

JEFFREY K. BARTON  
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS  
OF APRIL 12, 2011

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**JEFFREY K. BARTON**

Clerk to the Board



**April 12, 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 27<sup>th</sup> Street, Vero Beach, Florida, on Tuesday, April 12, 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**

Chaplain Kenneth Jones, VNA Hospice of Indian River County, delivered the Invocation.

### **3. PLEDGE OF ALLEGIANCE**

Vice Chairman Wheeler led the Pledge of Allegiance to the Flag.

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

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

### **5. PROCLAMATIONS AND PRESENTATIONS**

#### **5.A. PRESENTATION TO KEITH MCCULLY AND ALAN ALLEN STEWART OF THE "MAGGY BOWMAN CONSERVATIONIST OF THE YEAR" AWARD BY DR. RICHARD BAKER, PRESIDENT, PELICAN ISLAND AUDUBON SOCIETY**

Dr. Richard Baker presented a brief history of projects instituted by Indian River County Stormwater Engineer Keith McCully, and then presented to him, along with Allen Stewart, Vice President, HydroMentia Water Treatment Technologies, the Maggy Bowman Award for Conservationists of the Year. Through a PowerPoint presentation (on file), Dr. Baker described an algae farm constructed at Egret Marsh Stormwater Park by Messrs. McCully and Stewart, where the algae removes nitrogen and phosphorous from the canal before it enters the Indian River Lagoon, and can later be used for composting and as a soil supplement.

### **6. APPROVAL OF MINUTES - NONE**

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

**8. CONSENT AGENDA**

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

Commissioner O'Bryan requested Item 8.H. be pulled for discussion.

Chairman Solari requested Item 8.I. be pulled for discussion.

Commissioner Davis, pursuant to a request from Charles Wilson, requested Item 8.J. be pulled for discussion.

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

**8.A. APPROVAL OF WARRANTS AND WIRES – MARCH 25, 2011 TO MARCH 31,  
2011**

ON MOTION by Commissioner O'Bryan, 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 March 25, 2011  
to March 31, 2011, as requested in the memorandum of  
March 31, 2011.

**8.B. OUT-OF-COUNTY TRAVEL TO ATTEND THE FLORIDA ASSOCIATION OF COUNTIES ANNUAL CONFERENCE AND EDUCATIONAL EXPOSITION**

ON MOTION by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, the Board unanimously approved out-of-County travel for Commissioners and staff to attend the Florida Association of Counties Annual Conference and Educational Exposition in Orlando, Florida, on June 21 through June 24, 2011, as requested in the memorandum of April 1, 2011.

**8.C. RESOLUTION CANCELING TAXES ON PROPERTY ACQUIRED BY THE COUNTY FOR PUBLIC USE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2011-027**, cancelling certain taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.

*Grantor: Gamma Delta Corporation*

*Purpose: Right-of-Way*

*Location: 45<sup>th</sup> Street/66<sup>th</sup> Avenue (Parcels 118, 119, 302, 303, and 406)*

**8.D. HOUSING AUTHORITY – FINANCIAL REPORTING AND MANAGEMENT CHANGES**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously



approved granting an extension from the original deadline of April 15, 2011 to June 30, 2011, to finalize the separation of the Housing Authority and the County, as recommended in the memorandum of April 6, 2011.

**8.E. REQUEST FOR BOARD APPROVAL OF A RESOLUTION FOR A GRANT APPLICATION TO THE FLORIDA INLAND NAVIGATION DISTRICT FOR “PHASE B” PUBLIC ACCESS IMPROVEMENTS ON THE FLINN TRACT OF THE LAGOON GREENWAY**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2011-028**, Attachment E-6 Resolution for Assistance under the Florida Inland Navigation District Waterways Assistance Program.

**8.F. REQUEST APPROVAL OF FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (FWC) CONTRACT NO. 10308**

Commissioner Davis did not feel the County should accept the grant for planning assistance from the United States Fish and Wildlife Service (USFWS) for Habitat Conservation Plan (HCP). He expressed concerns about the County’s relationship with the Florida Fish & Wildlife Conservation Commission (FWC), who would be administering and issuing the grant, and feared that suggestions that are included in the HCP regarding the Comprehensive Plan could become mandates.

MOTION WAS MADE by Commissioner Davis, SECONDED by Chairman Solari, to DENY staff’s recommendation.

Commissioner O'Bryan also opposed acceptance of the grant. He said that although it looks good on the surface, there might be unintended consequences, and referenced the County's Manatee Protection Plan as an example of a County initiative that was misinterpreted by the Regulatory Agencies. In addition, he was concerned that the grant period was for one year, even though development of the HCP could take longer.

Vice Chairman Wheeler opposed the grant, expressing his disillusionment with State and Federal Governments creating bureaucracies.

