this annual bid is in the best interest of Indian River County, all as recommended in the memorandum of September 21, 2010.

8.K. AMENDMENT NO. 12 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CARTER ASSOCIATES, INC. IRC PROJECT NO. 9810, 66TH AVENUE PAVING IMPROVEMENTS (4TH STREET TO SR 60)

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Amendment No. 12 for a lump sum of \$23,700.00 and a not-to-exceed amount of \$9,830.00 for time and materials tasks for Carter Associates, Inc. as outlined in the Scope of Services (Exhibit "A"), as recommended in the memorandum of September 22, 2010.

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

8.L. AUTHORIZE COUNTY ADMINISTRATOR TO EXECUTE A RENEWAL AGREEMENT WITH SYMETRA FINANCIAL FOR THE COUNTY'S EXCESS LOSS/REINSURANCE POLICY

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously authorized the County Administrator to execute the renewal agreement for Alternative Two with Symetra Financial for the County's Excess Loss/Reinsurance

Policy for FY 2010/2011, as recommended in the memorandum of September 29, 2010.

8.M. SELECTION OF PROFESSIONAL LAND SURVEYING AND MAPPING/GIS FIRMS TO PROVIDE SERVICES ON AN ANNUAL SERVICES CONTRACT, REQUEST FOR QUALIFICATIONS (R.F.O.) #2011009, IRC PROJECT No. 1032

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously: (1) approved the Selection Committee's seven (7) recommended firms as follows: (a) Carter Associates, Inc., Vero Beach, Florida; (b) Creech Engineering, Inc., Melbourne, Florida; (c) Culpepper & Terpening, Inc., Ft. Pierce, Florida; (d) Indian River Survey, Inc., Vero Beach, Florida; (e) Kimley-Horn & Associates, Inc., Vero Beach, Florida; (f) Masteller, Moler & Reed, Inc., Vero Beach, Florida; and (g) Morgan Eklund, Inc., Wabasso, Florida; and (2) directed staff to negotiate a renewal Continuing Services Contract with each firm, as recommended in the memorandum of September 28, 2010.

8.N. CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR BRIDGE REPLACEMENTS AND WIDENING OF 66TH AVENUE FROM SOUTH OF SR60 TO NORTH OF 57TH STREET, AMENDMENT No. 8

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Amendment No. 8

authorizing professional services with Arcadis G & M, Inc., for a lump sum fee of \$36,150.00, as recommended in the memorandum of September 16, 2010.

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

8.O. AWARD OF BID # 2010028 F.D.O.T. LOCAL AGENCY PROGRAM (LAP) AGREEMENT – FPN NO. 420339-1-58-01, 8TH STREET SIDEWALK IMPROVEMENTS FROM U.S.1 TO 6TH AVENUE, IRC PROJECT NO. 0744

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the contract award to Melvin Bush Construction, Inc., in the amount of \$31,636.81, with \$30,536.81 FHWA (Federal Highway Administration) participating funds and \$1,100.00 FHWA Non Participating (local funds) as recommended in the memorandum of September 17, 2010.

8.P. APPROVAL OF STATE AND FEDERALLY FUNDED SUBGRANT AGREEMENT CONTRACT NUMBER 11-BG-05-10-40-01

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the FY 2010/2011 EMPA (Emergency Management, Preparedness and Assistance Trust Fund Base Grant Agreement) portion of the State Funded Subgrant Agreement (11-BG-05-10-40-01) and authorized Director of Emergency Services John King as the contract manager for the agreement, as recommended in the memorandum of September 17, 2010.

AGREEMENT FOR 8.P. ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.Q. APPROVAL OF 2010/2011 STATE FUNDED SUBGRANT AGREEMENT TO
UPDATE INDIAN RIVER COUNTY'S HAZARDS ANALYSIS**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the 2010/2011 State-Funded Subgrant Agreement with the State of Florida, Division of Emergency Management, and accepted the funding provided in the agreement, as recommended in the memorandum of September 13, 2010.

