

JEFFREY K. BARTON  
Clerk to the Board



INDEX TO MINUTES OF REGULAR MEETING

OF BOARD OF COUNTY COMMISSIONERS

DECEMBER 13, 2011

1.	CALL TO ORDER.....	1
2.	INVOCATION.....	1
3.	PLEDGE OF ALLEGIANCE .....	1
4.	ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS .....	2
	ADDITION: ITEM 5.D. UPDATE ON EXCAVATING THE OLD VERO MAN SITE .....	2
5.	PROCLAMATIONS AND PRESENTATIONS .....	2
5.A.	PRESENTATION OF PROCLAMATION DESIGNATING DECEMBER 13, 2011 AS POLL WORKER APPRECIATION DAY.....	2
5.B.	PRESENTATION ON WINTERFEST 2011 BY CHUCK MECHLING, POINTE WEST AND INDIAN RIVER COUNTY RECREATION DEPARTMENT.....	2
5.C.	PRESENTATION ON DORI SLOSBERG DRIVER EDUCATION SAFETY ACT BY EMILY SLOSBERG, CEO, DORI SLOSBERG FOUNDATION; TARA KIRSCHNER, EXECUTIVE DIRECTOR, DORI SLOSBERG FOUNDATION; AND JOHN BOLEN, SUPERVISOR AND TEACHER OF DRIVER EDUCATION PROGRAMS .....	3
5.D.	ADDITION: UPDATE ON EXCAVATING THE OLD VERO MAN SITE.....	3

6.	APPROVAL OF MINUTES - NONE .....	3
7.	INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS NOT REQUIRING BOARD ACTION.....	4
7.A.	INDIAN RIVER COUNTY ANNUAL FIRE REPORT 2010-11 BY FLORIDA FOREST SERVICE .....	4
7.B.	CITY OF VERO BEACH COMMITTEE APPOINTEES FOR 2012 .....	4
7.C.	2012 INDIAN RIVER COUNTY SCHOOL BOARD COMMITTEE APPOINTMENTS .....	4
8.	CONSENT AGENDA .....	4
8.A.	APPROVAL OF WARRANTS AND WIRES – NOVEMBER 18, 2011 TO DECEMBER 1, 2011.....	5
8.B.	2012 COMMITTEE ASSIGNMENTS .....	5
8.C.	APPROVAL OF AUCTION SALE PRICE FOR WINGS OF JOY PROPERTY AUCTION DATE: MONDAY, DECEMBER 12, 2011 .....	6
8.D.	CAMP DRESSER AND MCKEE, INC. WELLFIELD MAINTENANCE AND MANAGEMENT SERVICES FOR SOUTH AND NORTH COUNTY REVERSE OSMOSIS WATER TREATMENT PLANTS WORK ORDER NO. 10 – FINAL PAY APPROVAL .....	6
8.E.	43 <sup>RD</sup> AVENUE SUB-COMPLEX TRANSIT FACILITY – FPL UTILITY EASEMENT .....	7
8.F.	REQUEST FOR APPROVAL OF A COUNTY AGREEMENT WITH THE VERO SOUTH PROPERTY OWNERS ASSOCIATION, INC., FOR THE COUNTY TO REPAIR A CULVERT AND ROADWAY AT THE INTERSECTION OF 21 <sup>ST</sup> COURT SW AND OSLO ROAD .....	7
9.	CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE .....	8
10.	PUBLIC ITEMS.....	9
10.A.	PUBLIC HEARING(S) .....	9
10.A.1.	DON MEEK’S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL FOR A USED VEHICLE SALES BUSINESS AT 150 43 <sup>RD</sup> AVENUE (QUASI-JUDICIAL) .....	9
10.A.2.	CONSIDERATION OF AN ORDINANCE THAT WILL EXTEND BY SEVEN YEARS THE PLANNED DEVELOPMENT ZONING REVERTER DEADLINE FOR THE LIBERTY	

