

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF MAY 17, 2011

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JEFFREY K. BARTON

Clerk to the Board



May 17, 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, May 17, 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 Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

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

**ADDITION: ITEM 10.B.1. REQUEST TO SPEAK FROM TERRY SCHLITT REGARDING
8715 103RD AVENUE SCHEDULED FOR DEMOLITION**

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

5. PROCLAMATIONS AND PRESENTATIONS

**5.A. PRESENTATION BY STUDENTS WORKING AGAINST TOBACCO URGING
TOBACCO RETAILERS TO STOP THE SALE OF FLAVORED TOBACCO IN
INDIAN RIVER COUNTY**

Vero Beach High School students Lauren and Jenna DeFalco, representing Students Working Against Tobacco, gave a presentation highlighting the dangers to young people of tobacco use. Displaying a poster and basket of candy-flavored tobacco products, they discussed how the products, which resemble regular candy products, are being marketed to youth, and urged retailers to keep the products out of the hands of minors.

Commissioner O'Bryan recalled the Board's approval of Resolution 2011-037, to focus on education and enforcement with respect to illegal sales of tobacco to minors and the marketing of flavored tobacco products to youth in the County.

5.B. PRESENTATION OF PROCLAMATION DESIGNATING MAY 15 THROUGH MAY 21, 2011 AS EMERGENCY MEDICAL SERVICES WEEK IN INDIAN RIVER COUNTY

Vice Chairman Wheeler read and presented the Proclamation to Brian Burkeen, Assistant Chief Emergency Medical Services, who thanked the Board on behalf of all of the members of the Emergency Medical Services system.

Commissioner O'Bryan applauded the EMS team members for all the medical work they do and further acknowledged their active participation in community events and fundraisers.

5.C. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF MAY AS FOSTER PARENT APPRECIATION MONTH

Chairman Solari read and presented the Proclamation to Thomas Maher, CEO, Hibiscus Children's Center, and Sandy Divine, President, Hibiscus Children's Center Foundation. Mr. Maher presented to each Commissioner a booklet recapping the 25 year history of the facility, from its founding in 1985, and reported that further information was available at www.hibiscuschildrenscenter.org. He noted that over 1,000 children and families in the area are served by Hibiscus Children's Center monthly. Ms. Divine thanked the Board for its support, and spoke about how Hibiscus Children's Center provides a safety net for children.

5.D. PRESENTATION BY BARBARA SCHLITT FORD, EXECUTIVE DIRECTOR OF YOUTH GUIDANCE, ANNOUNCING 34TH ANNUAL TROPICAL NIGHT LUAU TO BENEFIT YOUTH GUIDANCE MENTORING AND ACTIVITIES PROGRAM

Barbara Schlitt Ford, Executive Director of Youth Guidance Mentoring and Activities Program, provided background information and details pertaining to their annual fundraiser, the Tropical Night Luau, to be held on Saturday, June 4, 2011 at the Quail Valley River Club, 7:00 – 11:00 p.m. She divulged that proceeds from the event would be used to send at-risk children to local camps, and discussed other ways individuals may contribute or sponsor a child for camp.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF APRIL 12, 2011

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of April 12, 2011. There were none.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the Minutes of the Regular Meeting of April 12, 2011, as written.

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

**7.A. RESIGNATION OF THE ENGINEER APPOINTEE TO THE ENVIRONMENTAL
CONTROL HEARING BOARD**

Noted for the record was the resignation of Engineer Appointee Steve Snoberger from the Environmental Control Hearing Board.

8. CONSENT AGENDA

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

8.A. APPROVAL OF WARRANTS AND WIRES, APRIL 29, 2011 TO MAY 5, 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 April 29, 2011 to May 5, 2011, as requested in the memorandum of May 5, 2011.

8.B. LEASE EXTENSION, LITTLE MERMAID CAR WASH, 1935 43RD AVENUE, TIMOTHY E. AND JOSHANA TYNES, 43RD AVENUE/SR60 INTERSECTION WIDENING AND IMPROVEMENTS

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the agreement with Timothy E. and Joshana Tynes, extending the lease, commencing May 1, 2011 and terminating April 30, 2012, as recommended in the memorandum of April 27, 2011.

