

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS

JUNE 12, 2012

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JEFFREY K. BARTON

Clerk to the Board



June 12, 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, June 12, 2012. Present were Vice Chairman Peter D. O'Bryan, and Commissioners Wesley S. Davis, Joseph E. Flescher, and Bob Solari. Chairman Gary C. Wheeler was absent. Also present were Assistant County Administrator Michael Zito, County Attorney Alan S. Polackwich, Sr., and Deputy Clerk Maureen Gelfo.

1. CALL TO ORDER

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

2. INVOCATION

Pastor ~~Roger Ball, Immanuel Church~~, Benny Rhyant, Mt. Sinai Baptist Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Flescher was joined by Eagle Scouts Colin MacKay, Zachary Maes, and Brian Smith, as he led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Vice Chairman O'Bryan requested the following change to the Agenda:

MOVE: ITEM 12.J.1. PROPOSED PROPERTY EXCHANGE WITH KEN MCKELLAR AT THE NORTHEAST CORNER OF 31ST AVENUE & 49TH STREET TO FOLLOW ITEM 10.B.1. REQUEST TO SPEAK FROM KEN MCKELLAR REGARDING COMP (COMPREHENSIVE) PLAN CHANGE RE: ZONING TRANSFER

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Solari, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the Agenda as amended.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. PRESENTATION OF PROCLAMATION HONORING CAROL SINOTTE ON HER RETIREMENT FROM THE TAX COLLECTOR'S OFFICE OF INDIAN RIVER COUNTY

Commissioner Solari read and presented the Proclamation to Carol Sinotte.

5.B. PRESENTATION OF PROCLAMATION HONORING BRIAN JASON SMITH FOR ATTAINING THE RANK OF EAGLE SCOUT

Vice Chairman O'Bryan read and presented the proclamations to Eagle Scout Brian Jason Smith of Boy Scout Troop 503.

5.C. PRESENTATION OF PROCLAMATION HONORING ZACHARY EDWARD MAES FOR ATTAINING THE RANK OF EAGLE SCOUT

Vice Chairman O'Bryan read and presented the proclamations to Eagle Scout Zachary Edward Maes of Boy Scout Troop 503.

5.D. PRESENTATION OF PROCLAMATION HONORING COLIN DAVIS MACKAY FOR ATTAINING THE RANK OF EAGLE SCOUT

Vice Chairman O'Bryan read and presented the proclamations to Eagle Scout Colin Davis MacKay of Boy Scout Troop 503.

5.E. LEGISLATIVE UPDATE BY U.S. CONGRESSMAN BILL POSEY, REPRESENTING FLORIDA'S 15TH DISTRICT

Representative Bill Posey addressed the Board regarding the detrimental impacts of the National Debt, the importance of the Space Program, and the negative effects of excessive federal regulations on businesses and banks. He also revealed that the House of Representatives and Senate are working on a five-year Transportation Plan that will help the County plan for future transportation needs.

Commissioner Davis commented on the large number of regulations imposed on businesses by local, State, and Federal agencies, as well as various permitting authorities.

Representative Posey agreed with Commissioner Davis, and discussed a bill he had sponsored for revising F.S. Chapter 120, the Administrative Procedures Act, to try to reduce bureaucracy at the State level.

Commissioner Flescher voiced appreciation for the congressman's support of NASA and asked what he anticipated in terms of the Space Program's future.

Representative Posey divulged that since he began his term, three votes had occurred in which monies were removed from NASA and put into other programs. He added that the estimates on how long it would take to put American astronauts in space go beyond ten years.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF MAY 1, 2012

6.B. REGULAR MEETING OF MAY 8, 2012

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

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the minutes of the May 1, 2012 and May 8, 2012 meetings, as written.

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

7.A. RESIGNATION OF MEMBER-AT-LARGE APPOINTEE TO THE CODE ENFORCEMENT BOARD

Noted for the record was the resignation of Clifford Suthard from the Indian River County Code Enforcement Board, effective June 24, 2012.

7.B. RESIGNATION OF THE CODE ADMINISTRATOR (F/K/A MECHANICAL CONTRACTOR) APPOINTEE TO THE CONSTRUCTION BOARD OF ADJUSTMENT & APPEALS

Noted for the record was the resignation of Mark Dean, Code Administrator (f/k/a Mechanical Contractor) to the Construction Board of Adjustment and Appeals, effective December 2010.

(Clerk's Note: This is a housekeeping matter dating back to December 2010).

7.C. METROPOLITAN PLANNING ORGANIZATION CITIZENS ADVISORY COMMITTEE (MPOCAC) APPOINTMENT BY THE CITY OF VERO BEACH

Noted for the record was the appointment of Joan Smith Edwards to serve on the Metropolitan Planning Organization Citizens Advisory Committee as the City of Vero Beach representative.

