

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF MARCH 22, 2011

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JEFFREY K. BARTON

Clerk to the Board



March 22, 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 22, 2011. Present were Chairman Bob Solari, Vice Chairman Gary C. Wheeler, and 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 Maureen Gelfo.

1. CALL TO ORDER

Chairman Solari called the meeting to order at 9:00 a.m.

2. INVOCATION

Jeffrey R. Smith, Chief Deputy Clerk of Circuit Court, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Davis led the Pledge of Allegiance to the Flag.

CONSTITUTIONAL OFFICER – OATH OF OFFICE

SUPERVISOR OF ELECTIONS – LESLIE SWAN

Honorable Judge David C. Morgan, Indian River County, administered the Oath of Office to the newly appointed Supervisor of Elections, Leslie Swan.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

An announcement was made by County Administrator Joseph Baird that additional backup had been distributed separately regarding Item 8.N., Sector 3 Beach Restoration Project, Change Order No. 4 – Fuel Cost Adjustment, Ranger Construction Industries, Inc. He requested that the Board base its Motion on the original backup (pages 203-205 of the Agenda Packet).

Chairman Solari requested the following change to today's Agenda:

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

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION INDIAN RIVER COUNTY CELEBRATING CHILDREN'S WEEK

Commissioner O'Bryan read and presented the Proclamation to Jacki Jackson, Executive Director, and Miranda Swanson and Susan Green, Board Members, Early Learning Coalition of Indian River, Martin and Okeechobee Counties, and to a representative of Little Rising Stars Creative Learning Center. Ms. Jackson described the goals and objectives of the Agency, and presented to the Board lapel pins and art created by the children.

5.B. PRESENTATION OF PROCLAMATION HONORING THE CITY OF FELLSMERE'S 100 YEAR ANNIVERSARY

Commissioner Davis read and presented the Proclamation to Beth Mitchell, Sebastian Chamber of Commerce, and Susan Adams, Mayor of Fellsmere. Ms. Adams invited everyone to attend the festivities on Saturday, April 2, 2011, Fellsmere Day, and Ms. Mitchell presented a video highlighting Fellsmere's history, heritage, culture, and business and recreational opportunities.

5.C. PRESENTATION OF PROCLAMATION DESIGNATING MARCH 21 – 27, 2011, AS SHARPS DISPOSAL AWARENESS WEEK

Commissioner Flescher read and presented the Proclamation to Cheryl Dunn, Environmental Manager of the Health Department, and Himanshu Mehta, Managing Director of the Solid Waste Disposal District. Director Mehta reported that residents could obtain a sharps container at no charge, from the Customer Convenience Centers, the Landfill, or the Health Department.

6. APPROVAL OF MINUTES - NONE

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

7.A. TOWN OF INDIAN RIVER SHORES 2011 COMMITTEE APPOINTMENTS

Noted for the record was the Committee appointment list for the Town of Indian River Shores for 2011.

8. CONSENT AGENDA

Vice Chairman Wheeler requested Item 8.H. be pulled for discussion.
Commissioner Flescher requested Item 8.K. be pulled for discussion.
Chairman Solari requested Item 8.N. be pulled for discussion.

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

**8.A. APPROVAL OF WARRANTS AND WIRES – MARCH 4, 2011 TO MARCH 10,
2011**

ON MOTION by Commissioner Flescher, 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 March 4, 2011 to March 10,
2011, as requested in the memorandum of March 10,
2011.

**8.B. APPROVAL OF ANNUAL FINANCIAL REPORT BY COUNTY COMMISSIONERS
AND NOTICE OF CAFR (COMPREHENSIVE ANNUAL FINANCIAL REPORT)
COMPLETION**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously authorized the Chairman to execute the County's Local Government Annual Financial Report and accepted the Comprehensive Annual Financial Report (CAFR) as presented for Fiscal Year 2009-2010, as requested in the memorandum of March 16, 2011.

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

8.C. SENATE BILL 1296

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved for the Board of County Commissioners to send a letter to the Senate Commerce and Tourism Committee requesting they pull Senate Bill 1296, the proposed legislation to eliminate the Florida Enterprise Zone Program effective July 1, 2011, as requested in the memorandum of March 16, 2011.

8.D. WILD TURKEY MINE – PHASE 1, APPROVAL OF CASH DEPOSIT AND ESCROW AGREEMENTS FOR COMPLIANCE AND RESTORATION

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the Cash Deposit and Escrow Agreement for Compliance and the Cash Deposit and Escrow Agreement for Restoration, both with Wild Turkey Estates of Vero, LLC, as recommended in the memorandum of March 11, 2011.

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

8.E. AUTHORIZATION TO ATTEND FLORIDA GOVERNMENT FINANCE OFFICERS ASSOCIATION ANNUAL CONFERENCE 2011

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously authorized the County Administrator to attend the 2011 Florida Government Finance Officers Association (FGFOA) Annual Conference in Boca Raton, Florida, from June 26 through June 29, 2011, as requested in the memorandum of March 10, 2011.

8.F. FINAL APPROVAL FOR RECORDING OLD DIXIE HIGHWAY RIGHT-OF-WAY MAP, FROM 69TH STREET THROUGH CR510 TO US No. 1

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the Right-of-Way map for Old Dixie Highway from 69th

Street (North Winter Beach Road) through CR 510 (Wabasso Road) to US No. 1, for recording, and authorized the Chairman to approve and execute the map accordingly, as recommended in the memorandum of March 9, 2011.