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

8.C. AMENDMENT No. 2 TO WORK ORDER No. 1 – G.K. ENVIRONMENTAL, INC., OSLO ROAD BOAT RAMP, IRC PROJECT No. 0381

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Amendment No. 2 to Work Order No. 1 with G.K. Environmental, Inc., in the not-to-exceed sum of \$8,580.00, authorizing the services as outlined in the Scope of Services, as recommended in the memorandum of May 6, 2011.

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

**8.D. WORK ORDER NO. 1 – MASTELLER, MOLER, REED AND TAYLOR, INC.,
NORTH COUNTY TRANS FLORIDA RAIL CORRIDOR FROM 104TH AVENUE
TO SEBASTIAN RIVER MIDDLE SCHOOL, IRC PROJECT No. 0923B**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Work Order No. 1 with Masteller, Moler, Reed and Taylor, Inc., in the lump sum amount of \$21,885.00, as recommended in the memorandum of May 9, 2011.

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

**8.E. WORK ORDER NO. 1 – INDIAN RIVER SURVEY, INC., 8TH STREET
(GLENDALE ROAD) ROUTE SURVEY FROM 58TH AVENUE TO 20TH AVENUE,
IRC PROJECT No. 1049**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute Work Order No. 1 with Indian River Survey, Inc., in the total lump sum amount of \$54,030.00, authorizing the project outlined in the Scope of Services, as recommended in the memorandum of May 9, 2011.

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

8.F. E911 STATE GRANT APPLICATION

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously authorized the Chairman to execute the E911 State Grant Application (for Public Safety Answering Point [PSAP] equipment) as recommended in the memorandum of May 10, 2011.

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

8.G. BOARD CONSIDERATION TO APPROVE A SECOND REVISED CONSERVATION EASEMENT FOR THE NORTH SHORE CLUB PRELIMINARY PD PLAN/PLAT

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the Second Revised Conservation Easement between the County; North Shore Club, LLC; and the Florida Department of Environmental Protection, as recommended in the memorandum of May 9, 2011.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. PAIN MANAGEMENT CLINIC ORDINANCE

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

County Attorney Alan S. Polackwich, Sr., reported that Ordinance 2010-016, imposing a 12-month moratorium on the issuance of business tax receipts (F/K/A business licenses) to pain management clinics, was adopted by the Board on July 20, 2010 and would expire in June 2011. He stated that the proposed Ordinance, which regulates the clinics and pharmacies dispensing controlled substances, is intended to convey a strong message that although legal pain management clinics are allowed, illegal pain management facilities will not be tolerated in the County. He explained that new State legislation governing pain clinics and the dispensing of controlled substances is expected to go into effect on July 1, 2011, after which he would return to the Board with any required changes to the Ordinance (if adopted today), to ensure consistency with State law. He noted that a potential loophole for some clinic operators may have been opened up by the State legislation, which contains exemptions from clinic registration and standards of practice criteria for fellowship-trained or board-certified pain management physicians.

Questions and discussion ensued as Attorney Polackwich spoke to the County's need to have an Ordinance regulating the pain clinics at the local level, in addition to the State legislation. He also supplied details regarding the application fees and permits, explaining that the latter must be obtained no later than 60 days (around July 18, 2011) from the effective date of the Ordinance.

Commissioner Davis wanted to have the Ordinance evaluated after the permits are obtained in July, and again in one year, to make sure the County is not overlooking any loopholes.

The Chairman opened the Public Hearing.

Robert Cigala, 2035 Ocean Ridge Circle, spoke about the devastating effects of Oxycontin addiction, and asked the Board to prohibit the pain clinics from dispensing that particular medication. He also urged the Board to close any loopholes opened up by the State exemption for board-certified or fellowship-trained physicians.