	PARK, TURTLE CREEK PRESERVE, AND SUNNYSIDE UP PLANNED DEVELOPMENT PROJECTS (LEGISLATIVE).....	10
10.A.3.	REFLECTIONS HOLDINGS, LLC’S REQUEST FOR SPECIAL EXCEPTION AND CONCEPTUAL SITE PLAN APPROVAL FOR AN ASSISTED LIVING FACILITY (ALF)/ADULT CONGREGATE LIVING FACILITY (ACLF) (QUASI-JUDICIAL).....	11
10.B.	PUBLIC DISCUSSION ITEMS .....	17
10.B.1.	REQUEST TO SPEAK FROM BILL RIGBY (AND AUDRA RIGBY) REGARDING THE GARBAGE RECYCLING PILOT PROGRAM.....	17
10.C.	PUBLIC NOTICE ITEMS .....	20
10.C.1.	NOTICE OF SCHEDULED PUBLIC HEARING DECEMBER 20, 2011: CONSIDER ADOPTION OF A PROPOSED ORDINANCE TO AMEND TITLE XI OF THE CODE OF INDIAN RIVER COUNTY TO GRANT AN ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION TO INEOS NEW PLANET BIOENERGY, LLC (LEGISLATIVE) .....	20
11.	COUNTY ADMINISTRATOR MATTERS - NONE.....	20
12.	DEPARTMENTAL MATTERS .....	20
12.A.	COMMUNITY DEVELOPMENT - NONE.....	20
12.B.	EMERGENCY SERVICES - NONE.....	20
12.C.	GENERAL SERVICES - NONE .....	20
12.D.	HUMAN RESOURCES - NONE .....	20
12.E.	HUMAN SERVICES - NONE .....	20
12.F.	LEISURE SERVICES - NONE .....	20
12.G.	OFFICE OF MANAGEMENT AND BUDGET - NONE .....	20
12.H.	RECREATION - NONE.....	20
12.I.	PUBLIC WORKS - NONE .....	21
12.J.	UTILITIES SERVICES.....	21
12.J.1.	APPROVAL OF WORK ORDER NO. 1 WITH SCHULKE, BITTLE & STODDARD, LLC TO PROVIDE CONCEPTUAL DESIGN FOR THE NORTH BARRIER ISLAND (SOUTH OF SR 510) RECLAIMED WATER DISTRIBUTION SYSTEM.....	21
12.J.2.	APPROVAL OF WORK ORDER NO. 1 WITH MASTELLER AND MOLER, INC. FOR ENGINEERING SERVICES TO DESIGN THE STORM GROVE STORMWATER RECLAMATION PROJECT FOR ADDITIONAL REUSE WATER SUPPLY.....	21
12.J.3.	AMNESTY PROGRAM FOR UTILITIES DELINQUENCY CHARGES .....	22

13.	COUNTY ATTORNEY MATTERS.....	23
13.A.	10:30 A.M. ATTORNEY-CLIENT SESSION: FVP MIAMI LAKES LLC V. INDIAN RIVER COUNTY, NINETEENTH JUDICIAL CIRCUIT, CASE NO. 312010CA074993.....	23
13.B.	APPROVAL OF MEDIATED SETTLEMENT AGREEMENT FOR PARCEL 106 LOCATED AT 5215 66 <sup>TH</sup> AVENUE OWNED BY JOHN AND DEBRA MAROTTO.....	23
13.C.	SETTLEMENT WITH SHADOWBROOK ESTATES, INC. ....	24
14.	COMMISSIONER ITEMS.....	25
14.A.	COMMISSIONER GARY C. WHEELER, CHAIRMAN - NONE .....	25
14.B.	COMMISSIONER PETER D. O'BRYAN, VICE CHAIRMAN - NONE .....	25
14.C.	COMMISSIONER WESLEY S. DAVIS - NONE.....	25
14.D.	COMMISSIONER JOSEPH E. FLESCHER - NONE .....	25
14.E.	COMMISSIONER BOB SOLARI - NONE .....	25
15.	SPECIAL DISTRICTS AND BOARDS .....	25
15.A.	EMERGENCY SERVICES DISTRICT - NONE.....	26
15.B.	SOLID WASTE DISPOSAL DISTRICT .....	26
15.B.1.	WORK ORDER NO. 1 TO CAMP DRESSER & MCKEE INC. (CDM) FOR ENGINEERING SERVICES WITH THE 2012 ANNUAL FINANCIAL REPORTS .....	26
15.B.2.	WORK ORDER NO. 2 TO CAMP DRESSER & MCKEE INC. (CDM) FOR ENGINEERING SERVICES WITH THE 2012 ANNUAL PERMIT COMPLIANCE MONITORING AND REPORTING.....	26
15.B.3.	SWDD LANDFILL GAS INTERCONNECT AGREEMENT WITH INEOS NEW PLANT PLANET BIOENERGY, LLC .....	26
15.C.	ENVIRONMENTAL CONTROL BOARD - NONE.....	26
16.	ADJOURNMENT.....	26

**JEFFREY K. BARTON**

Clerk to the Board



**December 13, 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, December 13, 2011. Present were Chairman Gary C. Wheeler, Vice Chairman Peter D. O'Bryan, and Commissioners Joseph E. Flescher and Bob Solari. Commissioner Wesley S. Davis was absent during the beginning of the meeting, but later joined after the Attorney-Client Session. Also present were County Administrator Joseph A. Baird, County Attorney Alan S. Polackwich, Sr., and Deputy Clerk Leona Adair Allen.

**1. CALL TO ORDER**

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

**2. INVOCATION**

Stan Boling, Community Development Planning Director, delivered the Invocation.

**3. PLEDGE OF ALLEGIANCE**

Vice Chairman O'Bryan led the Pledge of Allegiance to the Flag.

#### **4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS**

Commissioner Solari requested the following change to the Agenda:

##### **ADDITION: ITEM 5.D. UPDATE ON EXCAVATING THE OLD VERO MAN SITE**

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman O'Bryan, by a 4-0 vote (Commissioner Davis absent), the Board approved the Agenda as amended.