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of May 25, 2012 to May 31, 2012, as requested in the memorandum of May 31, 2012.

8.B. ACCEPTANCE OF UTILITY EASEMENT FROM 2083 SOUTH U.S. HIGHWAY 1, LLC

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board: (1) accepted the easement from 2083 South Highway 1, LLC, and authorized the Chairman to execute the County's acceptance on the Easement for recordation in the Public Records of Indian River County, Florida; and (2) authorized the payment of the property owner's (*Mary K. Stelzl, the managing member*) attorney's fees in the amount of \$725.00 to Campione, Campione & Leonard, P.A., as recommended in the memorandum of June 1, 2012.

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

8.C. RESOLUTION CANCELLING TAXES ON PROPERTY ACQUIRED BY INDIAN RIVER COUNTY FOR PUBLIC PURPOSES

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved **Resolution 2012-055**, cancelling certain taxes upon publicly owned lands, pursuant to Section 196.28, Florida Statutes.

(Lot 34, Chase Meadows Subdivision; 885 11th Drive)

8.D. ADVANCED UTILITY SYSTEMS ASSET MANAGEMENT PROGRAM

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board approved the purchase of the SEMS asset management program, inclusive of the first year of maintenance and support affiliated with the program, as recommended in the memorandum of June 4, 2012.

DOCUMENT 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 - NONE

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM KEN MCKELLAR REGARDING COMPREHENSIVE PLAN CHANGE RE: ZONING TRANSFER

Ken McKellar, 125 Ocean Way, outlined his proposal to exchange his 2.24 acre parcel on the corner of 31st Avenue and 49th Street (adjacent to a 34.4 acre parcel owned by County Utilities), with a 2.24 acre parcel of County-owned property located south and adjacent to his other property at 5290 31st Avenue. He revealed that if the Board approves the property exchange, he will apply for a rezoning of the subject parcel to General Industrial (IG), to match his adjoining property.

Commissioner Davis used an aerial map of the McKellar and County Utilities parcels to convey additional details on the proposed property exchange. He stated that although there is no inherent benefit for the County to approve the swap, neither are there drawbacks. In addition, he related that a portion of 31st Avenue used for public right-of-way goes directly through Mr. McKellar's property, and the property exchange would rectify this situation. He conveyed that he wished to address any concerns held by the Commissioners, County Attorney, and/or staff and provide Mr. McKellar with an answer to his request. He added that the proposed zoning change should be addressed separately.

Vice Chairman O'Bryan questioned whether a zoning change could be combined with a property exchange.

Attorney Polackwich advised that property exchanges require public notice and an authorizing Resolution by statute, and a zoning change cannot be included in the agreement. He also counseled the Board to obtain an appraisal to ensure that the two parcels are equivalent in value.

Mr. McKellar said he was not opposed to an appraisal; however, he recalled a prior instance when he gave the County right-of-way in exchange for additional footage, and no appraisal had been obtained.

(Clerk's Note: For Board action relative to this item, please see Item 12.J.1. Utilities Services: Proposed Property Exchange with Ken McKellar at the Northeast Corner of 31st Avenue & 49th Street).

10.C. PUBLIC NOTICE ITEMS - NONE

11. COUNTY ADMINISTRATOR MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. CONSIDERATION OF COMPREHENSIVE PLAN AMENDMENT SUBMITTAL WINDOWS

(Clerk's Note: This item was heard at the conclusion of the break following Item 12.J.1., and is placed here for continuity).

Community Development Director Robert Keating recalled that at the May 22, 2012 Board meeting, the Commissioners directed staff to explore the possibility of changing the County's twice-a-year Comprehensive Plan Amendment application requirement, pursuant to the State's elimination of that restriction. He summarized his memorandum of June 4, 2012 to provide background on the Comprehensive Plan Amendment requirements, and concluded with staff's analysis and recommendation to maintain the twice-per-year plan amendment submittal windows in January and July. He also advocated, should the Board decide to reduce the time frame, changing the plan amendment submittal windows from two to four times per year, and authorizing staff to submit a Comprehensive Plan Amendment to effect said change in the July 2012 window.

Commissioner Davis was concerned that the twice-yearly submittals of Comprehensive Plan Amendments might adversely affect the business community, and wanted to explore the possibility of instituting a thirty-day submittal window.

Commissioner Solari believed that allowing the Comprehensive Plan Amendment applications to be filed every ninety days (four times a year), would ensure a more orderly process.

MOTION WAS MADE by Commissioner Davis, SECONDED by Commissioner Solari for discussion, to change the current twice-a-year Comprehensive Plan Amendment application limitation to twelve times a year, or every thirty days.

