

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

MARCH 13, 2012

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JEFFREY K. BARTON

Clerk to the Board



March 13, 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, March 13, 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

Pastor Kellie Tipton, Central Assembly of God, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Alan S. Polackwich, Sr. led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS
- ADDITION

Chairman Wheeler requested the following change to the Agenda:

ADD: ITEM 14A. DISCUSSION BY CHAIRMAN WHEELER REGARDING HOUSE BILL 5301
MEDICAID SERVICES

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

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF VIDEO TOUR OF INDIAN RIVER COUNTY BY SCOTT JOHNSON, INDIAN RIVER COUNTY WEBMASTER.

Scott Johnson, Computer Services, recalled the Board's decision on May 3, 2011, to participate in the County Movie Showcase Program through an agreement with CGI Communications. Mr. Johnson reported that there are currently 10 different video tours of the County on the website and played one entitled "The Quality of Life". He extended kudos to Dori Roy, Assistant to County Administrator, for her meticulous editing of the video and scripts.

Vice Chairman O'Bryan pointed out that bordering the videos are advertisements and direct links to local businesses.

6. APPROVAL OF MINUTES - NONE

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

8. CONSENT AGENDA

Vice Chairman O'Bryan requested to pull Item 8.D., 8.E., 8.F., and 8.G. from the Consent Agenda for discussion.

Commissioner Solari requested to pull Item 8.J. for discussion.

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

8.A. APPROVAL OF WARRANTS AND WIRES – FEBRUARY 24, 2012 TO MARCH 1, 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 February 24, 2012 to March 1, 2012, as requested in the memorandum of March 1, 2012.

**8.B. OUT OF COUNTY TRAVEL TO ATTEND THE 2012 FLORIDA ASSOCIATION
OF COUNTIES ANNUAL CONFERENCE AND EDUCATIONAL EXPOSITION**

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 Annual Conference and Educational Exposition in Orlando, Florida from June 19 through June 22, 2012, as requested in the memorandum of March 1, 2012.

**8.C. APPROVAL OF RENEWAL FOR A CLASS "A" CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR INDIAN RIVER SHORES DEPARTMENT
OF PUBLIC SAFETY**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved renewal of the Class "A" Certificate of Public Convenience and Necessity for Indian River Shores Department of Public Safety, to be effective for a period of two (2) years from April 15, 2012 to April 15, 2014, as recommended in the memorandum of March 2, 2012.

**8.D. TRANSFER OF OWNERSHIP FOR A CLASS “B” CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR AMERICAN AMBULANCE SERVICES
INC.**

Vice Chairman O’Bryan noted that American Ambulance Services, Inc.; All County Ambulance, Inc.; and All County Ambulance, Inc., DBA Medical Transportation Specialist (MTS), are selling their non-emergency ambulance services to new owners. He wanted to know if prices will remain competitive or if the new owners will now have a monopoly for this type of transportation.

Brian Burkeen, Emergency Services Chief, described the price structuring for the non-emergency ambulance services and advised that there is not a monopoly; there are two additional companies providing non-emergency ambulance transport, We Care of the Treasure Coast and Coastal Health Systems of Brevard.

ON MOTION by Vice Chairman O’Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved a transfer of the Class “B” Certificate of Public Convenience and Necessity to the new principal owners, Falck Southeast II, Corp., of American Ambulance Services Inc., to be effective for a period of two (2) years from March 13, 2012 to March 13, 2014, as recommended in the memorandum of March 5, 2012.

**8.E. TRANSFER OF OWNERSHIP FOR A CLASS “B” CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR ALL COUNTY AMBULANCE INC**

(Clerk’s Note: Discussion on this item occurred under Item 8.D.)

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved a transfer of the Class "B" Certificate of Public Convenience and Necessity to the new principal owners, Falck Southeast II, Corp. of All County Ambulance Inc., to be effective for a period of two (2) years from March 13, 2012 to March 13, 2014, as recommended in the memorandum of March 5, 2012.

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

8.F. TRANSFER OF OWNERSHIP FOR A CLASS "E" CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AMERICAN AMBULANCE SERVICES INC.

(Clerk's Note: Discussion on this item occurred under Item 8.D.)

ON MOTION BY Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved a transfer of the Class "E" Certificate of Public Convenience and Necessity to the new principal owners, Falck Southeast II, Corp., of American Ambulance Services, Inc., to be effective for a period of two (2) years from March 13, 2012 to March 13, 2014, as recommended in the memorandum of March 5, 2012.