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

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman Wheeler, the Board unanimously adopted **Ordinance 2011-004**, creating Chapter 315 of the Code of Indian River County entitled “The Indian River County Pain Management Clinic and Controlled Substances Ordinance”; regulating and prohibiting certain activities relating to the operation of pain management clinics and pharmacies prescribing and dispensing controlled substances; and providing for severability, a general repealer and an effective date.

Commissioner Davis wanted the County Attorney to look into the State’s exemption and see whether the County’s Ordinance can be more restrictive than the State legislation.

ON MOTION by Commissioner Davis, SECONDED by Chairman Solari, the Board unanimously directed staff to: (1) reevaluate the Ordinance in July 2011 and in one year (May 2012); and (2) research whether the County’s Ordinance can be more restrictive than the State law.

10.B. PUBLIC DISCUSSION ITEMS

**10.B.1. ADDITION - REQUEST TO SPEAK FROM TERRY SCHLITT REGARDING
8715 103RD AVENUE SCHEDULED FOR DEMOLITION**

Terry Schlitt, 6316 7th Street, related that he had purchased a home at 8715 103rd Avenue, which he later discovered was one of three properties slated for demolition by the County (the Board approved the bid award for the work on May 3, 2011). He stated that a structural engineer would be evaluating the structure's walls and foundation to see whether the property can be rebuilt without a full demolition, and requested that the Board delay the demolition until a determination is made. He thereafter responded to questioning from the Board regarding his plans for renovating the structure, and advised that he would report on the engineer's findings at the Board of County Commission meeting of May 24, 2011.

The Board questioned staff on the status of the bid award for the demolition of the three structures.

Purchasing Director Jerry Davis explained that there was a clause in the bid documents allowing the County to withdraw any of the properties. He also noted that the purchase order for the bid award has not yet been issued.

Administrator Baird confirmed that this matter could be delayed and readdressed at next week's meeting on May 24, 2011.

The Board was concerned that the possible removal of one of the structures from the bid award for three structures might cause the contractor, Redmarq Homes Ltd Co dba Redmarq Construction Services, to withdraw their bid for the demolition of the remaining two structures.

Director Davis suggested that if Redmarq Homes withdrew its bid, the two remaining structures could be added to a new Invitation for Bid that is for demolition of three additional condemned structures.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board unanimously: (1) approved to delay the issuance of the Purchase Order to Redmarq Homes Ltd Co dba Redmarq Construction Services pertaining to three condemned structures, for one week, with the understanding that Mr. Schlitt will address the Board on Tuesday, May 24, 2011, with an update on the status of the structure at 8715 103rd Avenue; and (2) directed staff to discuss the situation with Redmarq Homes Ltd Co dba Redmarq Construction Services.

Commissioner O'Bryan cautioned Mr. Schlitt that although the Board was giving him a week to have his property evaluated, the demolition on the property still might proceed.

10.C. PUBLIC NOTICE ITEMS - NONE

11. COUNTY ADMINISTRATOR MATTERS - NONE

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12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. CONSIDERATION OF ESTABLISHING FEES FOR PAIN MANAGEMENT

CLINIC PERMITS AND RELATED APPEALS

(Clerk's Note: See also Item 10.A. Pain Management Clinic Ordinance)

Planning Director Stan Boling stated that the proposed fee Resolution, setting forth permit and appeal fees, is necessary for implementation of Ordinance 2011-004 (the Pain Clinic Ordinance) adopted under Item 10A.1. He noted that there is a requirement in the Ordinance for pain clinics to apply for permits, and explained the basis for staff's proposal to set the permit fee at \$200.00. He also discussed staff's rationale for the proposed \$800.00 fee for clinics appealing decisions for permit denials or suspensions. He noted that the permit fees will be waived for approximately 60 days for permit applications received on or before July 18, 2011, and presented staff's recommendation for Board approval of the proposed fee Resolution.

Chairman Solari sought and received confirmation that the permits applied for at no charge would be for a two-year period.

