

JEFFREY K. BARTON
Clerk to the Board



INDEX TO MINUTES OF REGULAR MEETING

OF BOARD OF COUNTY COMMISSIONERS

JUNE 19, 2012

1.	CALL TO ORDER.....	1
2.	INVOCATION.....	1
3.	PLEDGE OF ALLEGIANCE	1
4.	ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS	2
	EMERGENCY ADDITION: 12.G.1. CITY OF FELLSMERE, CHAPTER 180 –	
	NATURAL GAS SERVICE AREA.....	2
5.	PROCLAMATIONS AND PRESENTATIONS	2
5.A.	PRESENTATION OF PROCLAMATION RECOGNIZING JUNE 21, 2012, AS 7 TH	
	ANNUAL NATIONAL DUMP THE PUMP DAY IN INDIAN RIVER COUNTY	2
5.B.	PRESENTATION ON LOCAL BUSINESS AZZLY, BY COLETTA DORADO, AZZLY	
	PRESIDENT AND CHIEF EXECUTIVE OFFICER	2
5.C.	PRESENTATION ON ST. JOHN’S RIVER WATER MANAGEMENT DISTRICT LANDS	
	ASSESSMENT PROJECT BY ROBERT CHRISTIANSON, DIRECTOR OF THE DIVISION	
	OF OPERATIONS AND LAND RESOURCES	3

5.D.	PRESENTATION AND INTRODUCTION TO FPAN ORGANIZATION BY DR. RACHEL WENTZ, FLORIDA PUBLIC ARCHAEOLOGY NETWORK	3
5.E.	VERO BEACH UTILITY UPDATE BY AMY BRUNJES AND RYAN FAIR, FLORIDA POWER AND LIGHT.....	4
6.	APPROVAL OF MINUTES - NONE	5
7.	INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS NOT REQUIRING BOARD ACTION - NONE.....	5
8.	CONSENT AGENDA	5
8.A.	APPROVAL OF WARRANTS AND WIRES – JUNE 1, 2012 TO JUNE 7, 2012	5
8.B.	QUAIL CREEK PD APPROVAL/ACKNOWLEDGMENT TO ASSIGNMENT AND ASSUMPTION OF WARRANTIES	5
8.C.	RESOLUTIONS TO CALL LETTERS OF CREDIT AND TO ACT ON BEHALF OF INDIAN RIVER COUNTY DURING THE TIME FRAMES OF JULY 18, 2012, THROUGH AND INCLUDING AUGUST 20, 2012, AND AUGUST 22, 2012 THROUGH AND INCLUDING SEPTEMBER 10, 2012	6
8.D.	WORK ORDER NO. 2 WITH GFA INTERNATIONAL, INC., OSLO ROADWAY IMPROVEMENTS – PHASE III (43 RD AVENUE TO 58 TH AVENUE) IRC PROJECT NO. 0517.....	7
8.E.	APPROVAL OF BID AWARD FOR IRC BID NO. 2012045 STRUCTURE DEMOLITION AND SITE CLEARING AT FORMER JAYCEE FACILITY.....	7
8.F.	TRANSIT FACILITY, FINAL PAY REQUEST, SCHULKE BITTLE AND STODDARD, L.L.C.	8
8.G.	TRANSIT FACILITY, FINAL PAY REQUEST, BARTH CONSTRUCTION, INC.	8
8.H.	CONSIDERATION OF CHANGE ORDER NO. 1 TO CONTRACT AGREEMENT WITH TIMOTHY ROSE CONTRACTING, INC. FOR CONSTRUCTION OF PUBLIC ACCESS IMPROVEMENTS ON THE FLINN TRACT OF THE LAGOON GREENWAY	9
9.	CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE	9

10.	PUBLIC ITEMS.....	9
10.A.	PUBLIC HEARING.....	9
10.A.1.	CONSIDERATION OF PROPOSED LDR (LAND DEVELOPMENT REGULATION) AMENDMENTS (LEGISLATIVE).....	9
10.B.	PUBLIC DISCUSSION ITEMS – NONE.....	13
10.C.	PUBLIC NOTICE ITEMS.....	13
10.C.1.	NOTICE OF SCHEDULED PUBLIC HEARING FOR JULY 10, 2012:..... PELICAN ISLAND AUDUBON SOCIETY’S REQUEST FOR SPECIAL EXCEPTION USE APPROVAL FOR A COMMUNITY CENTER (QUASI-JUDICIAL).....	13
11.	COUNTY ADMINISTRATOR MATTERS.....	13
11.A.	APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR’S DENIAL OF 12 IMPACT FEE REFUND APPLICATIONS SUBMITTED BY IMPACT FEE CONSULTANTS (QUASI-JUDICIAL).....	13
12.	DEPARTMENTAL MATTERS.....	19
12.A.	COMMUNITY DEVELOPMENT - NONE.....	19
12.B.	EMERGENCY SERVICES - NONE.....	19
12.C.	GENERAL SERVICES - NONE.....	19
12.D.	HUMAN RESOURCES - NONE.....	19
12.E.	HUMAN SERVICES - NONE.....	19
12.F.	LEISURE SERVICES - NONE.....	19
12.G.	OFFICE OF MANAGEMENT AND BUDGET - NONE	19
12.G.1.	EMERGENCY ADDITION – CITY OF FELLSMERE, CHAPTER 180 – NATURAL GAS SERVICE AREA.....	19
12.H.	RECREATION - NONE.....	22
12.I.	PUBLIC WORKS.....	22
12.I.1	SECTOR 3 BEACH AND DUNE RESTORATION PROJECT, RANGER CONSTRUCTION INDUSTRIES, INC. REQUESTS FOR FINAL PAYMENT AND FULL RELEASE OF RETAINAGE.....	22
12.I.2	CRIME SCENE UNIT – WORK ORDER #2 DONADIO AND ASSOCIATES, ARCHITECTS, P.A.	27
12.J.	UTILITIES SERVICES.....	28

