

JEFFREY K. BARTON
Clerk to the Board



INDEX TO MINUTES OF REGULAR MEETING

OF BOARD OF COUNTY COMMISSIONERS

MARCH 15, 2011

1.	CALL TO ORDER.....	1
2.	INVOCATION	1
3.	PLEDGE OF ALLEGIANCE	1
4.	ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS	2
	ADDITION: 5.B. PRESENTATION OF PROCLAMATION DESIGNATING MARCH 25 AND 26, 2011 AS RELAY FOR LIFE DAYS IN INDIAN RIVER COUNTY	2
5.	PROCLAMATIONS AND PRESENTATIONS	2
5.A.	PRESENTATION OF PROCLAMATION COMMEMORATING THE 100 TH ANNIVERSARY OF THE NATIONAL EXCHANGE CLUB	2
5.B.	ADDITION: PRESENTATION OF PROCLAMATION DESIGNATING MARCH 25 AND 26, 2011 AS RELAY FOR LIFE DAYS IN INDIAN RIVER COUNTY	2
6.	APPROVAL OF MINUTES	3
6.A.	REGULAR MEETING OF FEBRUARY 1, 2011.....	3
6.B.	REGULAR MEETING OF FEBRUARY 8, 2011.....	3

7.	INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS NOT REQUIRING BOARD ACTION - NONE.....	3
8.	CONSENT AGENDA	4
8.A.	APPROVAL OF WARRANTS AND WIRES – FEBRUARY 25, 2011 TO MARCH 3, 2011.....	4
8.B.	FELLSMERE 2011 FIRE PROTECTION CHARGE.....	4
8.C.	FOURTH OF JULY FIREWORKS FUNDING MISCELLANEOUS BUDGET AMENDMENT 010.....	5
8.D.	TRAFFIC COUNTERS: BOARD APPROVAL FOR TRADE-IN AND PURCHASE OF TWELVE (12) TRAFFIC COUNTERS	5
8.E.	HUD GRANT RENEWAL ON SHELTER PLUS CARE GRANT – FL0360C4H091001	5
8.F.	MISCELLANEOUS BUDGET AMENDMENT 009.....	6
9.	CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE	6
10.	PUBLIC ITEMS.....	6
10.A.	PUBLIC HEARING(S)	6
10.A.1.	CONSIDERATION OF ORDINANCE TO TEMPORARILY SUSPEND IMPOSITION OF SEVERAL IMPACT FEES (LEGISLATIVE)	6
10.B.	PUBLIC DISCUSSION ITEMS - NONE	9
10.C.	PUBLIC NOTICE ITEMS	10
10.C.1.	NOTICE OF SCHEDULED PUBLIC HEARING FOR MARCH 22, 2011: CONSIDER ADOPTION OF AN ORDINANCE AMENDING CHAPTER 205 OF THE CODE OF INDIAN RIVER COUNTY TO PERMIT THE CARRYING OR POSSESSION OF CONCEALED WEAPONS OR FIREARMS IN PARKS AND RECREATIONAL AREAS IN ACCORDANCE WITH FLORIDA STATUTES (LEGISLATIVE)	10
11.	COUNTY ADMINISTRATOR MATTERS.....	10
11.A.	RENEWAL OF EMPLOYMENT AGREEMENT	10
12.	DEPARTMENTAL MATTERS	13
12.A.	COMMUNITY DEVELOPMENT	13