8.G. CHILDREN'S SERVICES ADVISORY COMMITTEE'S RECOMMENDATION
RFP #2011037 NEW FOCUS AREAS FOR 2011-12 AND SAMPLE AGENCY
CONTRACT TO BE USED

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously accepted the Request for Proposal (RFP) #2011037 for 2011-12, Focus Areas and Agency Contract as submitted, and authorized the Chairman to execute the individual contracts, as recommended in the memorandum of March 22, 2011.

8.H. REQUEST FOR AUTHORIZATION FOR THE BOARD CHAIRMAN TO SIGN A
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
NEIGHBORHOOD STABILIZATION PROGRAM 3 (NSP3) COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT

Vice Chairman Wheeler presented arguments opposing acceptance of the Community Development Block Grant. He spoke of unacceptable financial practices by banks and other financial institutions, poor decisions by home buyers, excessive spending and taxation by the Federal Government, and noted the Federal Government could decide to demand its money back should it perceive a reason to do so.

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

Commissioner Flescher felt the Board had an obligation to ensure that the County has viable taxpaying residents living in homes, as opposed to local government having to maintain abandoned and foreclosed homes, which would be a burden on the citizens. He supported receiving the grant funding to make sure these homes are occupied.

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

Commissioner Davis explained that he agreed with Vice Chairman Wheeler philosophically; however, he had a level of confidence because Habitat for Humanity would be overseeing the program.

Vice Chairman Wheeler stressed that people needed to be more self-reliant and start refusing these types of federal loans, and not depend on the Federal Government to correct all the problems in the country.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Vice Chairman Wheeler opposed), the Motion carried. The Board: (1) approved **Resolution 2011-019**, authorizing the Chairman to execute the documents required for the County to enter into a contract with the U.S. Department of Housing and Urban Development for a Fiscal Year 2010 Neighborhood Stabilization Program 3, Community Development Block Grant, and authorizing the Community Development Director to execute all

documents required for the administration of the Neighborhood Stabilization Program 3 Community Development Block Grant; and (2) authorized staff to transmit the executed copies of the Agreement to the Department of Community Affairs (DCA), all as recommended in the memorandum of March 14, 2011.

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

8.I. APPROVAL OF STATE SOVEREIGNTY SUBMERGED LANDS LEASE FOR THE JONES'S PIER DOCK FACILITY

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the sovereignty submerged lands lease with Richard M. Jones, for the Jones's Pier dock facility, as recommended in the memorandum of March 15, 2011.

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

8.J. APPROVAL OF CHANGE ORDER NO. 1 TO WORK ORDER NO. PCS-1 WITH HYDROMENTIA, INC. FOR A PILOT ALGAL TURF SCRUBBER® (ATS™) SYSTEM FOR NITROGEN AND PHOSPHORUS REMOVAL FROM STORMWATER AND THE TREATMENT AND REUSE OF REVERSE OSMOSIS REJECT WATER

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously: (1) approved and authorized the Chairman to execute Change

Order No. 1 with Hydromentia, Inc. for the twelve-week pilot Algal Turf Scrubber (ATS) study using a 1:1 canal water to Reverse Osmosis (RO) brine mix, for a lump sum fee of \$15,165; and (2) approved a \$10,110 contingency fee in the event up to two each additional acute and chronic bioassay tests are required, for a total authorized expenditure of \$25,275, as recommended in the memorandum of March 11, 2011.

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

8.K. CONSIDERATION OF A REQUEST FOR A LOCAL JOBS GRANT

Commissioner Flescher related that a local company (the Company), that is requesting anonymity at this time, had planned to expand its powder coating business to Brevard County, rather than remain in this County. He emphasized that the County's business-friendly stance and the Local Jobs Grant Program had incentivized the company to expand its operations within the County.

Community Development Director Robert Keating provided background description and conditions pertaining to the Company's request for a Local Jobs Grant, and revealed that currently 15 people are employed, with plans to add 40 additional staff members. He advised that in order to be competitive with Brevard County, the County was offering to the Company an upfront incentive loan of \$75,000 of the anticipated \$152,000 job grant award, to help with relocation/expansion costs. After reviewing several changes to the draft Promissory Note (pages 184-186 of the Agenda Packet), he confirmed staff's recommendation to approve the Jobs Grant Agreement in the amount of \$152,000, and to authorize the Chairman to execute same, after the County Attorney has determined the final Jobs Grant Agreement and Promissory Note meet legal sufficiency.

Helene Caseltine, Economic Development Director, Indian River County Chamber of Commerce, affirmed that she and Commissioner Flescher had been working with the Company for several months. She relayed that the Company anticipated posting its new job openings online by the end of the year, and requested that the Board approve, as part of the Jobs Grant, an upfront payment in the form of a loan, to be repaid with the Jobs Grant funds.

Wayne Schroeder, a Company principal, described how his company had at first been courted by Brevard County, and due to the efforts of Ms. Caseltine and Commissioner Flescher, decided to remain in Indian River County.

