

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

FEBRUARY 21, 2012

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JEFFREY K. BARTON

Clerk to the Board



February 21, 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, February 21, 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

Chaplain William Mead, Indian River Estates East, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Davis led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman Wheeler requested the following changes to the Agenda

DELETE: ITEM 10.B.1. REQUEST TO SPEAK FROM BOB DEES, GROVE ISLE CONDOMINIUM ASSOCIATION, REGARDING NOISE REDUCTION WALL ON USI AT GROVE ISLE CONDOMINIUMS

ADD: ITEM 10.B.1. REQUEST TO SPEAK FROM BRIAN CARMAN ON THE AGRICULTURAL ADVISORY COMMITTEE CHAIRMANSHIP

MOVE: ITEM 13.A. TO FOLLOW ITEM 10.C.2. PUBLIC NOTICE ITEMS

MOVE: ITEM 10.A.1. TO FOLLOW ITEM 13.A. COUNTY ATTORNEY MATTERS

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION RECOGNIZING JOHN MICHAEL MATTHEWS VETERANS COMMUNITY ACHIEVEMENT AWARD FROM THE INDIAN RIVER COUNTY VETERANS COUNCIL

Commissioner Flescher read and presented the Proclamation to Colonel Martin Zickert, President of the Indian River County Veterans Council, who accepted it on behalf of John Michael Matthews.

5.B. PRESENTATION OF PROCLAMATION RECOGNIZING JOSEPH MARTORANA'S LIFETIME ACHIEVEMENT AWARD FROM THE INDIAN RIVER COUNTY VETERANS COUNCIL

Commissioner Flescher read and presented the Proclamation to retired Sergeant Major Joseph Martorana, who was accompanied by Sergeant Curtis Paulison and Colonel Zickert. Mr. Martorana thanked the Board and spoke of his work with veterans and veterans' organizations. Sergeant Paulison provided a handout (on file) and information on the Veterans Charity Ball to be held from 5:00 – 10:00 p.m. on Saturday, March 10, 2012, at the Surf Club Hotel. Colonel Zickert relayed that through the efforts of the Sheriff's Office, particularly Deputy Jeff Luther, the Veterans Council had been able to purchase a new bus.

5.C. PRESENTATION OF PROCLAMATION HONORING AFRICAN AMERICAN PIONEER DAY FEBRUARY 2012

Commissioner Solari read and presented the Proclamation to honorees Ben Minus, Essie and Tommy Turner; Vanessa Turner; Jerelyn Moore; Martha Bradley; Katherine Washington; Annie Grace Foster; and Anna Mosley Johnson, daughter of the late J.W. Mosley and Willie Lee Mosley. Mr. Minus, Ms. Essie Turner, Martha Bradley, Katherine Washington, Annie Grace Foster, and Anna Mosley Johnson recounted some of their early history and thanked the Commissioners.

Deputy Teddy Floyd acknowledged the dedication of the pioneers and thanked the Commissioners for bestowing the honor.

**5.D. PRESENTATION OF INDIAN RIVER COUNTY SHERIFF'S OFFICE SPATIAL NEEDS
ASSESSMENT AND MASTER PLANNING CONCEPTS FOR FACILITIES EXPANSION BY
TONY DONADIO, DONADIO AND ASSOCIATES, ARCHITECTS**

Tony Donadio, A.I.A., Donadio & Associates, through a PowerPoint presentation (on file), gave an overview of the master plan for the Sheriff's office facilities expansion project. He showed slides of the existing facilities, the sites of the future expanded administration and jail buildings, and the old Sun Sky Roofing building that is going to be renovated into the new Crime Scene Facility. Mr. Donadio explained that the Master Plan is divided into three phases: Phase 1 – Crime Scene Facility; Phase 2 - Sheriff's Administration and Uniform Division; and Phase 3 - Support Services for the Administration Office.

Dave Crabtree, Architects Design Group Inc., continued the PowerPoint presentation to describe various options in Phases 1, 2, and 3 of the Master Plan. He noted that the plans for redevelopment of the Crime Scene Facility are identical in each phase, and that Phase 3 includes the option to construct a parking garage. He thereafter presented estimated costs and project completion times for each design phase, and told Board members that his company could help the County locate funding assistance from grants and programs.

Commissioner Davis noted that two of the design options had included moving the retention pond, and suggested that it be moved to 41st Street to reduce the likelihood of having to be moved more than once.

Chairman Wheeler stressed the need to have the Sheriff's new Administration Building built as fast as possible, because of the unhealthy condition of the current building. Additionally, he stated that he did not support the construction of a parking garage.

County Administrator Joseph Baird, responding to a question, divulged that the funding for Phase 1 would come from the Optional Sales Tax and Law Enforcement Impact Fee revenues.