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)	13
12.A.2.	IMPACT FEE STUDY CONSIDERATION.....	15
12.B.	EMERGENCY SERVICES - NONE.....	17
12.C.	GENERAL SERVICES - NONE	17
12.D.	HUMAN RESOURCES - NONE.....	17
12.E.	HUMAN SERVICES - NONE	17
12.F.	LEISURE SERVICES - NONE.....	17
12.G.	OFFICE OF MANAGEMENT AND BUDGET - NONE.....	17
12.H.	RECREATION - NONE.....	17
12.I.	PUBLIC WORKS.....	17
12.I.1.	STAFF UPDATE – SECTOR 3 BEACH RENOURISHMENT PROJECT	17
12.I.2.	SECTOR 3 BEACH RESTORATION PROJECT, CHANGE ORDER No. 4 – FUEL COST INCREASE, RANGER CONSTRUCTION INDUSTRIES, INC.....	17
12.J.	UTILITIES SERVICES - NONE.....	21
13.	COUNTY ATTORNEY MATTERS.....	21
13.A.	INDIAN RIVER COUNTY/CITY OF VERO BEACH ELECTRIC ISSUES.....	21
13.B.	APPROVAL OF MEDIATED SETTLEMENT AGREEMENT WITH MATTHEW AND HILDA HARBOUR, 3675 66 TH AVENUE, VERO BEACH	23
14.	COMMISSIONER ITEMS.....	23
14.A.	COMMISSIONER BOB SOLARI, CHAIRMAN	23
14.A.1.	RESOLUTION IN FAVOR OF REPEALING CERTAIN SECTIONS OF CHAPTER 2010-205, LAWS OF FLORIDA REGARDING SEPTIC TANK INSPECTIONS	23
14.B.	COMMISSIONER GARY C. WHEELER, VICE CHAIRMAN - NONE	24
14.C.	COMMISSIONER WESLEY S. DAVIS - NONE.....	24
14.D.	COMMISSIONER JOSEPH E. FLESCHER - NONE	24
14.E.	COMMISSIONER PETER D. O’BRYAN - NONE	24
15.	SPECIAL DISTRICTS AND BOARDS	24

15.A. EMERGENCY SERVICES DISTRICT - NONE..... 24
15.B. SOLID WASTE DISPOSAL DISTRICT - NONE 24
15.C. ENVIRONMENTAL CONTROL BOARD - NONE..... 25

16. ADJOURNMENT.....25

JEFFREY K. BARTON

Clerk to the Board



March 15, 2011

**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, March 15, 2011. Present were Chairman Bob Solari, Vice Chairman Gary C. Wheeler, Commissioners Wesley S. Davis, Joseph E. Flescher, and Peter D. O'Bryan. 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 Solari called the meeting to order at 9:00 a.m.

2. INVOCATION

Commissioner Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Chairman Solari led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman Solari requested the following change to the Agenda:

**ADDITION: 5.B. PRESENTATION OF PROCLAMATION DESIGNATING MARCH 25 AND 26, 2011
AS RELAY FOR LIFE DAYS IN INDIAN RIVER COUNTY**

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 COMMEMORATING THE 100TH
ANNIVERSARY OF THE NATIONAL EXCHANGE CLUB**

Chairman Solari read the Proclamation. Eric Menger, District President for the National Exchange Club, and Airport Director, accepted the Proclamation on behalf of the local Exchange Clubs. He thereafter introduced members, presented a brief history of its existence (on file), and spoke about the Club's adoption of a childhood prevention project – Child Abuse Services Training Life Enrichment (CASTLE).

**5.B. ADDITION: PRESENTATION OF PROCLAMATION DESIGNATING MARCH 25
AND 26, 2011 AS RELAY FOR LIFE DAYS IN INDIAN RIVER COUNTY**

Vice Chairman Wheeler read and presented the Proclamation, designating March 25 and 26, 2011, as Relay for Life Days in Indian River County, to Nancy Madsen, Executive Director of the American Cancer Society for the Treasure Coast. She invited the Board and community to join the program and opening ceremonies.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF FEBRUARY 1, 2011

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of February 1, 2011. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of February 1, 2011, as written.

6.B. REGULAR MEETING OF FEBRUARY 8, 2011

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of February 8, 2011. There were none.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of February 8, 2011, as written.

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

8. CONSENT AGENDA

Vice Chairman Wheeler requested to pull Item 8.E. from the Consent Agenda for discussion.