Chairman Solari felt there was nothing indicating that the County would not be just as environmentally sensitive without the additional layer of bureaucracy that would come with acceptance of the grant.

**Beth Powell**, County Conservation Lands Manager, noted that the County would apply for the Grant in conjunction with St. Lucie County.

**Trish Adams**, Habitat Conservation Planning Coordinator, USFWS, explained that the purpose of the grant was to develop a Habitat Conservation Plan for the entire County, such that development and conservation activities could occur where necessary and appropriate. She affirmed that the HCP was a good plan that would help developers know beforehand what the costs and mitigation strategies would be for a particular parcel.

**Craig Aubrey**, Trust Resources Supervisor, USFWS, spoke to the benefits of having a Countywide Plan and taking a consolidated, rather than a piecemeal approach, to development and conservation. He argued that the costs of the County, developers, and landowners would be reduced by the plan, because the Endangered Species Act still has to be complied with, and it is less expensive to approach it on a countywide basis.

Commissioner O'Bryan emphasized the County's proactive stance in regards to conservation and objected to all of the bureaucracy that is imposed by the regulatory agencies.

**Ms. Powell** defended the HCP, clarifying that staff had written the grant, and that regardless of whether the County pursues the grant, it must mitigate activities (related to the environment) anyway. She echoed Mr. Aubrey's position that the project would help the County in its conservation efforts.

Commissioner Flescher acknowledged Ms. Powell's work and acknowledged that the plan sounds good operationally. However, he stated that the Board consensus was that the County continues to get red flags from the regulatory agencies as it tries to advance various projects, and the State-administered HCP could be viewed as a red flag.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board: (1) DENIED acceptance of the United States Fish & Wildlife Service Cooperative Endangered Species Conservation Fund Grant; (2) DENIED approval of the Florida Fish and Wildlife Conservation Commission (FWC) Contract with the County for Development of a Regional Habitat Conservation Plan (HCP) for Indian River and St. Lucie Counties; and (3) DENIED approval of the Interlocal Agreement between the County and the St. Lucie County Board of County Commissioners.

**8.G. KIMLEY-HORN AND ASSOCIATES, INC. RELEASE OF RETAINAGE – WORK ORDER No. 1 OLD DIXIE HIGHWAY SIDEWALK FROM 38<sup>TH</sup> LANE TO 65<sup>TH</sup> STREET – IRC PROJECT No. 0845**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved payment of Kimley-Horn and Associates, Inc. Invoice No. 047035066-0211, dated February 28, 2011 in

the amount of \$8,000.00 for release of retainage for Work Order No. 1, as recommended in the memorandum of March 29, 2011.

**8.H. REQUEST TO ENTER INTO AN INTERMODAL PROGRAM SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO AVIATION BOULEVARD**

Commissioner O'Bryan expressed concerns about proceeding with the Aviation Boulevard/26<sup>th</sup> Street project, which has been included in the Metropolitan Planning Organization's (MPO) Long Range Transportation Plan. He suggested, since costs have escalated and there is not a compelling need to widen the Boulevard, removing the project from the priority list and diverting the funds to more urgent projects. Additionally, he pointed out that the proposed widening on the segment of roadway between 43<sup>rd</sup> Avenue and US 1 lies within the City of Vero Beach (the City); thus the County does not need to widen it.

Chairman Solari felt the City should be given a chance to spend their money on the project.

Director Mora, responding to questions from Commissioner Davis, revealed that due to reduced traffic counts Countywide, staff does not, at this time, see a compelling need to widen Aviation Boulevard.

Vice Chairman Wheeler envisioned an increase in west-bound traffic and was concerned about the narrow segment of Aviation Boulevard, from 43<sup>rd</sup> Avenue to 58<sup>th</sup> Avenue; thus, he was unsure whether the project should be removed from the Long Range Transportation Plan.

MOTION WAS MADE by Commissioner O'Bryan,  
SECONDED by Vice Chairman Wheeler, to direct staff to  
return with further analysis on costs, traffic concurrency,

and how the section of Aviation Boulevard from 43<sup>rd</sup> to 58<sup>th</sup> Avenue would be affected if the Aviation Boulevard Project is not approved.

Commissioner Davis wondered whether the City could find some means to help reduce project costs.

Attorney Polackwich disclosed that the project would be done through an interlocal agreement between the County and City, and staff would be returning with an analysis of the agreement.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board directed staff to return with further analysis on costs, traffic concurrency, and how the section of Aviation Boulevard from 43<sup>rd</sup> to 58<sup>th</sup> Avenue would be affected if the Aviation Boulevard Project is not approved.