12.J.1.	SEA OAKS WATER SERVICES REPLACEMENT PROJECT.....	28
13.	COUNTY ATTORNEY MATTERS.....	28
13.A.	VISTA PLANTATION SETTLEMENT DOCUMENTS.....	28
14.	COMMISSIONER ITEMS.....	29
14.A.	COMMISSIONER GARY C. WHEELER, CHAIRMAN - NONE	29
14.B.	COMMISSIONER PETER D. O'BRYAN, VICE CHAIRMAN - NONE	29
14.C.	COMMISSIONER WESLEY S. DAVIS - NONE.....	29
14.D.	COMMISSIONER JOSEPH E. FLESCHER - NONE	29
14.E.	COMMISSIONER BOB SOLARI - NONE	29
15.	SPECIAL DISTRICTS AND BOARDS	29
15.A.	EMERGENCY SERVICES DISTRICT	29
15.A.1.	APPROVAL OF MINUTES MEETING OF MARCH 20, 2012	30
15.A.2.	APPROVAL OF MINUTES MEETING OF APRIL 17, 2012.....	30
15.A.3.	APPROVAL OF MINUTES MEETING OF MAY 1, 2012	30
15.A.4.	REQUEST TO CONSTRUCT A RECEIVING/STORAGE/DISTRIBUTION (RSD) CENTER AT THE EMERGENCY OPERATIONS CENTER COMPLEX.....	30
15.B.	SOLID WASTE DISPOSAL DISTRICT - NONE	30
15.C.	ENVIRONMENTAL CONTROL BOARD - NONE.....	30
16.	ADJOURNMENT.....	30

JEFFREY K. BARTON

Clerk to the Board



June 19, 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 19, 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 Leona Adair Allen.

1. CALL TO ORDER

Chairman Wheeler called the meeting to order at 9:00 a.m.

2. INVOCATION

Reverend Steve Jones, Vero Christian Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Vice Chairman O'Bryan led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman Wheeler requested the following change(s) to the Agenda:

**EMERGENCY ADDITION: 12.G.1. CITY OF FELLSMERE, CHAPTER 180 – NATURAL GAS
SERVICE AREA**

ON MOTION by Commissioner Solari, SECONDED by
Vice Chairman O'Bryan, the Board unanimously
approved the Agenda as amended.

5. PROCLAMATIONS AND PRESENTATIONS

**5.A. PRESENTATION OF PROCLAMATION RECOGNIZING JUNE 21, 2012, AS 7TH
ANNUAL NATIONAL DUMP THE PUMP DAY IN INDIAN RIVER COUNTY**

Chairman Wheeler read and presented the Proclamation to Transportation Coordinator Paul Klubek and Senior Resource Association President Karen Deigl, in recognition of the seventh annual Dump the Pump Day, which encourages people to take public transportation. Mr. Klubek revealed that this year's one millionth rider had recently been recognized for using the Go-Line public transit bus system.

**5.B. PRESENTATION ON LOCAL BUSINESS AZZLY, BY COLETTA DORADO,
AZZLY PRESIDENT AND CHIEF EXECUTIVE OFFICER**

Helene Caseltine, Economic Development Director for the Indian River County Chamber of Commerce, introduced Azzly President and Chief Executive Officer Coletta Dorado, who provided the Board with the details of her company and its program, one that integrates electronic health record practice management and patient health record technology.

**5.C. PRESENTATION ON ST. JOHN’S RIVER WATER MANAGEMENT DISTRICT
LANDS ASSESSMENT PROJECT BY ROBERT CHRISTIANSON, DIRECTOR OF
THE DIVISION OF OPERATIONS AND LAND RESOURCES**

Director of Operations and Land Resources Robert Christianson, using a PowerPoint presentation (on file), provided an overview of the St. John’s River Water Management District’s (SJRWMD) 2012 Lands Assessment project, and how Florida Statute 373.139 governs land acquisitions by Water Management Districts. He offered to come back to the Board with preliminary results in advance of any action to ensure the Board of County Commission remains informed.

Commissioner Davis requested SJRWMD reconsider opening the All-Terrain Vehicle (ATV) trails in the Herky Huffman/Bull Creek Wildlife Management area without allowing hunting. Mr. Christianson said this would be reviewed.

Vice Chairman O’Bryan advocated Mr. Christianson’s return to the Board with information and updates on impacted County lands.

**5.D. PRESENTATION AND INTRODUCTION TO FPAN ORGANIZATION BY DR.
RACHEL WENTZ, FLORIDA PUBLIC ARCHAEOLOGY NETWORK**

Regional Director of the Florida Public Archaeology Network, Dr. Rachel Wentz, provided an introduction and spoke about the goals of the Florida Public Archaeology Network (FPAN) Organization.