ON MOTION by Vice Chairman Wheeler, SECONDED by Commissioner O'Bryan, the Board unanimously approved **Resolution 2011-038**, establishing fees associated with pain management clinic permit applications and related appeals.

Commissioner Davis confirmed with Director Boling that the Indian River County Medical Society had been given notice of the new regulations for pain management facilities. Commissioner Davis then requested that staff inform existing legitimate clinics regarding the new permitting requirement and the 60-day fee waiver.

**12.A.2. REQUEST TO ENTER INTO AN INTERMODAL PROGRAM
SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT (JPA) WITH THE
FLORIDA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO
AVIATION BOULEVARD**

Phillip Matson, Metropolitan Planning Organization (MPO) Staff Director, recalled that on April 12, 2011, the Board had directed staff to return with further information regarding an Intermodal Program Supplemental Joint Participation Agreement (JPA) with the Florida Department of Transportation (FDOT) for the Aviation Boulevard (43rd Avenue to US 1) Project. Through review of his May 10, 2011 memorandum, he provided details on the County's Interlocal Agreement with the City of Vero Beach (the City) for development of the Project, and an analysis of design and implementation issues, which included escalating costs, reduced revenues, and declining roadway demand. He outlined three alternatives (on pages 102 and 103), regarding the implementation of the Project, and confirmed staff's recommendation for the Board to: (1) approve the Intermodal Program Supplemental JPA and authorizing Resolution; (2) select Alternative II, to complete the design, and construction of the Aviation Boulevard intersection, widen 43rd Avenue, and make Intermodal Improvements; and (3) authorize staff to enter into a revised Interlocal Agreement with the City.

Discussion ensued as Director Matson addressed the Board's questions and concerns regarding the scope of the roadway improvements encompassed in the Project (as presented in Alternative II), and the need for improvements to 26th Street (F/K/A Walker Avenue), and the area designated as Aviation Boulevard.

Commissioner Davis voiced the need for a left-hand turn lane for motorists heading west from US 1 onto Aviation Boulevard and turning left onto the bridge over the Main Relief Canal into the County Administration Complex.

Responding to remarks from Vice Chairman Wheeler, Director Keating acknowledged the need for improvements to the narrow portion of 26th Street between 43rd and 58th Avenues, but conveyed that due to the expense, they have not been included in the subject Project.

Bob Johnson, Coral Wind Subdivision, supported making improvements on 26th Street and mentioned that Aviation Boulevard is an important route for hospital access.

Renee Renzi, Waverly Place, mentioned that she was disappointed when direct access into the Theater Guild parking lot had not been provided when the new County Administration Building was built. She asked whether an access from Aviation Boulevard into the lot could be constructed in conjunction with the Aviation Boulevard Project.

Administrator Baird advised that when the complex had been built, the City had not wanted the County to make a connection from 20th Avenue to Aviation Boulevard because some McAnsh Park residents were concerned it might draw additional traffic through their neighborhood. However, he advised that the bridge into the County Administration Complex has been designed to connect directly to 20th Avenue.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved: (1) **Resolution 2011-039**, approving an Intermodal Program Supplemental Joint Participation Agreement with the Florida Department of Transportation for roadway widening and intermodal improvements to Aviation Boulevard and 43rd Avenue; (2) approved Alternative II (Complete Project Design, Widen 43rd Avenue, Construct Aviation Boulevard/43rd Avenue Intersection Improvements, and Construct Intermodal Improvements); and (3) authorized staff to prepare a revised Interlocal Agreement with the City of Vero Beach

that corresponds to Alternative II, including the additional design fees, all as recommended in the memorandum of May 10, 2011.

Commissioner Davis wanted staff to explore whether the City would consider the possibility of interconnecting 20th Avenue to Aviation Boulevard.