**8.G. TRANSFER OF OWNERSHIP FOR A CLASS “E” CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR ALL COUNTY AMBULANCE INC. DBA
MEDICAL TRANSPORTATION SPECIALIST (MTS)**

(Clerk’s Note: Discussion on this item occurred under Item 8.D.)

ON MOTION BY Vice Chairman O’Bryan, SECONDED by Commissioner Flescher, the Board unanimously approved a transfer of the Class “E” Certificate of Public Convenience and Necessity to the new principal owners, Falck Southeast II, Corp. of All County Ambulance Inc. d/b/a MTS, to be effective for a period of two (2) years from March 13, 2012 to March 13, 2014, as recommended in the memorandum of March 5, 2012.

**8.H. FINAL PAY TO MELVIN BUSH CONSTRUCTION COMPANY FOR SR60
PHASE 3 CONFLICT RESOLUTION IMPROVEMENTS**

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved: (1) the total amount for construction of \$4,705.80; and (2) Pay Request No. 1 Final with Melvin Bush Construction, Inc., for \$4,705.80, as presented and recommended in the memorandum of March 5, 2012.

8.I. REQUEST FOR APPROVAL OF A LIST OF PRE-QUALIFIED HOUSING INSPECTORS / CONTRACTORS TO PERFORM HOUSING PROGRAM INSPECTION SERVICES

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved: (1) the Selection Committee's list of pre-qualified building inspectors/contractors for housing program inspection services, as follows: ALMM, LLC; MyLicensedRoofer, LLC (McAlhany Construction); Schulke, Bittle and Stoddard, LLC; and Universal Engineering Sciences, Inc.; (2) authorized the Chairman to execute the agreements with building inspectors and contractors when each agreement is found sufficient by the County Attorney's office; and (3) authorized the Community Development Director or his designee to solicit bids for each inspection job, execute work orders, and manage the process, all as recommended in the memorandum of March 5, 2012.

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

8.J. CONSIDERATION OF REVISIONS TO THE CURRENT AND PROPOSED INDIAN RIVER COUNTY LOCAL HOUSING ASSISTANCE PLAN

Commissioner Solari asked staff to elaborate on this item.

Community Development Director Bob Keating stated that the revised Indian River County Local Housing Assistance Plan (LHAPlan) will allow the County to provide State Housing Initiatives Partnership Program (SHIP) loans in conjunction with Community Development Block Grant (CDBG Funds) and that SHIP funds would be used in the West

Wabasso Sewer Project. He stated that the LHAPlan previously had a ten (10) year forgiveness allowance for CDB- related SHIP loans and the proposed modifications would allow those loans to be forgiven in five (5) years, or if the owner dies, whichever comes first. He thereafter supplied additional statistics on the SHIP funds.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2012-019**, approving the County's revised Local Housing Assistance Plan.

8.K. REQUEST FOR THE BOARD OF COUNTY COMMISSIONERS TO ENTER INTO A PUBLIC TRANSPORTATION SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT (SJPA) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved **Resolution 2012-020**, authorizing the execution of a Public Transportation Supplemental Joint Participation Agreement with the Florida Department of Transportation.

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

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. CONSIDERATION OF ORDINANCE TO TEMPORARILY SUSPEND IMPOSITION OF THREE IMPACT FEES FOR TWO YEARS

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 10.B.1. Public Discussion and is placed here for continuity)

Community Development Director Robert Keating recalled the Board's discussion and subsequent authorization at the February 7, 2012 County Commission meeting, for staff to advertise for a public hearing to extend from April 1, 2012 to March 31, 2014, the temporary impact fee suspensions for three of the County's nine impact fees - Public Buildings, Correctional Facilities, and Solid Waste Facilities. He stated that although there were no significant increases in building activity, it would not be detrimental to continue temporarily suspending the three impact fees for two more years. He thereafter presented staff's recommendation to adopt the proposed ordinance to suspend the three impact fees for an additional two-year period.

The Chairman opened the Public Hearing.

Vice Mayor Don Wright, City of Sebastian, presented a handout (copy on file) to the Commissioners, containing a letter from Sebastian's City Manager Al Minner, asking the Board to accept the City Council's recommendation for the Board to suspend all impact fees in order to enhance economic development. Mr. Minner cited examples of several local businesses that were negatively impacted by the fees, and contended that the assessment was deterring business

development in the County. Vice Mayor Wright thereafter advised that he was addressing the Board as a citizen, not as a City Council Member, with his recommendation to support transportation projects through an increase in gas taxes.

