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OF MARCH 6, 2007

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March 6, 2007

**REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER COUNTY**

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Tuesday, March 6, 2007. Present were Chairman Gary C. Wheeler, Commissioners Wesley S. Davis, Joseph E. Flescher and Peter D. O'Bryan. Vice Chair Sandra L. Bowden was absent. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Athena Adams.

1. CALL TO ORDER

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

2. INVOCATION

Pastor Roger Ball, Immanuel Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

County Administrator Joseph A. Baird led the Pledge of Allegiance to the Flag.

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

5. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION OF PROCLAMATION HONORING JEAN L. KLINE, R.N., M.P.H. FOR OUTSTANDING SERVICE AS THE INDIAN RIVER COUNTY HEALTH DEPARTMENT ADMINISTRATOR

Chairman Wheeler read and presented to Miranda Swanson the Proclamation honoring Jean L. Kline for outstanding services as the Indian River County Health Department Administrator.

Miranda Swanson of the Health Department accepted the Proclamation on behalf of Jean Kline who was unable to attend. She also read a “thank you” note from Ms. Kline.

6. APPROVAL OF MINUTES

A. REGULAR MEETING OF JANUARY 16, 2007

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Regular Meeting of January 16, 2007. There were none.

ON MOTION by Commissioner Flescher, SECONDED by Commissioner O’Bryan, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the Minutes of the regular meeting of January 16, 2007, as written and distributed.

B. SPECIAL CALL MEETING OF JANUARY 16, 2007 – BCC OFFICE

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Special Call Meeting of January 16, 2007. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the Minutes of the Special Call meeting of January 16, 2007, as written and distributed.

C. PUBLIC WORKSHOP FEBRUARY 1, 2007 – AFFORDABLE HOUSING

The Chairman asked if there were any additions, deletions or corrections to the Minutes of the Public Workshop of February 1, 2007. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the Minutes of the Public Workshop of February 1, 2007, as written and distributed.

7. CONSENT AGENDA

Commissioner Davis asked to pull, for discussion, Item 7.L

Commissioner O'Bryan asked to pull, for discussion, Items 7.P. and 7.EE

7.A REPORTS PLACED ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD:
(1) FELLSMERE WATER CONTROL DISTRICT MAP, FINANCIAL AUDIT AND FINANCIAL REPORT FOR THE YEAR ENDED SEPTEMBER 30, 2006.

7.B. APPROVAL OF WARRANTS – FEBRUARY 9 – FEBRUARY 15, 2007

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the list of Warrants as issued by the Clerk to the Board for the time period of February 9, 2007 to February 15, 2007 as requested.

7.C. APPROVAL OF WARRANTS - FEBRUARY 16 – FEBRUARY 22, 2007

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the list of Warrants as issued by the Clerk to the Board for the time period of February 16, 2007 to February 22, 2007 as requested.

7.D. APPOINTMENT TO THE METROPOLITAN PLANNING ORGANIZATION TECHNICAL ADVISORY COMMITTEE (MPOTAC)

The Board noted the appointment of Ms. Susan Olson as the School District’s representative on the Indian River County’s Metropolitan Planning Organization’s Technical Advisory Committee for the County’s 2007 fiscal year.

7.E. RESIGNATION AND TEMPORARY APPOINTMENT OF CHAIRMAN TO THE CHILDREN'S SERVICES ADVISORY COMMITTEE

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) accepted the resignation of Ms. Jean Kline as Chairman of the Children's Services Advisory Committee and approved the appointment of Ms. Miranda Swanson, M.P.H., Indian River Health Department, to fill the position until a permanent replacement can be found, as recommended in the memorandum of February 21, 2007.

7.F. 2007 ELECTION OF METROPOLITAN PLANNING ORGANIZATION (MPO) CHAIRMAN AND VICE CHAIRMAN

The Board noted the elections of Mr. Peter O'Bryan as Chairman and Mr. Brian Burkeen as Vice Chairman of the Metropolitan Planning Organization (MPO) for the year 2007.

7.G. APPOINTMENT OF JOHN "JACK" BERRIGAN TO THE TOURIST DEVELOPMENT COUNCIL AS MEMBER INTERESTED IN TOURISM

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the appointment of John "Jack" Berrigan to the Tourist Development Council as a Member Interested in Tourism, replacing Mr. Robert

Tenbus who is deceased, as recommended in the memorandum of February 19, 2007.

7.H. 2007 ELECTION OF CHAIRMAN AND VICE CHAIRMAN OF THE MPOTAC

The Board noted the re-elections of Mr. Robert Keating as Chairman, and Mr. Chris Mora as Vice Chairman of the MPO Technical Advisory Committee (TAC) for the year 2007.

7.I. RESIGNATION OF MEMBER-AT-LARGE APPOINTEE, LAND ACQUISITION ADVISORY COMMITTEE

The Board accepted the resignation of Mr. F.W. “Rick” Baker, Member-at-Large Appointee, from the Land Acquisition Advisory Committee.

7.J. APPOINTMENT OF BONNIE VERON TO THE LAND ACQUISITION ADVISORY COMMITTEE AS A MEMBER-AT-LARGE APPOINTEE

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the appointment of Mrs. Bonnie Veron as a Member-at-Large appointee on the Land Acquisition Advisory Committee to complete the term of Mr. F.W. “Rick” Baker who resigned, as recommended in the memorandum of February 20, 2007.

7.K. RESIGNATION OF CITIZEN AT LARGE APPOINTEE TO THE HISTORIC

RESOURCES ADVISORY COMMITTEE

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) accepted the resignation of Ms. Kathleen Smith as the Citizen-at-Large Appointee to the Historic Resources Advisory Committee, as recommended in the memorandum of February 27, 2007.

7.L. ACQUISITION OF RIGHT-OF-WAY ALONG 66TH AVENUE

Commissioner Davis received a call from a resident who was concerned about the acquisition on 66th Avenue and the Attorney handling the matter. Commissioner Davis felt this could “quite possibly be a bait and switch” because the Attorney they were entering into agreement with had sent mail to area residents introducing himself and offering to represent anyone who so wished. The contract looked like “a glorified real estate contract” to Commissioner Davis and he would rather it went to the residents than to an attorney.