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

Chairman Solari pointed out that it was a departure from the general jobs grant policy to provide the funding prior to a company's performance, and objected to giving the Company an upfront payment of \$75,000.

County Attorney Alan S. Polackwich provided further details on the draft Promissory Note.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Chairman Solari opposed), the Motion carried. The Board approved: (1) a local jobs grant of up to \$152,000 for the Company, and authorized the Chairman to execute the Job Grant Agreement with the Company, after approval of the agreement by appropriate County staff and the County Attorney's office; and (2) approved an upfront payment of \$75,000 to the Company as a loan to be repaid with local jobs grant funds after execution of a promissory

note by Company principals, as recommended in the memorandum of March 15, 2011.

8.L. HURRICANES FRANCES, JEANNE, AND WILMA CLOSEOUTS AND HURRICANE WILMA PROJECT WORKSHEET (PW) #5691 CLOSEOUT

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved: (1) the payment request for reimbursement to the Federal Emergency Management Agency (FEMA) for Hurricane Wilma in the amount of \$206,167.94, as recommended in the memorandum of March 15, 2011; and (2) **Resolution 2011-020**, amending the Fiscal Year 2010-2011 Budget.

8.M. MISCELLANEOUS BUDGET AMENDMENT 012

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2011-021**, amending the Fiscal Year 2010-2011 Budget.

8.N. SECTOR 3 BEACH RESTORATION PROJECT, CHANGE ORDER #4 – FUEL COST ADJUSTMENT, RANGER CONSTRUCTION INDUSTRIES, INC

The Chairman noted that the Board's vote would be based on the original backup dated March 17, 2011 (pages 203-205 of the Agenda Packet).

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

Commissioner O'Bryan felt that the 50% fuel cost adjustment should not be based on Ranger Construction Industries, Inc.'s projection of placing 281,000 cubic yards of sand by this year's project deadline, but rather on an estimate of 200,000 cubic yards. He asked Commissioner Davis if he wished to amend his Motion accordingly.

Commissioner Davis felt that the fuel cost adjustment should be based on what Ranger delivers.

County Administrator Joseph Baird clarified that at today's meeting, staff was asking the Board to approve 50% of the fuel adjustment increase requested by Ranger, until staff returns with the complete Change Order at the April 5, 2011 County Commission meeting. He noted that the fuel adjustment would be based on the amount of sand that is actually delivered, not on Ranger's estimate.

Chairman Solari clarified with Commissioners Davis and Flescher that the Motion would be to approve 50% of the fuel cost adjustment requested by Ranger on the delivered sand.

MOTION WAS AMENDED by Commissioner Davis, SECONDED by Commissioner Flescher, to: (1) authorize staff to pay 50% of the fuel cost adjustment requested by Ranger Construction based on the sand that has been delivered; and (2) to have staff return with the complete Change Order No. 4 at the Board of County Commission meeting of April 5, 2011.

Administrator Baird reiterated that Ranger will be paid only for the sand that has been delivered to the beach, not on what is proposed to be delivered.

The Chairman CALLED THE QUESTION, and the Amended Motion carried. The Board unanimously approved: (1) to pay 50% of the fuel cost adjustment requested by Ranger Construction Industries, Inc. based on the sand that has been delivered; and (2) directed staff to return with the complete Change Order No. 4 at the Board of County Commission meeting of April 5, 2011.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. CONCEALED WEAPONS IN COUNTY PARKS AND RECREATIONAL FACILITIES (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 that on February 8, 2011, the Board had directed him to draft an Ordinance amending Chapter 205, Parks and Recreation, which prohibits a person from carrying a weapon or firearms in a County park or recreational facility without a permit from the County Recreation Department. He said that since the State of Florida preempts the area of firearms possession, and allows a person holding a Florida-issued concealed weapons

permit to carry in a park or recreational area, the proposed Ordinance would make the County's Ordinance consistent with State law.

The Chairman opened the Public Hearing.

Jens Tripson, 2525 14th Street, after learning from Attorney Polackwich that County Code needs to conform with State law on this matter, voiced discomfort about people in County parks being allowed to carry guns.

Scott Oberlin, 644 536 Lane, opposed the proposed Ordinance, stressing that life-threatening situations could happen as a result of people bringing concealed weapons into public places, including local government offices. He requested that the Board use some type of governing authority to opt out of the State Statute, and keep guns out of the parks.

Attorney Polackwich, responding to Commissioner Davis's inquiry, confirmed that penalties or sanctions may be imposed on Counties that have Ordinances knowingly contrary to State law. He explained that the County does not have the choice of opting out and not following State law.

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

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

Commissioner O'Bryan acknowledged the points made by Messrs. Tripson and Oberlin, but pointed out that it was inappropriate for the County Commission to be in violation of State law. He felt the County's hands were tied, and suggested that the proper course would be to address the Legislature about amending the Statute.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board adopted **Ordinance 2011-003**, amending Chapter 205, "Parks and Recreation," 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, Sections 790.33 and 790.06; providing for severability, a general repealer and an effective date.