Brian Carman, representing the Indian River Neighborhood Association (IRNA), advocated the extension of the temporary suspension of the three impact fees, as proposed by staff.

Renee Renzi, Waverly Place, declared that impact fees were adopted during an economic boom which has subsided. She agreed with Vice Mayor Don Wright that all of the fees should be eliminated and supported an increase in the gas tax.

Commissioner Solari observed that a gas tax was a regressive tax that would affect disadvantaged citizens more than others.

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

MOTION WAS MADE by Commissioner Davis, to eliminate all impact fees. There was no second and the Motion DIED.

Commissioner Solari suggested that the County find out if the municipalities would like to abolish all of the impact fees before contemplating their elimination.

Discussion ensued regarding whether the municipalities could opt out of impact fee assessments.

Director Keating advised that there has to be a valid public purpose for a local government to be released from the Impact Fee Interlocal Agreement, and it is a legal issue

which has not yet been fully explored. He also noted that the impacts produced by development extend way beyond municipal boundaries

County Administrator Joseph Baird added that the County is responsible for providing governmental services and buildings for the municipalities.

In response to questions from Chairman Wheeler, Director Keating provided a brief history of residential impact fee rates, and Director of Management & Budget Jason Brown provided details on the County's overall property taxes and millage rates.

Chairman Wheeler advocated retaining the impact fees so growth will pay for itself, and property taxes will not have to be increased.

MOTION WAS MADE by Commissioner Davis, to direct the County Attorney to explore the ability of individual municipalities to opt out of the impact fee assessments. MOTION DIED for a lack of a Second.

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Wheeler, by a 4-1 vote (Commissioner Solari opposed), the Board adopted **Ordinance 2012-003**, amending Title X, Impact Fees, of the code of Indian River County to amend Code Section 1000.06 "Imposition" to provide an exception temporarily suspending for two years the imposition of impact fees for Public Buildings, Correctional Facilities, and Solid Waste Facilities; and providing for codification; severability; and effective date.

**10.A.2. FINAL CONSIDERATION AND ADOPTION OF SIX YEAR REFUND
ORDINANCE**

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

Attorney Polackwich recapped his memorandum of March 6, 2012 to present background and analysis regarding a proposed final ordinance relating to refunds of impact fees that are not spent or encumbered within six years. He explained that although impact fee Ordinances 86-014 and 2005-015 had included the refund provision, there was no requirement for the County to provide notice to the fee payer (1986-2005) or current property owner (2005 to present). He outlined several key components of the final Ordinance: (1) for funds collected by the municipalities, the County will treat the date “in” as the date the fee was paid; (2) the interest that accumulates will be treated as a single deposit into the same impact fee fund on the first day of the next fiscal year; (3) property owners will be given 180 days from the date of the first notice to apply for a refund and 60 days thereafter to correct any problems in the application; and (4) an option has been included (with associated criteria) to extend the baseline refund period from six to nine years for one or more specific impact fees.

The Chairman opened the Public Hearing.

(Clerk's Note: Commissioner Davis exited the meeting at 10:56 a.m. and returned at 10:58 a.m.)

Charlie Wilson outlined aspects of the proposed ordinance that he objected to, and questioned why it was necessary to have an ordinance to effect the notification process when staff could simply be directed to provide the notice. He was also opposed to the reduction of the application period from one year to six months, and the optional extension of the refund period from the baseline six years to nine years.

Chairman Wheeler and Administrator Baird spoke to the importance of having the impact fee refund changes be made through the Ordinance, and not just administratively.

Vice Chairman O'Bryan defended the need to retain the three-year extension option as a way for the County to fulfill its obligation to accommodate growth and maintain the area's quality of life.

The Chairman called a recess at 11:14 a.m. and reconvened the meeting at 11:22 a.m., with all members present.

Tim Zorc, 7658 South Polo Grounds Lane, made observations about the various categories of impact fee refunds. He stated he was opposed to the optional extensions, but if the Board approved any, he wanted to make sure clear reasons were given as to why the project needs an extension. He also suggested that the County meet the notice requirement by filing a public notice in the newspaper.