Commissioner Davis sought information pertaining to archaeological issues with Indian middens that caused the delay in finishing the sidewalk, on Old Dixie Highway, in Roseland.

Dr. Wentz stated that her organization is not a regulatory organization, but a liaison between communities and the Bureau of Archaeological Research. She said that there are cultural resource management firms and private organizations throughout the state that work with local governments to provide this service.

Public Works Director Chris Mora provided the details of halting the sidewalk project due to possible Indian middens, the cost of the moving forward with construction, and grant money not covering the cultural studies.

Dr. Wentz did not think this would be a cumbersome project, and agreed to help with any communications.

5.E. VERO BEACH UTILITY UPDATE BY AMY BRUNJES AND RYAN FAIR,
FLORIDA POWER AND LIGHT

Florida Power and Light (FP&L) representatives Amy Brunjes and Ryan Fair used a PowerPoint presentation (on file) to provide the Board with an update on the utility sale negotiations with the City of Vero Beach.

Commissioner Solari, due to the complexity of this issue, suggested that FP&L representatives write an article for the *Vero Beach News Weekly*, to help clarify the savings to the City, as well as the economic benefits.

Commissioners Davis and Flescher sought clarity regarding FP&L's two-year employee agreement.

Ms. Brunjes disclosed that the Public Service Commission had set the date of September 20, 2012, for a public workshop in Tallahassee, to address Smart Meter concerns.

6. APPROVAL OF MINUTES - NONE

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

8. CONSENT AGENDA

8.A. APPROVAL OF WARRANTS AND WIRES – JUNE 1, 2012 TO JUNE 7, 2012

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the list of Warrants and Wires as produced by the Comptroller's Office, for the time period of June 1, 2012 to June 7, 2012, as requested in the memorandum of June 7, 2012.

**8.B. QUAIL CREEK PD APPROVAL/ACKNOWLEDGMENT TO ASSIGNMENT AND
ASSUMPTION OF WARRANTIES**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the two Assignment and Assumption documents with Quail Creek of Vero, Inc.; authorized the Chairman to execute same evidencing the Board's approval/acknowledgment; and authorized staff to proceed with the release/return of the two surety bonds (No. 105675632 in the amount of \$98,322.76 and No. 105675631 in the amount of \$192,512.93) posted by Atlas FL I SPE, LLC and written by Travelers Casualty and

Surety Company of America, as recommended in the memorandum of June 12, 2012.

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

8.C. RESOLUTIONS TO CALL LETTERS OF CREDIT AND TO ACT ON BEHALF OF INDIAN RIVER COUNTY DURING THE TIME FRAMES OF JULY 18, 2012, THROUGH AND INCLUDING AUGUST 20, 2012, AND AUGUST 22, 2012 THROUGH AND INCLUDING SEPTEMBER 10, 2012

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved: (1) **Resolution 2012-056**, delegating authority to the County Administrator or the Assistant County Administrator to execute Resolutions calling Letters of Credit as necessary during the period commencing July 18, 2012, through and including August 20, 2012, and further delegating to the County Administrator, the Assistant County Administrator, and the Emergency Services Director the authority to execute all documents necessary to the proper functioning of the County during the period commencing July 18, 2012 through and including August 20, 2012; and

(2) **Resolution 2012-057**, delegating authority to the County Administrator or the Assistant County Administrator to execute Resolutions calling Letters of Credit as necessary during the period commencing August 22, 2012, through and including September 10, 2012, and

further delegating to the County Administrator, the Assistant County Administrator, and the Emergency Services Director the authority to execute all documents necessary to the proper functioning of the County during the period commencing August 22, 2012, through and including September 10, 2012.

8.D. WORK ORDER NO. 2 WITH GFA INTERNATIONAL, INC., OSLO ROADWAY IMPROVEMENTS – PHASE III (43RD AVENUE TO 58TH AVENUE) IRC PROJECT NO. 0517

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Work Order No. 2 to GFA International, Inc., authorizing professional services as outlined in the Scope of Services (Exhibit A), and authorized the Chairman to execute same for a not-to-exceed amount of \$46,040.00, as recommended in the memorandum of June 7, 2012.

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

8.E. APPROVAL OF BID AWARD FOR IRC BID NO. 2012045 STRUCTURE DEMOLITION AND SITE CLEARING AT FORMER JAYCEE FACILITY

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved: (1) the bid award to LGT Enterprises, LLC as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid; and

(2) the issuance of purchase order after receipt and approval of the appropriate certificate of insurance, as recommended in the memorandum of June 7, 2012.

8.F. TRANSIT FACILITY, FINAL PAY REQUEST, SCHULKE BITTLE AND STODDARD, L.L.C.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the final pay request to the Transit Facility contract with Schulke Bittle and Stoddard, LLC, in the amount of \$10,063.91, which will complete the contract, as recommended in the memorandum of June 11, 2012.

8.G. TRANSIT FACILITY, FINAL PAY REQUEST, BARTH CONSTRUCTION, INC.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved the final pay request to the Transit Facility contract with Barth Construction, Inc., in the amount of \$84,384.70, which will complete the contract, as recommended in the memorandum of June, 11, 2012.