10.A.2.COUNTY INITIATED REQUEST TO AMEND COMPREHENSIVE PLAN FUTURE LAND USE ELEMENT POLICY 1.16 TO ALLOW UP TO 25% RECREATIONAL VEHICLE USE IN MOBILE HOME RENTAL PARK LAND USE CATEGORY FOR PARKS LESS THAN 20 ACRES IN SIZE (CPTA 2011010004) (LEGISLATIVE)

Community Development Director Robert Keating, through a PowerPoint Presentation (on file), provided background and analysis pertaining to a proposed Comprehensive Plan Text Amending to Policy 1.16 of the Future Land Use Element (FLUE). He stated that the amendment would allow up to 25% recreational vehicle use within the Mobile Home Rental Park (MHRP) land use category for parks 20 acres or less in size, and that it would affect only three parks, Tanglewood Village, Holiday Village and Ranchland. Director Keating explained how the proposal would help the parks maintain financial feasibility, and confirmed the recommendations of the Planning & Zoning Commission and staff for Board approval of the rezoning request.

The Chairman opened the Public Hearing.

Bill Gorman, Manager, Tanglewood Village Mobile Home Park, thanked Vice Chairman Wheeler and Community Planning Director Stan Boling for their work on this issue,

and encouraged the Board to approve the proposed amendment. He noted that Tanglewood Village was a resident-owned community and explained how the proposed amendment would help the residents maintain their park.

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

MOTION WAS MADE by Vice Chairman Wheeler,
SECONDED by Commissioner O'Bryan, to approve
staff's recommendation.

A brief discussion ensued, as Commissioner Davis and Attorney Polackwich considered to what extent the inhabitants of a resident-owned mobile home park could make decisions about their own community. It was concluded that this matter would have to be revisited, if so desired.

Commissioner Flescher opposed the Motion, citing concerns about what the guidelines would be for the recreational vehicles and potential deterioration of the community and lifestyle impacts.

Vice Chairman Wheeler provided additional background history on the County's efforts towards protecting mobile home park owners. He believed the owners of the recreational vehicles would be responsible neighbors, and felt the proposal would protect the mobile home park owners in the affected communities from being forced out due to encroaching development or insufficient revenues.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner Flescher opposed), the Motion carried. The Board approved **Resolution 2011-022**, approving the transmittal of a proposed amendment to Policy 1.16 of the Future Land Use Element of the Indian

River County Comprehensive Plan to the State of Florida
Department of Community Affairs.

The Chairman called a break at 10:31 a.m. and reconvened the meeting at 10:46 a.m., with all members present.

**10.A.3. LUISA GARCIA'S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL FOR
A DEMOLITION DEBRIS FACILITY TO BE KNOWN AS A-1 WALEE
RECYCLING CENTER (QUASI-JUDICIAL)**

(Clerk's Note: Please see pages 31 and 32 of these minutes for a listing of exhibits).

County Attorney Polackwich read into the record the Order of Proceedings.

The Commissioners, as requested by the Chairman, divulged ex parte site visits, investigations, and communications, and affirmed that their decision would be based on the evidence and applicable law.

The Chairman opened the Public Hearing.

The Clerk swore in all persons who wished to speak at this Public Hearing.

PRESENTATION BY THE COUNTY

Director Keating, through a PowerPoint presentation (County Exhibit 1), provided background information regarding Luisa Garcia's request for special exception use approval to locate A-1 Walee Recycling Center, a demolition debris waste processing facility, in an Agriculturally-zoned property at 6350 9th Street SW. He confirmed that the County has special exception use allowances in conjunction with certain conditions for allowing demolition debris facilities in Agriculture (AG), and explained that the Board must determine whether or not the

evidence presented demonstrates that the A-1 Walee site would be in compliance with the Land Development Regulations in the Comprehensive Plan.

Planning Director Stan Boling explained that the Applicant proposes to have a Concrete and Mulching Recycling Center requiring an Administrative Use permit, and a Construction & Demolition (C&D) Debris Processing facility, requiring a Special Exception Use permit which must be approved by the Board. Continuing the PowerPoint Presentation, he displayed the proposed site and surrounding areas and gave an overview of the Applicant's proposed operations. He reviewed the special exception use criteria for demolition debris sites, confirmed staff's recommendation for Board approval of the request, and relayed that at its February 24, 2011 meeting, the Planning & Zoning Commission (P & Z) had unanimously recommended Board approval of the special exception use request, with the conditions recommended by staff.

Staff addressed the Commissioners' queries and remarks on the stockpile size limitations; fire safety; whether a processing site is a permitted special exception use in Agricultural (AG) Zoning; why FDEP is requiring the separate stormwater basin and whether there will be monitoring wells; whether there are any other local construction and demolition recyclers; and whether the entire processing area will be outdoors.

Commissioner Flescher presented maps not produced by County Staff (Exhibits 2, 3, 4A, and 4B), to illustrate that there were several different maps of the same area with different information.

Barry G. Segal, Barry Segal, P.A., 621 17th Street; representing applicant Luisa Garcia and A-1 Walee Recycling Center, LLC ("the Applicant"), introduced himself. He sought and received confirmation that Exhibits 2 through 4B had not been part of the original Agenda Packet provided to the Board.

Keith M. Poliakoff, P.A., Becker & Poliakoff, Pt. St. Lucie, representing Party Intervenor South County Preservation Society, LLC ("the Intervenor") introduced himself. He

made a correction to the first map displayed by staff, explaining the proposed site should have been located more to the east, and noted that the second slide depicted the correct location.