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

8.A. APPROVAL OF WARRANTS AND WIRES – FEBRUARY 25, 2011 TO MARCH 3, 2011

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 February 25, 2011 to March 3, 2011, as requested in the memorandum of March 3, 2011.

8.B. FELLSMERE 2011 FIRE PROTECTION CHARGE

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the *Agreement Relating to 2011 Fire Protection Charge*, with the City of Fellsmere, and authorized the Chairman to sign same, on behalf of the County.

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

**8.C. FOURTH OF JULY FIREWORKS FUNDING MISCELLANEOUS BUDGET
AMENDMENT 010**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2011-016**, amending the Fiscal Year 2010-2011 Budget.

**8.D. TRAFFIC COUNTERS: BOARD APPROVAL FOR TRADE-IN AND PURCHASE
OF TWELVE (12) TRAFFIC COUNTERS**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the transaction and authorized staff to trade-in twelve (12) old traffic counters and purchase twelve (12) new traffic counters, as recommended in the memorandum of March 2, 2011.

**8.E. HUD GRANT RENEWAL ON SHELTER PLUS CARE GRANT –
FL0360C4H091001**

MOTION WAS MADE by Vice Chairman Wheeler to deny staff's recommendation. MOTION DIED for lack of a Second.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board, by a 4-1 vote (Commissioner Wheeler opposed), approved and authorized the Chairman to execute the Renewal Agreement with the U.S. Department of Housing and Urban Development (HUD), and allowed the Treasure Coast Homeless Services Council to submit the Grant Agreement on behalf of the County, as recommended in the memorandum of March 8, 2011.

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

8.F. MISCELLANEOUS BUDGET AMENDMENT 009

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2011-017**, amending the Fiscal Year 2010-2011 Budget.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARING(S)

10.A.1. CONSIDERATION OF ORDINANCE TO TEMPORARILY SUSPEND IMPOSITION OF SEVERAL IMPACT FEES (LEGISLATIVE)

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

Community Development Director Robert Keating recapped the memorandum of March 3, 2011, providing background, description, conditions, and analysis regarding a temporary suspension of several impact fees. He stated that the current suspension of five impact fees would expire on March 31, 2011, confirmed that notices had been provided to the municipalities who partner with the County in the impact fee program, and pointed out that in order to provide flexibility of suspension for the Board, staff advertised suspending all five impact fees. He reviewed two proposed draft ordinances and recommended the Board adopt the ordinance that reflects the three fees (Law Enforcement, Public Buildings Impact Fee, and Solid Waste Facilities Impact Fee) that were referenced at the February 1, 2011 Board of County Commission meeting.

Director Keating specified that the Fire/Emergency Services Facilities and Law Enforcement Impact Fees would not be suspended. He thereafter responded to questions from the Board regarding the non-suspended impact fees and unencumbered impact fee tracking.

The Chairman opened the Public Hearing.

The following speakers supported the temporary suspension of impact fees:

Terry Torres, 1555 Club Drive

Charlie Wilson, 1935 19th Avenue

Brian Carman, Indian River Neighborhood Association (IRNA)

Peter Robinson, Laurel Homes

Don Wright, 720 North Fischer Circle

Penny Chandler, President of the Indian River Chamber of Commerce

Betty Lollo, Seacoast National Bank Branch Manager and Vice President

Brian Heady wanted to know if there was any money from impact fees that is close to the expenditure time limit, and Management and Budget Director Jason Brown relayed that there were currently no funds that have reached the 6-year expenditure time limit.

Chuck Mechling, 1999 Pointe West Drive, wanted impact fees kept to a minimum in order to generate new construction.

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

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Davis, to approve Attachment 3, extending the temporary suspension of five (5) Impact Fees (Fire/Emergency Services Facilities, Correctional Facilities, Public Buildings, Law Enforcement, and Solid Waste) for two years, until March 31, 2013.