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

**8.R. RENEWAL OF AGREEMENT WITH INDIAN RIVER COUNTY FAIR
ASSOCIATION FOR USE OF COUNTY FAIRGROUNDS**

Commissioner Davis disclosed that as a Board member of the Indian River County Fair Association, he would abstain from voting on this item.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis recused himself), the Board approved and authorized the Chairman to execute the Agreement with Indian River County Fair Association, Inc., as recommended in the memorandum of September 28, 2010.

**8.S. RIGHT-OF-WAY ACQUISITION, 66TH AVENUE NORTH PROJECT PHASE I
(SR60 TO 41ST STREET), PROJECT PARCEL #300, PARCEL I.D. #33-39-29-
00001-0170-00001.0 OWNER: H & C HOOSHMAND LIMITED
PARTNERSHIP**

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously: (1) approved the purchase of the needed right-of-way at a price of \$70,000, plus attorney fees of \$3,500, plus court costs of \$50, for a total cost of \$73,550; and (2) authorized the Chairman to execute the Purchase and Sale Agreement with H & C Hooshmand, Limited Partnership, as recommended in the memorandum of September 1, 2010.

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

8.T. WAIVER OF ALLOCATION FOR RECOVERY ZONE BONDS

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved the Waiver of Allocation for Recovery Zone Bonds and authorized the Chairman to execute the Waiver form, as recommended in the memorandum of September 29, 2010.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

9.A. KAY CLEM, INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS: FEDERAL ELECTION ACTIVITIES FUNDS

Supervisor of Elections Kay Clem explained that the County is required to provide matching funds of \$2,401.92, or 15%, in order to receive State funding of \$16,012.79, to be used for the sample ballot for the General Election. She thereafter requested that the Chairman execute the Agreement certifying the County's match.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Wheeler, the Board unanimously approved and authorized the Chairman to execute the Memorandum of Agreement with the Department of State, Division of Elections, and the Certificate Regarding Matching Funds, as requested in the letter of September 22, 2010.

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

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. CONSIDERATION OF PROPOSED AMENDMENT TO CN DISTRICT

**(NEIGHBORHOOD COMMERCIAL) REGULATIONS (CHAPTER 911 OF THE
INDIAN RIVER COUNTY LAND DEVELOPMENT
REGULATIONS)(LEGISLATIVE)**

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

(Clerk's Note: Court Reporter Michelle Ting, Vero Beach Court Reporters, was present on behalf of Attorney Gregg Casalino for the following two hearings).

County Planning Director Stan Boling explained that the next two public hearings, which have been continued from September 7, 2010, are inter-related; the first (legislative) pertains to an LDR amendment; the second (quasi-judicial) relates to a re-zoning request. He requested that the presentation and discussion on both matters be combined, as was done by the Planning and Zoning Commission (P&Z). He also conveyed that two separate Motions would be needed if the LDR Amendment and/or Rezoning are approved.

In accordance with Director Boling's declaration that the second hearing was quasi-judicial in nature, the Deputy Clerk administered the Oath to all persons who wish to speak at the hearing.

(Clerk's Note: Please see Item 10.A.2. for continuation of this item).

10.A.2. BUILDEX, INC.'S APPEAL OF THE PLANNING AND ZONING

COMMISSION'S DENIAL OF BUILDEX INC'S REQUEST TO REZONE ±2.17

ACRES FROM PRO TO CN (QUASI-JUDICIAL)

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

Director Boling used a PowerPoint (on file) to provide an overview of the request from George Beuttell, president of Buildex, Inc., to amend the zoning requirements pertaining to the Neighborhood Commercial (CN) District, to allow reduction of CN node minimum separation distance criterion. He related that the Planning and Zoning Commission (P&Z) had considered the LDR amendment request and proposed rezoning, had denied both and subsequently met with representatives of the neighboring community, Indian River Estates, to discuss the residents' concerns, and that a final motion made at the P&Z meeting, to approve the LDR amendment, FAILED by a 3-4 vote. Director Boling thereafter provided background on the CN district regulations, and summarized staff's analysis, confirming staff's recommendation for Board approval of the proposed LDR amendment, through adoption of the proposed LDR amendment Ordinance.