### **8.I. PROPERTY/CASUALTY INSURANCE 2011-12**

Chairman Solari commended Gerry Thistle, an insurance agent who had offered suggestions on ways for the County to lower its insurance costs. He added that Mr. Thistle's company had not benefitted in any way from the suggestions.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved: (1) that property and casualty insurance for the policy year beginning May 1, 2011, be placed with Arthur J. Gallagher Risk Management Services, Inc., at an annual cost of \$1,698,215.30; and (2) approved the selection and

authorized staff to bind coverage of the insurance program for May 1, 2011 through April 30, 2012, as recommended in the memorandum of April 4, 2011.

**8.J. AWARD OF BID # 2011018 FOR OSLO ROAD (CR 606) PHASE II ROADWAY WIDENING (43<sup>RD</sup> AVENUE TO 27<sup>TH</sup> AVENUE) IRC PROJECT NOS. 0533**

As referenced under Item 4, Commissioner Davis noted that he had pulled this item on behalf of Charles Wilson.

**Annabel Robertson North**, Esquire, Asset Research and Recovery, LLC (ARR), explained that ARR assists citizens in recovering funds from government agencies. She noted that the County's impact fee policies/procedures require the return of any funds unexpended within six (6) years, and give homeowners a one-year period in which to request a refund before the funds may be spent. Attorney North stated ARR was representing 11 homeowners believed to be owed refunds from the \$1.4 million allotted under Traffic Impact Fees – District 3, and requested that the Board not approve any expenditure of funds held by the County that are currently in the one-year refund period.

Budget and Management Director Jason Brown affirmed that all of the referenced funds have been expended, and that no fees are owed to anyone in Traffic Impact Fee District 3.

Chairman Solari sought and received confirmation from Director Brown that should any refunds be due, other funds for this project would be available.

**Charles Wilson**, Indian River County, stated that he had brought this issue to light, not to stop the project, but to put on record that unexpended funds may be due to individuals.

Commissioner Davis supported going forward with staff's recommendation, as long as the County is capable of paying for the project, whether or not any potential impact fee refunds are due to homeowners.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the contract be awarded to Dickerson Florida, Inc., in the amount of \$3,896,951.64, as recommended in the memorandum of March 31, 2011.

Director Brown noted that communications have been sent to ARR documenting the County's expenditure of the funds. He also affirmed that a monthly report on impact fee expenditures is sent to Community Development, the County Administrator, and the Board.

A brief discussion ensued, wherein the Commissioners spoke to the need for transparency in this process. Suggestions were posed to staff to: (1) include on a quarterly basis on the impact fee reports, the expiration dates of the fees; and (2) to alert any homeowners at such time they have occasion to request unexpended impact fee funds back.

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

## **9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES**

### **9.A. INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS – LESLIE SWAN** **REDISTRICTING AND RELOCATION OF POLLING SITES**

Supervisor of Elections Leslie Swan said that since the State of Florida has gained two additional seats in the U.S. House of Representatives, new lines would be drawn for the congressional and legislative districts. She explained that the County's Elections Office would

subsequently need to draw new precinct lines and change polling sites, and in view of budget constraints, requested that the Board allow the County's Geographic Information Systems (GIS) to work with the Elections Office to help with surveying and maps.

Commissioner Davis supported Ms. Swan's suggestion, adding that if the work is done in-house, the process should be done transparently.

Ms. Swan reminded Commissioners that it was the responsibility of the County and School Board to work together to draw their voting districts, and she suggested keeping the same boundary lines for specific districts. She also hoped that the voting district numbers would match the boundary district lines.

Chairman Solari offered to send a letter to the School Board outlining Ms. Swan's proposal and requesting their cooperation in this matter.

Discussion ensued about having Workshop Meetings to keep the public informed about the redistricting.

Gary Gordon, IT Manager, Supervisor of Elections, advised that the updated Senate and House precinct lines would not be available for public review until March 2012, at which time the local redistricting work can begin.

Administrator Baird confirmed that the GIS Department would be able to work with the Supervisor of Elections on the maps and surveying, noting that if any costs arose, they would be minimal.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board unanimously approved to provide GIS and surveying services to the Supervisor of Elections for the purpose of redistricting.



Ms. Swan thereafter explained the necessity to move Precincts 408/504 and 104/107, and asked for Board approval of the relocation.

A brief discussion ensued between Vice Chairman Wheeler and Ms. Swan regarding the feasibility of mobile polling places. Ms. Swan also spoke about the trend to consolidate polling locations.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board unanimously approved to move Precinct 408/504 located at Vero Beach Elementary School (1770 12<sup>th</sup> Street, Vero Beach) to Unitarian Universalist Fellowship Hall (1590 27<sup>th</sup> Avenue, Vero Beach); and to move Precinct 104/107 located at Sebastian Elementary School (400 County Road 512, Sebastian) to the American Legion Hall Post #189 (807 Louisiana Avenue, Sebastian).

