

JEFFREY K. BARTON  
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

JANUARY 17, 2012

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**JEFFREY K. BARTON**

Clerk to the Board



**January 17, 2012**

**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, January 17, 2012. Present were Chairman Gary C. Wheeler, Vice Chairman Peter D. O'Bryan, and Commissioners Wesley S. Davis, Joseph E. Flescher, and Bob Solari. Also present were County Administrator Joseph A. Baird, County Attorney Alan S. Polackwich, Sr., and Deputy Clerk Maureen Gelfo.

**1. CALL TO ORDER**

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

**2. INVOCATION**

Reverend Dr. Leslie A. Koerselman, Westminster Presbyterian Church, delivered the Invocation.

**3. PLEDGE OF ALLEGIANCE**

Commissioner Solari led the Pledge of Allegiance to the Flag.

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

**5. PROCLAMATIONS AND PRESENTATIONS - NONE**

**6. APPROVAL OF MINUTES - NONE**

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

**8. CONSENT AGENDA**

**8.A. APPROVAL OF WARRANTS AND WIRES – DECEMBER 29, 2011 TO JANUARY**  
**5, 2012**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of December 29, 2011 to January 5, 2012, as requested in the memorandum of January 5, 2012.

**8.B. REQUEST TO APPROVE A LICENSE AGREEMENT FOR OCCUPANCY OF THE PRINCIPAL RESIDENCE ON THE JONES'S PIER PROPERTY AT 7770 JUNGLE TRAIL**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved the License Agreement with Brad Fojtik, as recommended in the memorandum of January 9, 2012.

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

**8.C. TRANSIT FACILITY CHANGE ORDER #1**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved and authorized the Chairman to execute Change Order No. 1 to the Transit Facility contract with Barth Construction, Inc. in the amount of \$17,299.00, increasing the contract amount to \$1,634,990.00, as recommended in the memorandum of January 9, 2012.

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

**8.D. OUT OF COUNTY TRAVEL TO ATTEND THE 2012 FLORIDA ASSOCIATION OF COUNTIES LEGISLATIVE DAY**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved out-of-County travel for Commissioners and staff to attend the 2012 Florida Association of Counties Legislative Day

in Tallahassee, Florida on Wednesday, February 1, 2012,  
as recommended in the memorandum of January 12, 2012.

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

**10. PUBLIC ITEMS**

**10.A. PUBLIC HEARINGS**

**10.A.1. INDIAN RIVER COUNTY'S REQUEST FOR SPECIAL EXCEPTION USE  
APPROVAL TO CONSTRUCT A WIRELESS COMMUNICATIONS TOWER AT  
7235 4<sup>TH</sup> STREET (QUASI-JUDICIAL)**

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

Each Commissioner affirmed there had been no ex parte site visits, investigations, or communications.

Planning Director Stan Boling gave a PowerPoint Presentation (copy on file), regarding the County-initiated request for special exception use approval to construct a wireless communications tower ("County EMS Tower") on a small portion of the Egret Marsh Stormwater Treatment facility at 7235 4<sup>th</sup> Street, for the purpose of enhancing emergency communications. He relayed that the proposed tower compound would consist of a 180' monopole tower, equipment shelter, and electrical equipment, with fencing and landscaping improvements around the perimeter of the compound. After providing further description and analysis, Director Boling presented the recommendations of staff and the Planning & Zoning Commission (P & Z) for the Board to grant special exception use approval for the County EMS Tower, with the conditions listed in staff's report.

*(Clerk's Note: Please refer to the Board's Motion for conditions).*

Discussion ensued as Director Boling addressed the Board's questions about the landscaping buffer; the tower's capacity to be used by other entities; impacts to birds and wildlife; and exposure to electromagnetic fields.

*The Chairman opened the Public Hearing.*

**Bob Johnson**, Coral Wind Subdivision, remarked that he had not heard that a new tower was necessary, nor had he heard any analysis of the potential effects of the tower on adjacent properties. He also wondered whether the tower would bridge the gap in communications coverage in the South County.

Administrator Baird reported that in order to facilitate emergency communications, the County wanted to construct the tower to fill a "dead spot" in that area.

**Rick Rewiski**, Communications International, agreed that the tower would provide the additional coverage needed in the South County.

*There being no additional speakers, the Chairman closed the Public Hearing.*

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously found that:

1. It is empowered under the provisions of Chapter 971 to review the special exception use applied for;
2. 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.