Assistant County Attorney Bill DeBaal informed the Board that staff had proposed that the County and the attorney agree on an appraiser, have the property appraised, and the value given would be the purchase price of the property, and the property owner and the County would be bound by that appraisal.

Commissioner Davis did not want the Attorney to be considered the “procuring cause” because of any work he has done up to this point.

Attorney William Collins responded to Commissioner Davis' concerns regarding the 7% attorney's fee and whether individuals could opt out of this.

William Bethel, 4875 66th Avenue, wondered if the Board was fully aware of the process an eminent domain takes. He gave his knowledge of such a process, stating that if the County takes property for one reason and uses it for another they are in violation of State Statute. He talked about just cause, fair market value, and provisions of the Eminent Domain Law. He believed there was impropriety with the memorandum (dated February 26, 2007) especially that it was placed on the Consent Agenda.

Commissioner Davis was mostly concerned with individuals having options to get out of this.

Attorney DeBraal remarked that if they do not want to sign up for the agreement they were not bound to anything and the process goes on. Attorney Collins agreed noting that this was just a proposal and felt individuals should not sign up if they do not believe Mr. McGuire can represent their interests fully.

ON MOTION by Commissioner Davis, SECONDED by Commissioner O'Bryan, the Board by a 4-0 vote (Vice Chair Bowden absent) approved a "trial run" of the procedures outlined in the memorandum of February 26, 2007 (pages 35-36 of the backup). After purchase of the three properties, staff will make a report to the Board with a recommendation as to whether additional parcels should be acquired using the same method, as recommended by staff.

**7.M. REQUEST PERMISSION TO ADVERTISE FOR PUBLIC HEARING ON
MARCH 20, 2007 TO ADOPT AMENDMENTS TO THE COUNTY'S
EXISTING INDUSTRIAL PRETREATMENT ORDINANCE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) authorized staff to advertise the Industrial Pretreatment Ordinance amendments for a public hearing to be used on March 20, 2007, as recommended in the memorandum of February 27, 2007.

**7.N. ENVIRONMENTAL LEARNING CENTER – MITIGATION REQUEST DUE
TO EXPANSION OF ELEVATED BOARDWALK TRAIL SYSTEM**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the Conservation Easement in favor of St. Johns River Water Management District and authorized the Chairman to execute same for recordation in the Public Records of Indian River County, as recommended in the memorandum of February 14, 2007.

COPY OF RECORDED CONSERVATION EASEMENT ON FILE
IN THE OFFICE OF THE CLERK TO THE BOARD

**7.O. APPROVAL OF BID AWARD AND SAMPLE AGREEMENT FOR IRC BID
2007036 HOBART INDUSTRIAL PARK 16" MASTER PLAN WATER
MAIN – UTILITIES DEPARTMENT**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved for the Bid to be awarded to Derrico Construction Corp., as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid. The Board also approved the Sample Agreement and authorized the Chairman to execute said Agreement when required performance and payment bonds have been submitted along with appropriate certificate of insurance and the County Attorney has approved the agreement as to form and legal sufficiency, all as recommended in the memorandum of February 20, 2007.

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

**7.P. DESIGNATION OF COMMUNICATIONS INTERNATIONAL, INC., AS THE
SOLE SOURCE PROVIDER FOR RADIO COMMUNICATIONS
EQUIPMENT ENHANCEMENTS AND INSTALLATIONS**

Commissioner O'Bryan asked how had we not known this would affect the Jail under the same principles, when they discussed this process weeks ago for the new County administration building.

General Services Manager Tom Frame explained what the critical issue was in relation to the nature of the construction.

Discussion ensued between Commissioner Davis and Administrator Baird regarding antennae being able to withstand gale force winds.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Wheeler, the Board by a 4-0 vote (Vice Chair Bowden absent) designated Communications International, Inc., as the Sole Source Provider for radio communication equipment and equipment enhancements and installations and waived the standard bid procedures authorizing the County Administrator to approve the issuance of necessary purchase orders to Communications International, Inc., when associated with the County's 800 MHz public communications system, as recommended in the memorandum of February 26, 2007.

7.O. 74TH AVENUE FORCE MAIN LOOP CONNECTION SOUTH OF SR 60, UCP No. 2598, APPROVAL OF FINAL PAYMENT TO CONTRACTOR AND RELEASE OF RETAINAGE, W.I.P. No. 472-169000-06512, BID NUMBER 2006-056

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the total project construction cost of \$1,253,552.00 and approved Application for Payment No. 4 – Final as final payment to

Felix Associates, LLC, in the amount of \$62,677.60 as recommended in the memorandum of February 21, 2007.

7.R. CIVIL ENGINEERING AND LAND SURVEYING AGREEMENT FOR INTERSECTION IMPROVEMENTS AT CR 510 AND US HIGHWAY 1, AMENDMENT NO. 1 – RETAINAGE RELEASE

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the release of retainage in the amount of \$17,500.96 to McMahon and Associates, Inc., as recommended in the memorandum of February 13, 2007.

7.S. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR LOT 4, BLOCK 19, VERO LAKE ESTATES, UNIT 4

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved Alternative No. 1, granting the cut and fill balance waiver to Christopher Awtrey based on the criteria of Section 930.07(2)(d)4, as recommended in the memorandum of February 21, 2007.

**7.T. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR
PARCEL # 31-39-08-00000-0020-00007.0 LOCATED AT 11196
INDIAN RIVER DRIVE**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved Alternative No. 1 granting the cut and fill balance waiver to Ronald and Tammy Meeks based on the criteria of Section 930.07(2)(d) 1, as recommended in the memorandum of January 19, 2007.

**7.U. ACCEPTANCE CHANGE ORDER NO. 23, FOR THE NEW COUNTY
ADMINISTRATION BUILDINGS**

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved and authorized the Chairman to execute Change Order No. 23 with Turner Construction for the New County Administration Buildings, which will result in a decrease to the GMP of \$87,197.00 and an increase to the Owner's Contingency in the amount of \$5,482.00, as recommended in the memorandum of February 26, 2007.

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

7.V. PROFESSIONAL CIVIL ENGINEERING, GEOTECHNICAL ENGINEERING, AND LAND SURVEYING SERVICES AGREEMENT FOR INTERSECTION IMPROVEMENTS AT 1ST ST SW AND 27TH AVE; 5TH ST SW AND 27TH AVE; 1ST ST SW AND 43RD AVE; 12TH ST AND 27TH AVE, RETAINAGE RELEASE

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the release of retainage in the amount of \$28,057.46 for the projects listed and as recommended in the memorandum of February 13, 2007.