Chairman Wheeler declared that mailing the refund eligibility notices would be the best and most proper way to inform the refund recipients.

Discussion ensued between Commissioners and Mr. Zorc, with input from Attorney Polackwich and Administrator Baird, regarding the process that would be used by the Board to effect an extension of an impact fee refund; the necessity for the affidavit attesting to property ownership; whether the extensions would be blanket or done by individual account; and what date the Ordinance would go into effect.

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

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

Commissioner Solari provided several quotes from F.A. Hayek's *The Road to Serfdom*, on the Rule of Law (see below) to support his position that the impact fee extensions would be an example of an ex post facto law, which is unconstitutional.

Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of **the great principles** known as the Rule of Law. Stripped of all technicalities, this means that government in all its actions is bound by rules fixed **and announced beforehand** – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge.
(F. A. Hayek, *The Road to Serfdom*, p.80)

The Rule of Law thus implies **limits to the scope of legislation**: it restricts it to the kind of general rules known as formal law and excludes legislation either directly aimed at particular people or at enabling anybody to use the coercive power of the state for the purpose of such discrimination. It means, not that everything is regulated by law, but, **on the contrary**, that the coercive power of the state can be used only in cases **defined by law in advance** and in such a way that it can be foreseen how it can be used.
(F. A. Hayek, *The Road to Serfdom*, p.92)

By giving the government unlimited powers, the most arbitrary rule can be made legal: and in this way a democracy may set up the most complete despotism imaginable.
(F. A. Hayek, *The Road to Serfdom*, p.91)

Vice Chairman O'Bryan was concerned that if the County was forced to accelerate infrastructure improvements because of growth, without the impact fee funds, taxes would have to be raised.

Commissioner Solari maintained that prior to the institution of the impact fees, the County was able to provide needed services.

Commissioner Flescher spoke in favor of the three-year extension option as a means for the County to deliver the infrastructure that is needed.

Commissioner Davis was not in favor of making any impact fee refund extensions retroactive. He stated that he would consider including the optional three-year extension if the fee payers are advised up front about the possibility of an extension.

Chairman Wheeler opined that the only justification for an impact fee refund extension should be to coincide with Federal or State legislative extensions of development approvals. He wanted to eliminate from the draft Ordinance, Section 3 Subsections (2) (h) (ii); (iii); and (iv), which list additional reasons for warranting an extension.

MOTION WAS AMENDED by Commissioner Flescher, SECONDED by Chairman Wheeler, to adopt Ordinance **2012-004**, amended to apply Section 3 Subsection (2) (h) to impact fee payments commencing subsequent to adoption of this Ordinance, and not retroactively; and to delete Section 3, Subsections (2)(h)(ii); (2)(h)(iii); and (2)(h)(iv); amending Section 1000.15 of the code of Indian River County; establishing a procedure for refunding certain impact fees which are not encumbered or spent within specified time periods; establishing authority to extend the time period within which certain impact fees must be encumbered or spent; making findings and providing for severability and an effective date.

Administrator Baird asked the Board to keep in mind the County's goal of preserving the County's quality of life, and being able to provide the necessary services to accommodate growth when the developers come back.

Vice Chairman O'Bryan suggested having the optional extensions done by public hearing, instead of by Resolution.

Attorney Polackwich recommended having the extensions approved by Resolution following a public hearing.

MOTION WAS AMENDED by Commissioner Flescher, SECONDED by Chairman Wheeler, to authorize the Board to extend the six-year impact fee refund period for any impact fee category or categories for an additional three (3) years, by Resolution following a public hearing and applying only to those impact fees for which the six-year period has not yet expired.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Vice Chairman O'Bryan opposed), the Motion carried. The Board adopted **Ordinance 2012-004, AMENDED** to apply Section 3 Subsection (2)(h) to impact fee payments commencing subsequent to adoption of this Ordinance, and not retroactively; and to delete Section 3 Subsections (2)(h)(ii); (2)(h)(iii); and (2)(h)(iv); and to extend the six-year impact fee refund period for any impact fee category or categories for an additional three (3) years, by Resolution following a public hearing and applying only to those impact fees for which the six-year period has not yet expired, amending Section 1000.15 of the Code of Indian River County; establishing a procedure for refunding certain impact fees which are not encumbered or spent within specified time periods; establishing authority to extend the time period within which certain impact fees must be encumbered or spent;

making findings and providing for severability and an effective date.