**8.H. CONSIDERATION OF CHANGE ORDER NO. 1 TO CONTRACT AGREEMENT
WITH TIMOTHY ROSE CONTRACTING, INC. FOR CONSTRUCTION OF
PUBLIC ACCESS IMPROVEMENTS ON THE FLINN TRACT OF THE LAGOON
GREENWAY**

ON MOTION by Commissioner Flescher, SECONDED by Commissioner Davis, the Board unanimously approved Change Order No. 1 to the Lagoon Greenway Phase I Construction Agreement with Timothy Rose Contracting, Inc., and authorized the County Administrator to execute the Change Order on behalf of the County, as recommended in the memorandum of June 12, 2012.

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

Chairman Wheeler called a break at 10:15 a.m. and reconvened the meeting at 10:27 a.m., with all members present.

**9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL
AGENCIES - NONE**

10. PUBLIC ITEMS

10.A. PUBLIC HEARING

**10.A.1. CONSIDERATION OF PROPOSED LDR (LAND DEVELOPMENT
REGULATION) AMENDMENTS (LEGISLATIVE)**

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

Planning Director Stan Boling, using a PowerPoint presentation (on file), recapped his memorandum dated June 7, 2012, providing background and analysis on the proposed Land Development Regulations (LDR) amendments, which are the result of staff's Evaluation and Appraisal Report (EAR) process. He said that the Board needs to adopt the comprehensive plan policies, pointed out that some of the added amendments were initiated by the Board, and some were initiated through staff to clean up, clarify, and/or update the LDRs. He reviewed the proposed recommendations from the Agriculture Advisory Committee and the proposed recommendations and exceptions from the Planning and Zoning Commission. Director Keating also spoke about short-term lodging in single-family zoning districts; the definition in the County Code of hotel/motel; not currently having a definition of lodging facility (a use that is allowed only in commercial zoning districts); what staff has done over the years regarding 30-day stays; and the proposal to clarify the definitions in the ordinance. He recommended the Board direct staff to make any necessary changes to the proposed LDRs, and announce their intention to adopt the ordinances at the July 10, 2012, 5:01 p.m. hearing.

The Chairman opened the Public Hearing.

Glenn Powell, 12845 Bay Street, Roseland, owner of several single family homes and short-term rentals in Sebastian and Roseland, said he had four houses that were charming but did not lend themselves to attracting a good long-term tenant, so over the years he rented them as short-term vacation homes. He provided background, revealed his ongoing monthly costs, and noted that when he purchased the properties, he researched the County Code for single family residences, but it did not address rental terms or time limitations. He thereafter voiced concerns over: (1) the County Code being silent on short-term rentals, (2) how changing the LDR would affect him, and (3) not being notified of the workshops/meetings that had taken place. He claimed that the Courts have held that short-term rentals are not a business use. Mr. Powell emphasized that in addition to collecting lodging taxes, he also maintains the properties, and is an asset to his neighborhood; and if there is a code that specifically prohibits short-term rentals,

people will still continue to rent, but the landlords will not collect the taxes, and it will be a black market rental business. He relayed that on June 2, 2011, Governor Rick Scott signed a Bill into law that reclassifies a single-family home as a vacation rental, and a local law cannot restrict, prohibit, or regulate the rentals based on the classification use for occupancy.

Vice Chairman O'Bryan said that his family has used short-term rentals in the past, and felt they provide a family friendly environment. He believed that most of the people that moved or brought their business to this County visited here first. He asked the County Attorney to review the State Law that Mr. Powell referenced, and provide an opinion before the final meeting, so the Board can take appropriate action.

Commissioner Davis also revealed that his family uses short-term rentals when traveling. He could only recall two negative complaints in his eight years of being a commissioner.

Community Development Director Bob Keating acknowledged that there have not been a lot of complaints, and reiterated that staff is not changing the policy, they are only clarifying it.

Chairman Wheeler believed that by clarifying the ordinance, it is in effect, changing it.

Commissioner Davis did not favor changing the ordinance, he wanted time to observe whether there is a real or perceived problem; at this time he believed it to be perceived.

Mr. Powell said the people who come for short-term rentals have money, are educated, and seek out what Indian River has to offer. He said there are regulations that can be put into place to take care of the concerns of single-family residences.

Attorney Polackwich focused on legal issues and the interpretation of the proposed amendments to the ordinance. He recalled that vacation rentals are defined under Chapter 509 of the Florida Statutes, which also deals with hotels and vacation rentals at the State level, and are

regulated by the Division of Hotels and Restaurants, Department of Business and Professional Regulations, which is why this situation has been dealt with through the definition of hotel/motel. He said the County Code is gray, and staff's position is that because the ordinance includes "any building," they now want to clarify that "any building" includes single-family residences.

Richard Gillmor, Sebastian Councilmember and Congressional candidate, addressed the LDR's regarding vacation rentals. He felt the vacation rental business is self-regulating, and he cautioned the Board not to fix what is not broken. He suggested that staff invite other short-term rental landlords to future workshops.

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

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Flescher, to direct staff to remove the proposed changes to the "Hotel/Motel" section of the Land Development Regulations.

Discussion ensued among the Board as to how to make the amendment to the Land Development Regulations clearer.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Commissioner Flescher, to allow short-term rentals for less than one month.

The Chairman CALLED THE QUESTION and the motion carried. The Board unanimously directed staff to: (1) remove the proposed changes to the "Hotel/Motel" section of the Land Development Regulations; and

(2) include a sentence that would allow for short-term rentals less than one month at a time.

The Commissioners and staff debated the density transition area buffer requirement in the subdivision and site plan ordinance.