## **10. PUBLIC ITEMS**

### **10.A. PUBLIC HEARINGS - NONE**

### **10.B. PUBLIC DISCUSSION ITEMS**

#### **10.B.1. REQUEST TO SPEAK FROM DENNIS SPRUCE REGARDING ENFORCE SYLVAN LAKES TO FIX DRAINAGE PROBLEM THAT FLOODS MY PROPERTY. THE BUILDER AND RESIDENTS HAVE NOT MAINTAINED DRAINAGE SWALE**

**Dennis Spruce**, 5955 41<sup>st</sup> Street, relayed that pursuant to the County Attorney's suggestion, he was seeking a remedy from the Board regarding a drainage problem occurring on

his property, which is located at 5955 41<sup>st</sup> Street, abutting the Sylvan Lakes subdivision. Recapping the background history on this situation, he stressed that because of the lack of a drainage easement or swale on the Sylvan Lakes properties, his entire acreage floods and becomes swampland during rain events.

Public Works Director Christopher Mora, with input from Community Development Director Robert Keating, provided background history on when Sylvan Lakes was first platted in 1989, at which time a drainage easement was recorded, but never dug as a ditch. However, he stated that Code Enforcement at the time did not follow up, and issued the Certificates of Occupancy without the drainage swales being constructed.

Commissioner Davis supported Mr. Spruce's right to not have his property flooded, and wondered if a solution could be found that would be acceptable to all parties.

MOTION WAS MADE by Commissioner Davis, SECONDED by Chairman Solari, to have staff enter into negotiations with Dennis Spruce and the Sylvan Lakes Homeowners Association, to seek a resolution acceptable to all parties, with regards to the drainage problem occurring on property located at 5955 41<sup>st</sup> Street, and owned by Mr. Spruce.

Roland DeBlois, Chief of Environmental Planning and Code Enforcement, relayed that prior mediation attempts between staff and the Sylvan Lakes Property Owners Association (Sylvan Lakes) had been unsuccessful.

Attorney Polackwich conveyed that there were two possible remedies: (1) to have Code Enforcement try to enforce County code on houses that were approved years ago; or (2) for Mr. Spruce to pursue a private remedy, through the judicial system, between himself and Sylvan Lakes.

The Board continued to pose questions and comments to staff to see what Sylvan Lakes' legal responsibilities are; whether the County has any legal recourse to require the Property Owners Association to alleviate the drainage problem; and what possible options to remediate the situation would be.

Discussion ensued regarding the ownership of the drainage easement. Attorney Polackwich referred to the Sylvan Lakes plat, to clarify that it was unclear whether the three easements on the plat (drainage, stormwater, and landscape) were public or private easements.

Chairman Solari commented that Sylvan Lakes might want to determine whether they want the easements to be County property or Sylvan Lakes property. He felt the best way to move this issue forward would be to initiate the Code Enforcement process.

Commissioner O'Bryan felt the County Attorney should return with a recommendation on how to move this forward, with the goal of using Code Enforcement to get Sylvan Lakes to ameliorate Mr. Spruce's drainage problem.

Vice Chairman Wheeler felt that it was the responsibility of the Sylvan Lakes property owners to take some action, but he preferred to see staff meet with Mr. Spruce and Sylvan Lakes before seeking a remedy through Code Enforcement.

MOTION WAS AMENDED by Commissioner Davis, SECONDED by Vice Chairman Wheeler, to include the option of initiating Code Enforcement proceedings if mediation attempts are unsuccessful.

**Mr. Spruce** reiterated that prior mediation attempts by County staff had failed.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board directed staff to

enter into negotiations with Dennis Spruce and the Sylvan Lakes Property Owners Association, to seek a resolution acceptable to all parties, with regards to the drainage problem occurring on property located at 5955 41<sup>st</sup> Street, and owned by Mr. Spruce, with the option to initiate Code Enforcement proceedings if mediation attempts are unsuccessful.

**10.C. PUBLIC NOTICE ITEMS - NONE**

**11. COUNTY ADMINISTRATOR MATTERS - NONE**

*The Chairman called a break at 11:07 a.m., and reconvened the meeting at 11: 20 a.m., with all members present.*

**12. DEPARTMENTAL MATTERS**

**12.A. COMMUNITY DEVELOPMENT**

**12.A.1. DAMIEN GILLIAMS' REQUEST THAT THE BOARD OF COUNTY COMMISSIONERS RESCIND A \$3,000 FINE IMPOSED BY THE CODE ENFORCEMENT BOARD FOR A DOCK IN DISREPAIR CONSTITUTING A PUBLIC NUISANCE AT 9020 44<sup>TH</sup> AVENUE**

Chief DeBlois, through a PowerPoint presentation (on file), provided description and conditions pertaining to a code enforcement case involving several violations and a dilapidated dock, occurring on property owned by Damien and Bonnie Gilliams, located at 9020 44<sup>th</sup> Avenue (aka Massey Road). He provided a chronology of the case, and explained that although the dock was never completely rebuilt in accordance with the building permit, Mr. Gilliams had received a partial Certificate of Occupancy (CO) for constructing part of the dock that had previously constituted a safety hazard. He relayed that in response to Mr. Gilliams' request to

rescind his fine, the Code Enforcement Board on February 28, 2011 had agreed to reduce the fine amount from \$18,600 to \$3,000, to cover administrative costs. He clarified that the fine pertained only to the dock, as the other violations had been resolved, and provided staff's recommendation that the Board deny Mr. Gilliams' request to rescind the Code Enforcement Board's \$3,000 fine assessment.