10.A.3. CONTINUATION OF COUNTY INITIATED REQUEST TO AMEND CHAPTER 401 OF THE CODE OF INDIAN RIVER COUNTY TO ADOPT THE 2010 FLORIDA BUILDING CODE AND THE 2010 INDIAN RIVER COUNTY WIND SPEED MAP

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

County Building Official José Guanch recalled that on March 6, 2012, the Board adopted the Revised Indian River County Wind Speed Map, but requested a continuation of the public hearing relative to adoption of the Florida Building Code 2010 and Chapter 1, Model Administrative Code, Building Officials Association of Florida (BOAF). He observed that at the same meeting, the County Attorney was asked to explore the ramifications of not adopting the 2010 Building Code (see pages 158 and 159 of the agenda packet for analysis). He explained that regardless of its decision on the 2010 Building Code, the Board needs to adopt the BOAF Model Administrative Code because it contains essential provisions for the administration and operation of the Building Department, and for public safety. He thereafter presented staff's recommendation for the Board to adopt the proposed ordinance amending Chapter 401 of the Code of Indian River County, which references the latest editions of the BOAF Model Administrative Code and the Florida Building Code, as well as the revised Wind Speed Map that was approved on March 6, 2012.

The Chairman opened the Public Hearing.

Bob Johnson, Coral Wind Subdivision, asked how the new Building Code would impact new County buildings and screens that homeowners have had repaired or built during the last storms.

A brief discussion ensued among Commissioners, Mr. Guanch, and Director Keating, as they addressed Mr. Johnson's questions.

Commissioner Davis wanted to know if the Board would be in compliance with State requirements if the verbiage in the proposed Ordinance under Section 401.01, is amended where it currently reads, "...the editions set forth in the Florida Statutes shall apply: Florida Building Code, **2004 Edition**, less and except Chapter 1, Administration; and Chapter 1, Model Administrative Code **2004**, Building Officials Association of Florida, to read instead "...the editions set forth in the Florida Statutes shall apply: the latest edition of the Florida Building Code, 2004 Edition, less and except Chapter 1, Administration; and the latest edition of Chapter 1, Model Administrative Code **2004**, Building Officials Association of Florida.

Attorney Polackwich advised that the amendments suggested by Commissioner Davis were the ones that have been put into the revised Ordinance before the Board.

A brief discussion ensued, in response to questions from Mr. Johnson, regarding whether the new code would cause insurance rates to escalate.

John Colontrelle, General Manager, and **Mark Matakaetis**, Vice President, Barker Air Conditioning, reported that the new Building Code was adding to the costs of replacing an air conditioner, and making it unaffordable for many individuals. They explained that many of the extra costs were caused by the requirements for contractors to perform unnecessary Manual J Load calculations, and for people to repair leaking ductwork before replacing their air conditioners.

Commissioner Solari spoke to the health and safety problems being generated by these new requirements, where people are being priced out of replacing their air conditioners in the summer.

Mr. Colontrelle told Board Members that he had informed the Treasure Coast Air Conditioning Association about this issue, and would also talk to the Florida Air Conditioning Association.

Commissioner Davis told Messrs. Colontrelle and Matakaetis that the County would be meeting with the Legislative Delegation to discuss matters of concern, probably in November or December 2012, and he would let them know the date.

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

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

A brief discussion ensued wherein the Board expressed a desire to be kept apprised of changes in the Building Code before it becomes State law.

Mr. Guanch pointed out that it is difficult to know unless there is involvement at the State level.

Commissioner Solari declared that the County needs to be more involved as the State and Federal governments add layers of costs to government.

Commissioner Davis observed that the Treasure Coast Builders Association has lobby groups that ought to approach the Legislators about this matter.

Commissioner Solari added that the affordable housing groups in the community need to become involved, because the extra costs are going to affect programs like the Neighborhood Stabilization Program (NSP).

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner Solari opposed), the Board adopted **Ordinance 2012-005**, amending Indian River County Code Chapter 401, Building Codes, to adopt the updated 2010 Florida Building Code; providing for codification; providing for severability; and providing for an effective date.

The Chairman called a recess at 12:45 p.m., and reconvened the meeting at 12:54 p.m., with all members present.

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM MIKE DEGEORGE, PRESIDENT, AND SHERRI DAVIS, VICE PRESIDENT, TRILLIUM HOMEOWNERS' ASSOCIATION REGARDING THE 66TH AVENUE ROAD PROJECT

(Clerk's Note 1: This item was heard following 8.K. and is placed here for continuity.)