7.W. APPROVAL OF BID AWARD FOR IRC BID # 2007032 DEMOLITION OF 5 CONDEMNED STRUCTURES, COMMUNITY DEVELOPMENT DEPARTMENT/BUILDING DIVISION

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved and awarded the Bid for demolition at the remaining three (3) properties, #1, #3 & #4, for a total cost of \$13,997.00 to Cross Environmental Services, Inc., as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid, as recommended in the memorandum of February 20, 2007. (The low overall bid submitted by Staski Enterprises, Inc. has been determined to be non-responsive by the Building Department.)

**7.X. CRYSTAL SANDS SUBDIVISION WATER ASSESSMENT PROJECT –
FINAL PAYMENT TO CONTRACTOR**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved the total adjusted contract of \$93,790.00 and approved the Request for Final Payment to Underground Utilities, Inc., in the amount of \$2,267.00, as recommended in the memorandum of February 26, 2007.

7.Y. REMOVAL OF EXOTIC VEGETATION WITHIN COUNTY EASEMENTS

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved and authorized the Department of Utility Services and the Purchasing Division to proceed with bidding and award of the proposed project of Removal of Exotic Vegetation with County Easements, as recommended in the memorandum of February 13 2007.

**7.Z. REQUEST FOR FLOODPLAIN CUT AND FILL BALANCE WAIVER FOR
LOT 10, BLOCK 14, VERO LAKE ESTATES, UNIT 2**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice

Chair Bowden absent) approved Alternative No. 1 granting the cut and fill balance waiver to Burgoon Berger based on the criteria of Section 930.07(2)(d)4, as recommended in the memorandum of February 27, 2007.

7.AA. MISCELLANEOUS BUDGET AMENDMENT 012

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved **Resolution 2007-020** amending the fiscal year 2006-2007 budget.

7.BB. APPROVAL OF BID AWARD FOR IRC BID # 2007030 ONLINE TRAINING & RISK MANAGEMENT SERVICES, EMERGENCY SERVICES

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) approved that the Bid be awarded to Target Safety, Inc., as the lowest most responsive and responsible bidder meeting the specifications as set forth in the Invitation to Bid and as recommended in the memorandum of February 26, 2007.

7.CC. IRC JAIL ROOF-MOUNTED AC REPLACEMENTS USING WRITTEN QUOTES

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) waived the standard bidding procedure, accepted the written quotes, and authorized a Purchase Order not to exceed the amount of \$22,526.50 for the replacement of three (3) air conditioning units at the Jail to Colkitt Sheet Metal and Air Conditioning, Inc., as recommended in the memorandum of February 27, 2007.

7.DD. POINTE WEST OF VERO BEACH LTD'S REQUEST FOR FINAL PLAT APPROVAL FOR A SUBDIVISION TO BE KNOWN AS POINTE WEST NORTH VILLAGE PHASE V

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Davis, the Board by a 4-0 vote (Vice Chair Bowden absent) granted final plat approval for Pointe West North Village Phase V, as recommended in the memorandum of February 23, 2007.

7.EE. AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN INDIAN RIVER COUNTY AND SEBASTIAN INLET TAX DISTRICT - SECTORS 1 & 2 BEACH RENOURISHMENT

Commissioner O'Bryan reported that they are trying to put some sand on the

beaches in Sectors 1 & 2, which are their northernmost sectors. He saw the Interlocal Agreement as “a win/win” for the County and the Inlet District. He explained how the dredging schedule might be impacted, and modifications that might increase the cost of the project. Although it was a FEMA reimbursed project, they were not sure FEMA would reimburse the additional cost. He also stated that the Sebastian Inlet District was willing to put up \$2 million to cover any cost over-run. He then invited the Sebastian Inlet Chairperson to provide a status report on the actions of her Board.

Beth Mitchell, Chairperson, Sebastian Inlet, reported that by unanimous vote (last night) the District agreed to go forward with the \$2 million cost and hoped they would be reimbursed later with FEMA funds. They were also in the 14- day notice for permit to go forward with the Channel extension project.

Commissioner O’Bryan acknowledged that the timing was urgent, they needed to get started with the project, and to have it completed before the sea turtle nesting season. He thanked the Inlet District for stepping up in a timely manner.

ON MOTION by Commissioner O’Bryan, SECONDED by Chairman Wheeler, the Board by a 4-0 vote (Vice Chair Bowden absent) approved and authorized the Chairman to execute the Amendment to the Interlocal Agreement with Sebastian Inlet Tax District to place sand on the Sectors 1 and 2 beaches, with funding for the County’s portion from the Beach Preservation Fund, as recommended in the memorandum of February 28, 2007.

Administrator Baird announced that they were on Sector 7, were mobilizing today, they would be starting the pipe going down Surfside Terrace this morning around 9:00 a.m., and

they have to have it done by May 1st.

AMENDMENT TO ILA IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.A. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES - NONE

9. PUBLIC ITEMS -

A.1 DOUBLE R&D INC.'S REQUEST TO AMEND THE COMPREHENSIVE PLAN TO REDESIGNATE ±40.23 ACRES FROM R TO L-1, AND TO REZONE THOSE ±40.23 ACRES FROM A-1 TO RS-3 ¡LEGISLATIVE¿

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

(Clerk's Note: Court Reporter Debra McManus of American Reporting was present on behalf of Bruce Barkett, Esquire)

Community Development Director Bob Keating informed the Board that the next four public hearings were Comprehensive Plan Amendments and requested permission to make presentations on each at the same time.

Director Keating explained State Law requirements, and outlined the step-by-step Comprehensive Plan Amendment process. He recapped his memorandum of February 18, 2007 and through a PowerPoint presentation described the subject property, surrounding properties, and explained the purpose of the request, which involved changing the land use designation on

the future land use map from R (rural designation – up to 1 unit per acre) to L-1 (low density residential – up to 3 units per acre).