(Clerk's Note: Court Reporter Michelle Ting, Vero Beach Court Reporters, was present on behalf of Attorney Poliakoff).

Attorney Poliakoff questioned staff on the Applicant's proposed strategies to mitigate possible fugitive dust and groundwater contamination, and wanted to know what had been done to ensure there would be no adverse impacts on public health, safety, and general welfare.

Discussion ensued as the Board sought and received from staff additional information regarding this item.

Attorney Segal questioned staff to obtain further clarification and details on the County's and FDEP's policies and practices relating to the Applicant's request.

Commissioners sought and received further clarification from staff on the reasons that a special exception use permit would be required for the A-1 Walee operations.

The Chairman called a break at 12:18 p.m., and reconvened the meeting at 12:40 p.m., with all members present.

PRESENTATION BY THE APPLICANT

Attorney Segal called forth expert witnesses to provide further information on A-1 Walee's operating procedures, in order to address the concerns of members of the South County Preservation Society, LLC. He advised that the debris would be processed into rock of assorted sizes and shapes, and that the dust produced during the processing of the rock would be mitigated through irrigation. He said that the Applicant was willing to reduce the heights of the mulch and concrete piles, to 15' and to no more than 18' or less, respectively.

Dr. Fernando Sartor, 4901 Bethel Creek Drive, representing the Applicants (Luisa Garcia, Beatrice Sartor, and himself), read the Mission Statement of the A-1 Walee Recycling Center. He said the facility would receive various types of construction and demolition debris for recycling, and that trained operators would ensure that no hazardous materials are accepted for processing. He described the irrigation system used to control the dust during processing and storage. Dr. Sartor related that the concrete crushing machinery would not be kept on-site and that it does not produce substantial noise, and that a buffer would be constructed around the facility to mitigate noise and visual impacts.

Providing further information about anticipated noise levels, Attorney Segal showed a video of concrete crushing machinery in operation (Applicant's Exhibit 1), and two comparison charts (Applicant's Exhibits 2 and 3) measuring the decibel levels of the crusher.

Jodah Bittle, P.E., Schulke, Bittle, and Stoddard, 3 Tarpon Drive, gave a comprehensive overview of A-1 Walee's site and operating plans. He displayed a slide (Exhibit 4) of the site plan; maps (Exhibits 5A and 5B) of the proposed buffers; an aerial view (Exhibit 6) of the site location and surrounding property uses; an aerial view of the Treasure Coast Refuse facility (Exhibit 7); and a zoning map of the 43rd to 27th Avenue areas (Exhibit 8). Mr. Bittle reported that in accordance with FDEP requirements, the Applicant would submit an Operational Manual covering all aspects of the operation. Responding to questioning from Attorney Segal, he affirmed his support for the project.

James Golden, Professional Geologist & Principal Hydrogeologist, HSA Golden, 100 East Pine Street, Suite 605, Orlando, Florida, conveyed that the State defines Construction & Demolition (C & D) debris as a non-hazardous material. He displayed a slide of hazardous materials (Exhibit 9) that would not be accepted at the facility, and said that pressure-treated wood (which may contain Copper Chromium Arsenate [CCA]) would be separated and taken off-site. He attested that, in conjunction with the conditions imposed by staff and federal regulations, and if operated properly, the facility would be compatible with the character of the area and have no adverse impacts on public health and safety.

Dart Morales, Principal Scientist and Environmental Hygienist, Grove Scientific & Engineering Co., 6140 Edgewater Drive Orlando, Certified Visible Emissions Evaluator, explained that he was FDEP-certified to visually detect the opacity of fumes, smokes, and mists. He presented a slide of a concrete crusher (Exhibit 10) which he had inspected for emissions and conveyed that during the 3 ½ hours of the test period, there were 0 emissions from the unit while it crushed 110 tons per hour of debris. Responding to questioning from Attorney Segal, Mr. Morales opined that the facility, if constructed properly and operated according to FDEP standards, poses no health risks to anyone inside or outside the property.

Adam Preuss, 12385 Roseland Rd., Sebastian, Adam Preuss Appraisal Services, responded to questioning from Attorney Segal, opining that the facility would have no adverse impacts on surrounding property values.

Mr. Morales, Mr. Golden, and **Attorney Segal** responded to Commissioner Flescher's questions regarding a strand of fiber protruding from one of the Applicant's rock samples (Exhibit 11), and about wood containing Copper Chromium Arsenate (CCA) coming into the facility.

Commissioner Davis sought and received confirmation from Mr. Bittle that AG zoning is the only area permitting both the recycling center use, and the demolition debris processing.

Attorney Segal and **Mr. Morales** provided further details for Commissioner Davis on Exhibit 10, relating that the concrete crusher was being utilized at an asphalt processing plant in Ormond Beach, Florida.

Earlier in the meeting, Commissioner O'Bryan noted he had visited Recycle Rock, a cement recycling facility in Pt. St. Lucie, and concluded there was no market for its product, limestone rock. He was concerned that the Board had not seen a solid business model identifying markets for the crushed rock, and that the Applicant, if unable to move its collection of materials offsite, might pay the FDEP bond and abandon the site. In a rebuttal by Attorney

Segal, Commissioner O'Bryan was told that a business plan was not a requirement of the special exception use approval process.