Community Development Director Bob Keating, continuing the PowerPoint presentation, provided a description and the conditions of Buildex, Inc.'s appeal of the Planning and Zoning Commission's denial of its request for rezoning ±2.17 acres situated at SR60 and 74th Avenue from PRO (Professional Office Residential to CN (Neighborhood Commercial). He explained that the purpose of the rezoning is to develop the site with uses that are allowed under the CN Zoning district (see page 213 through 217 of the backup for table of uses). He explained that the CN node must be a contiguous area not exceeding 5 acres in size; thus, the subject rezoning is for ±2.17 acres, rather than the total 3 acres of ownership. He discussed the separation distance requirements for CN, and said that the proposed LDR amendment mentioned by Director Boling would allow staff to reduce the separation distances. Director Boling thereafter elaborated on

and presented staff's recommendation that the Board grant Buildex, Inc.'s appeal and approve the rezoning request by adopting the proposed Ordinance.

Commissioners sought and received from staff further information regarding the setback distance and the buffering requirements; the size of the Buildex, Inc. parcel; what specific automotive-related uses are permitted in the CN District; whether other parcels might be affected by the proposed LDR change; and whether the rezoning would affect the nearby mobile home park.

County Attorney Alan Polackwich advised Board members that, pursuant to the Courts, the decision to amend the LDR's to change the criteria of the CN node minimum separation distance, must be rationally related to a legitimate purpose, such as health, safety, and public welfare.

Attorney Bruce Barkett, representing George Beuttell, proffered arguments in support of the rezoning, stressing that any developer of the property must receive final approval of the architecture from Adult Communities Total Services, Inc. (ACTS), due to a restrictive covenant enacted when ACTS sold the property.

John Dean, Architect, presented arguments supporting the proposed rezoning, emphasizing that it would not be detrimental to the adjacent neighbors.

The Chairman called a break at 10:30 a.m. and reconvened the meeting at 10:42 a.m., with all members present, with the exception of County Administrator Joseph Baird, who rejoined the meeting at 10:54 a.m.

Attorney Gregg Casalino, representing Indian River Estates East Neighborhood Association, Indian River Estates West Neighborhood Association, and ACTS, provided the following documents (on file) for inclusion in the official record: (1) Signed petition containing signatures of over 500 neighbors; and (2) Letters of opposition to the rezoning sent from ACTS

and Attorney Bernard F. Grall, Jr., respectively, to the Commission. He also requested that the Board members reveal any ex-parte communications pertaining to the subject property. Attorney Casalino thereafter provided arguments opposing the rezoning, which he believed would propagate strip development and occasion health, safety and welfare issues associated with building up a more intensive use of the property.

The Chairman accepted input from the following individuals who expressed opposition to the proposed rezoning:

Lyn Marvin, 7745 Indian Oaks Drive, President of Indian River Estates West

Carl Rivasi, 2150 Indian Creek Blvd. East, President of Indian River Estates East

Dr. Harold Hunter, 7430 Willow Wood Lane, Indian River Estates

George Simons, Carter Associates, 1708 21st Street

In response to questions by Commissioner Wheeler, Director Keating spoke to the Sunset Clause for rezoning and the possible uses for the property adjacent to the subject site, which will retain its PRO zoning.

Vice Chairman Solari offered further observations pertaining to the split zoning, and inquired whether this would be an appropriate time to comply with Attorney Casalino's request and disclose any ex parte communications Commissioners may have had regarding the subject property.

Chairman O'Bryan invited the Board to make any such declarations, and Attorney Polackwich requested that the Board additionally disclose any visits to the subject property.

Vice Chairman Solari, Commissioner Wheeler, Chairman O'Bryan, Commissioner Flescher, and Commissioner Davis, respectively, disclosed the extent and nature of any communications that had occurred, and whether they had viewed/visited Indian River Estates or the subject property.

Attorney Barkett wished to establish for the record, whether any of the aforementioned communications had caused any Board member to reach a decision on this matter, to which each Board member responded in the negative.

The Chairman opened the Public Hearing.