Director Keating reminded the Board of past actions on this matter and noted that the Department of Community Affairs (DCA) had looked at it and had no objections. Staff felt the amendment was compatible with surrounding uses, it met the concurrency requirements, there were no environmental impacts, and it was consistent with the Comprehensive Plan. Staff recommended approval and adoptions of the ordinances presented and asked for direction to submit the documents to DCA for compliance review.

Commissioner O'Bryan was concerned that they were increasing the overall density and asked if there was anything in our ordinance that could require that. Director Keating said there were provisions relative to commercial/industrial whereby they set limits for nodes (acreage amounts) and they do not allow an expansion of the node unless the development percent of the node is increased or unless there is a swap, which is in essence a no-net increase of commercial acreage.

Chairman Wheeler read documentation that attested to Mr. Barkett's promise to have the right-of-way dedicated, which had not been done. He was therefore not in favor of making a decision until he knew there were right-of-ways and roads could be built.

There were no other questions from the Board and the Chairman opened the Public Hearing.

Bruce Barkett, Esquire, 756 Beachland Boulevard and representing the Applicant, argued that there were two ways to take property from an individual, either by eminent domain and pay just compensation, or when a project comes in they could do an individualized assessment to determine the impact to that project and make a rough proportional determination

of what the impact to that project is and thereby determine how much right-of-way could be taken from the individual. He further argued that his client has a constitutional right to compensation for his right-of-way and had not waived such right.

Chairman Wheeler reminded Mr. Barkett of his promise to deliver the deed to escrow as soon as they get the legal description and to work out the terms with the County Attorney. He asked Mr. Barkett why that was not done.

Mr. Barkett had done some research, on his client's behalf, and found out it was not legal. Chairman Wheeler engaged in further discussions with Mr. Barkett and could not support the request without the right-of-way.

Michael O'Haire, Esquire, representing Double R&D Inc., also discussed eminent domain issues and his client's entitlement, under the law, to have the Comprehensive Plan change and rezoning granted. He hoped the Board would not deny the approval unless his client contributes right-of-way.

Chairman Wheeler explained his position when the Board in the past voted on this. Commissioner Davis was concerned with interconnectivity issues, which he explained. He could not put taxpayers in a compromising position.

Mr. O'Haire and Commissioner Davis engaged in discussion regarding denial of the rezoning. Commissioner Davis expressed strong opposition to the granting of an "up-zoning so they could buy it later."

Joseph Paladin, Chairman, Growth Awareness Committee (a Private Sector Organization), commented that the policy mentioned earlier "more reflects on raw lands" and negotiated right-of-ways before we enter into development. He urged the Board to vote "no" on

this project.

Mr. Barkett presented two important points to consider before the Board takes a vote: (1) “they are projects”, and that is what are negotiated for a right-of-way, and the Board did not have a project before them; and (2) they did not have the deeds yet. Therefore, Mr. Paladin’s comments were irrelevant.

Chairman Wheeler inquired about the PD Mr. Barkett’s client said he would do. Discussion ensued between Mr. Barkett and Chairman Wheeler regarding planned development.

Mr. Paladin asked staff if any of this was covered under our new County Code (Chapter 952). Director Keating said, “No, not at comp plan time or zoning either.” Mr. Paladin and O’Haire debated further on the issues. Chairman Wheeler was still opposed to it.

There were no additional speakers and the Chairman closed the Public Hearing.

Attorney Collins provided detailed legal opinion in the matter of “entitlement compensation”. He remarked that the Comprehensive Plan Amendment is a Legislative Act and determination as to whether it is appropriate is subject to a fairly debatable standard. He cited portions of Fl Statutes 163.3161(3), which talks about the intent and purpose of the Local Government Comprehensive Planning and Land Development Act and based on those provisions was not convinced that it was totally inappropriate for the Board to be looking out for these transportation facilities (“the good order comfort”) at the Comprehensive Plan stage.

Mr. Barkett asked Attorney Collins whether he had found (of all cases researched) a single one where dedication was required at the Comprehensive Plan amendment or the rezoning stage.

Attorney Collins had not done that research but he had heard a lot of commentary around the State of Florida that DCA is more and more expecting local governments to look at these issues at the Comp Plan stage.

Mr. Barkett stated for the record that DCA did propose that and that rule was challenged by Tom Pelham who has since been made the head of the DCA. He suggested “Mr. Pelham’s rule challenge” would be effective.

Attorney Collins suggested that Mr. Pelham is not always right about everything.

On MOTION by Commissioner Flescher, SECONDED by Commissioner O’Bryan, the Board by a vote 4-0 (Vice Chair Bowden absent) **DENIED** Double R&D’s Request to amend the Comprehensive Plan to redesignate the subject 40.23 acres from R, Rural Residential (up to 1 unit/acre), to L-1, Low Density Residential (up to 3 units/acre), rezone those 40.23 acres from A-1, Agricultural-1 District (up to 1 unit/5 acres), to RS-3, Single-Family Residential District (up to 3 units/acre), and direct staff to submit the adopted land use plan amendment to the State Department of Community Affairs for compliance review.

The Chairman called a Break at 10:14 a.m. and reconvened the Meeting at 10:31 a.m. with all members present.

**9.A.2. COUNTY INITIATED REQUEST TO AMEND THE
COUNTY'S COMPREHENSIVE PLAN TO REDESIGNATE
±47.14 ACRES FROM L-2 TO PUB (LEGISLATIVE;**

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

(Clerk's Note: Chairman Wheeler announced that the Board would be going into a closed session at 11 a.m., after which they would close for lunch and be back at 1:30 p.m.)

Community Development Director Bob Keating informed the Board that this is a County initiated request for changing land use designation from L-2 to PUB. He recapped his memorandum of February 18, 2007 and through a PowerPoint presentation discussed existing land uses of subject and surrounding properties. He reminded the Board of past actions that involved transmission to the Department of Community Affairs (DCA) for compliance review. He also looked at concurrency, explaining that the subject property is exempt from concurrency because there is no change in intensity when a property goes from an L-2 designation to PUB. Further, the request was consistent with the Comprehensive Plan, staff anticipated no adverse environmental impacts, and found there were no compatibility issues of concern.

Director Keating asked the Board to approve staff's recommendation for adoption of the Comprehensive Plan ordinance and to direct staff to submit the adopted amendment to DCA for compliance review.

Commissioner Davis asked if there were any future design to facilitate interconnectivity regarding property north of the 34 acres. Director Keating explained the land uses to the north of subject property.

