

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

JANUARY 24, 2012

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JEFFREY K. BARTON

Clerk to the Board



January 24, 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 27th Street, Vero Beach, Florida, on Tuesday, January 24, 2012. Present were Vice Chairman Peter D. O'Bryan, and Commissioners Wesley S. Davis, Joseph E. Flescher, and Bob Solari. Chairman Gary C. Wheeler was absent. Also present were County Administrator Joseph A. Baird, County Attorney Alan S. Polackwich, Sr., and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

Vice Chairman O'Bryan called the meeting to order at 9:00 a.m.

2. INVOCATION

Rabbi Michael Birnholz, Temple Beth Shalom, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Flescher led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

- NONE

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION BY HIMANSHU MEHTA, MANAGING DIRECTOR, INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT ON ELECTRONICS RECYCLING EVENT ON SATURDAY, JANUARY 28, 2012, AT THE INDIAN RIVER COUNTY FAIRGROUNDS

Director Himanshu Mehta presented the Board with the details of the Electronics Recycling Event scheduled for Saturday, January 28, 2012, from 9:00 a.m. to 3:00 p.m., at the Indian River County Fairgrounds (flier on file).

6. APPROVAL OF MINUTES

6.A. MEETING OF DECEMBER 6, 2012 2011

The Vice Chairman asked if there were any corrections or additions to the minutes. There were none.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, by a 4-0 vote (Chairman Wheeler absent), the Board approved the minutes of the December 6, 2011 meeting, as written.

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

**7.A. RESIGNATION OF THE ENGINEER APPOINTEE TO THE CONSTRUCTION
BOARD OF ADJUSTMENT & APPEALS**

Noted for the record was the resignation of Dean Luethje, P.E., as the Engineer Appointee to the Construction Board of Adjustment and Appeals.

**7.B. 2012 ELECTION OF BEACH AND SHORE PRESERVATION ADVISORY
COMMITTEE CHAIRMAN AND VICE CHAIRMAN**

Noted for the record was the election of Dave Barney as Chairman, and Bob Anderson as Vice Chairman, to the Beach and Shore Preservation Advisory Committee for 2012.

**7.C. 2012 ELECTION OF THE ENTERPRISE ZONE DEVELOPMENT AGENCY
CHAIRMAN AND VICE CHAIRMAN**

Noted for the record was the election of Richard Lane as Chairman, and Penny Chandler as Vice Chairman, to the Enterprise Zone Development Agency for 2012.

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES – JANUARY 6, 2012 TO JANUARY 12, 2012

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of January 6, 2012 to January 12, 2012, as requested in the memorandum of January 12, 2012.

8.B. WORK ORDER NO. 11 TO THE PROFESSIONAL BRIDGE DESIGN SERVICES AGREEMENT WITH BRIDGE DESIGN ASSOCIATES, INC. FOR PEDESTRIAN BRIDGE ON INDIAN RIVER BOULEVARD OVER 14TH STREET CANAL – RELEASE OF RETAINAGE FOR CONSTRUCTION ENGINEERING INSPECTION SERVICES – IRC PROJECT NO. 0745

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved payment of Bridge Design Associates, Inc., Invoice No. 08-585/R, dated October 1, 2010, in the amount of \$466.90, for release of retainage for the construction engineering and inspection portion of Work Order No. 11, as requested in the memorandum of January 10, 2012.

8.C. TRAFFIC CONTROL DEVICE LEDGER

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved **Resolution 2012-005**, approving traffic control devices authorized by the Director of Public Works.

8.D. REQUEST FROM THE U.S. FISH AND WILDLIFE SERVICE (USFWS) FOR COUNTY CONCURRENCE ON A LAND EXCHANGE BETWEEN THE STATE AND USFWS FOR PROPERTY WITHIN THE ARCHIE CARR NATIONAL WILDLIFE REFUGE

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved the endorsement of the State's exchange of either Parcel 1 or Parcel 2, but not Parcel 3, for the U.S. Fish and Wildlife Service (USFWS) owned property in Brevard County, as recommended in the memorandum dated January 17, 2012.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved that if Parcel 1 is selected for the exchange, the Board will direct staff to coordinate with State staff to remove the Parcel 1 area from Sublease No. 3400-01, as recommended in the memorandum dated January 17, 2012.

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

8.E. APPROVAL OF REQUEST FOR PROPOSALS 2012-021 FOR CUSTODIAL SERVICES

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board: (1) accepted the selection committee ranking of JMC Services, Inc., with the pricing as submitted in their proposal; (2) authorized the Chairman to execute the agreement; and (3) approved that a Purchase Order be issued to Beachland Cleaning for an additional one month of service, all as recommended in the memorandum of January 16, 2012.