(Clerk's Note 2: At the conclusion this item, the Chairman called a recess at 9:59 a.m., and reconvened the meeting at 10:07 a.m., with all members present, at which time the meeting resumed with Items 10.A.1; 10.A.2; & 10.A.3. Public Hearings - above.)

Mike DeGeorge, 3115 Ashford Square, President, Trillium Homeowners' Association, presented the homeowners' request for the County to redesign the 66th Avenue Road Project such that the planned 46' median in front of Trillium would be narrowed to 18'. He aired concerns about safety, noise, and pollution, and advocated the County amend its plans to allow

for the smaller median, which would satisfy the residents and reduce County costs, because the current landscaping and sidewalk would be left intact.

Sherri Davis, Vice President, Trillium, gave a PowerPoint presentation (copy on file) to illustrate how the proposed median would have a detrimental impact on the residents at Trillium. She outlined safety concerns, stressing that shortening the driveway entrance to the gate from its current 182 feet to the proposed 80 feet would pose a significant traffic hazard. She also advocated that the County construct a designated right turn lane into the community, subject to homeowner approval (it would be on Trillium property.)

Public Works Director Chris Mora provided an aerial view of Trillium and the neighboring community, Vista Plantation, as he discussed the background history of the 66th Avenue Road Project and why Vista Plantation was allowed to have a narrower median than is proposed for Trillium. He explained that the Florida Department of Transportation (FDOT) is providing a \$5.7 million grant for the project; however, it must be underway by July 1, 2012, and he feared that redesigning the project might cause delays and the loss of FDOT funding.

Commissioner Flescher asked Director Mora whether it will become necessary for the County to add additional lanes to 66th Avenue in the future, and whether the redesign costs for the narrower median would be offset by the County not having to uproot the current sidewalk and landscaping.

Director Mora addressed Commissioner Flescher's queries and affirmed that the County wanted the flexibility to construct additional lanes on 66th Avenue should traffic volumes require it in the future. He emphasized that the main concern was not losing the FDOT grant due to delays caused by the redesign.

County Administrator Joseph Baird stressed that this is the second extension that the FDOT has granted the County for the 66th Avenue Road Project, which is a long-term plan to accommodate future growth.

A brief discussion ensued, with input from Ms. Davis, about the entrance into Trillium and how effective the right turn lane would be as a traffic calming measure.

Commissioner Davis voiced that the 66th Avenue Road Widening Project could be designed better and explained his concept for a redesign featuring two deceleration lanes, one of which would be the right turn lane previously discussed. However, he emphasized that he would not support a project redesign if it results in the loss of the FDOT grant.

Vice Chairman O'Bryan agreed with Commissioner Davis that if the project redesign causes the loss of the grant, he would not support it. However, he suggested that the County request that the State extend the funding.

Arjuna Weragoda, Project Engineer, provided input on how much of the median the County could give up for the redesign.

Mr. DeGeorge, responding to Vice Chairman O'Bryan's query, advised that the homeowners have not yet voted to give the County the right-of-way for a right turn lane.

Chairman Wheeler agreed with Commissioners Davis and O'Bryan that the redesign would be fine provided the FDOT extends the grant funding.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Flescher, to direct the County Administrator to send a letter to the Florida Department of Transportation requesting an extension of the grant funds for the 66th Avenue Widening Project, for the purpose of redesigning the median in front of the Trillium Community.

Commissioner Davis requested that the Trillium Homeowners Association provide a letter outlining their concerns for attachment to the County Administrator's letter to the FDOT.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board directed the County Administrator to send a letter to the Florida Department of Transportation requesting an extension of the grant funds for the 66th Avenue Road Widening Project, for the purpose of redesigning the median in front of the Trillium Community.