Mr. Golden, Mr. Morales, and Mr. Bittle responded to questions from Commissioner O'Bryan and Vice Chairman Wheeler, respectively, about possible groundwater impacts and the monitoring wells.

Commissioners Wheeler and Flescher aired concerns about the possibility of some CCA wood getting past the spotters and being crushed.

Mr. Sartor, Mr. Golden, and Attorney Segal reiterated that there were laws and safeguards in place to prevent the CCA material from being processed, but noted if small levels of the material did get mixed in, there would be a de minimis effect.

Attorney Poliakoff questioned Mr. Preuss to determine the basis of his opinion that the property values of the surrounding properties would not decline if the Applicant's facility is built.

Attorney Poliakoff posed questions to Mr. Morales regarding his training and experience and what types of substances he can visually detect; the sample rock (Exhibit 11); what happens to the wastewater used to wet the concrete; why sorters at some facilities wear respirators; whether he (Mr. Morales) would live near one of the facilities or send his children to a proximate school; and whether any of the concrete crushing facilities were located near residential properties.

Attorney Poliakoff questioned Mr. Golden on the water runoff, the frequency of FDEP testing, the methods employed by the sorters to detect the presence of CCA wood or toxins, and asked whether Mr. Golden had seen any of the concrete crushing facilities located in an AG zone or AG land use category.

Mr. Bittle responded to questioning from Attorney Poliakoff on his credentials; Magnolia Lakes; his earlier mention of an industrial area from 43rd Avenue to 27th Avenue being compatible with surrounding residential uses; the height of Oslo Road and the proposed debris piles; trip traffic calculations; the types of trees used for the buffers; whether Mr. Bittle wished to make any changes to his earlier testimony regarding the spotters; and why the Applicant had not chosen to build its facility closer to the landfill.

The Chairman called a break at 2:49 p.m., and the meeting reconvened at 3:02 p.m., with all members present.

Mr. Dart provided for Attorney Segal, information on what the effects would be if concrete with lead paint inadvertently got processed at the facility.

Mr. Bittle, responding to questioning from Attorney Segal about the areas adjacent to the Magnolia Lakes Subdivision, provided arguments supporting the suitability of the A-1 Walee facility in the proposed location.

Attorney Segal sought and received confirmation from Mr. Preuss that his analysis had not been based on the market value of any specific property proximate to the facility.

Responding to further questioning from Attorney Segal on possible effects the facility might have on neighboring properties, Mr. Preuss stated that currently, the site houses an old metal building with no landscaping and the Applicant's buffer might dress up the region.

PRESENTATION BY THE INTERVENOR

Keith M. Poliakoff, P.A reported that the South County Preservation Society consists of 3,000 residents living near the proposed facility. Through a PowerPoint presentation (Composite Exhibit 1), he described past uses of the property and displayed a map showing the AG and residential uses surrounding the site. He recapped that the Applicant is looking for permission to

construct a demolition debris facility (including concrete crushing and wood mulching), administrative permit use approval for a recycling facility associated with the demolition debris facility, and major site plan approval for the entire project. He reviewed the Special Exception criteria (Composite Exhibit 1), noting that approval of the site must be based on consistency with the Comprehensive Plan and Zoning Code; compatibility with surrounding land use; whether there would be any adverse impacts; and orderly development.

Marcie Nolan, AICP (American Institute of Certified Planning), Esquire, Becker and Poliakoff, continuing the PowerPoint presentation, provided a comprehensive overview of the Applicant's site and operating plans, as well as in-depth analysis of the proposed Comprehensive Plan and Land Development Regulations. She concluded that the facility does not meet the four Special Exception Criteria, and thus, is (1) ~~Consistency~~ Not Consistent with Comprehensive Plan and Zoning Code; (2) ~~Compatibility~~ Non-Compatible with Surrounding Land Uses; (3) ~~No~~ Adverse Has Impacts on Public Health, Safety, and General Welfare; and (4) ~~Promote~~ Does Not Promote Orderly Development.

Ronald Foulks, General Contractor, 6430 McWade Place, Vero Beach, owner of RIF Concrete Construction, through continuation of the PowerPoint Presentation (Composite Exhibit 1), described the practices and procedures common in the construction and demolition business, and voiced concerns about the contaminants not being screened out. Mr. Foulks appealed to the Board to not approve this project, as he believed this type of facility would be detrimental to future residential development.

Dr. Peter Scarlatos, PhD, 10465 Avenida De New York, Delray Beach, Professor and Chairman of the Civil, Environmental and Geomatics Engineering Department at FAU; Civil Engineer, spoke of his background experiences pertaining to construction and demolition debris facilities, and resumed the PowerPoint presentation (Composite Exhibit 1). He said it was common for all materials at a demolition site to get piled into one dumpster, and that it was difficult for the sorters to visually detect hazardous materials. He was concerned about what would occur during a natural disaster, and also foresaw possible contamination of groundwater

wells, occasioned by the drainage of the irrigation water. Dr. Scarlatos asked the Board to deny this project.