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

8.F. TRAFFIC VIDEO DETECTION HARD DRIVE: BOARD APPROVAL FOR TRADE-IN AND PURCHASE OF ONE (1) VIDEO DETECTION HARD DRIVE

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved the transaction for the Traffic Engineering Division to trade in one (1) traffic video detection hard drive and purchase one (1) new traffic video detection hard drive, as recommended in the memorandum of January 16, 2012.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARING(S) - NONE

10.B. PUBLIC DISCUSSION ITEMS

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

Dennis Spruce, 5955 41st Street, provided background regarding the ongoing flooding to his property from the abutting properties of Sylvan Lakes Subdivision (Sylvan Lakes). He requested that the County require Sylvan Lakes to install their own drainage so his property will stop flooding, and impose fines until the violations are resolved. He expressed frustration over spending time and money trying to rectify the situation, Sylvan Lakes not wanting to do their part, and not being able to make improvements to his land because of the flooding. He also voiced concerns over several incidents (with a resident of Sylvan Lakes) that dealt with him cutting down trees in a swale so County staff could investigate the drainage problem, the resident videotaping in the direction of his property, and the resident contacting Animal Control for citations regarding his barking dogs, which he claims he never received.

Public Works Director Chris Mora, using aerial photographs (on file), provided specifics and answered the Commissioners' concerns regarding the drainage issue. He said that staff's topographic survey of the boundary line (between Mr. Spruce's property and the abutting properties of Sylvan Lakes), showed that a perimeter swale behind the properties, as originally planned by Sylvan Lakes in 1989, was never constructed. He conveyed staff's beliefs that there is enough elevation difference to build a swale within the existing ten-foot drainage easement, and enough fall in the area to allow the water to be conveyed down to their stormwater pond. He

listed the three possible alternatives to correct the drainage problem that were presented to Bill Morgan, a representative of Sylvan Lakes: (1) dig a shallow swale where it was originally planned; (2) put a drainage pipe within the drainage easement and convey the water to the stormwater pond; or (3) dig a swale that would straddle the property line. Director Mora relayed that Mr. Morgan had told staff that he wanted to wait until the snowbirds returned before presenting it to the Homeowners' Association. Staff did not know the current progress, other than the fact that local engineers were contacted, who in turn contacted staff for survey information and possible solutions.

Vice Chairman O'Bryan questioned the enforcement capability of the County to expedite the process.

Director Mora felt it was an issue between private parties.

County Attorney Alan S. Polackwich, Sr. explained the law and offered suggestions pertaining to violations and enforcement. He also indicated that Mr. Spruce should pursue his own private remedy since the adjoining properties are diverting drainage onto his property, and causing a nuisance.

Mr. Spruce revealed that Sylvan Lakes had received notice from the County four or five years ago regarding this flooding issue.

Commissioner Flescher wanted to know the County's recourse.

Attorney Polackwich said that to change the condition of what was approved on the site plan is a Code Enforcement violation, and that the lengthy delay in enforcement (with some houses being built 15 to 20 years ago) could create a defense for the property owners. He believed the remedy exists more against the property owners than the association because he felt the individual property owners changed their lots and did not build the drainage easement.

Discussion ensued regarding the ten-foot drainage easement and who owns it, the delayed defense in Code Enforcement proceedings, and viable courses of action.

Commissioner Solari mentioned that a Code Enforcement action might help focus Sylvan Lakes' efforts, and Mr. Spruce agreed.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, by a 4-0 vote (Chairman Wheeler absent), the Board directed staff to: (1) advise the neighbors of Sylvan Lakes that a Code Enforcement action may be brought against them; (2) review the plat language to determine where the perimeter swell would be located; and (3) contact Mr. Morgan at Sylvan Lakes to determine where the Homeowners' Association is in the decision making process.

Vice Chairman O'Bryan informed Mr. Spruce that he would have the County Administrator follow up on the barking dog citations.

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 - NONE

12.J. UTILITIES SERVICES

**12.J.1. REQUEST TO RETAIN LEGAL COUNSEL TO ASSIST IN THE RECOVERY OF
IMPACT FEES FROM VILLAGE GREEN MOBILE HOME PARK**

Director of Utility Services Erik Olson reviewed his memorandum dated January 18, 2012, providing background on Countryside North Mobile Home Park (Countryside); the establishment of Village Green Mobile Home Park (Village Green) by the same owners as Countryside; and Countryside's agreement, and subsequent failure, to pay the County for delinquent sewer impact fees. Consequently, the County retained legal counsel from the law firm of Awerbach and Cohen P.A., who filed legal action against the owners and successfully recovered the fees. He thereafter explained a similar matter where the owners of Village Green owes the County for water and sewer impact fees in the amount of \$1,560,000, and recently retained legal counsel to refute the fees. Due to the large amount of money owed, the similarity of history between the two parks, and considering that the Village Green owners have retained legal counsel, the Utilities Department requested the Board allow the County Attorney to retain the legal services of Awerbach and Cohn P.A. to assist in the recovery of the fees.

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

Attorney Polackwich said that normally staff would not use this process, but because this is virtually identical to the prior situation, he felt it would be beneficial to seek outside council to simplify and expedite the process.

The Vice Chairman CALLED THE QUESTION and the Motion carried. The Board, by a 4-0 vote (Chairman Wheeler absent), authorized the County Attorney to enter into an agreement with the Law Firm of Awerbach and Cohn P.A. to recover the impact fees owed by Village Green Mobile Home Park to the County, as recommended in the memorandum of January 18, 2012.