**Damien Gilliams**, 1623 US 1 Sebastian, provided a synopsis of the events prior to, and subsequent to, the Code Enforcement Board's fine. He relayed that he had begun reconstructing his dock in accordance with a building permit issued on February 21, 2007, but in August 2007, the dock had not yet been repaired and the Code Enforcement Board began imposing a \$100 per day fine. Mr. Gilliams had on February 28, 2011, addressed the Code Enforcement Board with his request to rescind the fine, as he had received a partial CO for constructing part of the dock. He acknowledged that the Code Enforcement Board had reduced his \$18,600 fine to \$3,000, but asked the Commissioners to rescind the remaining fine and release the lien on his home.

An extensive and broad-ranging discussion ensued, as the Board sought and received additional information on this matter from staff and Mr. Gilliams.

**Mr. Gilliams** objected to picking up the costs for Code Enforcement's administrative fees, as he believed it had been unnecessary for him to continually reappear before that body, when he had gotten a permit from the Building Department allowing him to build his dock, which process he had begun.

Chief DeBlois provided the Code Enforcement Board's rationale for imposing the fine.

Attorney Polackwich noted that the original Code Enforcement Board Order (page 199 of the Agenda Packet) had given Mr. Gilliams a deadline of November 27, 2006 for the dock to either be repaired in accordance with the building permit, or removed.

Commissioner O'Bryan observed that the work had not been completed and the violation had not been brought into compliance when the Code Enforcement Board imposed the fine in August 2007.

MOTION WAS MADE by Commissioner O'Bryan,  
SECONDED by Chairman Solari, to approve staff's  
recommendation to deny Mr. Gilliams' request.

Commissioner Davis believed that due to the building boom in 2007, Mr. Gilliams may have had difficulty obtaining materials or a contractor, and he was willing to give him the benefit of the doubt.

**Mr. Gilliams** stated that he had not been aware that the Code Enforcement Board violation took precedence over the building permit. He pointed out that according to his building permit, he had one year to construct the dock.

Chairman Solari, reading from the Code Enforcement Board's Order, asserted that obtaining the permit did not bring Mr. Gilliams into compliance.

Vice Chairman Wheeler pointed out that the Code Enforcement Board Order said to complete the dock repair in accordance with the issued building permit, which gave him one year to construct it. He also agreed with Commissioner Davis's assessment that it may have been difficult to secure a contractor in 2007.

**Mr. Gilliams** outlined the difficulties he had in getting the dock completed, which included a contractor who had defaulted on his agreement to build the dock.

Further discussion ensued, as Chief DeBlois recapped the Code Enforcement Board's case.

Commissioner Davis opined that the Code Enforcement Board's Order was probably more than anyone could have complied with during the building boom.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Davis and Wheeler opposed), the Board denied the request of Damien Gilliams for the Board of County Commissioners to rescind the Code Enforcement Board's \$3,000 fine assessment, as recommended in the memorandum of April 4, 2011.

#### **12.A.2. TERMINATION OF JOBS GRANT APPROVAL**

Community Development Director Robert Keating recalled that on March 22, 2011, the Board had approved a \$152,000 Jobs Grant Agreement which included an upfront loan of \$75,000 to a local company ("the Company"), for expansion of its powder coating business within the County. He noted that after information had surfaced about a predecessor company and one of its principals, the Company had told staff it now had a funding source, and tendered a written withdrawal from the Jobs Grant process. Director Keating explained that it would be necessary to terminate the approved Jobs Grant and rescind the Board's approval of the upfront loan payment of \$75,000.

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

Vice Chairman Wheeler wanted to know if Commissioner Flescher or Helene Caseltine, (both of whom had induced the Company to remain in the County), had any prior knowledge of the problems encountered by the predecessor company.

**Helene Caseltine**, Economic Development Director, Indian River County Chamber of Commerce, stated that one of the principals from the predecessor company had told her he was refocusing on powder coating, as the shutter industry was in decline.

Commissioner Flescher confirmed Ms. Caseltine's statement, adding that the Company was a separate and new company.

Vice Chairman Wheeler was concerned that this item was placed on the Consent Agenda without a full disclosure of all the facts. He emphasized that the Board should know in advance, before taking action, if there are "red flags" pertaining to a particular situation.