County Attorney Alan Polackwich informed the Board that the governing Ordinance limits the extension to one year, not two.

MOTION WAS AMENDED by Commissioner Flescher, SECONDED by Commissioner Davis, to approve Attachment 3, extending the temporary suspension of five (5) Impact Fees for one year, until March 31, 2012.

Vice Chairman Wheeler said he would not support the Motion. He wanted only three impact fees suspended – Correctional Facilities, Public Buildings, and Solid Waste Facilities.

Commissioner O'Bryan concurred with Vice Chairman Wheeler, and explained why the entire tax issue should be examined. He also pointed out that due to the current economy and lack of competition, now would be the best time to purchase land for future fire stations.

Chairman Solari would not support the Motion because he did not believe impact fees should be used to manage growth.

Debate and discussion ensued regarding impact fees being considered a tax, businesses moving into the County to fill existing vacant buildings instead of building new, and the 35% reduction in impact fees that are being targeted to industrial projects.

The Chairman CALLED THE QUESTION, and by a 2-3 vote (Commissioners O'Bryan, Solari, and Wheeler opposed), the MOTION FAILED.

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Wheeler, by a 3-2 vote (Commissioners Flescher and Solari opposed) the Board adopted **Ordinance 2011-002**, amending Title X, Impact Fees, of the Code of Indian River County to amend Code Section 1000.06 "Imposition" to provide an exception temporarily suspending for one year the imposition of Impact Fees for Public Buildings, Law Enforcement, and Solid Waste Facilities; and providing for codification; severability; and effective date.

The Chairman called a break at 10:30 a.m., and reconvened the Meeting at 10:42 a.m., with all members present.

10.B. PUBLIC DISCUSSION ITEMS - NONE

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING FOR MARCH 22, 2011: CONSIDER ADOPTION OF AN ORDINANCE AMENDING CHAPTER 205 OF THE CODE OF INDIAN RIVER COUNTY TO PERMIT THE CARRYING OR POSSESSION OF CONCEALED WEAPONS OR FIREARMS IN PARKS AND RECREATIONAL AREAS IN ACCORDANCE WITH FLORIDA STATUTES (LEGISLATIVE)

County Attorney Alan Polackwich, Sr. read the notice into the record.

11. COUNTY ADMINISTRATOR MATTERS

11.A. RENEWAL OF EMPLOYMENT AGREEMENT

County Administrator Joseph Baird reviewed the details of his new proposed three-year Employment Agreement (contract) as outlined on pages 89 through 92 of the Agenda Packet. His current contract expires on March 22, 2011, and his new contract would be in effect through March 22, 2014.

The Commissioners echoed praise for Administrator Baird's job performance; however, they voiced objections and concerns over the following provisions: (1) the three-year term of the contract; (2) the accumulation of sick leave and vacation time; and (3) certain specifics within the severance package. The Board also compared his proposed contract to his current contract and the contract of the County Attorney.

Administrator Baird responded to the Commissioners' concerns, noted his accomplishments, and pointed out the difficult decisions he has recently had to make.

Attorney Polackwich spoke to the issue of a five-month severance package, and how it was resolved in the contracts of the Deputy County Attorney and Assistant County Administrator.

Chairman Solari opened the floor to public comment.

Joe McManus, 13450 77th Street, Fellsmere, objected to numerous details in the Administrator's proposed contract, and opposed its renewal.

Jens Tripson, 2525 14th Street, felt unused sick leave was a benefit that should not be part of the retirement package.

Peter Robinson, Laurel Homes, supported the Administrator's proposed contract.

Victor Regan, 6125 6th Place, Vero Beach, explained why he did not think that Administrator Baird needed an annual contract, and wanted his contract to be equal to other County employees.