The Chairman opened the Public Hearing.

Bob Johnson, Coral Wind Subdivision, understood that this was going to be public use and asked, (1) “does that mean the County owns it specifically; and (2) do we know the proposed use for this 43 acres piece of property?”

Director Keating responded, “Yes”, to the former, and to the latter stated that there is a wastewater treatment plant on the west 13 acres, and the east 34 acres would be used for some type of utility (some kind of effluent disposal).

Mr. Johnson then asked if this property would be appropriate for skateboarding use.

Attorney Collins felt there would be a difficulty with that. He commented that if the property was purchased with utility department funds and those funds were not generated by all the County taxpayers but by the utility ratepayers, as such the property would be restricted to those ratepayers and not the public at large.

Utilities Director Erik Olson outlined staff’s original intent for use of the property. He also responded to questions regarding acreage to the west, and whether we could anticipate a park-like setting.

There were no other speakers and the Chairman closed the public hearing.

On Motion by Commissioner O’Bryan, SECONDED by Commissioner Flescher, the Board by a 4-0 vote (Vice Chair Bowden absent) adopted **Ordinance 2007-010** amending the future land use map by changing the land use designation for approximately 13.09 acres located 650

feet north of 49th Street and west of lateral “H” canal, and approximately 34.05 acres located 265 feet north of 49th Street and east of lateral “H” canal, from L-2, low density residential-2 (up to 6 units/acre), to PUB, Public; and providing codification, severability, and effective date.

9.A.3 QUAIL RIDGE OF VERO BEACH LLC’S REQUEST TO AMEND THE TEXT OF THE COMPREHENSIVE PLAN’S FUTURE LAND USE ELEMENT POLICY 5.8 (LEGISLATIVE)

Community Development Director Bob Keating said this is a proposed text amendment, which he explained by recapping his memorandum of February 18, 2007. Through a PowerPoint presentation he provided background and outlined residential developments outside of the urban service area (Ag designated lands). He reminded the Board of past actions on the matter, and briefly discussed the provisions/requirements of the current Future Land Use Element (FLUE) Policy 5.8 as regards all Planned Development (PD) projects. He concluded by asking the Board to approve staff’s recommendation.

Chairman Wheeler directed questions to Attorney Collins regarding the definition of “in perpetuity”. He thought over the years that phrase had taken on new meanings and wondered if there was some to define, in our County that “in perpetuity” means forever and ever.

Attorney Collins did not see the need for a change because “in perpetuity” is forever and ever.

Commissioner Davis and Chairman Wheeler engaged in a brief discussion about lot sizes and whether they should consider having maximum lot sizes.

The Chairman opened the Public Hearing.

Bob Johnson, Coral Wind Subdivision, asked if this would be an exception for this developer or was it a change for every developer and builder under the Comprehensive Plan. Director Keating said it would apply to anyone outside the urban service area.

Mr. Johnson's commented on things that came up with a previous development for a golf course in the South County Initiative that never materialized, which stated that when it is a PD the golf course not be considered as part of the open space. He asked if it would then be considered separately as an entity thus eliminating the need for condos and apartments in a high-density area.

Chairman Wheeler informed him that they were looking at an Agricultural PD and did not think it applies under these conditions because of the landmass we would be dealing with and this does not change the density.

There were no other speakers and the Chairman closed the Public Hearing.

On Motion by Commissioner Davis, **SECONDED** by Commissioner O'Bryan, by a 4-0 vote (Vice Chair Bowden absent) the Board adopted **Ordinance 2007-011** amending the Comprehensive Plan's future land use element Policy 5.8 relating to Agricultural Planned Development; and providing codification, severability,

and effective date.

The Board also directed staff to submit the adopted amendment to the State Department of Community Affairs for compliance review.

Chairman Wheeler adjourned the meeting at 11:00 a.m. to conduct an Executive Session to be followed by a lunch break. He reconvened the meeting at 1:30 p.m. with all members present.

9.A.4 COUNTY INITIATED REQUEST TO AMEND THE COMPREHENSIVE PLAN TO REDESIGNATE ±1,824.33 ACRES FROM C-1 TO AG-2, AND TO REZONE THOSE ±1,824.33 ACRES FROM CON-1 TO A-2 (LEGISLATIVE)

Community Development Director Bob Keating recapped his memorandum of February 28, 2007 and through a PowerPoint presentation provided background on the matter. He informed the Board that this is a County initiated Comprehensive Plan amendment to redesignate and rezone land on behalf of the St. Johns River Water Management District from C-1 (Conservation-1) to AG-2 (Agricultural-2, which was the original zoning in 1999 when St. Johns purchased the property). Through a property location map he showed that portion of the property, which was the subject of the original request, explaining the current request and how it has changed from what the Board considered in October last year. Staff and P&Z recommended approval and adoption of the ordinance and requested approval to submit the amendment to the Department of Community Affairs for compliance review.

(Clerk's Note: Commissioner Davis exited the meeting at 1:42 p.m. and returned

at 1:49 p.m.)

Director Keating responded to questions from Commissioners O'Bryan, Flescher and Chairman Wheeler regarding an appeal or protest from St. Johns, extinguishment of development rights, and why it was decided to leave the eastern portion in Conservation.

The Chairman opened the Public Hearing.

Robert Christenson, St. Johns River Water Management District, responded to various questions from the Board. He explained the reasons they suggested withdrawal of the eastern 1200 or 1300 acres from consideration.

Chairman Wheeler asked if the CON property to the east would be used for grazing and hunting if the Corrigan's were to swap. Mr. Christensen felt the primary use would be grazing.

Joseph Paladin, Chairman of the Growth Awareness Committee (a private sector organization), gave his understanding of CON-1 property and private ownership. He theorized that if CON-1 property cannot be owned privately then he did not think the transfer should have been made and that should be null and void. He asked for Attorney Collins' opinion on the matter.

Attorney Collins was recently asked if the Board has any discretion and his opinion was that the Board does have some discretion because it currently carries a conservation designation and zoning, and if someone purchases it knowing that it is under that regulatory scheme then they get what they bought and they are taking it at a risk that this Board would take action to grant what they proposed.

Mr. Paladin agreed with Attorney Collins' analysis and found it odd that they

would go through with the transfer after reading Attorney Collins' letter.