Management and Budget Director Jason Brown added that two-thirds of the funding would come from the Optional Sales Tax.

Mr. Crabtree explained in response to Commissioner Flescher's inquiry, that it would be difficult to expand the Crime Scene building, because it is being renovated and not constructed from scratch.

Mr. Donadio advised that he would review project costs and schedules for Phase 1 of the expansion project with the Sheriff and Board after the plan details are finalized.

No Board Action Required or Taken

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF DECEMBER 20, 2011

6.B. SPECIAL CALL MEETING OF DECEMBER 30, 2011

The Chairman asked if there were any corrections or additions to the minutes of December 20, 2011, or the Special Call Meeting of December 30, 2011. There were none.

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Wheeler, the Board unanimously approved the minutes of the December 20, 2011 meeting and the Special Call Meeting of December 30, 2011, as written.

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

7.A. RESIGNATION OF THE OWNER/OPERATOR TOURIST ACCOMMODATIONS

REPRESENTATIVE TO THE TOURIST DEVELOPMENT COUNCIL

Noted for the record was the vacancy of the Owner/Operator Tourist Accommodations Representative to the Tourist Development Council, due to the resignation of Dean Saltz, effective February 10, 2012.

7.B. 2012 ELECTION OF PLANNING & ZONING COMMISSION CHAIRMAN AND VICE CHAIRMAN

Noted for the record was the election of Sam Zimmerman as Chairman, and Jens Tripson as Vice Chairman, of the Planning & Zoning Commission for the year 2012.

7.C. EXECUTION OF NEIGHBORHOOD STABILIZATION PROGRAM MORTGAGES AND PROMISSORY NOTES BY THE IRC HOUSING AUTHORITY

Accepted into the record was staff's report informing the Board that all of the Neighborhood Stabilization Program (NSP) properties currently owned by the Indian River County Housing Authority have had mortgages and notes placed on them by the County. The amount of each mortgage and note is the total of the purchase price of the home, plus the rehab costs of the home.

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES – FEBRUARY 3, 2012 TO FEBRUARY 9, 2012

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 February 3, 2012 to February 9, 2012, as requested in the memorandum of February 9, 2012.

8.B. APPOINTMENT OF GENERAL CONTRACTOR APPOINTEE FOR THE CODE ENFORCEMENT BOARD

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously appointed Frank M. “Pete” Clements III as the General Contractor Appointee to the Code Enforcement Board, as requested in the memorandum of February 13, 2012.

8.C. FOURTH OF JULY FIREWORKS FUNDING – MISCELLANEOUS BUDGET AMENDMENT 006

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously: (1) approved funding for the fireworks displays for the Cities of Sebastian and Vero Beach in the amount of \$2,500 each; (2) approved for each of the cities (Vero Beach and Sebastian) to appropriate and pay an equal amount up to \$2,500 and the County will match that amount, up to \$2,500 each, after the City of Vero Beach and Sebastian pay their share; and (3) approved **Resolution 2012-011**, amending the Fiscal Year 2011-2012 Budget.

**8.D. F.D.O.T. SMALL COUNTY OUTREACH PROGRAM (SCOP) AGREEMENT AND
RESOLUTION AUTHORIZING THE CHAIRMAN'S SIGNATURE – CONSTRUCTION
(MILLING AND RESURFACING) OF INDIAN RIVER BOULEVARD'S NORTHBOUND AND
SOUTHBOUND LANES FROM 41ST STREET TO 53RD STREET**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2012-012**, with the Florida Department of Transportation authorizing the Chairman's execution of a small County Outreach Program Agreement for construction (milling and resurfacing) of Indian River Boulevard's northbound and southbound lanes from 41st Street to 53rd Street.

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

8.E. RENEWAL OF PROFESSIONAL GEOTECHNICAL SERVICES AGREEMENT FOR 2012-2013

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the renewal agreements with the following firms: (1) AM Engineering and Testing, Inc.; (2) Ardaman & Associates, Inc.; (3) Dunkelberger Engineering & Testing, Inc.; (4) K.S.M. Engineering & Testing, Inc.; and (5) Universal Engineering Services, as recommended in the memorandum of February 1, 2012.

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

**8.F. APPROVAL OF RESOLUTION ADOPTING THE 2012 INDIAN RIVER COUNTY
EMERGENCY PLAN FOR HAZARDOUS MATERIALS**

ON MOTION by Commissioner Flescher, SECONDED
by Commissioner Davis, the Board unanimously approved
Resolution **2012-013**, approving the Indian River County
Hazardous Materials Emergency Plan.