MOTION WAS MADE by Vice Chairman Wheeler to approve Administrator Baird's contract for three years, with amendments to remove the deferred compensation and non-renewable clauses; clarify the use of sick/severance pay for serious life threatening illnesses; and add "or equally favorable terms" to pay outs and buy outs for sick, vacation, and compensation time. The MOTION DIED for lack of a Second.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Davis, to approve the three-year contract as presented, with the exception that severance pay for vacation and accumulated sick leave be tied to the County's Administrative Policy in effect during the time of resignation or contract termination.

Administrator Baird suggested putting a cap on his sick leave at 400 hours.

MOTION WAS AMENDED by Commissioner O'Bryan, SECONDED by Commissioner Davis, to add a cap of 400 hours to accrued sick leave.

Attorney Polackwich suggested adding to Section 9. SEVERANCE, the following underlined phrase: ***"If the County terminates this contract at any time, or in the event of County's failure to renew an employment contract with the Administrator, on equally favorable terms, County shall pay Administrator..."***. He noted that said verbiage is also stated in the Deputy County Attorney and Assistant County Administrator's contracts.

A SECOND AMENDMENT TO THE MOTION was made by Commissioner O'Bryan, SECONDED by Commissioner Davis, to add the phrase: "...on equally favorable terms," to Section 9. SEVERANCE.

Vice Chairman Wheeler emphasized that the Administrator's contract had been pared-down from his previous contract based on his own recommendations.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Flescher and Wheeler opposed), the Motion carried. The Board approved the three-year contract as presented, with the following amendments: (1) severance pay for vacation and accumulated sick leave to be tied to the County's Administrative Policy that is in effect at the time of resignation or contract termination; (2) a cap of 400 hours to be added to accrued sick leave; and (3) "...on equally favorable terms," to be added to Section 9. SEVERANCE.

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

The Chairman called a break at 11:49 a.m. and reconvened the Meeting at 1:17 p.m., with all members present.

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)

Environmental Planning and Code Enforcement Chief Roland DeBlois, using a PowerPoint Presentation (on file), recapped his memorandum of March 7, 2011, providing history, description, conditions, and analysis regarding the recurrence of overgrown grass and weeds at the Vista Golf property, within Vista Gardens Development. He recommended the

Board approve authorized individuals to enter upon said property to abate this nuisance, and to record the cost of abatement as a lien against this property.

Attorney Polackwich revealed that up to this point, the liens that the County filed on subject property had a “priority position,” but on December 7, 2010, a mortgage was recorded on the Vista Golf property (to Mr. and Mrs. Sullivan) in the amount of \$500,000, plus a future advance clause; therefore, all future liens on the property will have low or no priority. As a result, if the mortgage is foreclosed, the County’s liens could be eliminated through the foreclosure process.

Questions were posed to the County Attorney regarding future advance notices, filing and foreclosing on liens, and available alternatives.

MOTION WAS MADE by Commissioner Flescher,
SECONDED by Commissioner Davis, to approve staff’s
recommendation.

Chairman Solari supported one last mowing for the Vista Golf, LLC property, and felt that staff should notify the appropriate individuals that this would be the County’s final attempt to abate the nuisance, before moving forward with changes.

The Chairman CALLED THE QUESTION and the Motion unanimously carried. The Board authorized: (1) the County’s employees, servants, agents, or contractors to again enter upon the Vista Golf, LLC property, within Vista Gardens, at all reasonable times to take whatever action is necessary to abate the nuisance described, and (2) staff to record the costs of the abatement as a lien against the subject property, as recommended in the memorandum of March 7, 2011.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Chairman Solari, to direct the County Attorney to initiate foreclosure proceedings to recoup the County tax dollars that have been expended to date, for the mowing of the Vista Golf, LLC property.

Attorney Polackwich suggested including an injunction, should this be a viable claim.

Commissioner O'Bryan AMENDED HIS MOTION, SECONDED by Chairman Solari, to include an injunction, should this be a viable claim.