Commissioner O'Bryan agreed with Commissioner Davis's points about the need for a left-hand turn lane and interconnectivity from 20th Avenue to Aviation; however, to prevent delaying the Aviation Boulevard Project, he suggested the issues be treated separately from staff's recommendation.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved: (1) **Resolution 2011-039**, approving an Intermodal Program Supplemental Joint Participation Agreement with the Florida Department of Transportation for roadway widening and intermodal improvements to Aviation Boulevard and 43rd Avenue; (2) approved Alternative II (Complete Project Design, Widen 43rd Avenue, Construct Aviation Boulevard/43rd Avenue Intersection Improvements, and Construct Intermodal Improvements); and (3) authorized staff to prepare a revised Interlocal Agreement with the City of Vero Beach that corresponds to Alternative II, including the additional design fees, all as recommended in the memorandum of May 10, 2011.

After a brief discussion, the Board asked staff to explore and report back to the Board regarding three issues related to the intersection of Aviation Boulevard and 20th Avenue:

- (1) Constructing a left-hand turn lane for west-bound motorists traveling from U.S. 1 onto Aviation Boulevard and driving over the bridge into the County Administration Complex
- (2) Interconnecting 20th Avenue to extend all the way to Aviation Boulevard
- (3) Providing direct access to the Vero Beach Theater Guild parking lot from Aviation Boulevard, if 20th Avenue is not extended

Administrator Baird stated he would check with the City to see if the County had the right-of-way for the turn lane.

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

12.B. EMERGENCY SERVICES - NONE

12.C. GENERAL SERVICES - NONE

12.D. HUMAN RESOURCES - NONE

12.E. HUMAN SERVICES - NONE

12.F. LEISURE SERVICES - NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET - NONE

12.H. RECREATION - NONE

12.I. PUBLIC WORKS - NONE

The Chairman called a break at 10:24 a.m. and reconvened the meeting at 10:38 a.m., with all members present.

12.J. UTILITIES SERVICES

12.J.1. RECOMMENDATIONS OF IMPROVEMENTS OUTLINED IN ODOR CONTROL STUDY FINAL REPORT

Mike Hotchkiss, Capital Projects Manager, recalled the Board's approval on January 18, 2011 for Post, Buckley, Schuh and Jernigan (PBS&J) to perform an odor control study at the West Regional Wastewater Treatment Facility, in response to odor complaints. He reviewed his memorandum of May 4, 2011 to provide details on the study, and asked the Board to approve staff's proposal to implement the recommendations in PBS&J's West Regional Wastewater Treatment Plant Odor Study. Mr. Hotchkiss thereafter responded to the Commissioners' questions on the costs of the engineering services (including the 5% contingency amount included therein); and the status of odor remediations occurring at the Gifford Wastewater Treatment Plant.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved implementation of the West Regional Odor Enhancement design (for the West Regional Wastewater Treatment Plant), and advertisement for construction bids, as recommended in the memorandum of May 4, 2011.

12.J.2. IMPLEMENTATION SCHEDULE FOR MERGER AND ACQUISITION OF CITY OF VERO BEACH UTILITY SYSTEM

Director of Utility Services Erik Olson recalled the April 29, 2011 Joint Meeting between the County and the City of Vero Beach (the City), at which the two commissions agreed to proceed with the development of a process for the regionalization of the City and County's

Water Utility Systems, in which the County would acquire the City's system. Through a PowerPoint presentation (copy on file), he highlighted the benefits of the regionalization, which included a stabilization of utility rates for City customers, who typically pay higher rates than the County. He provided a timeline and detailed analysis of nine (9) tasks associated with the Regionalization, and advised that staff could have a draft agreement ready by the end of June 2011, an anticipated final agreement by the end of September 2011, and be ready to serve residents of the County, City, the Barrier Island (Orchid Island), and the Town of Indian River Shores with an integrated system approximately 24 months after the agreement is executed.

Commissioner Davis supported the regionalization; however, he wanted to make sure staff would continue to try to transition all of the City customers who are outside of City limits and in unincorporated areas of the County, into the County's utility system.

Chairman Solari felt that proceeding with the regionalization would not preclude the County from securing the customers alluded to by Commissioner Davis, nor in pursuing the Water, Wastewater, and Reclaimed Water Franchise Agreement with the Town of Indian River Shores.