Vice Chairman O'Bryan supported Commissioner Solari's suggestion to permit the Comprehensive Plan Amendment submittals four times per year.

The Vice Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners O'Bryan and Flescher opposed; Commissioner Wheeler absent), the Motion was LOST for lack of a majority vote.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, by a 3-1 vote (Commissioner Davis opposed and Commissioner Wheeler absent), the Board approved to change the current twice-a-year Comprehensive Plan Amendment application limitation to four times a year, and authorized staff to file a Comprehensive Plan Amendment application to do so in the July 2012 plan amendment submittal window.

12.B. EMERGENCY SERVICES - NONE

12.C. GENERAL SERVICES - NONE

12.D. HUMAN RESOURCES - NONE

12.E. HUMAN SERVICES - NONE

12.F. LEISURE SERVICES - NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET - NONE

12.H. RECREATION - NONE

12.I. PUBLIC WORKS

12.I.1 DECLARATION OF SOLE SOURCE FOR PURCHASE OF SPORTS LIGHTING FOR THE PROPOSED INDIAN RIVER COUNTY SOUTH COUNTY REGIONAL PARK MULTI-PURPOSE FIELDS, IRC PROJECT NO. 1126

County Engineer Chris Kafer revealed that Kimley-Horn and Associates, Inc. is donating the design services for the future Multi-Purpose Complex that will be built at the South County Regional Park; however, lighting and electrical design plans will not be included. He stated that Musco Sports Lighting, LLC (Musco) currently provides lighting for the ball fields and basketball and tennis courts, and provided staff's analysis and recommendation for the Board to approve Musco to provide a turnkey operation for the design, permitting and installation of the lighting at the multi-purpose fields for a total proposed cost of \$499,500.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, by a 4-0 vote (Commissioner Wheeler absent), the Board authorized the declaration of Musco Sports Lighting, LLC as the sole source for purchase and installation of the sports lighting at South County Regional Park Multi-Purpose Fields, and authorized the issuance of purchase orders for this item in accordance with the project, as recommended in the memorandum of June 6, 2012.

12.I.2. SECTOR 3 BEACH AND DUNE RESTORATION PROJECT, RANGER CONSTRUCTION INDUSTRIES, INC. REQUEST FOR FINAL PAYMENT AND FULL RELEASE OF RETAINAGE

(Clerk's Note: This item relates to a dispute between Ranger Construction Industries, Inc. and Henry Fisher & Sons, Inc. regarding Ranger's payment [through the subcontractor Ranch Road Lake, LLC] of a fuel adjustment surcharge to Fisher, a subcontractor to Ranch Road Lake. The fuel cost adjustment was approved by the Board on April 5, 2011).

Chuck Kramer, Henry Fisher & Sons, Inc., 10729 U.S.1., Sebastian, stated that all matters pertaining to the Sector 3 Beach & Dune Restoration Project, including the fuel adjustment surcharge, have been decided by all five County Commissioners. He therefore requested that the Board defer a decision until the full Board (Commissioner Wheeler is absent), can review this matter.

Bob Schafer, Ranger Construction Industries, Inc. ("Ranger") protested the Board delaying the company's final payment. He declared that Ranger was incurring costs due to the non-payment, and noted that the Board has received a Letter of Consent from the bond company allowing the release of the final payment.

Mr. Kramer and **Mr. Schafer** voiced additional arguments justifying their respective positions.

Vice Chairman O'Bryan confirmed with Attorney Polackwich that this item can legally be tabled until the County Commission meeting of June 19, 2012, when the entire Board will be present. He pointed out that Ranger's Final Payment Affidavit and Payment Requisition was received by the County on June 1, 2012, and that it is standard business practice to pay an invoice within 30 days of submittal.

MOTION WAS MADE by Commissioner Flescher, SECONDED by Vice Chairman O'Bryan, to TABLE this item until the June 19, 2012 Board of County Commission meeting to provide an opportunity for further negotiations between the interested parties.

Vice Chairman O'Bryan asked the Assistant County Administrator and County Attorney to make available any administrative or legal support that might facilitate negotiations between the parties.

Attorney Polackwich agreed to Vice Chairman O'Bryan's request. He also noted that he was uncertain whether Ranch Road would attend the meeting in view of pending litigation with Fischer & Sons regarding other issues related to the Sector 3 Beach & Dune Restoration Project.

Commissioner Flescher encouraged all of the affected parties to resume discussions.

The Vice Chairman invited comments from the public; there were none.

The Vice Chairman CALLED THE QUESTION, and by a 4-0 vote (Chairman Wheeler absent), the Board TABLED this item until the June 19, 2012 Board of County Commission meeting to provide an opportunity for further negotiations between the interested parties.