A lengthy and broad-ranging discussion ensued among the Board and staff. It was revealed that staff had done its due diligence prior to cutting the check, which had never been issued.

Commissioner Davis acknowledged Vice Chairman Wheeler's concerns, but felt that a requirement from all business for complete disclosure might undercut the County's economic development.

Chairman Solari recalled that when this item came before the Board in March, he had opposed it because he disagreed with providing the Company a \$75,000 upfront loan. He pointed out that this was a digression from the existing jobs grant policy, where funds are not distributed until a company demonstrates compliance with the terms of the Jobs Grant Agreement.

Additional discussion ensued as the Board and staff recollected details about when CVS had established its Distribution Center in the County, and the County had given a loan to the developer to help with the water/sewer infrastructure. Administrator Baird emphasized that the CVS project had been a success.



Commissioner O'Bryan suggested requiring a credit check prior to issuing a promissory note.

Administrator Baird revealed that staff had been checking into the Company's credit when these issues surfaced.

The Chairman CALLED THE QUESTION and the Motion carried unanimously. The Board: (1) terminated the approved jobs grant for the subject powder coating company; and (2) rescinded its approval of the \$75,000 upfront payment for the Company, as recommended in the memorandum of April 5, 2011.

**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**

**12.G.1. ACQUISITION OF PARCEL FOR FUTURE LAW ENFORCEMENT AND  
CORRECTIONS USE**

Director of Management and Budget Jason Brown, through review of his memorandum of April 6, 2011, provided background and analysis regarding the possible acquisition of a 2.75

acre parcel (“Roofing Parcel”) located to the northeast of the Sheriff’s Complex, formerly occupied by the Sun Sky Roofing Business. He displayed an aerial view of the site, and provided staff’s assessment that the property would satisfy the Sheriff’s future needs for law enforcement and corrections activities. Director Brown requested that the Board authorize staff to obtain an appraisal or appraisals on the property, and authorize the County Attorney to make a purchase offer on the “Roofing Parcel,” based on an upper limit equal to the lesser of \$800,000 or the appraised value determined by the appraisal/s.

Director Brown clarified for Chairman Solari that the funding for this project would not involve any impact fees that were due back to citizens.

**Bud Spencer**, Chief Deputy, Sheriff’s Department, expressed his support for this possible acquisition, which he believed would be a positive step for the Sheriff’s Department, the County, and the Public.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) authorized staff to obtain appraisal(s) for the Roofing Parcel; (2) authorized the County Attorney’s Office to present an offer for the purchase of this parcel in an amount not-to-exceed the lesser of \$800,000, or the appraised value determined by the appraisal(s); and (3) approved the necessary budget amendment, all as recommended in the memorandum of April 6, 2011.

**Charles Wilson** voiced his objections to the County’s expenditure of funds on what he deemed was a non-essential project. He believed that the County was finding ways to use impact fees before any unexpended revenues are due to the citizens.

**Deputy Spencer**, responding to Chairman Solari's request, elaborated on how the subject property was important for future expansion of the Sheriff's Department.

A brief discussion ensued, with input from County Administrator Joseph Baird, about the history of the property, which is now being sold at 40% of its previous market value.

Chairman Solari stressed that the County was acting responsibly, capitalizing on an opportunity to purchase property at the bottom of the market.

**Deputy Spencer** confirmed that the subject funds had been earmarked well before this prospective purchase, in order to begin activities related to the long-range plan for the Sheriff's Department.

#### **12.H. RECREATION - NONE**

#### **12.I. PUBLIC WORKS**

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

*The Chairman called a break at 1:08 p.m. and reconvened the meeting at 1:12 p.m., with all members present.*

Coastal Engineer James Gray used a PowerPoint presentation (on file) to provide an update on the Sector 3 Beach Restoration project. He reported that Phase 2 of the project would not be completed by the end of this year's schedule, May 1, 2011, and that the contractor, Ranger Construction, had requested a time extension to continue construction in November/December 2011. He relayed that staff would be talking with the Florida Department of Environmental Protection about the time extension, and in order to reduce costs, would also request a waiver of the requirement for extra Phase 2 post-construction monitoring.

#### **12.J. UTILITIES SERVICES - NONE**

### **13. COUNTY ATTORNEY MATTERS**

#### **13.A. ACQUISITION OF RIGHT-OF-WAY AND POND PARCEL ALONG 66<sup>TH</sup> AVE, HALE FAMILY 1999 PARTNERSHIP**

Deputy County Attorney William DeBraal recapped the April 4, 2011 memorandum to provide the details of a right-of-way acquisition involving 7.196 acres of land (five parcels) along 66<sup>th</sup> Avenue, owned by the Hale Family 1999 Limited Partnership. He pointed out via overhead projection a change in the location of the retention pond, to which the County would have an access easement, and noted that the agreement includes a short-term lease back provision. He thereafter presented staff's recommendation for the Board to approve the purchase at the all inclusive price \$440,000.