The Board also confirmed the admission into evidence of staff's agenda package and PowerPoint presentation, and granted special exception use approval for the proposed wireless communication facility with the following conditions:

1. Prior to site plan release, the applicant shall submit to Planning Division staff a copy of the final Federal Aviation Administration (FAA) determination showing conformance with Subpart C of Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace; and
2. Prior to operation of the tower facility, landscaping improvements shall be installed as shown on the project site plan; all as stated and recommended in the memorandum of December 27, 2011.

**10.B. PUBLIC DISCUSSION ITEMS**

**10.B.1. REQUEST TO SPEAK FROM DENNIS SPRUCE REGARDING SUBDIVISION DRAINAGE AT SYLVAN LAKES**

Mr. Spruce was absent.

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

**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**

**12.I.1 LEASE AMENDMENT, 6855 66<sup>TH</sup> AVENUE, VERO BEACH, FL, OWNER:**

**INDIAN RIVER COUNTY, TENANT: JOHN A. JACKSON, JR., PROJECT: 66<sup>TH</sup>**

**AVENUE WIDENING PROJECT**

Public Works Director Christopher Mora provided background history pertaining to a right-of-way parcel the County acquired in 2009 from John A. Jackson, Jr. for the 66<sup>th</sup> Avenue road project. He reported that the terms of the original purchase agreement allowed Mr. Jackson to lease back the property for two years at \$1.00 per month, and that pursuant to his request to extend his lease at the same terms, the Board on October 4, 2011 directed staff to negotiate a fair market level rent with Mr. Jackson. Director Mora thereafter provided staff's recommendation

to allow Mr. Jackson to extend his lease at the \$1 per month rental rate until March 31, 2013, with an increase to fair market value if the lease extends beyond that date.

Discussion ensued regarding the improvements that Mr. Jackson made to the property with \$14,175 of his own money.

Commissioner Davis asked staff to see what can be done (while Mr. Jackson is a tenant and has a relative to the south), about a tool shed which is partially located on both the subject parcel and the property to the south.

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

Commissioner Solari outlined his objections to the \$1.00 per month rental rate; however, he was open to setting the rent at less than fair market value.

Commissioners Flescher, Davis, and Wheeler, respectively, spoke in support of staff's recommendation.

Vice Chairman O'Bryan agreed with Commissioner Solari that a rental amount above \$1.00 should be established.

The Chairman CALLED THE QUESTION and by a 3-2 vote (Commissioners O'Bryan and Solari opposed), the Board approved and authorized the Chairman to execute the lease amendment with John A. Jackson, Jr., as recommended in the memorandum of January 9, 2012.

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

**12.J. UTILITIES SERVICES**

**12.J.1. EXECUTION OF FEDERALLY FUNDED SUBGRANT AGREEMENT FOR  
DEPARTMENT OF ECONOMIC OPPORTUNITY \$750,000 COMMUNITY  
DEVELOPMENT BLOCK GRANT FOR NEIGHBORHOOD REVITALIZATION OF  
WEST WABASSO COMMUNITY**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the proposed agreement with the Department of Economic Opportunity (DEO), as recommended in the memorandum of January 11, 2012.

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

**13. COUNTY ATTORNEY MATTERS**

**13.A. INITIAL CONSIDERATION OF PROPOSED FUND 101 REFUND ORDINANCE**

Attorney Alan S. Polackwich, Sr., presented for Board consideration a proposed Ordinance amending Section 1010.05 *Use of Funds Collected and Trust Funds* of County Code, Chapter 1010, *Traffic Facilities and Fair Share Roadway Improvements*, pursuant to the Board's decision on December 20, 2011, to refund unspent impact fees collected in original Traffic Impact Fee District II ("Fund 101"). He explained why the correct amount of unexpended fees in Fund 101 is \$255,829, rather than \$132,159 as indicated at the December 20 Board meeting. He outlined the process defined in the Ordinance for issuing the refunds, which will include: (1) the identification of each fee that has been paid and remains unspent; (2) the identification of the properties associated with those fees and the current property owner; (3) a written notice to the current owner that will include an application, an IRS Form W-9, and an affidavit affirming property ownership and acknowledging that by accepting the refund, the property owner may be

jeopardizing the A1A/17<sup>th</sup> Street project (“The Project”). Attorney Polackwich noted that there would be a public hearing on February 21, 2012 for adoption of the final Ordinance.

After a brief discussion, it was clarified that in cases where the refund money is unclaimed or rejected, it would be allocated back into the Fund 101 account.