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

**8.G. APPROVAL OF WORK ORDER NO. AM-1 WITH A.M. ENGINEERING & TESTING, INC.
FOR GEOTECHNICAL SERVICES FOR THE PC SOUTH NUTRIENT RECOVERY FACILITY**

ON MOTION by Commissioner Flescher, SECONDED
by Commissioner Davis, the Board unanimously approved
Alternative No. 1, Work Order No. AM-1, Tasks I through
IV, with A.M. Engineering & Testing, Inc., as
recommended in the memorandum of February 13, 2012.

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

**8.H. WATERWAY VILLAGE ACCEPTANCE OF TEMPORARY EASEMENTS FOR UTILITIES
WHICH EXTEND BEYOND 51ST COURT RIGHT-OF-WAY**

ON MOTION by Commissioner Flescher, SECONDED
by Commissioner Davis, the Board unanimously approved
and authorized the Chairman to execute the three
temporary utility easements (51st Court) with DiVosta
Homes, L.P., for recordation in the public records of
Indian River County, as recommended in the
memorandum of February 14, 2012.

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES – NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARING(S)

10.A.1. FUND 101 REFUND ORDINANCE – FINAL CONSIDERATION AND ADOPTION (LEGISLATION)

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

(Clerk's Note: This item was heard following Item 13.A. County Attorney Matters and is placed here for continuity.)

County Attorney Alan S. Polackwich, Sr., brought forward for Board consideration and final adoption, a draft ordinance providing for the refund of unspent traffic impact fees collected in original Traffic Impact Fee District II (now Fund 101). He reported that revisions have been made subsequent to discussion at the January 17, 2012 County Commission meeting, and after receiving input from staff. He relayed that in the proposed draft, the refund has been set at a specific amount, with interest that is earned during the refund process or generated from refund waivers, to be returned to the fund for the road project; thus, staff would not be issuing a second wave of notices.

Charlie Wilson pointed out that Ordinance 86-14 specified that the refunds were to include interest at the rate of six (6) percent a year. He asked that the wording in the proposed Ordinance be amended under Section 3, Subsection (4)(D)(e), to read thus...“each eligible

owner shall have until July 31, 2012 to ~~complete, execute and~~ submit the application materials to the County Community Development Department...”, and revealed that Director of Management and Budget Jason Brown had mentioned to him that he wanted to add another sixty (60) days to the time for the application process, in order to correct any deficiencies in the application package. Mr. Wilson also requested that the Ordinance provide a long enough time period for people to apply for their refunds.

The Chairman opened the Public Hearing.

Vice Chairman O’Bryan commented that many residents who live around the intersection might want to waive their refunds in favor of having the intersection improved. He supported putting towards the road project any refunds that are waived or not applied for.

Tim Zorc, 7658 South Polo Grounds Lane, wanted to see the refund opportunities opened to as many eligible parties as possible, and advocated having a second set of mailings if funds are left after the first refund process has concluded.

Annabelle Robertson, Asset Research and Recovery, 3404 Aviation Boulevard, representing 130 homeowners eligible for refunds, echoed Mr. Zorc in her support for a second wave of mailings to accommodate as many eligible homeowners as possible.

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

MOTION WAS MADE by Vice Chairman O’Bryan, SECONDED by Commissioner Solari, to adopt the proposed Ordinance, amended under Section 3 Subection 4(D)(e) to read thus...“each eligible owner shall have until ~~July 31, 2012~~ August 31, 2012 to ~~complete, execute and~~ submit the application materials to the County Community Development Department..., and until

October 31, 2012 to correct deficiencies, if any, in the submitted application materials.

Attorney Polackwich suggested extending the deadline past the summer months to September 30, 2012.

Director Keating, responding to an inquiry, revealed that there were 462 owners eligible for an impact fee refund going back to 1990 and using all the money in the fund. He hoped to begin sending out letters and applications in the next several days.

MOTION WAS AMENDED by Vice Chairman O'Bryan, SECONDED by Commissioner Solari, to adopt the proposed Ordinance, amended under Section 3 Subsection 4(D)(e) to read...“each eligible owner shall have until ~~July 31, 2012~~ September 30, 3012 to ~~complete, execute~~ ~~and~~ submit the application materials to the County Community Development Department...and until November 30, 2012 to correct deficiencies, if any, in the submitted application materials.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board adopted **Ordinance 2012-002**, amending Section 1010.05 of the code of Indian River County; providing for a refund of certain traffic impact fees and accrued interest held in the original Traffic Impact Fee District II Trust Account; making findings and providing for severability and an effective date, *with revisions* in Section 3 Subsection 4(D)(e)...“each eligible owner shall have until ~~July 31, 2012~~ September 30, 3012 to ~~complete, execute and~~ submit

the application materials to the County Community Development Department and until November 30, 2012 to correct deficiencies, if any, in the submitted application materials.”