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARING APRIL 10, 2012:

A. ORCHID QUAY, LLC; TC PROPERTY VENTURE, LLC; AND WILLIAM HUNTER REQUEST: TO AMEND THE COMPREHENSIVE PLAN'S FUTURE LAND USE MAP TO REDESIGNATE ± 28.56 ACRES, LOCATED APPROXIMATELY ±900 FEET SOUTH OF C.R. 510 AND EAST OF 46TH AVENUE AND U.S. #1, FROM M-1, MEDIUM-DENSITY RESIDENTIAL-1 (UP TO 8 UNITS/ACRE), TO C/I, COMMERCIAL/ INDUSTRIAL; AND SIMULTANEOUSLY CHANGE THE LAND USE DESIGNATION OF ±9.21 ACRES, LOCATED SOUTH OF C.R. 510, AND EAST OF 46TH AVENUE, FROM C/I, COMMERCIAL/INDUSTRIAL, TO M-1, MEDIUM DENSITY RESIDENTIAL – 1 (UP TO 8 UNITS/ACRE); AND CHANGE THE LAND USE DESIGNATION OF ±20.11 ACRES, LOCATED APPROXIMATELY ±1300 FEET SOUTH OF 65TH STREET AND WEST OF THE FEC RAILROAD, FROM C/I, COMMERCIAL AND INDUSTRIAL, TO L-2, LOW DENSITY

**RESIDENTIAL-2 (UP TO 6 UNITS/ACRE); AND TO REZONE SEVERAL
ASSOCIATED PROPERTIES (LEGISLATIVE)**

**B. COUNTY INITIATED REQUEST: TO AMEND TEXT OF SEVERAL
ELEMENTS AND SUB-ELEMENTS OF THE COUNTY'S COMPREHENSIVE
PLAN (LEGISLATIVE)**

County Attorney Alan S. Polackwich, Sr. read the notices 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 CHANGE ORDER NO. 2, FINAL PAYMENT AND RELEASE OF RETAINAGE TO SUMMIT CONSTRUCTION MANAGEMENT, INC. FOR CONSTRUCTION OF THE NORTH COUNTY RECLAIMED WATER STORAGE TANK AND REPUMP FACILITY

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Flescher, the Board approved: (1) Change Order No. 2; (2) authorized staff to process the final payment and release of retainage to Summit Construction Management, Inc., in the amount of \$88,853.77; (3) authorized the Chairman to execute same; (4) found that the project is needed to accommodate new growth in the County; and (5) found that new growth will proportionately benefit from the project as presented, all as recommended in the memorandum of March 7, 2012.

13. COUNTY ATTORNEY MATTERS - NONE

14. COMMISSIONER ITEMS

14.A.1. COMMISSIONER GARY C. WHEELER, CHAIRMAN - HOUSE BILL 5301 MEDICAID SERVICES - ADDITION

Chairman Wheeler requested that the Board send a letter to Governor Rick Scott asking him to veto House Bill 5301 (HB 5301), which would shift the costs of erroneous Medicaid

billings from the State agency to the counties. He also requested sending to Representatives Deborah Mayfield and Tom Goodson, and Senators Mike Haridopolos and Joe Negron, a letter requesting that they explain why they voted for HB 5301 (Senate Bill 1988 [SB 1988]).

Commissioner Solari read the proposed letter (on file) outlining the County's objections about the legislation, which would have a significant adverse financial impact on the County.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Davis, the Board unanimously: (1) authorized the Chairman to execute and mail the proposed letter to Governor Rick Scott; and (2) directed the County Attorney to draft a letter to Representative Deborah Mayfield, Representative Tom Goodson, Senator Mike Haridopolos, and Senator Joe Negron, asking them to provide an explanation as to their support for House Bill 5301 (Senate Bill 1988), and authorized the Chairman to execute and mail same.

Vice Chairman O'Bryan felt that HB 5301 amounted to an unfunded mandate, and thought it would be a good idea to show taxpayers how the legislation is affecting their tax bills. He suggested that during the upcoming budget hearings, a line item be included and categorized as the "State Legislature Tax Increase", showing that the County was forced to increase millage rates to cover the additional \$568,627 in Medicaid costs.

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

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

14.C. COMMISSIONER WESLEY S. DAVIS

14.C.1. COBBLESTONE/51ST AVENUE PROPERTY OWNERS BOUNDARY DISPUTE

Commissioner Davis asked staff to discuss the boundary dispute between Cobblestone Subdivision and the property owners on 51st Avenue, in the hope that the Board can help the parties reach an agreement.

Planning Director Stan Boling provided background on the boundary dispute, which involves a 20-foot wide strip of land acquired by Mark Brackett when he purchased two ten-acre tracts that he developed into the Cobblestone Subdivision. Mr. Brackett's surveyor had discovered that the tract line that had been claimed by the surveys of Ms. Grainger and other property owners along 51st Avenue was actually about 20 feet east of the indicated location and had been deeded to Mr. Brackett separately when he received title to the 20 acres. Director Boling advised that resolving the issue of the 20-foot strip was a condition of plat approval; however, the majority of homeowners had not accepted Mr. Brackett's offer to quit claim the disputed parcel to them.