John H. Robbins, P.E. continuing the PowerPoint presentation (Composite Exhibit 1), detailed possible environmental impacts that might originate from the A-1 Walee site from the possible presence of hazardous materials in the concrete that is processed and toxins released during the crushing. He was concerned about the lack of information in the operating plan about the quantities of materials that would be delivered and processed, the type of equipment, whether the buffer would mitigate the noise levels, attenuating nuisance dust that has not yet been processed, how rainfall would affect the piles, and lack of a plan for pest control. He also feared that leachate water would get into the surface water and impact the water and vegetative foliage. Concluding, Mr. Robbins declared that there is a potential for public health impacts from the A-1 Walee facility.

Attorney Poliakoff, continuing the PowerPoint presentation (Composite Exhibit 1), referred to a slide of a mulch fire that had occurred in Port Charlotte, and to a Channel 5 news clip about arsenic and mulch, to illustrate his concerns about the dangers of mulching.

Mark Hornbuckle, 6160 1st Street SW, believed that the proposed facility would have detrimental effects on his farm, Veggies of Vero, which is located at 6255 5th Street SW, proximate to the proposed site. Continuing the PowerPoint presentation (Composite Exhibit 1), he expressed concerns about the contamination of his irrigation sources, about airborne dust and toxins settling on his vegetables, and about his plants being attacked by pests from the facility. He asked the Board to retain the compatibility of the neighborhood and reject this project.

Richard Haight, MD, 3172 West Temple Court SW, continuing the PowerPoint presentation (Composite Exhibit 1), testified that cement dust contains heavy metals and pollutants that have adverse impacts on vegetation, human and animal health, and ecosystems. He spoke about the dangers of silica dust (released from rocks, sand, and concrete crushing), and arsenic, which can enter the groundwater from the mulching of pressure treated wood. Dr.

Haight urged the Board to protect the health, safety, and welfare of the community, and deny this project.

Attorney Poliakoff concluded that the South County Preservation Society, LLC has provided substantial evidence that the A-1 Walee facility would dramatically impact the lives of the area residents. He believed that the Applicant has failed to demonstrate that the facility: (1) is consistent with the Comprehensive Plan; (2) would not cause adverse impacts; (3) is compatible with surrounding land uses; or (4) would promote orderly development. He asked the Board to do the best thing for the residents, and to review the Special Exception Use requirements and determine whether or not the applicant has proven, by competent substantial evidence, that it has met the criteria of the Comprehensive Plan and Zoning Code.

Dr. Scarlatos responded to Commissioner Flescher's question on what constitutes a safe level of Copper Chromium Arsenate.

Attorney Segal and County Attorney Polackwich, respectively, elaborated for Chairman Solari what is meant by "competent substantial evidence."

Attorney Segal asked Mr. Foulks to justify his statement that the haulers do not check for toxic materials at the demolition sites, and asked what evidence he had that A-1 Walee would not be properly separating the materials. He also inquired whether the concrete crushing facility in Fort Pierce (previously mentioned) had a buffer.

Attorney Segal questioned Dr. Scarlatos on the following: (1) what evidence had Dr. Scarlatos that A-1 Walee would be engaging in illegal activities (improper sorting and/or burning of materials) seen in other facilities; (2) whether he had done research on the owners; (3) whether the neighbors would report any burning activity at the facility; (4) what is required for the sorters to do their jobs properly; (5) whether the construction and demolition facility he had pictured was representative of the A-1 Walee facility; and (6) whether the mulch piles would be visible over the 8' opaque buffer.

Attorney Segal questioned Mr. Robbins about the noise levels of the concrete crushing machinery, and whether the concrete pad the Applicant has in place for the tipping area is a proper and normal requirement for this operation. He also wanted to know if the Intervenor's Composite 1 had included the Applicant's response ("resubmittal information") to the FDEP's comments.

Attorney Segal questioned Mr. Hornbuckle on his irrigation sources, and asked him what the basis was for his concerns that the Applicant's facility would impact his farming operation.

PUBLIC INPUT

Sandy Kahle, 6020 5th Street SW, owner of Maitland Farm Preschool, opposed the A-1 Walee site. Her concerns centered on the children, and her fear that the facility is not compatible with the surrounding area and would promote disorderly development.

A resident of Magnolia Lakes spoke in opposition to the proposed site for the A-1 Walee facility, declaring that surrounding property values would be dramatically affected.

Brian Carman, Indian River Neighborhood Association, indicated there were too many uncertainties about health and safety impacts, noting that if the decision was his, he would deny the application.

Jennifer Geary, PTA President, Imagine School, opposed A-1 Walee, citing concerns about her berry farm and the school children.

Dru Bowerman, BSN, RN, 615 Calamondin Way SW, speaking to the dangers of particulates in the air and pollutants in the water or soil, expressed her opposition to A-1 Walee.

FINAL ARGUMENTS

THE APPLICANT

Attorney Segal asserted that clear and convincing, competent substantial evidence has been presented and demonstrates that the Applicant has met the special exception use requirements, and that there will be no safety, health, and welfare issues. He declared that the proposed site is: (1) appropriate for the subject facility; (2) compatible with the surrounding land uses; (3) would have no adverse effect outside of its own walls; and (4) would promote orderly development. He thereafter presented the Applicant's request that the Board grant the special exception use.

THE INTERVENOR

Attorney Poliakoff asked the Commissioners to weigh the evidence, find that the Applicant has failed to satisfy the burden of proof, and deny the A-1 Walee special exception use application.