A brief discussion ensued between the Board and Clerk of Circuit Court and Comptroller Jeffrey K. Barton, Finance Director Diane Bernardo, and Director Brown, on what the interest rate should be.

Vice Chairman O’Bryan advocated basing the interest on the six percent rate in Ordinance 86-14.

ON MOTION by Vice Chairman O’Bryan, SECONDED by Chairman Wheeler, the Board unanimously approved to refund certain traffic impact fees held in the original Traffic Impact Fee District II, with accumulated interest at the rate of six (6) percent a year.

Commissioner Solari wanted to have a second tier of notifications go out after the first waves of refunds have been distributed, should the total refund amount not be expended.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Davis, to approve a second refund process for the Fund 101 Impact Fee refunds following the completion of the first refund cycle, if the total refund amount was not refunded as a result of the first refund process.

Vice Chairman O’Bryan stated he would support the Motion provided the applicant could indicate a preference to have his or her refund applied to the A1A/17th Street Project.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Commissioner Davis, to provide a check-off box on the application for the refund recipient to opt to apply his or her refund to the A1A/17th Street Project.

A brief discussion ensued about the timing of the second round of mailings.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved: (1) a second refund process for the Fund 101 Impact Fee refunds, if the total refund amount is not fully refunded to eligible owners as a result of the first refund process; and (2) to provide a check-off box on the application for the refund recipient to opt to apply his/her refund to the A1A/17th Street Project.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM BOB DEES, GROVE ISLE CONDOMINIUM ASSOCIATION, REGARDING NOISE REDUCTION WALL ON US1 AT GROVE ISLE CONDOMINIUMS (LEGISLATIVE) - DELETED

(Clerk's Note: The request to speak from Bob Dees was deleted; however, the request to speak from Brian Carman was approved and heard as Item 10.B.1.)

10.B.1. REQUEST TO SPEAK FROM BRIAN CARMAN ON THE AGRICULTURAL ADVISORY COMMITTEE CHAIRMANSHIP - ADDITION

(Clerk's Note: This item was heard following Item 8.H. and is placed here for continuity).

Brian Carman, speaking on behalf of the Indian River Neighborhood Association, endorsed the appointment of Bob Adair as the Chairman of the Agricultural Advisory Committee for an additional one-year period for the 2012-2013 term.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING MARCH 6, 2012

**TO APPROVE PROVIDING WATER SERVICE TO SHADY ACRES SUBDIVISION, ALONG
24TH AVENUE NORTH OF 10TH STREET (LEGISLATIVE)**

10.C.2. NOTICE OF SCHEDULED PUBLIC HEARING MARCH 6, 2012

**PUBLIC HEARING ON ADOPTING THE UPDATED AND AMENDED FLORIDA BUILDING
CODE (LEGISLATIVE)**

County Attorney S. Polackwich, Sr. read the notices into the record.

The Chairman called a recess at 10:04 a.m. and reconvened the meeting at 10:16 a.m., with all members present.

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

12.G.1. QUARTERLY BUDGET REPORT

Jason Brown, Director of Management and Budget, provided an overview of the County's financial health by reviewing the Quarterly Budget Report for the First Quarter of Fiscal Year 2011-2012 (copy on file). He presented a comparison of taxing fund revenues and expenses for the current and previous fiscal years; a profit and loss analysis; and a budget-to-actual revenue comparison of all department funds year-to-date. He explained that Medicaid expenses were over the quarterly budgeted amounts because the State, due to its faulty billing system, was back billing the County for old bills that were not properly processed. Among positive economic indicators, he reported that Tourist Tax and Shooting Range revenues were up substantially.

A brief discussion ensued about the possibility of using the tourist tax dollars to supplement other funds.

County Administrator Joseph Baird explained that tourist tax revenues were restricted to the promotion of the tourist industry.

Commissioner Davis wanted to know when the shooting range could operate again as an Enterprise Fund.

Administrator Baird advised that the shooting range would probably be operated as an Enterprise Fund after the completion of the sporting clays course.

Vice Chairman O'Bryan mentioned that the Florida Association of Counties (FAC) reported that the County has an estimated \$1 million of Medicaid liabilities, and wanted to know what the County is doing to challenge the State.

Attorney Polackwich responded that the Florida Association of Counties (FAC) is trying to have the Governor veto House Bill 5301 (HB 5301) *Health Care Services*.

Director Brown explained that HB 5301 seeks to absolve the State of any responsibility and leave the County with no recourse, because if the County does not pay the back billing amounts, the State will reduce the portion of the sales tax it shares with counties through the one-half cent sales tax sharing program.

