

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

MAY 8, 2012

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JEFFREY K. BARTON

Clerk to the Board



May 8, 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, May 8, 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 Assistant County Administrator Michael Zito, 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

Deputy Teddy Floyd, Indian River County Sheriff's Department, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Solari led the Pledge of Allegiance to the Flag.

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

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

5. PROCLAMATIONS AND PRESENTATIONS

**5.A. PRESENTATION OF PROCLAMATION DESIGNATING THE MONTH OF MAY
AS FOSTER PARENT APPRECIATION MONTH**

Commissioner Davis read and presented the Proclamation to Janet Steward, Foster Care
Recruiter, who accepted on behalf of the Hibiscus Children's Center.

**5.B. PRESENTATION OF PROCLAMATION RECOGNIZING MAY 06 – 12, 2012 AS
NATIONAL CORRECTIONAL OFFICERS WEEK**

Commissioner Flescher read and presented the Proclamation to Sheriff Deryl Loar,
Captain Selby Strickland, Sgt. Adam Bailey, 2011 Correctional Deputy of the Year Scott
Liberatore, Deputy Division Commander Ryan Haffield, and Deputy Teddy Floyd.

6. APPROVAL OF MINUTES - NONE

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

**7.A. CITY OF VERO BEACH COMMITTEE REPRESENTATIVE TO THE PUBLIC
SCHOOL PLANNING CITIZENS OVERSIGHT COMMITTEE FOR 2012**

Noted for the record was the appointment of Keith Pelan as the City of Vero Beach's Representative on the Public School Planning Citizens Oversight Committee for 2012.

**7.B. 2012 ELECTION OF SCHOOL PLANNING CITIZENS OVERSIGHT
COMMITTEE CHAIRMAN AND VICE CHAIRMAN**

Noted for the record was the election of Mary Wolff as Chairman, and Yolanda Gamez as Vice Chairman, of the Public School Planning Citizens Oversight Committee (SPCOC) for the year 2012.

8. CONSENT AGENDA

**8.A. APPROVAL OF WARRANTS AND WIRES – APRIL 20, 2012 TO APRIL 26,
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 April 20, 2012 to April 26, 2012, as requested in the memorandum of April 26, 2012.

8.B. EXECUTION OF REVISED EASEMENT TO ~~WILLIAM E. RUTZ~~, MARY ALGENE RUTZ, TRUSTEE OF THE MARY ALGENE RUTZ TRUST – OSLO ROAD IMPROVEMENT PROJECT

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the easement as amended, with Mary Algene Rutz, Trustee of the Mary Algene Rutz Trust U/A dated 3-31-00, as recommended in the memorandum of April 25, 2012.

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

8.C. SECOND AMENDMENT TO FEEDSTOCK SUPPLY AGREEMENT WITH INEOS

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously: (1) approved the Second Amendment to Feedstock Supply Agreement Concerning Cash Deposit and Escrow Agreement of Section 7.4, with INEOS New Planet BioEnergy, LLC; and (2) authorized the Chairman to execute same on behalf of the Solid Waste Disposal District (SWDD), as recommended in the memorandum of May 2, 2012.

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

8.D. RESOLUTION CANCELING TAXES ON PROPERTY ACQUIRED BY THE CITY OF FELLSMERE FOR OPEN SPACE FOR WATER UTILITY USES

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2012-036**, cancelling certain taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.

(Acquired from Lee Oscar Mays – 1031 Grant Avenue, Fellsmere)

8.E. APPROVAL OF BID AWARD FOR IRC BID NO. 2012039 DEMOLITION AND REMOVAL OF FIVE (5) CONDEMNED STRUCTURES

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved: (1) the bid award to Henry Fischer & Sons, Inc., as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid; and (2) approved the issuance of a purchase order after receipt and approval of the appropriate certificate of insurance, as recommended in the memorandum of May 1, 2012.

**8.F. AWARD OF BID NO. 2012037 MISCELLANEOUS DRAINAGE CULVERT
REPLACEMENTS IRC PROJECT NO. 1142**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously: (1) approved to award the project to Timothy Rose Contracting, Inc., in the amount of \$380,594.95; and (2) authorized the Chairman to execute the Agreement with Timothy Rose Contracting, Inc., as recommended in the memorandum of April 26, 2012.

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

**8.G. RESOLUTIONS CANCELING TAXES ON PROPERTIES ACQUIRED BY THE
INDIAN RIVER COUNTY HOUSING AUTHORITY FOR PUBLIC PURPOSES**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2012-037**, cancelling certain taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.