The following individuals OPPOSED the proposed rezoning:

Carolyn Corum, Dolores Street, Sebastian, Florida

Brian Carman, Indian River Neighborhood Association (IRNA)

Dr. Karl Richard Knoblauch, 2350 Indian Creek Blvd. West

The following individuals SUPPORTED the proposed rezoning:

Cliff Norris, 1408 Club Drive

Chuck Mechling, Developer, 1999 Pointe West

Jim Leffew, 7665 14th Lane, Pointe West Subdivision

Kerry Cook, Mockingbird Drive

Donna Keys, P&Z Commission, District 1 Appointee, questioned whether regulations could be imposed upon the CN property to ensure that there is some control over such matters as the hours of business operation.

A lengthy discussion ensued, with input from Commissioners, staff, and Ms. Keys, on whether the permitting process for CN could be changed to special exception use, which would allow certain restrictions to be incorporated into the approval of a rezoning.

The Board accepted final discourse from Attorneys Casalino and Barkett.

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

Commissioner Flescher envisioned that development at the subject site would enhance the safety and welfare of the neighborhood, as well as compliment the environment.

Commissioner Davis foresaw that it was important to provide the neighborhood commercial zoning for future needs of the community. He stated that the rezoning was in the best interests of the entire community.

Vice Chairman Solari agreed with Commissioners Flescher and Davis, and added that he did not feel the rezoning would become a burden to the neighborhood.

Commissioner Wheeler agreed with his fellow Commissioners that the highest and best use for the subject property would be commercial.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner Davis, to adopt the
proposed LDR Amendment Ordinance.

Chairman O'Bryan thanked the public speakers, and affirmed the Board's intention to weigh input from all parties and act in the best interests of the entire community. He advised the residents of Indian River Estates that they would likely find the rezoning a benefit, not an impairment, of their lifestyle.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board adopted **Ordinance 2010-017**, concerning amendments to its Land Development Regulations (LDRS); providing for amendments to Chapter 911, Zoning, by amending Special District Requirements Section 911.10(9)(a)(b) pertaining

to CN (Neighborhood Commercial) District requirements; by providing for repeal of conflicting provisions; codification; severability; and effective date.

MOTION WAS MADE by Vice Chairman Solari, SECONDED by Commissioner Flescher, to grant Buildex, Inc.'s appeal of the Planning & Zoning Commission's rezoning denial, and to approve the request to rezone the subject property from PRO, Professional Office District, to CN, Neighborhood Commercial District.

The Chairman invited further comments. There being none, the Board took the following action:

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board: (1) granted Buildex, Inc.'s appeal of the Planning & Zoning Commission's denial of its request to rezone ± 2.17 acres from PRO to CN; and (2) adopted **Ordinance 2010-018**, amending the Zoning Ordinance and the accompanying Zoning Map for ± 2.17 acres located at the northwest quadrant of SR 60 and 74th Avenue, from PRO, Professional Office District, to CN, Neighborhood Commercial District; and providing codification; severability; and effective date.

The Chairman called a break at 12:23 p.m. and reconvened the meeting at 1:15 p.m. with all members present.

10.A.3. ORDINANCE AMENDMENT TO PROVIDE FOR REPEAL AND SUNSETTING
OF SECTION 105.041.1, LOCAL PREFERENCE IN PURCHASING OR
CONTRACTING (LEGISLATIVE)

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

Deputy County Attorney William DeBraal recalled the Board's action on September 7, 2010, to sunset the local preference policy which was enacted through adoption of Ordinance 2009-010, which created a new section 105.041 for Local Preference in Purchasing or Contracting. He advised that today's public hearing and subsequent vote would satisfy the requirements to repeal the Ordinance, if the Board chooses to do so.

Attorney Polackwich reported there were three outstanding bids under the Local Preference Policy, and asked the Board if they could be processed pursuant to the conditions of Ordinance 2009-010, which was in effect at the time of the bids.

The Board CONSENSUS was to allow the aforementioned bids to continue under Ordinance 2009-010.

The Chairman opened the Public Hearing.

Seeing no one, the Chairman closed the public hearing.

MOTION WAS MADE by Vice Chairman Solari,
SECONDED by Commissioner Wheeler, to repeal the
Local Preference in Purchasing or Contracting Ordinance.