ON MOTION by Commissioner Solari, SECONDED by Commissioner Davis, the Board unanimously approved to eliminate any Land Development Regulation wording that implements the density transition area requirements of Future Land Use Element (FLUE) Policy 1.48.

In conclusion, the Board announced its intention to adopt the final ordinances at the Special Call Meeting, scheduled for July 10, 2012, at 5:01 p.m.

10.B. PUBLIC DISCUSSION ITEMS – NONE

10.C. PUBLIC NOTICE ITEMS

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

PELICAN ISLAND AUDUBON SOCIETY'S REQUEST FOR SPECIAL EXCEPTION USE

APPROVAL FOR A COMMUNITY CENTER (QUASI-JUDICIAL)

County Attorney Polackwich read the notice into the record.

11. COUNTY ADMINISTRATOR MATTERS

11.A. APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR'S DENIAL OF 12

IMPACT FEE REFUND APPLICATIONS SUBMITTED BY IMPACT FEE

CONSULTANTS (QUASI-JUDICIAL)

(Clerk's Note: This item followed Item 12.I.1. Sector 3 Beach and Dune Restoration Project, and is placed here for continuity.)

Chairman Wheeler announced that this is an appeal to the Board of County Commissioners by Impact Fee Consultants, LLC (IFC) regarding staff's denial of 12 applications for impact fee refunds. The applications were denied by the Community Development Director and IFC appealed the denial to the County Administrator. The County Administrator denied the appeal, and the IFC is now appealing that decision to the Board. The appeals were taken pursuant to Section 100.06 of the Indian River County Code.

Each Commissioner, as requested by the Chairman, divulged ex parte site visits, investigations, and communications. They also acknowledged that they had reviewed staff's report, and affirmed that they have an open mind and can base their decisions on the evidence presented and applicable law.

In accordance with Chairman Wheeler's declaration that this meeting was quasi-judicial, the Deputy Clerk administered the Oath to all persons who wished to speak at the hearing.

Charles Wilson, Impact Fee Consultants, LLC (IFC), (formerly affiliated with Asset Research and Recovery, LLC) reviewed procedural matters and requested the recusal of Attorney Polackwich from these proceedings due to his role in representing the Board of County Commission.

MOTION WAS MADE by Commissioner Solari to Table this item. Motion DIED for lack of a Second.

Attorney Polackwich explained the duties of the County Attorney as set forth in the Indian River County Code, and drew attention to the Guidelines for Quasi-Judicial Proceedings Before the Indian River County Board of County Commissioners (“Board”), on pages 274 – 278 of the Agenda Packet, where he clarified his role.

Chairman Wheeler denied Mr. Wilson’s request to recuse the County Attorney, based on the above guidelines.

Mr. Wilson revealed that under the outline of procedures, he needed to make this part of the record.

A brief discussion ensued regarding quasi-judicial matters and due process requirements.

Attorney Polackwich and Mr. Wilson debated the Burden of Proof pertaining to this appeal.

Mr. Wilson informed the Board that after the appeal was filed, an additional application was received, and since it is under the same requirements as the other 12 applications, he wondered if it could be added. The Board agreed to consider the addition, making this the thirteenth application appeal. Thereafter he asked that the Board issue a summary judgment and grant a refund to everyone that is deserving of it.

Community Development Director Robert Keating declared that this is an appeal of staff’s denial of impact fee refund applications. He provided background and characteristics regarding impact fees, described the specifics of Ordinances 2012-002 and 2012-004, which deal with impact fee refunds, explained refund procedures, reviewed the various appeals that were submitted by IFC, and justified why the individuals did not qualify for the impact fee refunds.

He clarified staff's calculations, time frames, and the determination for refunds; and thereafter summarized the seven appeal points from Mr. Wilson and staff's responses (page 266 in the Agenda Packet). Director Keating concluded his presentation by pointing out that the County Attorney supports his findings that the applications were properly denied since all of the applications were based on the six-year refund ordinance, and all of the impact fees were encumbered or spent within the six-year period.

Discussion ensued between the Commissioners and staff regarding the calculation of impact fee refunds and property owners being entitled to an impact fee refund only if the impact fees paid for the property were not expended or encumbered within the six-year period.

Management and Budget Director Jason Brown, using a PowerPoint presentation (on file), summarized IFC's appeal of the impact fee refund denials. He explained the County's methodology for first in-first out when impact fees are collected, and reported on the expenditures and revenues for District 3, from inception (1999-2011), as well as the refunded fees paid in 2005 and 2006. He read Section 1000.15(2)(b) of the County Code, which basically says that if the funds are not encumbered, the County is to identify the specific property for which the funds have not been encumbered, which would exclude the funds that have been expended or encumbered from any refunds. Director Brown explained why the 13 refund applications were denied: one application was for the first calendar quarter of 2005 and paid during the January 1 to March 31 time frame, so those funds had to be expended/encumbered on or before March 31, 2011; eleven applications were from the last quarter of 2005 and needed to be expended/ encumbered by December 31, 2011; and one application was from the first quarter of 2006 and reached the six-year period on March 31, 2012. He said the calculations were conducted in accordance with the ordinance change that was adopted in March 2012. He also pointed out that all refund calculations were verified by the Finance Director; financial records were audited by an independent CPA firm; and calculations were made in accordance with the revised Code (Ordinance 2012-004), effective March 13, 2012.

Administrator Joseph Baird conveyed that he had met with staff officials several times regarding the process of application denials, and he truly believed that the refunds are not due.