Mr. Paladin went on to discuss development rights as outlined in the contract between Florida Joint Ventures and St. Johns River Water Management District. He also brought to the Board's attention, by way of a site map, a "Paper Town" platted in 1913 and called Broadmoor, which showed 1064 development rights assigned to that Town. He felt the County should have some serious concerns as to what happens to the development rights in that area.

Discussion ensued between Mr. Paladin, Commissioner Flescher and County staff regarding knowledge of the Town of Broadmoor and whether development rights still existed.

(Clerk's Note: Commissioner Davis departed the Meeting at 2:12 p. m)

Attorney Collins did not think there was a Town out there and did not think there were any rules that would apply to it because it was just a plat in the unincorporated area. He believed it would have to be developed under our rules and given that it was platted years before we had any zoning, it could be considered process of record if they were conveyed to individuals.

Commissioner Flescher discussed the potential for development, the possibility of \$216 million in development rights laying in the balance, and a challenge with respect to access.

Chairman Wheeler also gave his views on the matter and sought to know the relevance of the discussion.

Mr. Paladin thought there was a great deal of interest in those developments rights that are useless in the contract. He found it odd that something of no value has importance

enough to be issued and protected in the contract, which is laid out to protect the interest of the landowner. Another concern for Mr. Paladin was the pumping of polluted water east to our Lagoon. He believed there were enough questions to put a haze over this and urged the Board to deny the request, get some representation together, and get the Attorneys office working on this so we know what it is we are getting into.

Attorney Collins expounded on the issue of private ownership. He noted that if there is privately owned property we could not take it from agriculture to conservation without affecting or taking the property rights. He felt the basis question before the Board was, "Is this property more appropriate in agricultural designation or conservation designation."

Commissioner O'Bryan asked Director Keating if agricultural activities were allowed in a CON-1 land use designation for zoning. Director Keating said agricultural activities would be allowed if they are existing non-conforming uses and they were not allowed as permitted uses or special exception uses in the district. The land use designation indicates that CON-1 is limited to conservation uses and passive recreational uses.

Renee Renzi, Waverly Place, agreed with implications alluded to by Mr. Paladin, although it seemed complex and she did not understand all the ramifications. After she learned that Fellsmere Joint Venture was a private corporation with no relation to the City of Fellsmere, she felt we should not be making far-reaching changes in zoning to benefit a private corporation.

Richard Carnell, Attorney representing Fellsmere Joint Venture, 1550 56th Court, at the request of Commissioner Flescher, elaborated on the scope of services provided by FJV and pointed out that FJV is a citrus company that has been in agriculture and in operation for 40 years, and are not developers. He briefly described contributions of land (24,000 acres) his Company has made over the last 40 to various causes. He did not think it was legally prudent to suggest that Fellsmere Joint Venture buy a landlocked piece of property.

Commissioner O'Bryan met with Mr. Christensen a few weeks ago and they discussed the issues of the contract, transfer of development rights, and the issues with Broadmoor, and he had said he would have felt a lot better if they would just pull those issues from the contract. He wondered why the retention of development rights was so crucial in this contract if FJV was strictly a citrus operation.

Mr. Carnell restated that it was a prudent legal decision, in the event Indian River County sets up some mechanism to transfer development rights. He thought Attorney Collins could address the matter of development rights.

John Higgs, 45 Waxmyrtle Way, felt the Board should not approve the proposal if they are not in agreement. He strongly urged the County to get legal counsel to look into the entire situation (annexation, development rights, etc.) because there are important unanswered questions, and for the sake of the future.

David Cox, Perriwinkle Lane, thought the current land use designation was appropriate. He noted that the County recently made an acquisition under its environmental lands program of the Russell Grove property along the St. Sebastian River, with intent to take that old grove and restoring it to uplands. He urged the Board not to redesignate this land and to keep it in its conservation designation.

Bob Johnson, Coral Wind Subdivision, saw ramifications of a technicality in the notification process.

George Christopher believed the Board would be setting an extremely dangerous precedent if they approve this request. He also believed it was bad for conservation reasons and there were very serious development issues at stake. He could not understand how private

people could purchase land that can only be owned by a public entity, therefore, it seemed to him that the transaction should be null and void and this whole hearing was faulty as well.

Chairman Wheeler referred to a letter from Attorney Collins that stated, “private entity could own conservation land”, and asked if that was correct or incorrect. Attorney Collins said a private entity does own conservation land right now unless and until the Board changes it.

Mr. Christopher disagreed with Attorney Collins, pointing out that our Comprehensive Plan says only a public entity can own this land. He remarked that the Board may be compelled to change the classification on the land but until the Court tells them to, he did not think they should take that action. He felt the Board should find out what is Fellsmere’s growth management policy, and how could the County be assured that significant development in Fellsmere would not adversely affect the County. He thought the Board needed to seek legal advice now.

Chairman Wheeler presented a hypothetical situation and asked what would stop St. Johns from annexing that property into the City of Fellsmere, have the City of Fellsmere change the designation of the land, and then they own it.

Mr. Christopher thought it was an excellent question but he did not know the answer and reiterated his earlier suggestion for the Board to seek legal opinion immediately.

Attorney Collins interjected commenting on the idea of the conservation designation precluding private ownership and did not think that was the case. He believed there are private entities that purchase land for the express purpose of conserving it and did not think that the fact that the land carries a certain conservation designation necessarily meant it has to be in public ownership. He also thought the idea that private ownership could be precluded probably runs in the face of constitutional restrictions against restraint on alienation of property.

Bea Gardner, Vero Beach, believed it is incumbent on this Board to get a representative on the SJRWMD Board.

Mr. Christensen responded to questions and concerns expressed by earlier speakers. He urged the Board to go forward with the comp plan change. He also responded to Commissioner Flescher's question regarding a bridge/right-of-way easement in the middle of the 6,020 acres.

There were no other speakers and the Chairman closed the Public Hearing.

Commissioner O'Bryan spoke of his dislike for this project from the onset and wanted to leave the zoning as it is because the deal had already gone through.

Commissioner Flescher believed there were some unknowns, shared the same concerns for development rights, and could not look favorably on the change.

Chairman Wheeler thought the whole thing that got us off center was the potential for tremendous growth in the City of Fellsmere and to the north and south of us. He was having a hard time rezoning land that was already conservation and did not want to set such a precedent. He agreed they needed to look at the issues more closely and wanted to keep the conservation in place.