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

##### **5.A. PRESENTATION OF PROCLAMATION DESIGNATING DECEMBER 13, 2011 AS POLL WORKER APPRECIATION DAY**

Vice Chairman O'Bryan read and presented the Proclamation to Supervisor of Elections Leslie Swan, who accepted it on behalf of all poll workers.

##### **5.B. PRESENTATION ON WINTERFEST 2011 BY CHUCK MECHLING, POINTE WEST AND INDIAN RIVER COUNTY RECREATION DEPARTMENT**

**Chuck Mechling**, Pointe West, Inc., announced Pointe West's eighth annual WinterFest event hosted by the Indian River County Recreation Department and Pointe West, to be held on Saturday, December 17<sup>th</sup> from 2:00 p.m. to 6:00 p.m. He outlined the planned activities and invited everyone to attend.

**5.C. PRESENTATION ON DORI SLOSBERG DRIVER EDUCATION SAFETY ACT BY EMILY SLOSBERG, CEO, DORI SLOSBERG FOUNDATION; TARA KIRSCHNER, EXECUTIVE DIRECTOR, DORI SLOSBERG FOUNDATION; AND JOHN BOLEN, SUPERVISOR AND TEACHER OF DRIVER EDUCATION PROGRAMS**

**Tara Kirschner**, Executive Director, and **John Bolen**, Supervisor and Public School Teacher, provided a brief presentation on the Dori Slosberg Driver Education Safety Act, and requested the Board re-implement the drivers' education program in Indian River County.

Discussion ensued regarding the available funds in the Dori Slosberg account since the program was cancelled by the School Board; the cost of educating a student through the program; bringing this back to the Board with justification for the additional fee; and a plan and/or program for the distribution of funds.

**5.D. ADDITION: UPDATE ON EXCAVATING THE OLD VERO MAN SITE**

Representatives from the Old Vero Ice Age Sites Committee (OVIASC) provided the Board with a presentation (on file) on the old Vero Man site excavation, and asked the Commissioners to give their committee recognition and support as they move forward with OVIASC objectives and plans.

**6. APPROVAL OF MINUTES - NONE**

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

**7.A. INDIAN RIVER COUNTY ANNUAL FIRE REPORT 2010-11 BY FLORIDA  
FOREST SERVICE**

Noted for the record was the receipt of the required annual Fire Report.

**7.B. CITY OF VERO BEACH COMMITTEE APPOINTEES FOR 2012**

Noted for the record was the 2012 list of Committee appointees for the City of Vero Beach (pages 6 and 7 of the Agenda Packet).

**7.C. 2012 INDIAN RIVER COUNTY SCHOOL BOARD COMMITTEE  
APPOINTMENTS**

Noted for the record was the 2012 list of Committee appointees for the Indian River County School Board (pages 9 through 13 of the Agenda Packet).

**8. CONSENT AGENDA**

Chairman Wheeler requested to pull Item 8.B. for clarification.

Vice Chairman O'Bryan noted that Attorney Polackwich recommended pulling Item 8.F. for discussion.



ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board approved the Consent Agenda, as amended.

**8.A. APPROVAL OF WARRANTS AND WIRES – NOVEMBER 18, 2011 TO DECEMBER 1, 2011**

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of November 18, 2011 to December 1, 2011, as requested in the memorandum of December 1, 2011.

**8.B. 2012 COMMITTEE ASSIGNMENTS**

Chairman Wheeler pointed out that Commissioner Solari was going to be assigned to the Beach and Shore Preservation Advisory Committee (listed on page 27 of the Agenda Packet), but Commissioner O'Bryan agreed to remain on the committee.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman O'Bryan, by a 4-0 vote (Commissioner Davis absent), the Board approved the 2012 Committee assignments for each Commissioner as listed on pages 26 and 27 of the Agenda Packet, with the exception that the Beach and Shore Preservation Advisory Committee will be removed from Commissioner Solari's assignment list and added to Vice Chairman O'Bryan's.

**8.C. APPROVAL OF AUCTION SALE PRICE FOR WINGS OF JOY PROPERTY**

**AUCTION DATE: MONDAY, DECEMBER 12, 2011**

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board ratified and approved to accept at the December 12, 2011 auction, the winning bid for the former Wings of Joy property surplus, scheduled for Monday, December 12, 2011, as recommended in the memorandum of December 6, 2011.

CONTRACT AND COPY OF DEED ON FILE IN THE  
OFFICE OF THE CLERK TO THE BOARD

**8.D. CAMP DRESSER AND MCKEE, INC. WELLFIELD MAINTENANCE AND**

**MANAGEMENT SERVICES FOR SOUTH AND NORTH COUNTY REVERSE**

**OSMOSIS WATER TREATMENT PLANTS WORK ORDER No. 10 – FINAL PAY**

**APPROVAL**

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board approved Pay Request No. 80410092/22 to Camp Dresser and McKee (CDM), Inc., in the amount of \$5,876.25, for wellfield maintenance and management services, as recommended in the memorandum of December 1, 2011.