*(Neighborhood Stabilization Program - Vero Lake Estates
8755 105th Court)*

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved **Resolution 2012-038**, cancelling certain taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.

*(Neighborhood Stabilization Program - Vero Lake Estates
9056 104th Avenue)*

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES

9.A. INDIAN RIVER COUNTY SUPERVISOR OF ELECTIONS – LESLIE ROSSWAY

SWAN: BOARD OF COUNTY COMMISSIONER(S) APPROVAL OF SUPERVISOR OF ELECTIONS PROPOSED NEW PRECINCTS PLAN

Supervisor of Elections Leslie Rossway Swan announced that the State has concluded its redistricting process of redrawing new Congressional boundary lines. She reported that the Elections Office has also finalized the County's new precinct boundary lines, which have been redrawn to consolidate the precincts from 54 to 37, with voters continuing to vote at the 22 consolidated polling locations throughout the County. She conveyed that Gary Gordon, IT Manager, would be updating the voter registration records, and new voter information cards are slated to be mailed in July 2012. Ms. Swan recalled the Board's initial approval on March 6, 2012, of the proposed reduction of the number of voting precincts, and requested approval of the final plan for the proposed new precincts.

ON MOTION by Vice Chairman O'Bryan, SECONDED by Chairman Wheeler, the Board unanimously approved the Supervisor of Elections' proposed plan for the County's new precinct boundary lines, reducing the number of voting precincts from 54 to 37, and numbering the new precincts from 1 to 37, as requested in the letter of May 3, 2012.

10. PUBLIC ITEMS

10.A. PUBLIC HEARING

10.A.1. ORDINANCE AMENDING AND RESTATING CHAPTER 201, PART III

(INDUSTRIAL PRETREATMENT REGULATIONS) OF INDIAN RIVER COUNTY

CODE (LEGISLATIVE)

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

County Attorney Alan S. Polackwich, Sr. stated that since 1994, Part III of Chapter 201 of County Code has set forth the regulations required for certain industrial facilities to pretreat wastewater before it is discharged into the County treatment system. He revealed that the Code was amended in 2007 to keep up with Federal and State law, and that in order to comply with changes in the industrial pretreatment regulations, another update is required by Ordinance.

Director of Utilities Erik Olson noted that a copy of the proposed Ordinance and notice of the public hearing has been sent to the single facility in the County that meets the criteria for compliance with the pretreatment regulations. He also explained for Commissioner Davis why, in addition to the Federal and State laws, the County needs its own Ordinance regulating the industrial pretreatment of wastewater.

The Chairman opened the Public Hearing.

Bob Johnson, Coral Wind Subdivision, wanted to know which industrial facility would have to comply with the Ordinance.

Director Olson revealed that Parker Hannifin Corporation was currently the only company subject to the pretreatment regulations, with the possibility that INEOS New Planet BioEnergy could become subject to the regulations in the future.

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

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Solari, the Board unanimously adopted **Ordinance 2012-007**, amending and restating Part III (Industrial Pretreatment Regulations) of Chapter 201 of the Code of Indian River County, Florida; providing for severability; providing for codification; and providing for an effective date.

10.B. PUBLIC DISCUSSION ITEMS

10.C. PUBLIC NOTICE ITEMS

10.C.1. NOTICE OF SCHEDULED PUBLIC HEARINGS FOR MAY 22, 2012:

10.C.1.A. AMENDMENT TO THE FUTURE LAND USE MAP BY CHANGING THE

LAND USE DESIGNATION FOR ±1,171.45 ACRES OWNED BY THE ST.

JOHN RIVER WATER MANAGEMENT DISTRICT (SJRWMD) (±531.68

ACRES LOCATED SOUTH OF CITY OF FELLSMERE AND 3 ½ MILES NORTH

OF SR60, AND ±639.77 ACRES LOCATED 2 ½ MILES NORTH OF SR60 AND

3 MILES WEST OF I-95), FROM AG-2, AGRICULTURAL-2 (UP TO 1 UNIT /10

ACRES), TO C-1, CONSERVATION-1 (ZERO DENSITY); AND TO

REDESIGNATE ±350 ACRES OWNED BY INDIAN RIVER COUNTY LOCATED

WEST OF BLUE CYPRESS LAKE AND APPROXIMATELY 6 ½ MILES NORTH

OF SR60, FROM AG-3, AGRICULTURAL-3 (UP TO 1 UNIT/20 ACRES), TO C-

1, CONSERVATION-1 (ZERO DENSITY) (LEGISLATIVE)