Attorney Polackwich, in response to Commissioner Solari, stated that according to the Code, he saw no inconsistent interpretations by staff.

Chairman Wheeler called a break at 4:10 p.m. and reconvened the meeting at 4:16 p.m. with all members present.

CROSS-EXAMINATION FROM MR. WILSON

Mr. Wilson went through a cross-examination process with Director Keating, Attorney Polackwich, and Administrator Baird, pertaining to the denial of impact fee refund applications.

Chairman Wheeler led a lengthy discussion and debate regarding applicable ordinances, procedural aspects, references and reasons for the denials, eligibility for refunds, Fund 101, the impact fee refund calculation of \$1.4 million, and the methodology of spending the money.

Vice Chairman O'Bryan asked Mr. Wilson to provide evidence showing that the expenditures in question are incorrect. Chairman Wheeler suggested that if Mr. Wilson believed there to be an error in the numbers, he needs to point out the mistake and allow Director Brown to recalculate it.

Director Brown reiterated the methodology regarding impact fee accounting.

Mr. Wilson said that the decision staff used is not in the ordinance, and he believed the decision could be changed by staff without changing the ordinance. He felt the decision on how to count the money affects those who are eligible.

Discussion ensued among the Commissioners as to whether this item should be tabled, and they decided to continue. Mr. Wilson continued with his cross-examination of staff.

MR. WILSON'S PRESENTATION

Mr. Wilson stated that his firm had appealed the decision of the Community Development Director based upon an inaccurate interpretation by staff that the impact fees paid were encumbered or spent within the six-year period as defined in Section 1000.15 of the Code; and the methodology used for determining eligibility (not as directed by the ordinance). He said unless the balance is zero, there is impact fee refund money left. He did not believe the money was spent in the original six-year period, and the people who paid their money in that six-year period deserve it back.

Chairman Wheeler asked the Commissioners, staff, and the public if there were questions for Mr. Wilson; there were none.

Directors Brown and Keating emphasized that staff had followed the ordinance during the process.

Attorney Polackwich said the ordinance states that if the money is expended or encumbered by the end of the six-year period, then it is not eligible for refund.

Discussion ensued among the Commissioners regarding the six-year period, the first in-first out process, and the eligibility for refunds.

Vice Chairman O'Bryan observed that during today's hearing he had not heard sufficient, competent, factual evidence in Mr. Wilson's claim to overturn-the decision of the Community Development Director.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously agreed that all impact fees which were the subject of the thirteen (13) applications, were spent or encumbered within the six-year period; and therefore, the applications submitted by Impact Fee Consultants, LLC, were properly denied, as recommended in the memorandum of June 8, 2012.

ALL SUBMITTED DOCUMENTS ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

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.G.1. EMERGENCY ADDITION – CITY OF FELLSMERE, CHAPTER 180 –
NATURAL GAS SERVICE AREA**

(Clerk's Note: This item followed Item 15. Special Districts and Boards, and is placed here for continuity.)

Management and Budget Director Jason Brown used a PowerPoint presentation (on file) to recap his memorandum dated June 18, 2012, regarding the potential for a natural gas reserve area that would cover a large portion of the unincorporated area of the County. He reported that this issue is going before the City of Fellsmere (Fellsmere) at the City Council meeting on Thursday, June 21, 2012, and that he would be attending the meeting to inquire what the purpose is for extending this service outside their municipal boundaries, and what their plans are for the reserve area, since F.S. Chapter 180 gives municipalities the power to provide utility service outside the municipal area. He wanted the Board of County Commissioners to be aware of this issue, and did not want this to result in an adverse situation for the taxpayers in the unincorporated area.

Administrator Baird did not foresee this as a problem so long as it is within their city boundaries.

The Board discussed options, working with the municipalities, and staff obtaining more information.

Vice Chairman O'Bryan said he had spoken with City Manager Jason Nunemaker, who wants to go large to make it attractive to a utility company that would provide natural gas service. He said that Fellsmere's intent is to not overlay existing service areas. He asked Director Brown to clarify where there is and is not current service.

Administrator Baird felt that Florida City Gas should be included in the discussions, and suggested that Mr. Nunemaker give a presentation to the Board before the City adopts an ordinance.

Attorney Polackwich said that Fellsmere's proposed Ordinance provides a concept that will not work at this time because Fellsmere would not be providing a service and extending it outside of their area for the benefit of the residents, they are considering a service which they do not currently provide, and declaring the area to be their exclusive territory. He believed that under the old Statute, the County has an obligation to provide objections to them promptly, which should be no later than the end of next week.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Davis to direct: (1) Director Brown to attend the Thursday, June 21, 2012, Fellsmere City Council meeting; (2) Attorney Polackwich to write the appropriate letter to include the problems of exclusivity of the franchise and the possibility of Indian River County residents being taxed with no representation; and (3) staff to encourage the County and City of Fellsmere to embrace the operation as a partnership that would be a win-win for everyone in the County.

Discussion ensued regarding the County and Fellsmere embracing this operation; putting the natural gas franchise within Fellsmere's jurisdiction, not the County's; moving this forward in the spirit of economic development, not economic enhancement for Fellsmere; and this not being perceived as an adversarial attack or statement of aggression.