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

13. COUNTY ATTORNEY MATTERS

13.A. INEOS/FPL AGREEMENTS RELATING TO UNDERGROUND ELECTRICAL FACILITIES

Attorney Polackwich recapped his memorandum of January 18, 2012, providing background and analysis of the proposed agreement for a City/County Right-of-Way Agreement for underground installations with Florida Power and Light (FP&L), as well as the proposed Reimbursement Agreement with INEOS New Planet BioEnergy, LLC.

Vice Chairman O'Bryan noted that the two agreements should be addressed separately.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Commissioner Davis, to approve the City/County Right-of-Way Agreement with Florida Power and Light, and authorize the Chairman to execute same, as recommended in the memorandum of January 18, 2012.

Commissioner Solari wanted to know if this is what had been done in the past.

Ken Rubin, Attorney for Florida Power and Light, explained that normally if it is a private easement, the customer would bear 100% of the responsibility of moving the underground facilities, if they had to be moved; otherwise, in the right-of-way agreement, the municipality or governmental entity would have 100% responsibility.

Attorney Polackwich clarified that the installation of facilities above ground does not require a separate agreement, only for facilities installed underground.

Bob Johnson, Coral Wind Subdivision, sought and received the proposed locations for the underground cables.

The Vice Chairman CALLED THE QUESTION and the Motion carried by a 4-0 vote (Chairman Wheeler absent).

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Chairman Wheeler absent), the Board approved the Reimbursement Agreement with INEOS New Planet BioEnergy, LLC for certain expenses and liabilities the County might incur, and authorized the Chairman to execute same, as recommended in the memorandum of January 18, 2012.

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

The Chairman called a break at 10:00 a.m., and reconvened the meeting at 10:10 a.m., with all members present.

13.B. VERO BEACH SPORTS VILLAGE – FIRST AMENDMENT TO CAPITAL RESERVE ACCOUNT AGREEMENT

Attorney Polackwich provided background on the assignment of the Facility Lease Agreement for the Vero Beach Sports Village, from MiLB Vero Beach, LLC (MiLB) to Verotown, LLC (Verotown); and requested the Board approve the substitution of the name Verotown in place of MiLB, on the proposed First Amendment to the Capital Reserve Account Agreement.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Davis, by a 4-0 vote (Chairman Wheeler absent), the Board approved the proposed First Amendment to Capital Reserve Account Agreement, and authorized the Chairman to execute the Amendment on behalf of the Board, as recommended in the memorandum of January 13, 2012.

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

13.C. COMMITTEES VACANCIES – APPOINTMENT

Attorney Polackwich recalled that on September 13, 2011, the Board adopted Resolution 2011-072, which assigned the monitoring of committee member terms and overseeing the process of annual appointments and reappointment to the County Attorney's office. He reviewed

the list of committee vacancies and qualified applicants (pages 80 and 81 of the Agenda Packet), and requested the Board appoint the committee members to the appropriate vacancies, or defer the appointments. He informed the Board that David Washington had applied for numerous committee vacancies, but prioritized the Affordable Housing Advisory Committee as his number one choice.

There was a brief discussion among the Commissioners pertaining to the committee vacancies and qualified applicants.

MOTION WAS MADE by Commissioner Davis, SECONDED by Vice Chairman O'Bryan, to appoint: (1) David Washington to the Affordable Housing Advisory Committee; (2) Louis C. Schacht to the Agricultural Advisory Committee; (3) Duane M. Wiese as Engineer, and Bryant Jenks as Code Administrator, to the Construction Board of Adjustment and Appeals; (4) no applicants to the Economic Development Council; and (5) Nicholas Rains to the Enterprise Zone Development Agency.

Commissioner Solari spoke to the difficulty of the Affordable Housing Advisory Committee making a quorum at their meetings. He suggested contacting the State to see if there could be a small-County exclusion from this committee, do away with the committee, and have staff send any necessary reports directly to the Commissioners.

Discussion ensued as to whether there would be another committee that the Affordable Housing Advisory Committee could fall under, such as the Housing Authority or a non-profit organization.

The Vice Chairman CALLED THE QUESTION and the Motion carried by a 4-0 vote (Chairman Wheeler absent).

14. COMMISSIONER ITEMS

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

14.B. COMMISSIONER PETER D. O'BRYAN, VICE CHAIRMAN

14.B.1. SUMMARY OF THE FLORIDA REGIONAL COUNCILS ASSOCIATION MEETING

Vice Chairman O'Bryan provided the Board with an update on his travel to Tallahassee, on Friday, January 13, 2012, to attend the Florida Regional Councils Association meeting. He briefly summarized the ongoing activities of the Regional Planning Councils Association (topics of discussion on page 84 of the Agenda Packet).

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 Vice 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. APPROVAL OF MEETING MINUTES OF DECEMBER 6, 2011

**15.B.2. APPROVAL TO BID SEGMENT 3 LANDFILL LATERAL EXPANSION CELL I
PHASE 2 PROJECT**

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 Vice Chairman declared the meeting adjourned at 10:30 a.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/LA/2012 Minutes