After a brief debate to whether Commissioner Davis should abstain from the vote, Attorney Polackwich said he saw no conflict of interest.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board directed the County Attorney to: (1) initiate foreclosure proceedings to recoup the County tax dollars that have been expended to date, for the mowing of the Vista Golf, LLC property; and (2) file an injunction, should this be a viable claim.

12.A.2. IMPACT FEE STUDY CONSIDERATION

Community Development Director Robert Keating recapped his memorandum dated March 7, 2011. He providing description, conditions, and analysis regarding the Board's direction, at the February 1, 2011 Board of County Commission Meeting, to move forward with a new Traffic Impact Fee Study, believing it would result in lower commercial traffic impact fee rates. He thereafter provided alternatives for the Board to consider in moving forward.

A lengthy discussion ensued regarding the level of service standards, the necessity of certain traffic impact fees, the calculation of impact fee trips versus human behavior, the methodology of Impact Fee Studies, the high cost of commercial traffic impact fee rates, and whether the addition of neighborhood establishments attracts new growth.

The Chairman opened the floor to public comment.

Peter Robinson, Laurel Homes, stressed that Impact Fee Studies are based on national standards. He did not feel Indian River County could match these standards, and offered suggestions.

Don Wright, Sebastian, did not feel the Impact Fee Study was appropriate for Indian River County at this time, thought it would be a waste of money, and offered suggestions.

Jeff Thompson, 2307 Seville Avenue, Vero Beach, opposed the Impact Fee Study at this time, and thought it should be put on hold for two years.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Vice Chairman Wheeler, to deny staff's
recommendation.

Commissioner Davis wanted this discussion on impact fees to be considered a "revisit" since the Ordinance requires review every three years.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board denied staff authorization to initiate the Impact Fee Update Study process.

The Chairman called a break at 2:29 p.m. and reconvened the Meeting at 2:38 p.m., with all members present.

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

12.I.1. STAFF UPDATE – SECTOR 3 BEACH RENOURISHMENT PROJECT

Public Works Director Chris Mora provided the Board with the weekly construction summary and schedule update for the Sector 3 Beach Renourishment Project (on file).

**12.I.2. SECTOR 3 BEACH RESTORATION PROJECT, CHANGE ORDER NO. 4 –
FUEL COST INCREASE, RANGER CONSTRUCTION INDUSTRIES, INC.**

Director Mora provided a chronological order of events that transpired on this project since the date of original bid (August 2009). He reported that on March 4, 2011, Ranger

Construction Industries, Inc. (Ranger) requested Change Order No. 4, in the amount of \$303,480, for unforeseeable and substantial increases in the cost of fuel. He calculated that this would increase the project cost from \$10,319,234 to \$10,622,714, and if this was to be granted, it would increase the unit cost of all sand required to complete Phase II by \$1.08 per cubic yard, taking it from \$15.66 to \$16.74 per cubic yard. Director Mora disagreed with the baseline date provided by Ranger as to when the increase should be calculated - Ranger calculated it back to August 2009 (when the original bid was submitted), but staff felt it should be calculated from March 23, 2010 (when the Board approved Change Orders No. 1 and 2, and when Ranger agreed to no further price increase). Director Mora provided alternatives, and recommended the Board deny Ranger's request for Change Order No. 4. He also noted that the contract was silent, and offered no provisions regarding fuel cost adjustments.

Bob Schafer, Vice President, Ranger Construction Industries, Inc. spoke to the unforeseen fuel escalations since the original bid contract of August 2009, and how the increase has affected the project. He also provided justification regarding the submittal of each Change Order.

Chuck Kramer, 10729 US 1, Sebastian, compared the price of sand from 2007 to today's prices, which he said dropped by more than half. He stressed the effects of the crippling fuel prices, and asked the Board to consider extending the deadline date of the project, should their request for compensation be denied.