**8.E. 43<sup>RD</sup> AVENUE SUB-COMPLEX TRANSIT FACILITY – FPL UTILITY  
EASEMENT**

ON MOTION by Vice Chairman O’Bryan, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board: (1) approved the Sub-Complex Transit Facility – Florida Power and Light Utility Easement sketch and description; and (2) authorized the County Administrator to execute the Easement, as recommended in the memorandum of December 5, 2011.

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

**8.F. REQUEST FOR APPROVAL OF A COUNTY AGREEMENT WITH THE VERO  
SOUTH PROPERTY OWNERS ASSOCIATION, INC., FOR THE COUNTY TO  
REPAIR A CULVERT AND ROADWAY AT THE INTERSECTION OF 21<sup>ST</sup> COURT  
SW AND OSLO ROAD**

At the request of Vice Chairman O’Bryan, County Attorney Alan Polackwich recapped his memorandum dated December 7, 2011, regarding the private access road at 21<sup>st</sup> Court SW that is in substantial disrepair. He talked about how it serves as the sole ingress and egress to a small commercial plaza and a townhouse development known as Vero South Property Owners Association (POA); how the maintenance responsibility for the road belongs to the POA; and how the commercial plaza owners have no maintenance responsibility for the road. He reported that in the interest of expediting road repair, staff has taken steps to obtain consent from the POA to conduct the repair work, and later assess the POA for the costs through a recorded lien on the property. He thereafter addressed the risks of repayment for repairs, and revealed that the

proposed agreement was signed by the Secretary/Treasurer, a Director of the Corporation. Attorney Polackwich wants to get written verification of the signature from the President of the Corporation, which is forthcoming, and make any approval conditions on that.

Public Works Director Chris Mora conveyed that in order to put in a new entrance to the plaza off of 20<sup>th</sup> Avenue, the road would need to go over the existing shallow swales, and the retention pond would need to be accounted for. He felt it would be more costly than just fixing the pipe on Oslo Road.

Discussion ensued regarding the cost of putting a lien on the property, the road being private property, setting a precedent, and encouraging the owner of the plaza to work something out with the POA.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board denied staff's recommendation to authorize the County Administrator to execute, on behalf of the County, the "Agreement between Indian River County, Florida, and the Vero South Property Owners Associations, Inc. for Repair of Culvert and Roadway at the Intersection of 21<sup>st</sup> Court SW and Oslo Road and Consent to Lien".

**9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE**

## **10. PUBLIC ITEMS**

### **10.A. PUBLIC HEARING(S)**

#### **10.A.1. DON MEEK'S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL FOR A USED VEHICLE SALES BUSINESS AT 150 43<sup>RD</sup> AVENUE (QUASI- JUDICIAL)**

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

At the request of the Chairman, each Commissioner disclosed that they had no ex parte communications on this subject, and asserted that they have open minds.

Community Development Planning Director Stan Boling, summarized the memorandum of November 16, 2011, providing the details of Don Meek's request for special exception use and major site plan approval to establish a used vehicle sales business. The site is currently zoned CG (General Commercial) and requires special exception use approval for the sale of used vehicles. He recommended the Board make findings as listed in the staff report, and grant special exception use approval for a used vehicle sales business.

Director Boling addressed the Commissioners' questions regarding the stormwater site and landscaping.

The Chairman opened the Public Hearing.

**Jeff Smith**, Mosby-Smith Engineering, Inc., invited questions or comments from the Board; there were none.

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

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent), the Board found: (1) that the Board of County Commissioners is empowered under the provisions of Chapter 971 to review the special exception use applied for; (2) that granting special exception use approval will not adversely affect the public interest; and (3) the application satisfies the general and specific criteria required for special exception use approval; and (4) granted special exception use approval for the proposed used vehicle sales business; all as recommended in the memorandum of November 16, 2011.

**10.A.2. CONSIDERATION OF AN ORDINANCE THAT WILL EXTEND BY SEVEN YEARS THE PLANNED DEVELOPMENT ZONING REVERTER DEADLINE FOR THE LIBERTY PARK, TURTLE CREEK PRESERVE, AND SUNNYSIDE UP PLANNED DEVELOPMENT PROJECTS (LEGISLATIVE)**

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE  
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Director Boling provided background on various Planned Development (PD) projects that were approved through the PD rezoning process, and PD zoning reverters that were put on the project approvals. He explained the process of how several PD rezonings were approved with a zoning reverter provision that is activated if the PD project has not progressed by a specific deadline, and upon activation of the reverter, the site's zoning returns to its original zoning. He reported that three projects currently have the PD zoning reverters (Liberty Park, Turtle Creek

Preserve, and Sunnyside Up), and are now requesting an additional seven-year extension to the zoning reverter deadline. Director Boling said that staff has no objection to granting the request since the projects are well designed and meet the County's current policies. He urged the Board to adopt the ordinance.