Commissioner Flescher was opposed to the repeal of the local preference ordinance, believing that the County has not provided ample opportunity for the policy to work. He felt that

it would be unfair to adopt the proposed Ordinance and remove this tool which might enhance the opportunity for jobs and economic recovery in the community.

Discussion continued as Vice Chairman Solari and Commissioner Flescher engaged in debate supporting their individual viewpoint.

Commissioner Wheeler spoke to the benefits of competition, capitalism, and free enterprise.

Further discussion ensued.

Commissioner Davis concurred with Commissioner Flescher that the local preference policy should not be sunsetted. He referenced the upcoming transportation building, and observed that the parks building at Hobart Road had been constructed by a Sarasota firm.

Administrator Baird pointed out that the new transportation facility would probably follow federal rules because of partial federal funding.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Flescher and Davis opposed) the Board adopted **Ordinance 2010-019**, repealing Code Section 105.041.1, Local Preference in Purchasing or Contracting; providing for conflicts; providing for severability; and providing for effective date.

10.B. PUBLIC DISCUSSION ITEMS-NONE

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARINGS OCTOBER 12, 2010:

10.C.1.A. CORRIGAN ET AL'S REQUEST: TO AMEND THE COMPREHENSIVE PLAN TO EXPAND THE COUNTY'S URBAN SERVICE AREA (USA) AND TO REDESIGNATE ± 674.17 ACRES LOCATED GENERALLY WEST OF 102ND AVENUE AND NORTH OF S.R. 60 FROM AG-2, AGRICULTURAL-2 (UP TO 1 UNIT/10 ACRES), TO C/I, COMMERCIAL/ INDUSTRIAL (LEGISLATIVE)

10.C.1.B. NOTICE OF SCHEDULED PUBLIC HEARINGS OCTOBER 12, 2010:

CORRIGAN ET AL'S REQUEST: TO AMEND THE COMPREHENSIVE PLAN'S FUTURE LAND USE ELEMENT POLICIES 1.22 AND 1.36 TO ALLOW FOR EXPANSION OF COMMERCIAL/INDUSTRIAL NODES FOR LARGE SCALE RESEARCH/TECHNOLOGY/INDUSTRIAL PARKS AND TO INCREASE THE SIZE AND USE ALLOWANCES OF THE COMMERCIAL/INDUSTRIAL DESIGNATED PROPERTY LOCATED AT THE NORTHWEST CORNER OF SR 60 AND 98TH AVENUE (LEGISLATIVE)

10.C.1.C. CONSIDERATION OF EAR (EVALUATION AND APPRAISAL REPORT) BASED AMENDMENTS TO THE COUNTY'S COMPREHENSIVE PLAN (LEGISLATIVE)

County Attorney Alan Polackwich, Sr. read the notices 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

12.D.1. TEAMSTER'S LOCAL 769 – MEMORANDUM OF AGREEMENT

Director of Human Resources James Sexton reported that the International Brotherhood of Teamsters, Local 769, “the Union”, and the County have reached an agreement whereby Union members will forgo their increases for Fiscal Year 2010/2011 in return for the County funding the number of positions equivalent to the dollar amount of the relinquished raises. He stated that the next step would be for the Board to either deny or approve the agreement.

A brief discussion ensued, during which Director Sexton addressed the Commissioner’s questions.

Chairman O’Bryan and Commissioner Flescher, respectively, applauded Union employees for sacrificing their increases, and congratulated Union members, staff, and Local 769 Representative Steve Myers for arriving at the subject agreement.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously ratified the Memorandum of Agreement with the International Brotherhood of Teamsters, Local 769, “the Union”, as requested in the letter of September 27, 2010.

12.E. HUMAN SERVICES-NONE

12.F. LEISURE SERVICES-NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET

**12.G.1. INDIAN RIVER COUNTY GOVERNMENT TELEVISION CHANNEL 27
POLICIES AND GUIDELINES**

Office of Management and Budget Director Jason Brown provided a description of Indian River County Government Television Channel 27's (IRGC – Channel 27) policies and procedures, which establish a formal framework and policy for governing the programming on Channel 27. He directed the Board's attention to the sample IRCTV Channel 27 Programming Request Form, pointing out that "Emergency ~~and~~ Public Safety Information" had been changed to "Emergency Public Safety Information". He thereafter requested that the Board approve the proposed policy and request form.