Commissioner O'Bryan clarified the technical details of the project. He wanted the project to be 100% completed, felt a fuel adjustment was warranted, and thought the Board should start planning how to adjust fuel usage costs. Referencing page 132 of the Agenda Packet, he suggested that the March 23, 2010 price of \$3.00 per gallon be used as the baseline. He did not think it fair for the County taxpayers to pay a higher fuel price for sand that has already been moved. He wanted a fair and equitable adjustment to be made based on the average weekly cost of fuel when the sand is being hauled.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Davis, to set the March 23, 2010 price of \$3.00 as the baseline, with weekly adjustments for the average diesel fuel price, based on the cubic yards of sand hauled for that week.

Commissioner Davis acknowledged why assigning a per cubic yard price would not work in this instance, and questioned whether the adjusted compensation in fuel prices is being passed on to the independent truck drivers who are hauling the sand.

Mr. Schafer assured Commissioner Davis that monies are adjusted and distributed to the truckers and miners by revising the subcontracts.

Patrick Flynn, Ranger Construction Manager, stated that he had developed Change Order 4, which reflects the exact figures submitted from their suppliers, without any mark-up or overhead. He thereafter responded to questions from the Board.

A lengthy discussion ensued regarding the use of a sliding scale, the original construction budget, and fuel price adjustments.

Vice Chairman Wheeler wanted this sent back to staff so "real numbers" can be put to paper and locked in.

Paul Meunier, Indian River Contracting, emphasized that his trucking company is currently running at a deficit and on good faith, and stressed the urgency to approve a fuel increase adjustment.

Administrator Baird suggested authorizing the Change Order for 50% of what Ranger is requesting to keep the project moving, and afterwards calculate a formula and index of what the County owes them to date and in the future.

Mr. Kramer spoke about the glitches in processing the sand, and wanted the Board to consider allowing Ranger to complete the project this calendar year. He also specified that there would be no mobilization fee.

MOTION WAS AMENDED by Commissioner O'Bryan, SECONDED by Commissioner Davis, to advance one-half of the requested fuel adjustment to Ranger Construction Industries, Inc. until staff can settle on a formula.

There was a brief debate as to when the adjustment should start.

Steve Smith, Ranch Road Lake Mine of Vero Beach, clarified that the proposed formula should not go back to Phase I (last year's turtle season), but begin during the next turtle season.

Mr. Flynn made it clear that this fuel adjustment would include 281,000 cubic yards of sand, and nothing retroactive.

Commissioner O'Bryan supported advancing Ranger a dollar amount as a fuel adjustment, but he did not want the fuel price tied to a cubic yard until staff reviews the process for weekly adjustments.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board approved to: (1) set the March 23, 2010 price of \$3.00 as a baseline, with weekly adjustments for the average diesel fuel price, based on the cubic yards of sand hauled for that week; and (2) advance one-half of the requested fuel adjustment to Ranger Construction Industries, Inc. until staff can settle on a formula.

Administrator Baird interpreted the direction of the Board, and the adjustments to the total increase in fuel cost as requested by Ranger (page 123 of the Agenda Packet). He indicated that he would return next week with a formula for moving forward.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board unanimously approved to advance the fuel adjustment rate of 13.5 cents per trucking cubic yard, 28 cents for dredging and processing per cubic yard, and 09 cents of construction per cubic yard, based upon the Phase II sand that has been processed and invoiced appropriately.