The Chairman opened the Public Hearing. There being no speakers, the Chairman closed the Public Hearing.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Davis absent) the Board adopted **Ordinance 2011-010**, further extending the deadline by seven (7) years for planned developments to commence construction or have their zoning revert to the site's original (pre-planned development approval) zoning; and providing for effective date.

**10.A.3. REFLECTIONS HOLDINGS, LLC'S REQUEST FOR SPECIAL EXCEPTION  
AND CONCEPTUAL SITE PLAN APPROVAL FOR AN ASSISTED LIVING  
FACILITY (ALF)/ADULT CONGREGATE LIVING FACILITY (ACLF)  
(QUASI-JUDICIAL)**

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

The Commissioners, as requested by the Chairman, divulged ex parte site visits, investigations, and communications. They also acknowledged they reviewed staff's report and affirmed that their decisions would be based on the evidence presented and applicable law.

Community Development Planning Director Stan Boling used a Power Point (on file) to recap the memorandum dated November 17, 2011. He provided description, conditions, and analysis for the special exception use request from Reflections Holdings, LLC, for a proposed Assisted Living Facility (ALF)/Adult Congregate Living Facility (ACLF). The project will consist of a three-story, 98 unit (125 beds) adult congregate living facility on the east side of US1 near Schumann Drive. The site is zoned CL (Limited Commercial) and RM-6 (Residential Multi-family, up to 6 units/acre), with both districts allowing an ACLF as a special exception use. He explained the special exception use process, noted there was an existing site plan approved for development on the site, and used zoning and aerial maps to describe the proposed site, traffic circulation, stormwater management, and landscaping buffers. Director Boling also used a sketch to depict the front elevation of the proposed ACLF building, and highlighted some of the concerns raised by the Planning and Zoning Commission at their last meeting. He asked the Board to make the findings that are listed in the staff report, review the request, approve it as is; approve it with the conditions listed in staff's report; or deny it.

Vice Chairman O'Bryan questioned the distance between the existing buildings and the proposed ACLF, and the types of retail shops that could occupy a strip center if one were to be built on subject site, in lieu of the ACLF.

**Joseph Paladin**, President Black Swan Consulting, presented the Board with the details of the proposed ALF/ACLF, highlighted the tax base on the property, the local employment opportunities that would be created before and after the project's completion, the facility's compatibility to the area, and the low intensity of the assisted living facility.

*(Clerk's Note: At 10:30 a.m. the Board convened in the County Commission Conference Room to conduct the Attorney-Client Session [Item 13.A.]. The Board reconvened in the Chambers at 11:15 a.m. with all members present to continue Item 10.A.3.)*



**Mr. Paladin** continued his presentation, providing the particulars on the construction of the project, legality and ownership of the property, proposed landscaping, the project being State regulated and approved, and wanting to be a good neighbor.

Commissioner Davis declared that he has had communications with Chris Russell of Oculina Bank, and claimed to have an open mind in dealing with this subject.

The Chairman opened the Public Hearing.

**Thomas Tierney**, Attorney with Rossway Moore Taylor and Swan, representing Reflections on the River Homeowners' Association (HOA), which is adjacent to the subject property on US1, listed the reasons why the HOA opposes the request for special exception and conceptual site plan approval, and asked the Board to deny the request. He thereafter addressed questions from the Board regarding the portion of the site that is in ownership dispute.

**Todd Howder**, MBV Engineering, Inc., said his firm was hired by the Reflections community to analyze the engineering aspects of the proposed site plan. He discussed issues dealing with the compatibility and intensity of the proposed facility, as well as its proximity to existing buildings. He urged the Board to consider these issues before making their decision.

**Tom Cooke**, President of Reflections on the River HOA, voiced opposition and concerns over the compatibility and size of the proposed 120,000 square-foot, three-story ALF/ACLF.

**Larry Stetler**, Treasurer of Reflections on the River HOA, voiced community concerns over constructing a three-story commercial building in front of their neighborhood, and compatibility issues that would impact residents.

**Don Graziano**, resident of Reflections on the River, stressed that the proposed building would not be suitable for the property, despite legal issues of who owns the property; said he would rather see a residential project built on the property; and questioned staff about parking

spaces and firefighter access/standards. He requested that the Board obtain proof of financing and a conditional basis approval, if they choose to proceed with the project.

**Bob Ashcroft**, 6283 N. Vero Lake Drive, provided background regarding the property in question, voiced concern over the proposed three-story building, and would only support building something on the site if it coincides with existing buildings.

**Robert Marcum** opposed the proposed project, and voiced concern over the lack of outdoor grounds for the tenants of the proposed three-story ALF/ACLF.

**Robert Christy** explained why he and his family moved to Reflections on the River, and questioned what the proposed facility would do to their property values.

A lengthy discussion followed as Attorney Polackwich and staff addressed the Commissioners' questions and concerns regarding the ownership issue and moving forward; the pending lawsuit; the floor area ratio of the proposed facility; parking requirements and standards; the site plan application requirements and process; general criteria for special exception use approval; permitting requirements; and stormwater management.