ON MOTION by Commissioner O'Brien, SECONDED by Commissioner Flescher, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) DENIED the request to amend the Comprehensive Plan to redesignate

±1,824.33 acres from C-1 to AG-2, and to rezone those
±1,824.33 acres from CON-1 to A-2.

*The Chairman called a break 3:10 p.m. and reconvened the meeting at 3:23 p.m.
with Commissioner Davis absent.*

**9.A.5 GRACE LUTHERAN CHURCH'S REQUEST FOR SPECIAL
EXCEPTION USE APPROVAL FOR A CHILD CARE/PRE-
SCHOOL FACILITY (QUASI-JUDICIAL)**

Stan Boling, Planning Director, presented this item pointing out, via a vicinity map, the area under consideration, which is a little over 3-acres located on the south side of 12th Street and the east side of 41st Avenue, with an RS-6 zoning. The purpose of the request is to allow a pre-school childcare use in the existing Church facility for up to fifty (50) students enrolled in the program. There are specific land use criteria that are met as outlined in staff's recommendation (memorandum dated February 26, 2007). Staff and Planning and Zoning Commission recommended approval with conditions as outlined at pages 313-314 of the backup.

Commissioner O'Bryan inquired if there were any concerns from parents. Director Boling had not recently had any but initially there were concerns about access to the entrance and that has since been remedied.

The Chairman opened the Public Hearing.

Former Commissioner John Tippin supported the request.

There were no other speakers and the Chairman closed the Public Hearing.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) approved and granted special exception use approval for the childcare/pre-school use with the following conditions: (1) the maximum enrollment at the childcare/pre-school facility shall be 50 children; (2) the Church shall instruct all parents entering and leaving the childcare/pre-school facility to travel north on 41st Avenue directly to 12th Street, rather than south through the residential neighborhood; and, (3) prior to commencement of the use on site, the applicant shall provide to planning staff written acknowledgement from the State that the proposed recreation facilities will meet or exceed applicable State requirements for childcare facilities, all as recommended in the memorandum of February 26, 2007.

9.B. PUBLIC DISCUSSION ITEMS

1. REQUEST TO SPEAK FROM INDIAN RIVER SOCCER ASSOCIATION REGARDING PURCHASE AND INSTALLATION OF LIGHTS FOR SOCCER FIELDS AT HOBART PARK

Daniel Fourmont, 2267 Magans Ocean Walk, gave a brief history on the Soccer Association. He recapped his memorandum of March 2, 2007 seeking funds from the County to

fund field lighting at Hobart Fields. He reported on past fund-raising events and contributions they have received. He asked the board to support the request to fund the purchase and installation of lights for soccer fields at Hobart Park.

Neil Hockenhull, 2115 Waltons Court, provided copies of Estimates for the project they received from Lighting Dynamics, Inc., Musco Lighting, and Techline Sports Lighting, LP (copies on file). He outlined and compared the costs involved for each Estimate/Bid. He then invited questions from the Board.

Board members questioned Mr. Hockenhull regarding costs and the choice of company for the project. He also answered questions regarding annual operating costs and maintenance expectations.

Discussion ensued among Board members regarding whether the budget could accommodate this request. Administrator Baird felt they could allocate recreational impact fees towards that if the Board wished to consider it.

The \$1.2 million for Musco puzzled Attorney Collins because the budget (handed out) has them at a range of \$400,000 to 430,000 and he was not seeing the other \$600,000 Mr. Hockenhull was attributing to them.

Mr. Hockenhull stated that Musco's was actually done in phases, and there were three phases to the project.

Chairman Wheeler thought it was honorable that the Soccer Association had gone out on its own and was not dependent on government to supply everything. He commended the request and supported it. Commissioner Flescher agreed.

Bill Becker, 989 Bay Oak Lane, talked about the venture and saw it as a true public/private partnership. He talked about the program costing the County zero dollars and the various benefits to be gained. He then thanked the Board for the opportunity to speak.

Commissioner Flescher inquired if we could fund this and not affect any other recreationally earmarked programs. Administrator Baird believed it could be done from fund balance in recreational impact fees.

On Motion by Commissioner Flescher, **SECONDED** by Chairman Wheeler, by a 3-0 vote (Commissioners Bowden and Davis absent) approved to move forward with the Lighting Project.

9.B.2. REQUEST TO SPEAK FROM JOHN T. WILLIAMS REGARDING ONGOING CONTRACT NEGOTIATIONS WITH THE FIREFIGHTERS UNION

Mr. John Williams, 1525 Smugglers Cove, made it clear that this was not an attack on the unionized firefighters/paramedic personnel. It was however, a criticism of the system itself. His concerns involved costs and abuses that the system has brought. He presented the follow requests to the Board:

1. “To urge you [the Board] to hold the line on our costs for Emergency Services.
2. To ask you [the Board] to modify your policy about “grandfathering-in” existing positions in that department.
3. To try once again to inform the public of the actual costs of these services.
4. To ask you [the Board] to direct your negotiating teams to extend its so-

called “bargaining universe” into sectors served by private enterprise.”
(copy of letter dated march 5, 2007 is on file).

Mr. Williams discussed in detail the foregoing items and urged the Board to consider this, hold the line against the current union contract demands, change existing policies, inform the public and expand “bargaining universe” into private sector. In conclusion, he again asked the Board to require negotiations to explore costs from the private sector when bargaining with the firefighters. He also suggested the use of private corporations to provide fire rescue services to the County.

No Board action required or taken.

**9.B.3. REQUEST TO SPEAK FROM KEITH D. HEDIN REGARDING ZONING
ON 37TH STREET**

Keith Hedin, 6030 37th Street, thanked the Board for the opportunity to speak. He informed the Board that in June 2006 the property (Alchohope) was sold to a group with provisions that if the neighbors were not happy with some of the zoning issues they could file appeals within 21 days of the date of notification. He was never notified of the decision to keep the zoning as is even though there was non-conformity in that use. He learned of it through the newspaper in August 6, 2006. He saw a technicality and believed that County staff had made grave errors to allow this piece of property to continue on in a “grandfathered-in” type clause.