Director Olson confirmed for Vice Chairman Wheeler that he would attend the City Council Meeting tonight, May 17, 2011, to address any questions about the regionalization.

Chairman Solari, voicing support for the regionalization, noted that as a County customer, he would save around \$150 annually on his water bill, and anticipated that other City residents would see substantial savings. He said other benefits for the City would be decreased debt, and reduced environmental risks and increased property values resulting from the removal of the wastewater plant on 17th Street (situated above the Indian River Lagoon).

Bob Johnson, Coral Wind Subdivision, told Commissioners he would probably support the regionalization, but had questions about the length of time and expense for laying the infrastructure pipeline, and repaving affected areas.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved proceeding with the estimated timeline and process for implementation of the merger and acquisition of the City of Vero Beach Utility System, as recommended in the memorandum of May 12, 2011.

MOTION WAS MADE by Commissioner Davis, SECONDED by Chairman Solari, to direct staff to: (1) continue efforts to transition all City of Vero Beach residents and businesses outside of City limits (in unincorporated areas of the County), into the County Utilities System; and (2) continue to pursue the Water, Wastewater, and Reclaimed Water Franchise with the Town of Indian River Shores that will become available in 2016.

Director Olson confirmed for Commissioner O'Bryan that staff would have available for the May 26, 2011 Town of Indian River Shores Council Meeting, the County's written proposal for the Water, Wastewater, and Reclaimed Water Franchise with the Town.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously.

13. COUNTY ATTORNEY MATTERS

13.A. RESPONSE TO OFFER FOR PURCHASE OF FORMER SUN SKY ROOFING PARCEL

Deputy County Attorney William DeBraal recapped his memorandum of May 10, 2011, and showed slides of the subject parcel, to provide background and details pertaining to the

acquisition of the former Sun Sky Roofing Parcel, located at 3885 41st Street, and now owned by SunTrust Bank. He recalled the actions leading up to the County's \$800,000 counteroffer to SunTrust's asking price of \$1 million, and said that SunTrust had rejected the County's counteroffer. He revealed that Bill Mills, the County's real estate agent for the property, had reported that there were indications that SunTrust might accept \$975,000 for the property, and proffered staff's recommendation for the Board to approve a final counteroffer in that amount (\$975,000).

Vice Chairman Wheeler explained why he thought the property could be acquired for \$800,000, and declared he would pay no more.

MOTION WAS MADE by Vice Chairman Wheeler,
SECONDED by Chairman Solari, to present a final
counter offer of \$800,000 to SunTrust Bank for purchase
of the property at 3885 41st Street.

Attorney DeBaal noted that previous offers had been received and rejected by SunTrust Bank.

Bill Mills, Real Estate and Management Group, 800 8th Street, explained how the \$975,000 figure had been arrived at, and told Commissioners it was his understanding that SunTrust had rejected two other offers of \$900,000.

Commissioner Flescher expressed concerns that there was no verification of the two aforementioned offers, nor was it certain that the existing structures on the property would be suitable for the Sheriff's Department.

Administrator Baird described how certain structures on the parcel would be utilized by the Sheriff's Department, and confirmed that SunTrust's rejection of two offers at \$900,000 was the rationale for staff's recommendation of \$975,000.

Commissioner O'Bryan felt the \$900,000 counteroffer was more in accordance with the County's appraised value of the parcel than the \$800,000 suggested by Vice Chairman Wheeler.

The Chairman CALLED THE QUESTION, and by a 2-3 vote (Commissioners Davis, Flescher, and O'Bryan opposed) the Motion FAILED.

Attorney DeBraal clarified for the Board that the due diligence and closing could be done in thirty days, and that there would be a Phase I Site Inspection Environmental Study prior to the closing.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Davis, to make a final counter offer of \$900,000 to SunTrust Bank for purchase of the former Sun Sky Roofing Parcel, with the closing date to be scheduled within thirty days of the contract; and to authorize the Chairman to execute a counter offer of \$900,000 to the contract with SunTrust.