**David Phillips**, Sustainable Engineering Design, engineer for the project, addressed concerns relating to the proposed structure, compatibility, architectural style, and the final footprint. He also discussed issues pertaining to buffering, relocating the service drive and dumpster locations, traffic intensity, drainage/sewer improvements, and the setback between the buildings.

**Gregory Burke**, Gregory John Burke Architect, 333 17<sup>th</sup> Street, architect for the project, explained the details of the proposed building, the four outdoor court yards, buffering, and landscaping.

**Mr. Paladin** concluded his presentation by expressing that he was not planning to build a big box, but rather a building that is architecturally appealing. He wanted to be a teammate to the neighboring community, and felt the ALF/ACLF would be less intensive than building a drug store, restaurant, or movie theatre on the site. He believed the project would greatly benefit the community and its residents, and requested the Board approve the conceptual site plan and special exception use.

In response to Chairman Wheeler, **Mr. Paladin** specified that the facility would target individuals who can live alone, but still need assistance.

A brief discussion ensued regarding density and parking capacity for the condominiums at Reflections on the River.

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

Vice Chairman O'Bryan did not believe the delivery traffic, or the three-story building would be a concern; however, he felt the proposed 40-foot distance between existing Building 11 (in Reflections on the River) and the proposed three-story facility would have an adverse effect on the individuals in the one-story building. He supported the special exception application with the condition that there is an increased buffer (possibly 75') between Building 11 and the proposed facility.

Commissioner Davis felt there also needed to be appropriate aesthetics between the two buildings.

Commissioner Flescher felt that many of the aforementioned concerns would be a matter of site-based management.

Commissioner Solari provided reasons why he would normally support this request; however, he believed he was charged to find out if this was compatible with the surrounding land

use, and based on the neighbors' comments, the applicant has come close, but not met the burden of compatibility with the surrounding land use.

Chairman Wheeler noted that upon weighing the evidence that was presented, he still has concerns over: (1) single family residences backing-up to the three-story facility, which he did not think was compatible; (2) the amount of parking that is required; and (3) ownership interest in the disputed property.

MOTION WAS MADE by Vice Chairman O'Bryan, SECONDED by Commissioner Davis, for the Board to find: (1) the Board of County Commissioners is empowered under the provisions of Chapter 971 to review the special exception applied for; (2) that granting the special exception will not adversely affect the public interest; (3) the application satisfies the general and specific criteria required for special exception approval; and (4) the conditions stated below are adequate to ensure compatibility between the special exception use and surrounding land uses, and (5) that there be a 75-foot buffer between Building 11 and any new building on the application. In addition, grant special exception use approval for the Reflections ACLF with the following conditions: (1) prior to issuance of a building permit, the applicant shall obtain approval of a final site plan and satisfy site plan release conditions; (2) prior to the issuance of a certificate of occupancy (C.O.): (a) all required landscape buffers and opaque features, including taller trees required between the proposed 3-story ACLF building and the adjacent Reflections on the River building, shall be installed; (b) the US1 turn lane

improvements shall be completed, unless the improvements are not required by FDOT and are determined to not be warranted under a revised traffic study approved by County Traffic Engineering; and (c) the sidewalk along the site's US1 frontage shall be maintained or repaired/replaced as determined by Public Works; and (3) there shall be no increase over 125 residents/beds unless special exception use approval is granted for an increase.

Discussion ensued among the Commissioners regarding intensity, the loss of privacy for individuals living in single-family homes that would back up to the three-story building, and compatibility with the existing use.

The Chairman CALLED THE QUESTION and the Motion carried by a vote of 3-2 (Commissioners Solari and Wheeler opposed).

*The Chairman called a break at 1:22 p.m., and reconvened the meeting at 1:36 p.m., with all members present.*

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

### **10.B.1. REQUEST TO SPEAK FROM BILL RIGBY (AND AUDRA RIGBY)**

#### **REGARDING THE GARBAGE RECYCLING PILOT PROGRAM**

**Audra Rigby**, 8465 59<sup>th</sup> Avenue, asked that his name be added to the above title, since he and Bill Rigby are equally representing Capital Sanitation, Inc., (Capital), with 50% of the company being owned by each individual.

**Bill Rigby**, 8465 59<sup>th</sup> Avenue, asked for clarity on the definition of “addendum” and “pilot program” and asked that the definitions be stated in the minutes.

Attorney Polackwich informed Mr. Rigby that an “addendum” is a subsequent amendment or supplementation of an existing agreement. He said the “pilot program” did not have legal meaning, but considered it to be a program that is going to be attempted for a short period of time to see what result is achieved, and based on the results that are achieved, a more permanent decision would follow.

Administrator Baird explained that the purpose of a “pilot program” is to see if a program would be worth the County moving in a particular direction, or staying neutral, so it would not cost the taxpayers more money than necessary. He said the program allows staff to look at other methods that might save the County money due to the volatility of market prices.