12.J. UTILITIES SERVICES

**12.J.1. PROPOSED PROPERTY EXCHANGE WITH KEN MCKELLAR AT THE
NORTHEAST CORNER OF 31ST AVENUE & 49TH STREET**

(Clerk's Note: This item was discussed following Item 10.B.1. Public Discussion Items, and is placed here for continuity).

Director of Utilities Erik Olson presented conditions, description, and analysis pertinent to Ken McKellar's proposal to exchange his 2.24 acre parcel on the corner of 31st Avenue and 49th Street with 2.24 acres owned by the County located south and adjacent to his other property at 5290 31st Avenue. Director Olson advised that Mr. McKellar had represented the sellers of the multiple parcels comprising the 34.4 acres that had been acquired by the Utilities Department for a future stormwater park, and that staff saw no benefit to the stormwater park project in terms of the property exchange. He relayed that Mr. McKellar had initially requested certain zoning criteria to be effected prior to the swap, and from that standpoint, staff could not recommend the transaction. Director Olson pointed out, however, that the Indian River Farms Water Control District ("IRFWCD") has been granting the County access on a portion of 31st Avenue, and the proposed property exchange would stabilize the County's right-of-way on that segment of 31st Avenue.

A lengthy discussion ensued as the Board and staff speculated on whether IRFWCD would continue to allow the County right-of-way access on 31st Street.

Director Olson provided additional background history on the County's purchase of the future stormwater park site, and divulged that the County has only verbal authorization from IRFWCD to use the access easement, despite requesting written permission. He observed that it is possible that IRFWCD might never have an issue with the County using the subject right-of-way.

Commissioner Davis reasoned that by exchanging like property for like property, the County could resolve any potential access issues on 31st Street, as well as the northern portion of 31st Street that runs through the middle of Mr. McKellar's property.

Vice Chairman O'Bryan did not envision IRFWCD creating access issues on 31st Street. He stated that he saw no clearly defined public benefit to the proposed property exchange, but there would be a definite public benefit if Mr. McKellar purchased the County's parcel, thus adding more acreage to the tax roll.

Commissioner Davis advocated the property swap, which he felt was an equal exchange that would provide the County with paved road on two sides. He also remarked that it would be beneficial for Mr. McKellar to enhance his commercial piece of property, and that he would like to give Mr. McKellar some direction.

Assistant County Administrator Michael Zito summarized staff's concerns, which included having no confirmation that the Utilities Department needs the swap for the stormwater project, or that IRFWCD will not continue to share rights-of-way with the County.

Mr. McKellar explained why the subject parcel had not been offered as part of the County's purchase of the original parcels for the stormwater park. He requested that the Board approve a "like for like" property exchange without contingencies, and stressed that he would pay any fees associated with the transaction.

MOTION WAS MADE by Commissioner Davis, to authorize staff to proceed with the proposed property exchange with Ken McKellar at the northeast corner of 31st Avenue & 49th Street. MOTION DIED for lack of a Second.

The Vice Chairman called a recess at 10:21 a.m. and reconvened the meeting at 10:32 a.m., with Commissioners Davis, Flescher, O'Bryan, and Solari present, and Chairman Wheeler absent.

13. COUNTY ATTORNEY MATTERS - NONE

14. COMMISSIONER ITEMS

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

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

14.C. COMMISSIONER WESLEY S. DAVIS - NONE

14.D. COMMISSIONER JOSEPH E. FLESCHER - NONE

14.E. COMMISSIONER BOB SOLARI - NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT - NONE

15.B. SOLID WASTE DISPOSAL DISTRICT

The Board of the Emergency Services District reconvened as the Board of Commissioners of the Solid Waste Disposal District. Those Minutes are available separately.

15.B.1. APPROVAL OF MINUTES MEETING OF MAY 1, 2012

15.B.2. ENGINEER'S FINAL ESTIMATE AND CLOSURE PLAN FOR REPAVING OF WINTER BEACH, GIFFORD, AND ROSELAND CUSTOMER CONVENIENCE CENTERS

15.B.3. FINAL PAY FOR AMENDMENT 1 TO WORK ORDER No. 28 TO GEOSYNTEC FOR PROCUREMENT OF CONSTRUCTION CONTRACT FOR CELL 1 SEGMENT 3 EXPANSION

15.B.4. FINAL PAY TO GOLDR ASSOCIATES THROUGH REPUBLIC SERVICES FOR 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 Vice Chairman declared the Board of County Commission meeting adjourned at 11:07 a.m.

ATTEST:

Jeffrey R. Smith
Clerk of Circuit Court & Comptroller

Peter D. O'Bryan, Vice Chairman

Minutes Approved: _____

BCC/MG/2012 Minutes