Under discussion, Vice Chairman Wheeler declared that the transaction is a business deal, not an eminent domain acquisition, and that the County could do better. He pointed out that the property is not in a good location and that many foreclosed properties have been selling at greatly reduced values, and maintained that SunTrust would accept an \$800,000 counteroffer.

Chairman Solari remarked that after hearing Vice Chairman Wheeler's comments, he had revised his stance.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Solari and Wheeler opposed), the Motion carried. The Board approved a final counter offer of \$900,000 to SunTrust Bank for purchase of the former Sun Sky Roofing Parcel, with the closing date to be scheduled within thirty days of the contract; and authorized the Chairman to execute a counter offer of \$900,000 to the contract with SunTrust Bank.

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

**13.B. PAYMENT AGREEMENT FOR REQUIRED IMPROVEMENTS CONSTRUCTED
BY DiVOSTA HOMES, LP**

Attorney DeBaal reviewed his May 10, 2011 memorandum, providing background and conditions regarding the County's 2004 Development Order with DiVosta Homes, LP, which required the developer to construct an oversize water main and sewer main in excess of what was required for their development, Waterway Village. He stated that the Development Order contained a provision for the County to reimburse DiVosta for a proportionate share of the cost, and that staff has calculated the reimbursement sum to be a discounted amount of \$315,785.62. He confirmed that the work has been completed and accepted by the County, and presented staff's recommendation to pay the \$315,785.62 in one lump amount, rather than the five annual installments structured in the Development Order.

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

Attorney DeBaal, with input from Attorney Polackwich, addressed Commissioner O'Bryan's questions about the calculation of the reimbursement amount.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved and authorized the Chairman to execute the Satisfaction and Payment Agreement for Required Improvements with DiVosta Homes, L.P. (for Waterway Village). The County will have 30 days from the date of approval of this agreement to remit payment to DiVosta, all as stated and recommended in the memorandum of May 10, 2011.

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

13.C. HIRING OUTSIDE COUNSEL TO DEFEND THE COUNTY IN FVP MIAMI LAKES V. INDIAN RIVER COUNTY

Attorney Polackwich, through review of his memorandum of May 10, 2011, provided background and analysis on a lawsuit imposed by FVP Miami Lakes (FVP) against the County. He explained that FVP has acquired properties formerly owned by Lennar Homes, who had paid traffic and water/sewer impact fees, but never developed the properties, and that FVP was seeking a partial or total refund of the fees. He explained that although the County Attorney's office had been defending this case thus far, at this time, there was need for outside counsel as the case proceeds to trial in late August 2011. He provided staff's rationale for selecting Murphy and Walker, Attorneys at Law, as the outside counsel, and requested that the Board authorize staff to hire Murphy and Walker to defend the County in the FVP Miami Lakes v. IRC case.

Responding to Commissioner Davis's remarks about the consequences these types of impact fee lawsuits might have for the State of Florida, Attorney Polackwich agreed to follow up with the Florida Association of Counties or other State organizations to see if they can provide some type of assistance with this matter.

Attorney Polackwich responded to questions from the Board regarding possible reimbursement of the court costs, and whether a cap would be placed on the costs for the outside counsel.

The Board directed staff to include in the Board of County Commission Meeting Agendas, under Informational Items, a tally of the amounts disbursed to Murphy and Walker.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved the hiring of Murphy and Walker, Attorneys at Law, to defend the County in the FVP Miami Lakes v. Indian River County (IRC) case; (2) authorized the Chairman to execute the fee agreement with Murphy and Walker; and (3) directed staff to include under Informational Items, periodic updates on the invoiced amounts billed by Murphy & Walker to the County.