Bob Johnson, Coral Wind Subdivision, wanted to see the break periods eliminated from the broadcasts and rebroadcasts of the County Commission meetings.

Chairman O'Bryan advised Mr. Johnson that although the subject policy would not address his suggestion, staff could look at the technical aspects of removing the breaks.

Staff provided additional information for the Board on the groups who would be allowed to present programming on Channel 27.

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman Solari, the Board unanimously approved the Indian River County Government Television Channel 27 (IRGC – Channel 27) Policies and Guidelines and the Indian River County Government Television Channel 27 (IRGC – Channel 27) Programming Request Form, as recommended in the memorandum of September 13, 2010.

12.H. RECREATION-NONE

12.I. PUBLIC WORKS-NONE

12.J. UTILITIES SERVICES

12.J.1. CHANGE ORDER NO. 1 TO IRC BID NO. 2010024 TO TIM (TIMOTHY)

ROSE CONTRACTING, INC. FOR FAIRGROUNDS RV PARK IMPROVEMENTS

Director of Utility Services Erik Olson recapped his memorandum of September 24, 2010 to provide background and details pertaining to the Environmental Health Department's assessment that the RV Park facility at the Fairgrounds requires an update of the water, sewer, and electric utilities. He advised the Board that the cheapest and most efficient way to do the required improvements would be to have Timothy Rose Contracting, Inc., who was already onsite, incorporate the specified improvements at the RV Park with their current job.

Commissioner Davis, who stated he was a member of the Indian River Fairgrounds Association, sought and received confirmation from Attorney Polackwich that he (Commissioner Davis) was permitted to vote on this matter.

Assistant County Administrator Michael Zito, with input from County Administrator Joseph Baird, addressed Commissioner Wheeler's query on the criteria for RV site use at the Fairgrounds.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved and authorized the Chairman to execute Change Order No. 1 with Timothy Rose Contracting, Inc., in the amount of \$161,172.77; and (2) authorized the necessary Budget Amount in the amount of \$161,172.77 from the Parks Impact Fees and Fairground Reserves account, all as recommended in the memorandum of September 24, 2010.

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

12.J.2. REQUEST FOR SOLE SOURCE FOR REPAIRS FOR ABS, FLYGT AURORA, LAYNE/VERI-LINE PUMPS

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman Solari, the Board unanimously authorized the Purchasing Department to use Barney's Pump, Inc., of Lakeland, Florida; Hydra Services (ABS Pumps) of Sanford, Florida; and ITT Water and Wastewater U.S.A., Inc. (Flygt Pumps) of Riviera Beach, Florida, as the sole source provider for parts and repairs covered under their service area, as recommended in the memorandum of September 27, 2010.

**12.J.3. WATER AND WASTEWATER SERVICE TO THE TOWN OF INDIAN RIVER
SHORES**

Director of Utility Services Erik Olson recapped his memorandum of September 27, 2010 to provide a status update on the water and wastewater franchise between the Town of Indian River Shores (the Town) and the City of Vero Beach. He said the Franchise Agreement expires in 2016, and that recently, Indian River Shores had sent to both the County and the City, a draft Asset Purchase and Franchise Agreement for the provision of their water, wastewater, and reuse water, with a response date of October 8, 2010, and a closing date of January 2011. He detailed staff's concerns regarding the proposed Agreement, and questioned whether the County could negotiate on the franchise while the existing Franchise Agreement between Indian River Shores and the City of Vero Beach remains in effect. He recommended the Board direct staff to send the draft letter (page 300 of the backup), advising Indian River Shores that the County would be interested in discussing further the Town's proposal; however, is wary of interfering with the City of Vero Beach's existing franchise rights.