**Bill Rigby** voiced concerns over his application for the Enterprise Zone, and Capital being denied participation in the pilot program; the legality of whether a pilot program was stated in the current contract; incidents that occurred at Orchid Island and Grand Harbor; past personal comments made by Commissioners; and past denials to participate being a discriminatory, unfair action. He recounted Attorney Polackwich’s comment that there is merit in what the Rigbys’ are saying, and that they would have to wait until 2015 to reapply (when the current franchise contract expires).

Chairman Wheeler asked for more specifics regarding the concerns that Mr. Rigby was referring to, and Mr. Rigby said he would provide that information to him privately.

**Bill Rigby** voiced concerns over the Board giving Waste Management, Inc. and Treasure Coast Refuse a contract for 30 years without an application, but when asking for the same terms, he was refused and was informed that an application was required.

Administrator Baird explained that when the County is seeking garbage and recycling collection, staff looks for a company that has the ability to deliver and meet code requirements, such as sufficient references and assets to do the job. He said he was not aware of incidents mentioned with Grand Harbor, or the 30-year contracts.

Attorney Polackwich provided history and clarified that after he took office, he could not find any applications dating back to the 1960's. He believed that once Waste Management and Treasure Coast had the franchises and began providing the services, that new applications were not requested of them as the renewals came due.

Discussion ensued regarding the trash haulers in 1975 who did not submit applications, the Request for Proposals (RFP), implementing the pilot program as an emergency solution, and the County's plans to go out for bids in a few months.

Director of Utility Services Erik Olson provided background information relative to the contracts and Mr. Rigby's comments.

Discussion ensued between the Rigbys' and the Commissioners pertaining to Capital's submission of a Request for Application (RFA), whether the pilot program would be economically feasible in the future, issues pertaining to the Enterprise Zone application, deficiencies from the past, and the current Commissioners wanting to ensure that all processes will be conducted in a fair, optimal way, in moving forward.

**Bill Rigby** stressed that he had always come to the Board with truth and facts, and sought the same from the Board. He said he has no problem with the pilot program, just the fairness of the process from 1958 to today.

NO BOARD ACTION REQUIRED OR TAKEN

**10.C. PUBLIC NOTICE ITEMS**

**10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING DECEMBER 20, 2011:**

**CONSIDER ADOPTION OF A PROPOSED ORDINANCE TO AMEND TITLE XI  
OF THE CODE OF INDIAN RIVER COUNTY TO GRANT AN ECONOMIC  
DEVELOPMENT AD VALOREM TAX EXEMPTION TO INEOS NEW PLANET  
BIOENERGY, LLC (LEGISLATIVE)**

Attorney Polackwich read the notice into the record.

**11. COUNTY ADMINISTRATOR MATTERS - NONE**

**12. DEPARTMENTAL MATTERS**

**12.A. COMMUNITY DEVELOPMENT - NONE**

**12.B. EMERGENCY SERVICES - NONE**

**12.C. GENERAL SERVICES - NONE**

**12.D. HUMAN RESOURCES - 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**

**12.J. UTILITIES SERVICES**

**12.J.1. APPROVAL OF WORK ORDER NO. 1 WITH SCHULKE, BITTLE & STODDARD, LLC TO PROVIDE CONCEPTUAL DESIGN FOR THE NORTH BARRIER ISLAND (SOUTH OF SR 510) RECLAIMED WATER DISTRIBUTION SYSTEM**

Vice Chairman O'Bryan noted that he was glad to see the County moving forward with reuse capabilities.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Work Order No. 1 with Schulke, Bittle and Stoddard (SBS), LLC, in the amount of \$161,200.00; found the project was needed to accommodate new growth in the County; found that new growth will proportionately benefit from the project; and authorized the Chairman to execute the Work Order, all as recommended in the memorandum of December 2, 2011.

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

**12.J.2. APPROVAL OF WORK ORDER NO. 1 WITH MASTELLER AND MOLER, INC. FOR ENGINEERING SERVICES TO DESIGN THE STORM GROVE STORMWATER RECLAMATION PROJECT FOR ADDITIONAL REUSE WATER SUPPLY**

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman O'Bryan, the Board unanimously

approved Work Order No. 1 with Masteller and Moler (M&M), Inc., in the amount of \$181,498.00; found that the project was needed to accommodate new growth in the County; found that new growth will proportionately benefit from the project; and authorized the Chairman to execute the Work Order, all as recommended in the memorandum of December 1, 2011.

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

### **12.J.3. AMNESTY PROGRAM FOR UTILITIES DELINQUENCY CHARGES**

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Davis, to approve an Amendment to Indian River County Ordinance 201.J (4) to allow for waiving of delinquency charges during a Board approved amnesty period and to proceed with setting the required public hearings necessary to change the Ordinance to allow for the waiver of delinquency charges on reserve accounts during the Board approved 30-day amnesty period, as recommended in the memorandum of December 5, 2011.

Vice Chairman O'Bryan said that overall he supports the program, but did not think it would be fair to the account holders who have been paying their balances in a timely manner. He did not support 100% amnesty, and wanted a penalty for those paying late.