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

**13.D. DODGERTOWN PROPERTY SWAP – ISSUES WITH MINOR LEAGUE
BASEBALL**

Attorney Polackwich recalled the Board's approval on May 3, 2011, of the final closing documents on the land swap with the City of Vero Beach (the City) pertaining to certain improvements at Vero Beach Sports Village (F/K/A Dodgertown). He explained that Minor League Baseball (MiLB) had questioned certain clauses in one of the closing documents, the First Amendment to the Facility Lease Agreement between the County and MiLB, and had at first declined to sign the agreement; however, they have since decided to execute the document. He confirmed that the land swap would proceed based on the documents approved by the Board on May 3, 2011.

Commissioner Davis voiced support for the improvements going forward at the Vero Beach Sports Village.

Commissioner O'Bryan dispelled rumors that MiLB was going to be leaving Vero Beach by December 2011. He hoped that by proceeding with the Lease Agreement, the Board was sending a clear message of the County's commitment to a successful long-term partnership with MiLB.

No Board Action Required or Taken

14. COMMISSIONER ITEMS

14.A. COMMISSIONER BOB SOLARI, CHAIRMAN

14.A.1. COMMISSIONER'S CAR ALLOWANCE

Chairman Solari felt that in keeping with other budget cuts in the County, it would be appropriate to reduce the Commissioner's car allowance. He observed that he has seen a decline in his own driving due to fewer committees and less meetings, and suggested that the Commissioners reduce their car allowance by about half. He thereafter invited input from fellow Commissioners.

Discussion ensued as individual Board members debated whether the amount of auto travel done by the Commissioners in the fulfillment of their duties, and their costs for fuel and maintenance, was equivalent to the current car allowance, or whether a reduction in the car allowance should be effected.

MOTION WAS MADE by Commissioner Davis,
SECONDED by Chairman Solari, to reduce by 10%, the
car allowance for the Board of County Commissioners.

Administrator Baird mentioned that the Commissioners' budgets had already been cut about 5.2%.

During additional discourse, points were made regarding the differences between travel expenses and the car allowance, and each Commissioner's need to travel not only in his own district, but Countywide. It was also noted that each Commissioner had the ability to further limit his car allowance, if desired.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved to reduce by 10% the car allowance for the Board of County Commissioners.

A brief discussion ensued as Administrator Baird sought and received clarification on the Board's direction to staff.

14.A.2. DROUGHT

Chairman Solari, expressing concern over the drought in the County and State, reminded homeowners to check their irrigation systems for leaks.

Commissioner Davis sought and received confirmation from Administrator Baird that staff would check for leaks in the County's irrigation systems.

No Board Action Required or Taken

14.A.3. CICI AWARD

Chairman Solari reported that the publishers of Trade & Industry Development Magazine recently presented the Board with a Corporate Investment and Community Impact Award (CiCi

Award) for outstanding achievement in economic development. He noted that the award was related to the Board's role in attracting INEOS New Planet BioEnergy to the County.

Commissioner Davis read the award letter (page 168 of the Agenda Packet) into the record.

No Board Action Required or Taken

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 APRIL 12, 2011

15.A.2. DECLARE FORMER FIRE-RESCUE STATION 9 SURPLUS; AND, AUTHORIZATION FOR THE COUNTY ADMINISTRATOR TO SIGN AUCTION DOCUMENTS WITH KARLIN DANIEL & ASSOCIATES, INC.

15.B. SOLID WASTE DISPOSAL DISTRICT

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

15.B.1. AMENDMENT 1 TO WORK ORDER NO. 28 TO GEOSYNTEC FOR PHASE 2 – PROCUREMENT OF CONSTRUCTION CONTRACT FOR CELL 1 OF SEGMENT 3 LANDFILL EXPANSION

15.B.2. AMENDMENT NO. 1 TO WORK ORDER NO. 29 TO GEOSYNTEC FOR ONE YEAR OF GROUNDWATER MONITORING, INSTALLATION OF SIX NEW WELLS AND PREPARE REMEDIAL ACTION PLAN FOR THE FORMER SOUTH GIFFORD ROAD LANDFILL

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 12:52
p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Bob Solari, Chairman

Minutes Approved: _____

BCC/MG/2011Minutes