Deputy County Attorney William DeBral explained that the 20-acre parcel formerly owned by Mr. Brackett ended up being sold in a tax deed sale to Patience Anderson Thomas. He relayed that Ms. Thomas got claim to the 20-foot parcel via her tax deed and the 51st Avenue owners also have a claim to the property through surveys. Mrs. Thomas has subsequently filed a claim against her title insurance policy, but the claim is still being evaluated.

Commissioner Davis asked what would be the fastest and most inexpensive remedy for all parties involved in this dispute.

Attorney Polackwich provided analysis of the situation, and concluded that the best option would be for the title insurance companies to deal with the problem. He suggested the Board authorize the County Attorney's office and Community Development to contact the affected parties and explain the problem, obtain copies of the title insurance policies, and solicit

the title insurance companies to work with the County and homeowners to come up with a permanent total solution. He added that the solution should encompass both the 20-foot strip that is subject to the tax deed, and the lot lines on 51st Avenue that are inconsistent with the actual property boundaries of the homeowners.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Flescher, to authorize the County Attorney's office and Community Development to: (1) contact the affected parties, explain the problem, and obtain copies of the title insurance policies; and (2) contact the title insurance companies and urge them to work together with the County and homeowners to come up with a permanent total solution to the boundary dispute involving both the 20-foot strip subject to the tax deed, and the lot lines that are inconsistent with the actual property boundaries of the homeowners.

Vice Chairman O'Bryan wondered if resurveying the disputed parcel would be the first step to a conflict resolution.

Discussion ensued, with input from Attorney Polackwich and County Surveyor David Schryver, about the feasibility of having a new survey undertaken.

Mike Porter, 6465 51st Avenue, explained why he questioned the Brackett survey.

Commissioner Davis wanted to know how the County could recoup the cost of a survey.

Attorney Polackwich responded that the County could seek payment from the property owners, or get the title companies to fund the solution. He stated that the solution will take some

money, and that the County would not want to use public funds; thus, it was preferable to use title company funds to solve this dispute.

Attorney Polackwich, responding to questioning, surmised that within 60 days, the County could inform the involved title companies that there is a problem they need to solve.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board authorized the County Attorney's office and Community Development to: (1) contact the affected parties, explain the problem, and obtain copies of the title insurance policies; and (2) contact the title insurance companies and urge them to work together with the County and homeowners to come up with a permanent total solution to the boundary dispute involving both the 20-foot strip subject to the tax deed, and the lot lines that are inconsistent with the actual property boundaries of the homeowners.

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 of the Regular 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 JANUARY 10, 2012

15.B.2. APPROVAL OF MINUTES MEETING OF JANUARY 24, 2012

15.B.3. APPROVAL OF MINUTES MEETING OF FEBRUARY 7, 2012

**15.B.4. WORK ORDER NO. 3 TO MBV ENGINEERING, INC. FOR THE REPAVING
OF WINTER BEACH, GIFFORD, AND ROSELAND CUSTOMER CONVENIENCE
CENTERS**

**15.B.5. RECYCLABLES TRANSFER, PROCESSING, AND MARKETING – RFP No.
2012023**

**15.B.6. AMENDMENT NO. 1 TO SWDD FEEDSTOCK SUPPLY AGREEMENT WITH
INEOS NEW PLANET BIOENERGY, LLC (INPB)**

**15.B.7. AMENDMENT NO. 1 TO SWDD LANDFILL GAS INTERCONNECT
AGREEMENT WITH INEOS NEW PLANET BIOENERGY, LLC**

15.C. ENVIRONMENTAL CONTROL BOARD

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

15.C.1. APPROVAL OF MINUTES MEETING OF NOVEMBER 8, 2011

15.C.2. APPROVAL OF MINUTES MEETING OF FEBRUARY 7, 2012

15.C.3. REPORT OF ACTIVITIES FOR FIRST QUARTER FY 11-12 (OCTOBER THROUGH DECEMBER 2011)

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 2:12 p.m.

ATTEST:

Jeffrey K. Barton
Clerk of Circuit Court and Comptroller

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/MG/2012 Minutes