Commissioner O'Bryan wanted the Board to note, for future agenda items, that the cost to the County for acquiring this Agriculturally-zoned land, outside the Urban Service Area, was approximately \$61,145.00 per acre.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the contract for purchase of the five parcels from the Hale Family 1999 Limited Partnership for \$440,000, inclusive of all attorney's fees, engineering costs, and real estate commissions, as recommended in the memorandum of April 4, 2011.

*Parcel 121 2.67 acres for right-of-way along 66<sup>th</sup> Avenue;*

*Parcel 151 1.25 acres for right-of-way along 66<sup>th</sup> Avenue and 37<sup>th</sup> Street;*

*Parcel 152 0.39 acres for right-of-way along 37<sup>th</sup> Street;*

*Parcel 409 2.619 acres for a pond site (perpetual drainage easement);*

*Parcel 804 0.267 acres for an access easement to the pond site*

**13.B. OFFER OF JUDGMENT ON BETHEL, PARCEL #108**

Attorney DeBraal outlined the information contained in the memorandum of April 6, 2011, to provide the details of staff's proposal that the County make an Offer of Judgment to William Bethel, related to the right-of-way acquisition of a .30 acre parcel at 4875 66<sup>th</sup> Avenue owned by Mr. Bethel. He related that Mr. Bethel was claiming a total of \$940,000 of business and property damages as a result of the take; however, staff is recommending the Board authorize the Offer of Judgment in the sum of \$385,000 for full and final settlement of Mr. Bethel's claims.

Attorney DeBraal provided further information for Commissioner O'Bryan regarding staff's rationale for arriving at the \$385,000 figure.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously recommended authorization of an Offer of Judgment to William Bethel in the sum of \$385,000, as recommended in the memorandum of April 6, 2011.

**13.C. MEDIATED SETTLEMENT AGREEMENT FOR PARCEL 109, PROPERTY LOCATED AT 4855 66<sup>TH</sup> AVENUE, WILLIAM AND RUTH STANBRIDGE, NON-HOMESTEAD PARCEL**

Attorney DeBraal recapped his April 6, 2011 memorandum, providing background and analysis pertaining to the Mediated Settlement Agreement for a right of-way acquisition of about .42 acres of a 1.23 acre parcel located at 4855 66<sup>th</sup> Avenue (Parcel 109), owned by William and Ruth Stanbridge. He explained that as a result of the County's take, there would be a road going

through the yard and a sidewalk going through the house that was built on the property in 1926, and used by the Stanbridges as an office. Attorney Debraal conveyed staff's recommendation for the Board to approve and authorize the Chairman to sign the Mediated Settlement Agreement in the amount of \$444,462.32. He revealed that there was a question regarding the appropriateness of Rod Gillis's fees (the Stanbridges' appraiser), which will be appealed at court; as such, those amounts are not included in the cost of the Mediated Settlement Agreement.

Commissioner O'Bryan declared that the mediated settlement amount for this purchase was inflated over the property's true value. He observed that there has been a trend for some appraisers to assign inflated prices to properties, and asserted that if the County did not challenge these overly high appraisals, land values for right-of-way acquisitions would keep skyrocketing.

Commissioner Davis acknowledged that he could not defend the price; however, he said the high cost was due to the process, and the emotional impact of losing real estate that has been in the family for generations.

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman Wheeler, by a 4-1 vote (Commissioner O'Bryan opposed), the Board approved and authorized the Chairman to execute, the Mediated Settlement Agreement with William and Ruth Stanbridge, for Parcel 109, as recommended in the memorandum of April 6, 2011.

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

**13.D. MEDIATED SETTLEMENT AGREEMENT FOR PARCEL 110 WILLIAM AND RUTH STANBRIDGE, 4835 66<sup>TH</sup> AVENUE, VERO BEACH**

Attorney DeBraal recapped his March 25, 2011 memorandum, providing background and details of the Mediated Settlement Agreement for a right of-way acquisition of about .042 acres

of a 1.25 acre parcel of homesteaded property located at 4835 66<sup>th</sup> Avenue (Parcel 110), owned by William and Ruth Stanbridge. Using an aerial projection, he showed how the County's take would impact the Stanbridges' house, which had been built by Mr. Stanbridge and in which the Stanbridges had resided for over thirty years. He presented staff's recommendation for the Board to approve a total cost at this time of \$640,118.98, not inclusive of expert witness fees for the Stanbridges' appraiser, Rod Gillis. He reiterated that, as mentioned in Item 13.C, the County would be contesting Mr. Gillis's fees.

Chairman Solari echoed Commissioner Davis's earlier sentiment about this matter being about more than money. He was sympathetic to the Stanbridges' loss of their homesteaded property, and for their having endured a long mediation process.