Administrator Baird noted that any funds going back into the coffers would be utilized for The Project. He cautioned that if all the funds are returned, another project would have to be eliminated in order to afford the intersection improvements.

Vice Chairman O’Bryan warned property owners who might be due a refund to be wary of telephone solicitations for assistance with the refunds.

Commissioner Solari wanted to see the impact fees returned with interest until the entire amount of Fund 101 is expended, or everyone who paid an impact fee has been contacted. He noted that the impact fee law stipulates a refund of unexpended fees after six years and must be upheld regardless of the need for The Project.

**Pilar Turner**, 1600 Indian Bay, speaking as a resident and not a City of Vero Beach Council Member, opined that the County was rushing to do The Project in order to avoid giving the impact fee refunds. She urged the Board to return all the Fund 101 revenues to the property owners, and to allow individuals 120 days from their notification of eligibility to apply for the refund.

Commissioner Davis emphasized that impact fee law provides for the refund, and since the County did not spend the dollars in Fund 101 in the time stipulated, there is only one correct course of action, regardless of whether the money is needed.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Solari, to: (1) refund unspent traffic impact fees collected in original Traffic Impact Fee District II (now Fund 101), in the amount of \$255,829, with accrued interest, to the owner of each eligible property, starting with the last impact fee paid into the account and moving backward in time until the entire amount of \$255,829 in fees and the accrued interest has been expended; and (2) authorize the County Attorney to bring forward for public hearing and adoption on February 21, 2012, a final Ordinance providing for the refund of unspent traffic impact fees held in the original Traffic Impact Fee District II Trust Account (Fund 101).

Attorney Polackwich confirmed with Commissioner Davis that his Motion was to refund the fees with the interest accrued until the fund balance is zero.

Commissioner Flescher spoke in support of the Ordinance, and presented analysis of why the refunds should go to the current property owners, rather than the original fee payer.

Vice Chairman O'Bryan stated that he would support the refunds with simple interest; however, he was opposed to refunding the entire amount with accumulated interest. He spoke to the importance of fixing the intersection, and wanted to see a compromise that would allow refunds to be issued with some funding retained for The Project.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Vice Chairman O'Bryan opposed), the Motion carried. The Board approved: (1) to refund unspent traffic impact fees collected in original Traffic Impact Fee District II (now Fund 101), in the amount of \$255,829,

with accrued interest, to the owner of each eligible property, starting with the last impact fee paid into the account and moving backward in time until the entire amount of \$255,829 in fees and the accrued interest has been expended; and (2) authorized the County Attorney to bring forward for public hearing and adoption on February 21, 2012, a final Ordinance providing for the refund of unspent traffic impact fees held in the original Traffic Impact Fee District II Trust Account (Fund 101).

Chairman Wheeler, in order to address the public perception about the County escalating its spending, requested that staff return with an accounting of the projects that are being funded by impact fee revenues.

Administrator Baird affirmed that staff would return with a report in 30 days, and a copy would also be given to the City of Vero Beach.

**Tim Zorc**, 7658 South Polo Grounds Lane, conveyed that he did not perceive a Level of Service deficiency at the A1A/17<sup>th</sup> Street intersection.

*The Chairman called a recess at 10:03 a.m., and reconvened the meeting at 10:13 a.m., with all members present.*

### **13.B. INITIAL CONSIDERATION OF PROPOSED SIX YEAR IMPACT FEE REFUND ORDINANCE**

Attorney Alan S. Polackwich, Sr., presented for Board consideration a proposed Ordinance amending Section 1000.15 *Refund of Fees Paid* of County Code, Chapter 1000, *Impact Fees - Purpose and Intent*, for the purpose of updating impact fee Ordinances 1986-14 and 2005-015 with a more fair refund mechanism. Currently, if an impact fee has not been spent

or encumbered within six years, an individual may request a refund; however, in the proposed ordinance, the property owner associated with a specific impact fee would receive notification from County staff, go through the application process, and receive their refund. Attorney Polackwich conveyed that there is a baseline six year refund period in the proposed ordinance; however, an option has been included to extend the refund period for a specific impact fee from six to nine years.

Considerable discussion ensued, with input from Administrator Baird, Attorney Polackwich, and Budget Director Brown regarding whether to couple or decouple the interest from the impact fees; and whether to retain in the final ordinance, the option to extend a specific impact fee fund refund.

Commissioner Solari remarked that there would have to be a rational basis for the three year refund extension, because if the impact fee funds originally paid are held for an additional three years, they would lose value. He advocated coupling the interest with the impact fee that was paid.