No Board Action Required or Taken

12.H. RECREATION - NONE

12.I. PUBLIC WORKS - NONE

12.J. UTILITIES SERVICES

12.J.1. WORK ORDER NO. 2 – MOIA, BOWLES, VILLMIZAR & ASSOCIATES (MBV) SOUTH COUNTY RO FACILITY OPERATING SYSTEM SOFTWARE UPGRADE

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved Work Order No. 2 to MBV Engineering, Inc., in the amount of \$7,950.00, as recommended in the memorandum of February 6, 2012.

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

**12.J.2. UPDATE TO ORDINANCE NO. 2007-013 INDUSTRIAL PRETREATMENT PROGRAM
(IPP) ORDINANCE**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the Public Hearing date of March 13, 2012, for an amendment to the Industrial Pretreatment Program Ordinance 2007-13, and authorized staff to advertise for the public hearing, as recommended in the memorandum of February 14, 2012.

13. COUNTY ATTORNEY MATTERS

13.A. AMENDMENT TO SIX YEAR IMPACT FEE REFUND ORDINANCE

County Attorney Alan S. Polackwich, Sr., provided background on the Board's decision to amend Section 1000.15 *Refund of Fees Paid* of County Code, Chapter 1000, *Impact Fees - Purpose and Intent*, to establish a procedure for refunding impact fees not encumbered or spent within six years. He stated that on January 17, 2012, the Board directed him to report back on several issues related to the revised impact fee ordinance, and additional issues posed by County Administrative and Clerk of Court staff (the latter administer the impact fee refund process). For Issue I, Coupling and Decoupling Interest, he stated that both systems are legally defensible and would be at the Board's discretion. He reported that the Clerk pays simple interest at the Federal Funds interest rate, but Ordinance 2005-015 has provided for interest at the rate earned by the County (normally higher) on the impact fee funds. He explained that it would be an arduous process to convert all existing funds to coupled interest and the refund differential is small between coupled (compound) and decoupled (simple) interest; and that County and Clerk of Court staff recommend using the Federal Funds as the interest rate.

Commissioner Solari stated that coupling the interest might be “more squeeze than juice” and going with the higher rate of interest earned by the County would make up for the bit of interest that would be lost by keeping the decoupled interest.

MOTION WAS MADE by Commissioner Solari,
SECONDED by Commissioner Flescher, for the County
to disburse the impact fee refunds with decoupled (simple)
interest at the rate earned by the County on the funds.

Commissioner Davis opposed the Motion, and asserted that the County should make a one-time expenditure to get the software adjustment and begin issuing the refunds with the coupled interest.

Chairman Wheeler observed that the interest differential seemed miniscule for the amount of work and expense for the Clerk/County to convert to and administer a coupled interest system.

Administrator Baird recommended retaining the current method of decoupling interest.

Vice Chairman O’Bryan noted that the impact fees do not cover the complete costs for the infrastructure projects, and felt it was necessary to put the accumulated interest towards those costs. He foresaw that if all the interest is returned, impact fees would need to be raised.

Charlie Wilson observed that the Board’s focus today was on simple and compound interest, but the problem in Fund 101 was that the interest was decoupled from the principal, and 15 years later, the County started spending the interest.

Clerk of Circuit and Comptroller Jeffrey K. Barton expressed willingness to comply with the Board’s wishes; however, he advised that handling the impact fee accounts differently would require additional manpower and costs.

Director Brown discussed the intricacies involved in accounting for coupled interest. He also noted that the economic downturn has resulted in the County not spending a lot of the impact fees on projects, and he did not anticipate large accumulations of interest moving forward.

Mr. Zorc suggested using as the interest rate for the impact fee refunds, a weighted blended average of the short term/long term interest rates earned by the County.

Mr. Barton responded to Mr. Zorc's suggestion with details about the Clerk's investment practices.

Mr. Wilson asserted that the only other change the County needs to make, besides addressing the Fund 101 issues, is to establish the notification process for individuals entitled to an impact fee refund. He noted that the County's decision to separate and use the impact fees first and the interest later was an administrative decision that can be changed without an ordinance.

Commissioner Davis wanted to know whether the County is going to expend the principal and interest in the same year, and if not, if the refunds will be disbursed with the principal and interest after six years.

Finance Director Diane Bernardo affirmed that staff has a means for refunding the interest; the difficulty lies with coupling the interest. She advised that Director Brown undertook a test case converting one month's worth of Parks and Recreation impact fees to coupled interest and the process had taken 20 hours.

Director Brown referring to a 77-page spreadsheet he had compiled, provided an overview of the layers involved in converting one month of the Parks and Recreation impact fees to coupled interest.