ON MOTION by Vice Chairman Wheeler, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute the Mediated Settlement Agreement with William and Ruth Stanbridge, for Parcel 110, as recommended in the memorandum of March 25, 2011.

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

**13.E. PELICAN POINTE CONDOMINIUM ERU RETURN AGREEMENT**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute the Agreement for Return of Equivalent Residential Units (ERUs) with Pelican Pointe Umbrella Association, Inc., as recommended in the memorandum of April 5, 2011.

Discussion ensued as Attorney Polackwich, with input from Administrator Baird, addressed questions and comments from Charles Wilson and Commissioner Davis, respectively. Further information was provided about the County's general policies regarding Equivalent Residential Units and about the particular circumstances of the County accepting back the ERU's from Pelican Pointe.

**13.F. PAIN MANAGEMENT CLINIC ORDINANCE**

Attorney Polackwich recalled that on July 20, 2010, the Board adopted Ordinance 2010-016, providing a twelve-month emergency moratorium on the issuance of business tax receipts (formerly occupational licenses) to pain management clinics, and said that staff had been directed to return with a permanent Ordinance before the moratorium's expiration on June 8, 2011. He recapped his memorandum of April 4, 2011, to point out the primary highlights of the Ordinance, including a requirement for pain clinics to obtain a County permit, and for pharmacies to limit the amount of controlled substances dispensed to no more than 20% of their total monthly prescriptions. He discussed enforcement mechanisms, and told the Board that existing clinics had sixty days in which to apply for the County permit. Attorney Polackwich thereafter requested Board input on the proposed Ordinance.

Attorney Polackwich responded to Commissioner Davis's questions on what groups have reviewed the Ordinance.

Commissioner Davis also sought information for the cost of the County permit, and learned from Attorney Polackwich that the amount would be set by a Rate Resolution of the Board, when the Ordinance is brought back for final approval.

Commissioner Davis was concerned about any existing legitimate clinics that may have just paid for a business tax renewal, having the additional expense of getting the County permit.



He wondered whether those businesses could be grandfathered in until the date of their next business tax renewal.

A brief discussion ensued wherein the Board made suggestions about providing some relief to the existing clinics, and expressed concerns about not prohibiting legitimate pain management clinics from opening in the County.

In response to Board questions, Attorney Polackwich provided further information on the permitting process. He revealed that if a pain clinic operator has been involved in any type of prior criminal activity relating to this topic, he or she would be banned from getting State registration.

**Detective Bill Starr**, responding to Vice Chairman Wheeler's query, said that to his knowledge, there are only three legitimate pain clinics in the County, and he was not aware of any illegal facilities.

Commissioner O'Bryan requested information on why the requirement for a doctor to be Board-certified had not been carried over from the Emergency Ordinance to the proposed permanent Ordinance.

Attorney Polackwich conveyed that by 2012, the State would require doctors operating the pain clinics to have certain levels of training and certification, and said that lacking those qualifications, doctors would be unable to get State registration or a County permit.

Commissioner O'Bryan asked how the County would monitor the percentage of controlled substances that would be dispensed each month by the pharmacies, and whether the Health Insurance Portability and Accountability Act of 1996 (HIPAA) would preclude the information from being circulated.

Attorney Polackwich acknowledged that it might be difficult to monitor percentages; however, he believed it would be the pain clinics dispensing far more than the allotted 20% that would point to illegal activities. He added that the County would be sending a strong message by adopting the Ordinance, and that having it in place would provide more of an opportunity for enforcement than not having it in place.

Further discussion ensued regarding enforcement issues.

Attorney Polackwich revealed that there was a \$500 per day ceiling on the fine; that enforcement could be done via the Code Enforcement Board or through the court systems.

Chairman Solari sought clarification on which method would be quicker, and learned from Attorney Polackwich that going through Code Enforcement Board would be a faster process.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously directed staff to finalize the Pain Management Clinic and Controlled Substances Ordinance, publish notice for a public hearing, and bring the final Ordinance back for public hearing and final consideration in May 2011.

Attorney Polackwich noted that staff might make some minor changes, but would be bringing back the final Ordinance for Board review in May 2011.

#### **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

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 MINUTES REGULAR MEETING OF FEBRUARY 1, 2011

15.A.2. APPROVAL OF LICENSE AGREEMENT WITH INDIAN RIVER COUNTY  
HISTORICAL SOCIETY

15.A.3. AUTHORIZATION FOR FINAL PAYMENT AND RELEASE OF RETAINAGE TO  
BARTH CONSTRUCTION, INC. FOR THE RECONSTRUCTION OF FIRE  
RESCUE STATION #9

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 2:10  
p.m.

ATTEST:

\_\_\_\_\_  
Jeffrey K. Barton, Clerk

\_\_\_\_\_  
Bob Solari, Chairman

Minutes Approved: \_\_\_\_\_

BCC/MG/2011Minutes