Management and Budget Director Jason Brown explained that many developers who paid fees were unable to build out their projects, and have been given project extensions.

Administrator Baird urged the Board to keep in mind how hard it is to accumulate sufficient funding to build and operate the projects that will accommodate future growth.

Vice Chairman O'Bryan supported the optional three year extension period, explaining that the Clerk's method of calculating the interest would preserve the value of an impact fee through the nine years. He advocated maintaining the accumulated interest in the account, so the funds can be used to make improvements for the entire community.



Chairman Wheeler asserted that the County should not have a windfall accumulation of interest. He suggested that after a fee is applied to a particular project, the accumulated interest for that fee should be expended next.

Commissioner Davis was concerned that the proposed ordinance provides for the return of the impact fees, but has no provision for the return of the accumulated interest. He observed that in theory, the County could spend every impact fee dollar on a project, zero out the account for the year, and let the interest continue to accumulate.

**Charlie Wilson**, 1057 6<sup>th</sup> Avenue, wanted to see the optional extension of the refund period (if approved by the Board), apply exclusively to the traffic impact fees. He objected to decoupling the interest from the impact fees, and alleged that capital improvement projects were being expedited to use up the Fund 101 moneys and avoid having to pay the refunds.

Commissioner Davis stated that he did not have difficulty with extending the refund period; however, if the interest is not spent after the nine year period, it should be refunded along with the impact fee.

Attorney Polackwich clarified that there is no refund of interest alone; it is only refunded as a component when the underlying impact fee is being refunded.

Commissioners Davis and Solari voiced concerns about the lack of a mechanism in the proposed ordinance for giving the accrued interest back to the impact fee recipient, particularly where the County cannot afford to do the project associated with those fees.

Chairman Wheeler advocated spending the interest with the impact fees; thus, avoiding the issue of accumulating interest in the future.

**Anabelle Robertson**, Asset Research & Recovery, requested that the Board create an ordinance reflecting Commissioner Wheeler's suggestion to expend the interest with the impact fees.

Chairman Wheeler wondered what would be the specific criteria for triggering the optional extension of the refund period.

Commissioner Solari summarized that the unresolved issues are whether to couple or decouple the interest from the impact fees; and whether there is a rational basis for allowing the extension of the six year refund period for a specific impact fee by three additional years.

Chairman Wheeler acknowledged the complexity of this issue, and suggested that this item be discussed again at another Board of County Commission meeting before the public hearing.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Flescher, to direct staff to report back to the Board with analysis on three scenarios related to the proposed ordinance for amending impact fee refund procedures:

- (1) the effect of coupling the interest with the impact fees;
- (2) the effect of decoupling the interest from the impact fees; and
- (3) the rationale or criteria for extending the six year impact fee refund period for any specific impact fee for an additional three years.

Further discussion ensued, wherein it was established that there would be no application fees for property owners that are eligible for the refunds.

**Mr. Wilson** questioned whether the extension of the refund period for an additional three years would accomplish the intended goal, and whether it would be legal. He also requested that the Board grant refund applicants more time to complete the application process than the 150 days stipulated in the draft ordinance.

Attorney Polackwich explained that extending the time period in which the impact fees may be spent is in accordance with the economic downturn and delays or extensions in project completions. He also remarked that since the County is going to a notice process, it is justifiable to decrease the time period for application submittals.

Administrator Baird noted that some road projects were delayed due to backlogs in the permitting agencies.

Attorney Polackwich clarified for Ms. Robertson that six years would remain the base underlying refund period in the proposed ordinance; the Board would need to decide whether the optional three year period is needed for a specific impact fee fund prior to the conclusion of the six years.

**Mr. Zorc** suggested that the proposed ordinance be amended to provide for the impact fee refunds with interest calculated according to the actual return earned on the money, as opposed to the rate earned by the County on the fund.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Vice Chairman O'Bryan opposed), the Board directed the County Attorney to report back to the Board with analysis on three scenarios related to the proposed ordinance for amending impact fee refund procedures:

- (1) the effect of coupling the interest with the impact fees;

- (2) the effect of decoupling the interest from the impact fees;
- (3) the rationale or criteria for extending the six year impact fee refund period for any specific impact fee for an additional three years.

#### **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 - 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 11:30  
a.m.

ATTEST:

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

\_\_\_\_\_  
Gary C. Wheeler, Chairman

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

BCC/MG/2012 Minutes