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

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

Attorney Polackwich, responding to Commissioner Davis's inquiry, provided guidance on the verbiage that should be contained in the Motion.

Chairman Solari stated he had a problem with some, but not all, of the criteria, and asked if the denial could be based on one or more findings.

Attorney Polackwich clarified that one criterion could be the basis of denial, and advised the Board to make as broad a Motion as possible, should there be a legal challenge.

Commissioner Flescher clarified his Motion, stating that after reviewing the evidence, he had concluded that there would be an adverse impact on the public health, safety, and general welfare of the citizens of Indian River County.

Commissioner Davis conveyed that his issue was with the compatibility of the A-1 Walee facility with the surrounding land uses. However, he believed that the recycling facility could have merit in the right location, such as the County's landfill.

Chairman Solari felt that the facility would not promote orderly development, and asked whether Commissioner Flescher wanted to include that in his Motion.

MOTION WAS AMENDED by Commissioner Flescher, SECONDED by Vice Chairman Wheeler, to include the findings that by substantial, competent evidence, the granting of the special exception would adversely impact the public health, safety, and general welfare; and the application would not promote orderly and efficient development of the area.

A brief discussion ensued wherein Commissioners Davis, O'Bryan, and Wheeler provided explanations on why they felt the facility is NOT compatible with the surrounding land uses.

Attorney Polackwich, responding to the Board's remarks, clarified what elements should be included in the Motion.

A SECOND AMENDMENT TO THE MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Davis, to include the finding that the application does not ensure compatibility between the special exception use and surrounding land uses.

Commissioner Davis reiterated his thoughts about exploring the possibility of locating the recycling facility at the landfill.

The Chairman CALLED THE QUESTION, and the Amended Motion carried unanimously. The Board DENIED staff's recommendation to grant the special exception use approval for the A-1 Walee Recycling Center, and FOUND, by substantial, competent evidence that: (1) the granting of the special exception would adversely impact public health, safety, and general welfare; (2) the application does not ensure compatibility between the special exception use and surrounding land uses; and (3) the application would not promote orderly and efficient development of the area.

EXHIBITS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD, AS FOLLOWS:

COUNTY EXHIBITS

Exhibit 1 – PowerPoint Presentation by staff on A-1 Walee Recycling Center Demolition Debris Special Exception Use

Exhibit 2 – Map with Notations

Exhibit 3 – Map showing Aerial Projection

Exhibits 4A and 4B – Google Maps showing site location

THE APPLICANT'S EXHIBITS

Exhibit 1 - DVD depicting the noise level generated from a concrete crusher at a bio-fuel diesel plant (*Please note that visual/audio recordings are not maintained for permanent retention*)

Exhibit 2 – bulls eye chart of sound level test at concrete recycling plant

Exhibit 3 – chart contrasting the decibel level of normal conversation with various objects

Exhibit 4 - map depicting A-1 Walee's operational plan

Exhibit 5A– map depicting buffer and opaque features

Exhibit 5B – map illustrating “line of sight” from roadway

Exhibit 6 – map showing site location and surrounding areas

Exhibit 7 – map depicting Treasure Coast Refuse site

Exhibit 8 – zoning map from 43rd Avenue to 27th Avenue

Exhibit 9 - list of waste that will not be accepted at the facility

Exhibit 10 - slide of concrete crusher (*not provided to Clerk*)

Exhibit 11 - photo of sample rock made from crushed concrete

THE INTERVENOR'S EXHIBITS

Composite Exhibit 1

- A-1 Walee Special Exception Criteria checklist
- Opposition to A-1 Walee Recycling Center PowerPoint Presentation
- Attorney Nolan's curriculum vitae
- Testimonies of Ronald Foulks, Mark Hornbuckle, and Dr. Richard Haight
- Testimonies and curricula vitae of Dr. Scarlatos and John Robbins
- FDEP correspondence with the Applicant

Composite Exhibit 2

- Petitions containing 1,164 signatures of residents opposing the A-1 Walee Recycling Center

10.B. PUBLIC DISCUSSION ITEMS - NONE

10.C. PUBLIC NOTICE ITEMS - NONE

11. COUNTY ADMINISTRATOR MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. DR. LESLIE TAR'S REQUEST THAT THE BOARD OF COUNTY COMMISSIONERS RESCIND A \$15,000 FINE IMPOSED BY THE CODE ENFORCEMENT BOARD FOR A DUNE VEGETATION REMOVAL VIOLATION AT 2252 MAGAN'S OCEAN WALK (LOT 18, ATLANTIS SUBDIVISION) - POSTPONED

The Chairman requested that since Dr. Tar was not present, and due to the late hour of the meeting, this item be postponed until the Board of County Commission meeting of April 5, 2011.

ON MOTION BY Vice Chairman Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved postponing this item until the Tuesday, April 5, 2011 Board of County Commission meeting.

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 -
DELETED

12.J. UTILITIES SERVICES - NONE

13. COUNTY ATTORNEY MATTERS - NONE

14. COMMISSIONER ITEMS

14.A. COMMISSIONER BOB SOLARI, CHAIRMAN - NONE

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 5:27 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Bob Solari, Chairman

Minutes Approved: _____

BCC/MG/2011Minutes

March 22, 2011