**10.C.1. B. CONSIDERATION OF REQUEST BY DR. JOHN CAIRNS TO AMEND
ROAD WIDTH REQUIREMENTS FOR MINING HAUL ROUTE ROAD
SEGMENTS NOT USED BY THE GENERAL PUBLIC (LEGISLATIVE)**

**10.C.2. NOTICE OF SCHEDULED PUBLIC HEARING FOR MAY 15, 2012:
PUBLIC NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF AN
ORDINANCE AMENDING AND ADDING VARIOUS SECTIONS OF CHAPTER
204 (SOLID WASTE DISPOSAL) OF THE CODE OF INDIAN RIVER COUNTY
(LEGISLATIVE)**

The County Attorney read the notices into the record.

11. COUNTY ADMINISTRATOR MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

**12.A.1. CONSIDERATION OF MEETING DATES FOR PROPOSED AMENDMENTS
TO THE COUNTY'S LAND DEVELOPMENT REGULATIONS (LDRS)**

Planning Director Stan Boling reported that staff has been working on a large number of amendments to the County's Land Development Regulations (LDRs). He explained that since some of the amendments will change allowed uses in certain zoning districts, the Board is required to hold two public hearings, and that unless four or five Commissioners vote otherwise, the Board needs to hold one of the hearings after 5:00 p.m. Director Boling revealed that the Agriculture Advisory Committee (AAC) and the Planning & Zoning Commission (P&Z) would be holding public workshops on certain amendments on May 11 and May 31, 2012 respectively, and suggested that the Board schedule its public hearings for June 19 and July 10, 2012.

Vice Chairman O'Bryan stated that since some major changes are proposed to the LDR's, one of the public hearings should be held in the evening.

Chairman Wheeler suggested that the second public hearing on July 10, 2012 be held at 5:01 p.m.

ON MOTION by Commissioner Flescher, SECONDED by Vice Chairman O'Bryan, the Board unanimously concurred with the proposed hearing dates/times of Tuesday, June 19, 2012 at 9:00 a.m., and Tuesday, July 10, 2012, at 5:01 p.m., to consider the LDR amendments, as recommended in the memorandum of April 24, 2012.

Assistant County Administrator Michael Zito confirmed with Chairman Wheeler that the evening meeting would be dedicated to the public hearing on the LDR amendments.

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 - NONE

13. COUNTY ATTORNEY MATTERS

13.A. HOUSE BILL 5301 (HB 5301) – MEDICAID BACKLOG

Attorney Polackwich provided background on House Bill 5301 (HB 5301) which authorizes the State to collect back payments for Medicaid bills that were disputed and unpaid by Florida counties. He relayed that on August 1, 2012, the Agency for Healthcare Administration (“AHCA”) will be making a final determination on the amount owed by each County, and the Board will need to decide whether to pay 85% of the final amount, or challenge the figure and pay 100% of the final amount. Attorney Polackwich recalled that at the April 17, 2012 County Commission meeting, the Board had discussed whether to join the Florida Association of Counties’ (FAC) lawsuit challenging the constitutionality of HB 5301, and decided to defer a decision until more information was available. Attorney Polackwich stated that since he did not foresee sufficient information or an agreement being reached on the bill prior to AHCA’s determination, he recommended the Board join the lawsuit for the one-time fee of \$3,500.

Chairman Wheeler objected to the State’s demand that the County pay 100% of the State’s final figure if the County decides to contest the amount. He was also disturbed by the lack of response by State legislators to the Board’s request for them to explain why they voted for HB 5301.

Attorney Polackwich revealed that Representative Debbie Mayfield has met with County and Hospital District representatives and pledged to be present when County staff meets with the AHCA on May 22, 2012 to discuss the County’s charges.

Commissioner Davis wanted to know if the County would be better off paying 100% of the back payments and joining the FAC lawsuit.

Attorney Polackwich clarified that joining FAC's lawsuit and disputing the State's figure are two separate processes. After the AHCA's decision, the Board must decide whether to accept the State's figure and pay 85%, or dispute the amount, pay 100%, and file a petition with the Florida Department of Administrative Hearings (DOAH) by September 1, 2012.

Assistant County Administrator Michael Zito added that the lawsuit will result in the Statute being overturned or sustained; however, in the meantime, the County is abiding by the Statute. He advised that since the County's sustainable denials of payment are well over 15%, staff is preparing to challenge the State's figures.

Attorney Polackwich addressed Commissioner Davis's questions regarding the criteria that are used to determine the residency status of the Medicaid patients, and the issue of Medicaid bills that are transferred from other counties to Indian River County.