Administrator Baird recommended that the Board follow the advice of the Clerk's office, because they would be administering the new policy.

Ms. Robertson felt that spending the interest associated with a particular impact fee payment would allow more refunds to be distributed.

Commissioner Solari said he wanted to table this issue indefinitely.

Commissioner Flescher withdrew his second to Commissioner Solari's Motion.

(Clerk's Note: Vice Chairman O'Bryan later seconded this Motion and it was put back on the table).

Commissioner Davis recapped that the County needs to decide whether to allocate compound or simple interest with the impact fee refunds; and if the interest associated with a particular impact fee payment should be expended at the same time as the principal.

Discussion continued, with input from Attorney Polackwich, about issues related to coupling the interest and principal linked to a particular impact fee payment.

Ms. Bernardo elaborated on the complexities of breaking down and tracking the interest, determining who gets the refunds, and other issues associated with coupling the interest.

Vice Chairman O'Bryan advocated refunding the impact fee amounts plus interest calculated with the rough average interest earned by the County. He pointed out that there would always be an accumulation of interest from the impact fees that had been expended, but did not foresee a large amount of accrued interest such as occurred with Fund 101.

Commissioner Davis wanted to know if the principal and interest on a particular impact fee account was going to be zeroed out on a quarterly or annual basis.

Attorney Polackwich suggested treating the accumulated interest at the end of the fiscal year as a single deposit into that same impact fee account for the following fiscal year.

Director Brown voiced support for Attorney Polackwich's suggestion.

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Wheeler, the Board unanimously approved for the County to handle the accumulated interest earned in an impact fee account during the fiscal year to be treated as a single deposit into that same account on the first day of the next fiscal year, to be encumbered or spent on a first in – first out basis, along with the impact fees.

The Chairman called a recess at 12:17 p.m. and reconvened the meeting at 12:25 p.m., with all members present.

Attorney Polackwich reminded Board members that a decision was still pending regarding the distribution of interest that would accompany the impact fee refunds.

Vice Chairman O'Bryan stated that he would provide a second to Commissioner Solari's original Motion.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman O'Bryan, for the County to disburse the impact fee refunds with interest earned at the same rate as the County on the funds.

There was no further discussion.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved for the County to disburse the impact fee refunds with interest earned at the same rate as the County on the funds.

Attorney Polackwich presented and provided analysis on Issue II, Rationale/Criteria for Optional Three Year Extension to Encumber or Spend Fees. He reported that due to the economy, the State has granted approval extensions to many developments, and confirmed that there is a legal basis for extending the fees, because the timing of the infrastructure projects would better coincide with the timing of actual development.

Director Keating, responding to Commissioner Davis's questions, provided information about three recent instances where the State has extended development approvals.

Mr. Wilson outlined his reasons for opposing the three-year extension.

Administrator Baird affirmed that the three-year extension was necessary in order to construct some of the projects needed to accommodate growth.

Commissioner Solari believed it was unfair to hold onto a homeowner's impact fee payment for an additional three years, when they have not and may never derive the benefit associated with the fee. He stated he would definitely not support the option extension for payments that were already in the system.

Vice Chairman O'Bryan remarked that extending the refund period would make it more likely that the County would have the funds needed to construct the infrastructure improvements. He believed the people are owed a level of service, and pointed out that a lot of the refunds would be going to investors or banks that had purchased foreclosure properties.

Commissioner Davis was opposed to the optional three year extension.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Solari, to DENY the optional three-year extension of the six-year period to encumber or spend impact fees.

Chairman Wheeler agreed with Vice Chairman O'Bryan that the funds are there to improve the community, and wanted to see the money used for its original purpose.

Commissioner Flescher supported the optional three-year extension. He noted that the needs of the community do not disappear because the County has been unable to construct the projects in six years.

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

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Wheeler, by a 3-2 vote (Commissioners Davis and Solari opposed), the Board approved the optional three-year extension to encumber or spend fees as per Item II under County Attorney matters.

Attorney Polackwich brought before the Board Issue III. Should the Optional Three-Year Extension Apply to Impact Fees Currently Held by the County, or Only to Fees Collected in the Future. He explained that currently, the County holds impact fees in two categories, fees for which the six-year period has passed and other fees currently being held for which the six years has not passed. He stated that the extension option could not be applied to fees for which

the six years has passed; however, he believed that the County could apply to the other fees currently being held for which the six years has not passed. He advised that the Board could also choose to apply the extension only to fees collected after the adoption of the revised ordinance.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Solari, to apply the three-year extension option only to impact fees paid subsequent to the date of adoption of the final Ordinance.

Commissioner Solari stated that the County made a promise to the homeowner that it would deliver improvements in the six-year period or return the money.