12.J. UTILITIES SERVICES - NONE

13. COUNTY ATTORNEY MATTERS

13.A. INDIAN RIVER COUNTY/CITY OF VERO BEACH ELECTRIC ISSUES

Attorney Polackwich recalled that on February 1, 2011, Dr. Stephen Faherty, Sr. had made a presentation to the Board on the City of Vero Beach Electric system. He said that at the conclusion of the presentation he was instructed to review whether it made sense for the County to intervene in the pending Florida Public Service Commission (PSC) case that Dr. Faherty and Glenn Heran had filed, and to also explore the possibility of a survey of the City of Vero Beach Electric customers, to see if they wanted to be served by the City of Vero Beach Electric system or Florida Power and Light (FPL). After completing the task, he felt that the Board should address the alternatives listed on pages 141 through 144 of his Memorandum dated March 7, 2011, make their position known by adopting a resolution setting forth the Board's position, wait for the results of a possible sale to FPL, and give the City Council a chance to react. Attorney Polackwich explored the idea of conducting a survey, and believed the "bill stuffer" method would be the best way to conduct the survey. He noted that the City Manager felt it was

premature to put a question before their customers until FPL provides their offer to purchase the city electric system.

Dr. Stephen Faherty provided a brief update regarding the City of Vero Beach's (the City) response to the Florida Public Service Commission, and the questions that were raised in February. He said he and Glenn Heran were preparing to address the City's response, due to "major holes" in what they were responding to. He wanted to wait to see what happens with FPL, and how the City reacts to it. He urged the Board to pass the resolution, requested Attorney Polackwich's assistance with proposed language to the resolution, and asked that copies be provided to Indian River Shores, the City of Vero Beach, and the Public Service Commission.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved to: (1) adopt a resolution stating its position on the electric issues; (2) give the City Council a reasonable time to work out a sale to FPL; (3) monitor, but not intervene in the Faherty/Heran Public Service Commission case for now; and (4) provide a copy of the resolution to Indian River Shores, City of Vero Beach, and the Public Service Commission.

Glenn Heran explained why the Board should continue being visible and vigilant on this state wide issue.

Administrator Baird suggested sending a letter to the Florida Municipal Energy Association (FMEA) stating that the Board does not want them representing Indian River County customers.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

**13.B. APPROVAL OF MEDIATED SETTLEMENT AGREEMENT WITH MATTHEW
AND HILDA HARBOUR, 3675 66TH AVENUE, VERO BEACH**

Deputy County Attorney William DeBaal, provided introduction, background, risk assessment, and details of the mediation pertaining to the property acquisition associated with the construction of 66th Avenue, north of State Road 60. The property is located at 3675 66th Avenue, and owned by Matthew and Hilda Harbourt.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Mediated Settlement Agreement and authorized the Chairman to execute same on behalf of the Board, as recommended in the memorandum of March 7, 2011.

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

14. COMMISSIONER ITEMS

14.A. COMMISSIONER BOB SOLARI, CHAIRMAN

**14.A.1. RESOLUTION IN FAVOR OF REPEALING CERTAIN SECTIONS OF
CHAPTER 2010-205, LAWS OF FLORIDA REGARDING SEPTIC TANK
INSPECTIONS**

Chairman Solari recalled that at the March 1, 2011 Board of County Commission Meeting, the Board directed the County Attorney's Office to prepare a resolution in favor of repealing certain sections of Chapter 2010-205, Laws of Florida, which provides for mandatory

inspection of all septic tanks in the State of Florida. He asked the Board to consider and approve the proposed resolution.

Chairman Davis announced he would abstain from the vote and file Form 8B, Memorandum of Voting Conflict.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board, by a vote of 4-0 (Commissioner Davis abstained) approved **Resolution 2011-018**, in favor of repealing certain sections of Chapter 2010-205 Laws of Florida regarding septic tank inspections.

FORM 8B, MEMORANDUM OF VOTING CONFLICT ON FILE
IN THE OFFICE OF THE CLERK TO THE BOARD

14.B. COMMISSIONER GARY C. WHEELER, VICE CHAIRMAN - NONE

14.C. COMMISSIONER WESLEY S. DAVIS - NONE

14.D. COMMISSIONER JOSEPH E. FLESCHER - NONE

14.E. COMMISSIONER PETER D. O'BRYAN - 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 4:07 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Bob Solari, Chairman

Minutes Approved: _____

BCC/LA/2011 Minutes