Commissioner Flescher expressed his support for the County's participation in the lawsuit with the FAC.

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

Bob Johnson, Coral Wind Subdivision, asked how the County's cost of \$3,500 was derived, and inquired about the possibility of the State's final bill increasing.

Attorney Polackwich responded that as a medium-sized county, Indian River was being assessed the \$3,500.

Vice Chairman O'Bryan acknowledged that the bill could go either up or down. However, he advocated doing the right thing – if the County needs to pay more because additional patients were residents, then that would be the correct action. He felt that the State's proposal was not the right approach to this situation.

Rene Renzi, Waverly Place, urged the Board to join the FAC lawsuit.

Vice Chairman O'Bryan agreed that the County's only true recourse would be to join the FAC lawsuit and have the court overrule HB 5301.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved for the County to join the Florida Association of Counties (FAC) lawsuit challenging the constitutionality and implementation of House Bill 5301 (HB 5301); and (2) approved to direct payment of the contribution amount of \$3,500 to FAC, as recommended in the memorandum of May 1, 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 - NONE

14.D. COMMISSIONER JOSEPH E. FLESCHER - NONE

14.E. COMMISSIONER BOB SOLARI

14.E.1. INDIAN RIVER COUNTY – OPEN FOR BUSINESS

Commissioner Solari discussed his idea for the Board to craft a marketing piece that is “County-centric” and sends to businesses a clear message of support from the County Government. He wanted the material to highlight the advantages of locating or expanding a business in the County.

Penny Chandler, Chamber of Commerce (the Chamber), displayed some of the marketing materials, and noted that attached to one of the brochures is a flash drive containing a video on the lifestyle, industries, infrastructure, programs, and services in the County. She relayed the Economic Development Council’s (EDC’s) suggestion that the County feature the video on its website.

Commissioner Solari applauded the Chamber’s efforts, but wanted a handout that clearly indicates that the County Government is open for business.

Commissioner Flescher affirmed that the Chamber’s flash drive presentation clearly sends the message that the County is open for business. He did not want to duplicate the Chamber’s efforts, and suggested including with the Chamber’s promotional materials, a pro-business letter from the Board listing various contact points within the County government.

Ms. Chandler proposed securing the Chamber’s promotional packet with a large wrap-around band that would advertise Indian River County as “Open for Business.” Responding to questions from Commissioner Davis, she provided data on the promotional packets that have been distributed recently, and discussed the ways in which people learn that the information is available upon request.

Commissioner Davis suggested that when an individual requests information, the Chamber include a personalized letter from the Commission letting them know that the County wants their business.

Ms. Chandler affirmed that the Chamber would be happy to include any material the Board wished to furnish.

Commissioner Solari acknowledged that the suggestions for the wrap-around band and personalized letter are steps in the right direction. However, he felt that the Board could make a stronger statement that it is Indian River County that aggressively wants business.

Chairman Wheeler advocated that the Chamber and County work as a team and consolidate the promotional materials. He suggested that the Board initiate a marketing plan and a document that can be brought back for final approval.

A brief discussion ensued, during which the Board decided to include the home telephone numbers of all five County Commissioners on a letter that would accompany the Chamber's promotional materials.

Commissioner Davis suggested that Commissioner Solari begin drafting a "welcome" letter to businesses, and that the Chamber's video presentation (from the flash drive) be displayed on the County's website. He also wanted information to be provided (not necessarily in the subject letter) concerning the steps the County has taken to promote businesses, such as the Land Development Regulation (LDR) change that was approved in order to accommodate the CVS Distribution Center.

Brian Carman, 1190 Ainsley Avenue SW, pointed out that the Community Development Report contains a lot of positive information about the County and its programs and accomplishments. He agreed that the Board should send an updated, positive message to dispel old perceptions that the County is unfriendly to business.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously: (1) authorized Commissioner Solari to work with staff and draft for Board approval, a letter from the County Commission listing the home telephone numbers of all five County Commissioners, to be added to the Chamber of Commerce's marketing packet to encourage businesses to locate in the County; and (2) approved to place on the County's website the Chamber of Commerce's promotional video of the County.

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT - NONE

15.B. SOLID WASTE DISPOSAL DISTRICT - NONE

15.C. ENVIRONMENTAL CONTROL BOARD - NONE

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES

16. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 10:34 a.m.

ATTEST:

Jeffrey K. Barton
Clerk of Circuit Court & Comptroller

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/MG/2012 Minutes