A broad-ranging discussion ensued wherein Board members considered a variety of factors associated with providing water and sewer service to the Town, and how best to respond to the letter sent by GAI Consultants (on behalf of Indian River Shores), requesting that the County let them know if it did not wish to enter into negotiations for the Asset Purchase and Franchise Agreement with Indian River Shores.

County Attorney Alan Polackwich provided legal opinion that prior to the completion of the existing Franchise Agreement, the County cannot sign the subject agreement without interfering with the City of Vero Beach's right to continue with the existing franchise. He also pointed out that the five-year deadline for notice of continuation or non-renewal of the Franchise Agreement is not until November 2016; hence if they so desired, the Town of Indian River Shores and the City of Vero Beach would have plenty of time for further negotiations.

Director Olson, referencing information in staff's report, reiterated that the City of Vero Beach's Finance and Utility Committee has recommended moving forward with the Franchise Agreement with Indian River Shores, which recommendation might, in turn, be approved by the City Council. He nonetheless recommended sending the County's letter, to let Indian River Shores know that the County is interested in providing utility services to the Town, but cannot interfere with the existing Franchise Agreement between Indian River Shores and Vero Beach.

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Davis, the Board unanimously approved to send a response to the Town of Indian River Shores and to GAI Consultants, Inc., in the form attached to staff's report (on page 300 of the backup), as recommended in the memorandum of September 27, 2010.

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

13. COUNTY ATTORNEY MATTERS

13.A. MONROE COUNTY V. PRICELINE, ET AL., CLASS ACTION

County Attorney Alan S. Polackwich, Sr. provided background information and analysis regarding a class action lawsuit against several internet travel companies that were not paying the full amount of Tourist Development Taxes in Florida. The suit was filed by Monroe County on behalf of all Florida counties that levy a tourist development tax, and the County Commission had decided in May 2010, not to opt out of the lawsuit. Attorney Polackwich conveyed that if the County remains in the suit, it would receive a settlement fee of \$61,171.65, which after associated fees and costs would come to approximately \$35,000. He thereafter presented staff's recommendation to accept the settlement.

ON MOTION by Vice Chairman Solari, SECONDED by Commissioner Flescher, the Board unanimously accepted the proposed settlement, as recommended in the memorandum of September 22, 2010.

13.B. SOUTH BARRIER ISLAND WATER/SEWER SYSTEM

Attorney Polackwich presented the Board with the results of an in-depth study he had undertaken pursuant to Board direction, regarding: (1) the ownership of the utility facilities, such as sewer and water mains, on the South Barrier Island; and (2) how the purchase price of those facilities would be determined. He conveyed his analysis that all the water and sewer mains on Highway A1A were built or purchased by the City of Vero Beach, with the exception of water system facilities built by the Moorings and now owned by the City (with the stipulation that it be sold should a new provider take over the utility service), and the privately owned utilities located within several subdivisions. He explained that there is no binding agreement or law setting forth a formula for determining a purchase price, and summarized what some of the factors involved in the pricing would be.

Attorney Polackwich responded to questioning from Chairman O'Bryan regarding: (1) the 10% surcharge imposed by the City of Vero Beach; and (2) whether the Public Service Commission could make a ruling on the purchase price.

After a brief discussion, with input from Attorney Polackwich, the Board determined that at this juncture, the County's focus should be on Indian River Shores, rather than the South Barrier Island.

The Board CONSENSUS was to note the information provided by the County Attorney, with no Board Action taken or required at this time.

Attorney Polackwich responded to Commissioner Wheeler's questions on what areas are regulated by the Public Service Commission.

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

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

15.A.1. APPROVAL OF LEASE AMENDMENT FOR FIRE STATION #2 BOAT DOCK

15.B. SOLID WASTE DISPOSAL DISTRICT

The Chairman announced that immediately upon adjournment of the Regular Emergency Services District 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. CANCEL 2010 PETITION HEARING SOLID WASTE DISPOSAL DISTRICT
ASSESSMENT FEES**

**15.B.2. REQUEST FOR GENERAL FUNDS – PACE PROJECT AND OTHER
COMMUNITY PROJECTS**

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 2:36 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Peter D. O'Bryan, Chairman

Minutes Approved: _____

BCC/MG/2010Minutes