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

Chairman Wheeler said it is the County's responsibility to prepare for growth.

Commissioner Solari commented that there was nothing that has kept the County from spending the money and preparing for the growth.

Vice Chairman O'Bryan added that some of the delays in building infrastructure have been because of the expense of manning and maintaining the facilities. He stressed that the County has an obligation to provide the services or improvements necessary for future growth.

MOTION WAS MADE by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, to approve a three-year extension of the six-year time period in which the impact fees may be spent or encumbered, for the

impact fees currently being held which have not passed the six-year refund period.

Commissioner Davis was opposed to retaining the homeowners' money for an additional three-year period.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Davis and Solari opposed), the Motion carried. The Board approved a three year extension of the six-year time period in which the impact fees may be spent or encumbered, for the impact fees currently being held which have not passed the six-year refund period.

Attorney Polackwich continued with Issue IV. Should the Three-Year Optional Extension Apply to All Impact Fees or Just Traffic Impact Fees. He provided his recommendation to apply the extension to all of the impact fee funds.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Vice Chairman O'Bryan, to apply the three-year extension option for the impact fees to all impact fee funds.

Vice Chairman O'Bryan clarified with Attorney Polackwich that the three year extension is an option that may be applied to one or more specific impact fee funds, not a blanket extension for all of the impact fee funds.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Davis and Solari opposed), the Motion carried. The Board approved to apply the three

year extension option for the impact fees to all impact fee funds.

Attorney Polackwich presented Issue V. What is the Exact Date on Which Ownership is Determined if the Refund is to be Made to the Current Owner. He explained his recommendation to establish property ownership on the first day following the last day of the six-year impact fee refund period.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Davis, the Board unanimously approved to set the date to determine property ownership of impact fee refund recipients as the first day following the expiration of the six-year refund period for a certain impact fee fund.

Attorney Polackwich noted that the revised ordinance will state that any individual who gets an impact fee refund for a project that has not been constructed will be charged a new impact fee if the project is developed in the future.

Mr. Wilson mentioned that the original proposal for the revised impact fee ordinance had reduced the time period for the application process for a refund from one year to four months. He stressed that the application process may take as long as one year to complete.

Attorney Polackwich explained that the one-year period was instigated when the owner was getting no notice; the application period was shortened because the property owners would now be receiving a notice of refund eligibility. However, he stated that the final ordinance might extend the time period for completion of the refund process to six months.

Chairman Wheeler wanted to know what would be the drawback to allowing one year, instead of four or six months, for the refund process.

Commissioner Davis declared that he did not see any problems.

Attorney Polackwich replied that he would talk to staff and reminded the Board that there would also be two notices mailed out.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Solari, to grant impact fee refund recipients one year to complete their application process.

Chairman Wheeler inquired again whether there was a downside.

Attorney Polackwich checked with Director Brown who affirmed he had no problem with the suggested time period for the application process.

The Chairman CALLED THE QUESTION, and the Motion carried. The Board unanimously approved to grant impact fee refund recipients one year to complete their application process.

Concluding the discussion on this item, Attorney Polackwich explained the Clerk's recommendation to issue separate refund checks for joint owners who are not married, unless a single check is requested.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, the Board unanimously approved the Clerk's recommendation for the County to issue separate refund checks for joint owners who are not married, unless a single check is requested.

13.B. ELECTRIC FRANCHISE WITH THE CITY OF VERO BEACH

Attorney Polackwich reported that the County's franchise agreement with the City of Vero Beach (the City) for the provision of electric service in certain unincorporated areas of the County is set to expire in January 2017. He conveyed that pursuant to Resolution 87-12 (the authorizing Resolution), the County must indicate a desire to negotiate a renewal by advising the City five (5) years prior to the expiration date, which would be now, and he was seeking Board direction. He summarized three options: (1) send no notice; (2) send a notice that the County does not desire to renew; or (3) send a notice indicating a desire to renew with stipulations, noting that ultimately the Public Service Commission (PSC) is the only agency who determines the service areas for electricity. Attorney Polackwich mentioned that the 6% franchise fee the City pays for the use of the County's rights-of-way, might factor into the Board's decision.

Discussion ensued, with input from Administrator Baird, about the revenues generated by the 6% franchise fee paid by the City.

Attorney Polackwich, responding to Chairman Wheeler's inquiry, explained what it would take for the PSC to change the service areas, which were established in a 1981 agreement between Florida Power and Light (FPL) and the City, and which included certain unincorporated areas of the County within the City's electric service areas.

J. Rock Tonkel, Grand Harbor, opined that the 6% franchise fee would have to be paid by whatever electric service provider assumes electric service for the unincorporated areas under discussion. He advocated that the County advocate to PSC for fair rates for the 18,000 rate payers currently receiving electric service from the City.