Director Brown voiced staff's concerns as to whether this would provide service to people who otherwise would not be able to get service. At Thursday's City Council meeting, he will attempt to find out: (1) how existing customers would be impacted; (2) whether existing customers' rates would change by paying a 10% fee in addition to what they are currently paying; (3) what benefits the customers at the south end of the County would receive from Fellsmere; and (4) what would stop Fellsmere from expanding to other ends of the County.

Administrator Baird emphasized that staff is not against Fellsmere, they just want to protect the County's citizens.

Chairman Wheeler said no one knows enough to be against or for it.

Commissioner Davis wants staff to attend the City Council meeting as diplomats and discuss the proposed natural gas service franchise.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

Chairman Wheeler called a break at 12:14 p.m. and reconvened the meeting at 1:18 p.m. with all members present.

12.H. RECREATION - NONE

12.I. PUBLIC WORKS

12.I.1 SECTOR 3 BEACH AND DUNE RESTORATION PROJECT, RANGER

CONSTRUCTION INDUSTRIES, INC. REQUESTS FOR FINAL PAYMENT AND FULL RELEASE OF RETAINAGE

Coastal Engineer James Gray reviewed his memorandum to provide background and analysis regarding the Sector 3 Beach and Dune Restoration project with Ranger Construction Industries, Inc. (Ranger). He reported that Ranger had submitted their request for final payment in the amount of \$495,746.20, as well as a Final Payment Affidavit that recites that all indebtedness connected with the project had been paid in full, except for a claim by Henry Fischer and Sons, Inc. (Fischer). He made it clear that Fischer was a subcontractor to Ranger as

a sand supplier, and to Ranch Road Lake, LLC (Ranch Road) as a sand producer and processor. He informed the Board that the County had paid in full the fuel adjustment surcharge to Ranger as general contractor, and according to Ranger, the proper amounts had been distributed to their subcontractors, including Ranch Road. Mr. Gray said that Fischer maintains that Ranch Road did not distribute the portion of the fuel adjustment surcharge attributable to Fischer's dredging and processing work; therefore, Fischer's claim is \$60,299.55, which includes \$50,437.94 worth of the fuel adjustment surcharge, and \$9,861.61 in interest charges. He recalled that during the May 15, 2012 Board of County Commissioners Meeting, the Board requested that all parties meet to try to resolve the fuel adjustment surcharge issues prior to this meeting, and on June 15th, staff met with representatives from Ranger, Fischer, and Ranch Road, but no resolution was reached.

Attorney Polackwich provided background and reported that staff had made payments to Ranger because they are the County's general contractor. He went on to explain that Fischer had a dual role in this project - they were a subcontractor of Ranger and also a sub-subcontractor to Ranch Road. He said the County paid the full surcharge to Ranger, and in-turn, Ranger distributed the full amount to Ranch Road, which created the problem, because the funds did not downstream from Ranch Road to Fischer, due to a dispute. He believed there would be ongoing litigation between Fischer and Ranch Road relating to disputes over this project. Attorney Polackwich thereafter presented three possible options for the County: (1) to not pay out anything until the dispute is resolved; (2) withhold \$60,299.55 and pay the balance to Ranger; or (3) release the funds to Ranger and leave Fischer to its private remedies of a claim on the payment bond or a civil lawsuit against Ranch Road, which is what he recommended.

Commissioner Flescher felt the County has the obligation to ensure that all the subcontractors are paid.

Discussion ensued among the Commissioners and County Attorney regarding Ranger having distributed 100% of the fuel adjustment surcharge, the surcharge reaching all the subcontractors, and the ongoing dispute between Fischer and Ranch Road.

Bob Schafer, Ranger Construction Industries, Inc., explained the breakdown of how the surcharge was paid out. He said his agreement was with Steve Smith of Ranch Road, who had several people working under him, so he had no way of knowing how the money was broken down and disbursed after he paid Mr. Smith.

Steve Smith, Ranch Road Lake, LLC, informed the Board that he was enrolled in an ongoing lawsuit and his attorney advised him not to extend specifics. He did, however, explain that before he started Phase II, fuel costs had already started to escalate and Ranch Road agreed (on a handshake) to grant a 40-cent per yard increase on the sand that left his pit. He said Fischer was paid more than the \$50,000, and now they want to double dip. He also pointed out that the fuel surcharge money that the County granted was a partial repayment to him for what was extended in good faith.

Chuck Kramer, Henry Fischer and Sons, Inc., provided background, and described the ongoing dispute over the non-payment of the fuel adjustment surcharge. He felt there could have been other remedies taken when the dispute was realized, but now it will be hard to settle since the money has already been distributed. He said that no matter how he tries to get the money (through litigation with Ranch road or through the bond company), it will cost him thousands of dollars, so he wanted the Board's help if possible.

Discussion and debate ensued regarding the lack of a solution, contractual obligations, privity issues, why Ranger released the money to Ranch Road, and why Fischer did not produce a contract for the fuel adjustment surcharge or submit a Notice to Owner.

Vice Chairman O'Bryan appealed to all three parties to consider "kicking-in" \$20,000 to settle and close this issue on a positive note for moving forward in the future - Ranger and Ranch Road opposed the idea.

Commissioner Solari did not believe the County should be involved.

Chairman Wheeler observed that the Board is at a loss to offer any solutions, and did not see where the Board could intervene.

Commissioner Flescher elaborated on why he did not feel that Ranger did the right thing by distributing the money to Ranch Road.