Administrator Baird clarified that the account holder would still pay their past base utility charges, but their compounded interest and penalties would be waived.

The Chairman CALLED THE QUESTION and the Motion carried by a vote of 4-1 vote (Vice Chairman O'Bryan opposed).

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

#### **13.A. 10:30 A.M. ATTORNEY-CLIENT SESSION: FVP MIAMI LAKES LLC V. INDIAN RIVER COUNTY, NINETEENTH JUDICIAL CIRCUIT, CASE NO. 312010CA074993**

*(Clerk's Note: The Attorney Client Session convened at 10:30 a.m. in the County Commissioners' Conference Room.)*

Present at the session were Commissioners Wesley S. Davis, Joseph E. Flescher, Peter D. O'Bryan, Bob Solari and Gary C. Wheeler. Also present were County Attorney Alan S. Polackwich, Sr., County Administrator Joseph A. Baird, outside Counsel Lewis Wilson Murphy, Jr. from the firm of Murphy and Walker, P.L., and certified Court Reporter Greg Campbell.

*(Clerk's Note: The Commissioners returned to the Chambers at 11:15 a.m., the Chairman closed the Attorney-Client Session, and reconvened the regular meeting.)*

#### **13.B. APPROVAL OF MEDIATED SETTLEMENT AGREEMENT FOR PARCEL 106 LOCATED AT 5215 66<sup>TH</sup> AVENUE OWNED BY JOHN AND DEBRA MAROTTO**

Deputy County Attorney William DeBaal recapped his memorandum of December 5, 2011, pointing out that in order for the 66<sup>th</sup> Avenue improvement project to move forward, the County needs to acquire 0.679 acres from John F. Marotto and Debra A. Marotto. He described the project purpose, risk assessment, mediation details, and thereafter recommended the Board approve the Mediated Settlement Agreement.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Solari, the Board unanimously approved the Mediated Settlement Agreement for Parcel 106, located at 5215 66th Avenue, owned by John and Debra Marotto, as recommended in the memorandum of December 6, 2011.

**13.C. SETTLEMENT WITH SHADOWBROOK ESTATES, INC.**

Attorney Polackwich reviewed his memorandum dated December 6, 2011, providing background and ongoing details of the County's purchase of 29 environmentally contaminated acres located at the headwaters of the St. Sebastian River, from Shadowbrook Estates, Inc. He also explained the specifics of the Escrow Agreement and the tentative settlement whereby the County will receive \$100,000.00 of the escrow funds, Shadowbrook will receive the balance, and the County will take over remediation efforts.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Davis, to approve the settlement, and authorize the Chairman to attest the proposed Settlement Agreement with Shadowbrook Estates, Inc.

Vice Chairman O'Bryan suggested staff send a copy of the settlement to Representative Debbie Mayfield, accompanied with a strong letter stating that it is mind-boggling that the Department of Environmental Protection (DEP) took more than four years to come up with a remediation plan; and should it cost the County over \$100,000.00, that DEP will pay the difference, because of what it is costing taxpayers, due to the bureaucratic paper pushing of DEP.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Commissioner Davis, to approve the settlement, authorize the Chairman to attest the proposed Settlement Agreement with Shadowbrook Estates, Inc., and direct staff to send a copy to Representative Debbie Mayfield, accompanied with a strong letter stating that it is mind-boggling that the Department of Environmental Protection (DEP) took more than four years to come up with a remediation plan, and should it cost the County over \$100,000.00, that DEP pay the difference.

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

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

#### **14. COMMISSIONER ITEMS**

**14.A. COMMISSIONER GARY C. WHEELER, CHAIRMAN - NONE**

**14.B. COMMISSIONER PETER D. O'BRYAN, VICE CHAIRMAN - NONE**

**14.C. COMMISSIONER WESLEY S. DAVIS - NONE**

**14.D. COMMISSIONER JOSEPH E. FLESCHER - NONE**

**14.E. COMMISSIONER BOB SOLARI - NONE**

#### **15. SPECIAL DISTRICTS AND BOARDS**

**15.A. EMERGENCY SERVICES DISTRICT - NONE**

**15.B. SOLID WASTE DISPOSAL DISTRICT**

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

**15.B.1. WORK ORDER NO. 1 TO CAMP DRESSER & MCKEE INC. (CDM) FOR ENGINEERING SERVICES WITH THE 2012 ANNUAL FINANCIAL REPORTS**

**15.B.2. WORK ORDER NO. 2 TO CAMP DRESSER & MCKEE INC. (CDM) FOR ENGINEERING SERVICES WITH THE 2012 ANNUAL PERMIT COMPLIANCE MONITORING AND REPORTING**

**15.B.3. SWDD LANDFILL GAS INTERCONNECT AGREEMENT WITH INEOS NEW PLANT PLANET BIOENERGY, LLC**

**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 2:51 p.m.

ATTEST:

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Jeffrey K. Barton, Clerk

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Gary C. Wheeler, Chairman

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

BCC/LA/2011 Minutes