Attorney Polackwich agreed with Mr. Tonkel that if another provider, such as FPL, acquires the City's electric utility, the County would receive from them the 6% franchise fee. He also clarified that his recommendation was for the Board to only consider renewing its franchise

with the City if all other avenues fail, because if there is no franchise at that point, it is uncertain whether the City would continue paying the franchise fee.

Commissioner Solari pointed out that the County did not have to renew the current franchise agreement; if the other options did not work out, the County could enter into a new franchise agreement with the City.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Wheeler, to direct the County Attorney to send a letter to the City of Vero Beach advising that the County does not desire to renew the existing franchise agreement between the County and the City for the provision of electric service in certain unincorporated areas of the County.

Vice Chairman O'Bryan inquired as to the extent of the PSC's authority with regards to the territorial agreement for the electric service.

Attorney Polackwich explained that ultimately, the PSC controls the territories.

The Board, with input from Attorney Polackwich and Mr. Tonkel, discussed whether the County should begin discussions with the PSC for the desired service territory. The Board consensus was to wait until negotiations between the City and FPL have been concluded.

Vice Chairman O'Bryan advocated retaining the option of renewing the County's franchise with the City should the other options fail, because otherwise, the City could contend that the PSC grants them the service territory and refuse to pay the franchise fee.

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

carried. The Board directed the County Attorney to send a letter to the City of Vero Beach advising that the County does not desire to renew the existing franchise agreement between the County and the City for the provision of electric service in certain unincorporated areas of the County.

13.C. STIPULATED FINAL JUDGMENT WITH WILLIAM E. RUTZ, TRUSTEE OF THE MARY ALGENE RUTZ TRUST – OSLO ROAD IMPROVEMENT PROJECT

Deputy County Attorney William DeBraal provided description and conditions regarding the County's acquisition through eminent domain of the old Cumberland Farms site for the Oslo Road Improvement Project. He explained that the purchase had included a 30' easement owned by a third party, William E. Rutz, Trustee of the Mary Algene Rutz Trust, and as negotiations with Cumberland Farms have concluded, Mr. Rutz was left as the sole defendant in the lawsuit. He thereafter provided staff's recommendation to return the easement to the Rutz family for ingress and egress, and to pay their final expert witness costs of \$28,625, in full and final satisfaction of all matters in this case.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously: (1) approved the Stipulated Final Judgment with the Mary Algene Rutz Trust; (2) authorized the Chairman to execute an easement ingress and egress in favor of Rutz; and (3) approved the payment of fees to the attorneys and experts, as recommended in the memorandum of February 15, 2012.

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

14.C.1. MODIFY RESOLUTION 2003-125 ESTABLISHING THE AGRICULTURE ADVISORY COMMITTEE

ON MOTION by Commissioner Davis, SECONDED by Vice Chairman O'Bryan, the Board unanimously authorized the County Attorney to prepare **Resolution 2012-014**, amending Section 7, General Provisions, of Resolution 2003-125 to allow the Chair of the Agricultural Advisory Committee to serve for an additional one year for the 2012-2013 term.

14.D. COMMISSIONER JOSEPH E. FLESCHER - NONE

14.E. COMMISSIONER BOB SOLARI - NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT

The Chairman announced that immediately upon adjournment, 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 – MEETING OF DECEMBER 6, 2011

15.A.2. APPROVAL OF MINUTES – MEETING OF DECEMBER 20, 2011

**15.A.3. APPROVAL TO PURCHASE (1) INTERNATIONAL TYPE I MEDIUM DUTY AMBULANCE
FROM ETR**

**15.A.4. APPROVAL TO ADD TWO (2) LP-15 CARDIAC MONITORS TO EXISTING SERVICE
AGREEMENT FOR FIRE RESCUE DIVISION FROM MEDTRONIC EMERGENCY RESPONSE
SYSTEMS**

15.B. SOLID WASTE DISPOSAL DISTRICT

The Chairman announced that immediately upon adjournment of the 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. APPROVAL OF MINUTES – MEETING OF DECEMBER 13, 2011

15.B.2. APPROVAL OF MINUTES – MEETING OF DECEMBER 20, 2011

**15.B.3. WORK ORDER NO. 3 TO GEOSYNTEC TO PROVIDE CONSTRUCTION SERVICES FOR THE
LANDFILL GAS FLARE RELOCATION 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 Chairman declared the meeting adjourned at 1:59 p.m.

ATTEST:

Jeffrey K. Barton
Clerk of Circuit Court and Comptroller

Gary C. Wheeler, Chairman

Minutes Approved: _____
BCC/MG/2012 Minutes