Mr. Smith stated that there are multiple issues involved in this situation, and he reiterated that Fischer received a significant increase during Phase II.

Attorney Polackwich did not accept the notion that because the Board expressed concern about getting the money to the people burning the fuel, that it somehow created privity between the truckers and miners with the County. He said he had reviewed Change Order No. 4 to see if there was something that addressed this, but there was not. He did not believe that holding back \$60,299.55 would be a path to correcting this situation, which is why he supported option 3.

MOTION WAS MADE by Commissioner Solari,
SECONDED by Vice Chairman O'Bryan to approve
staff's recommendation of Option 3.

Commissioner Flescher sought and received clarification that this issue is for the fuel adjustment surcharge for Phase II.

Henry Fischer, Henry Fischer and Sons, Inc., said that prior to the start of Phase II, he spoke with Mr. Smith about a 40-cent increase due to the cost of changing the screening, and the fuel adjustment surcharge was not mentioned. He noted that he had approached Mr. Smith about lobbying the County for a fuel increase, and after that Mr. Smith and Mr. Kramer worked out the details. He revealed that neither his company nor David Thornton received fuel money.

David Thornton, South East Development, Ft. Pierce, said he worked as a subcontractor with Fischer on the project, and his company funded the project, wore out equipment, and was promised that they would receive the fuel adjustment surcharge to compensate the workers. He revealed that he had funded and made up the difference when other peoples' equipment was down, but now he is out approximately \$21,000 for the fuel surcharge. He also informed the Board that he had received a final release check, but it was soon deducted from him as demobilization. He urged the Board to look beyond the legal issues and bring forward the surcharge monies.

The Commissioners voiced their frustration with not being able to offer a solution.

Mr. Schafer showed the Board his 100% complete Final Release Waiver of Lien from David Thornton.

Director Mora affirmed that he has the same form, dated June 13, 2011, where Mr. Thornton signed a full Release Waiver of Lien, which basically waived their rights.

The Chairman CALLED THE QUESTION and the Motion carried by a 4-1 vote (Commissioner Flescher opposed). The Board approved Option 3: Release all funds to Ranger Construction Industries, Inc. and leave Henry Fischer & Sons, Inc. to its private remedies under the bond or in court; and that the funds related to Fischer's

claim be released pursuant to Section 4.7 of the contract, which under the circumstances requires Ranger to indemnify the County for any matters relating to the Fischer claim, as recommended in the memorandum of June 5, 2012.

Chairman Wheeler called a break at 2:43 p.m. and reconvened the meeting at 2:50 p.m. with all members present.

12.I.2 CRIME SCENE UNIT – WORK ORDER #2 DONADIO AND ASSOCIATES, ARCHITECTS, P.A.

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

Administrator Baird requested the Board approve the architectural design services with Donadio and Associates, Architects, P.A., for the Sheriff's Department Crime Scene Unit, adjacent to the Sheriff's Department Office and Jail Complex site (formerly SunSky Roofing), for the adaptive re-use of the existing structure.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously approved Work Order No. 2, Crime Scene Unit for design services with Donadio and Associates, Architects, P.A., and authorized the Chairman to execute same, as recommended in the memorandum of June 12, 2012.

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

12.J. UTILITIES SERVICES

12.J.1. SEA OAKS WATER SERVICES REPLACEMENT PROJECT

ON MOTION by Commissioner Solari, SECONDED by Commissioner Flescher, the Board unanimously approved the replacement of the water services for labor and materials in the amount of \$79,395.50, and authorized the Chairman to execute Work Authorization No. 2010-008 for the Labor Contractor for \$51,045.50, as recommended in the memorandum of June 6, 2012.

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

13. COUNTY ATTORNEY MATTERS

13.A. VISTA PLANTATION SETTLEMENT DOCUMENTS

Attorney Polackwich provided background regarding the 66th Avenue project; the negotiations of settlement with Vista Properties of Vero Beach, Inc. (Vista Properties); and Vista Plantation Association, Inc. (Vista Association) for stormwater retention; and the conceptual agreements that were accepted by the Board on February 14, 2012.

Deputy County Attorney William DeBral explained the details of the proposed settlement documents, and asked the Board for approval.

ON MOTION by Vice Chairman O'Bryan, SECONDED by Commissioner Davis, the Board unanimously approved and authorized the Chairman to execute the settlement documents with: (1) Vista Properties of Vero Beach, Inc., (2) Vista Plantation Association, Inc., and (3) Attorney's Title Insurance Fund, Inc., as recommended in the memorandum of June 13, 2012.

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

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

The Board reconvened as the Board of Commissioners of the Emergency Services District at 11:52 a.m. and returned to the regular Board of County Commission at 11:53 a.m., where Item 12.G.1 was heard next. The Emergency Services District Minutes are available separately.

15.A.1. APPROVAL OF MINUTES MEETING OF MARCH 20, 2012

15.A.2. APPROVAL OF MINUTES MEETING OF APRIL 17, 2012

15.A.3. APPROVAL OF MINUTES MEETING OF MAY 1, 2012

**15.A.4. REQUEST TO CONSTRUCT A RECEIVING/STORAGE/DISTRIBUTION
(RSD) CENTER AT THE EMERGENCY OPERATIONS CENTER COMPLEX**

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 5:52 p.m.

ATTEST:

Jeffrey R. Smith,
Clerk of Circuit Court and Comptroller

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/LA/2012 Minutes