Mr. Hedin did not think the Newspaper should notify him of a potential land use change, potential threat or health hazard to his neighborhood. He and his neighbors retained legal counsel who looked at the issue and has been talking with County Attorney Collins. They filed an appeal and enclosed a check for \$800.00, which was submitted and accepted by County staff. The Planning and Zoning Commission ruled that the appeal was valid and the matter then

went before the Board of County Commissioners but a technicality arose. Their appeal was deemed not timely and the appeal was denied, but the check was cashed by the County and was not refunded to them.

Commissioner Flescher asked if the offer and acceptance would constitute a business agreement. Attorney Collins said no.

Chairman Wheeler suggested, based on the technicalities involved and out of fairness, he would be in favor of hearing the appeal and having it come back before the Board.

MOTION WAS MADE by Commissioner Flescher,
SECONDED by Chairman Wheeler for discussion, to hear
the appeal and have the matter come back before the
Board.

Administrator Baird acknowledged that the check was received and deposited.

Commissioner Flescher believed they should be heard before the County Commission in light of the appeal being filed in a timely manner and the County received and cashed the check submitted.

Discussions ensued among Board members and Mr. Hedin regarding technicalities and whether to rehear the matter out of fairness. Commissioner O'Bryan supported the Motion.

Attorney Collins, commenting on the Motion, disclosed that he had been corresponding with Mr. O'Haire regarding the requirement that a filing fee accompany an appeal. He thought the position that the Board has already taken (that the appeal was not effective for of the lack of a filing fee) is the proper and the defensible one. He cited case law in

support of his opinion and relevant to the issues in question. He also felt if the Board grants a hearing it could end up in Court and we could conceivably lose or have the decision overturned on this issue.

Chairman Wheeler understood but felt maybe the County was wrong by not providing proper notice and by accepting the check. He believed, out of a sense of fairness, everyone should have his/her “voice with the Commission.” Board members continued to discuss the intents of the law and the need to let the citizens “have their day.”

The Chairman CALLED THE QUESTION and the Motion carried 3-0 (Commissioners Bowden and Davis absent). The Board approved for the appeal to be brought before the Board for a hearing.

Administrator Baird would ensure this item is placed on a future Agenda. Chairman Wheeler would be in favor of a “special call meeting” if needs be.

9.B.4. REQUEST TO SPEAK FROM BRYAN DELP REGARDING OPTIONS FOR THE COMMISSIONERS TO HEAR PUBLIC DEBATE ON THE PROPOSAL TO ESTABLISH A HOMELESS CENTER ON 37TH STREET

Bryan Delp, 5860 34th Street, believed the Board made the right decision (in relation to Item 9.B.3 above). Item WITHDRAWN.

9.B.5. REQUEST TO SPEAK FROM RAYMOND A. METZ REGARDING

HOMELESS CENTER ON 37TH STREET

Mr. Metz did not need to speak further based on the decision to bring the matter back for a rehearing (see Item 9.B.3). Item WITHDRAWN.

Chairman Wheeler called a break at 4:41 p.m. and reconvened the meeting the meeting at 4:51 p.m.

**9.B.6. REQUEST TO SPEAK FROM REX NELSON REGARDING
MODIFICATION OF ZONING CODE**

Rex Nelson, 710 Fischer Circle, Sebastian was, amazed at the “maze” of ordinances, codes, procedures and rules that pertain to the Industrial Light classification site plan approval that have been denied over the last 70 days. He requested that the Board direct staff to review criteria for light industrial zoning and to take steps necessary to modify the zoning code. His main point was that we have “process industries” being able to be in a light industrial zone and “process industries” do not belong because they are capital intensive and do not belong in close proximity of residential properties. He urged the Board to try to accomplish this as soon as possible.

Chairman Wheeler would be interested in looking at this, getting staff’s evaluation and getting the pros and con on this.

Director Stan Boling said staff could report back with pros and cons.

There was CONSENSUS for staff to consider the matter and bring this back to the Board.

9.C. PUBLIC NOTICE ITEMS -

1. NOTICE OF PUBLIC WORKSHOP MONDAY, MARCH 12, 2007, 9:00 A.M.:
A CHARTER GOVERNMENT PUBLIC WORKSHOP HAS BEEN SCHEDULED FOR MONDAY, MARCH 12, 2007, AT 9:00 A.M. IN THE COMMISSION CHAMBERS OF THE COUNTY ADMINISTRATION BUILDING, 1840 25TH STREET, VERO BEACH, FLORIDA.

9.C.2. NOTICE OF ATTORNEY-CLIENT SESSION, MARCH 13, 2007, 1:30 P.M.:
THE INDIAN RIVER COUNTY ATTORNEY DESIRES TO MEET IN PRIVATE WITH THE COUNTY COMMISSION AND THE COUNTY ADMINISTRATOR TO DISCUSS PENDING LITIGATION TO WHICH THE COUNTY IS PRESENTLY A PARTY IN CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT (DIVOSTA HOMES, L.P. AND DIVOSTA HOMES HOLDINGS, L.L.C. VS. INDIAN RIVER COUNTY CASE No. 20070109-CA-1)

9.C.3. NOTICE OF SCHEDULED PUBLIC HEARING MARCH 13, 2007:
A PUBLIC HEARING WILL BE HELD ON MARCH 12 13, 2007 TO CONSIDER AN ORDINANCE IMPOSING A STATE ROAD 60 INTEREST SHARE FEE AND ESTABLISHING INDIAN RIVER COUNTY CODE CHAPTER 214 (LEGISLATIVE)

The Chairman read the Notices into the record.

10. COUNTY ADMINISTRATOR'S MATTERS

A. REQUEST FOR EXECUTIVE SESSION – MARCH 6, 2007

(Clerk's Note: Board members met in an Executive Session at 11:00 a.m. in the County Administrator's Conference Room).

10.B. JOINT MEETING WITH CITY OF PALM BAY

Administrator Baird informed the Board that the earliest Palm Bay could meet with the Board was the 23rd of March, in the evening, in Palm Bay. He suggested bringing this back to the Board with other alternative dates and times for the convenience of all concerned.

11. COMMUNITY DEVELOPMENT - NONE

11.B. EMERGENCY SERVICES - NONE

11.C. GENERAL SERVICES - NONE

11.D. HUMAN RESOURCES

1. DIRECTION FOR CONDUCTING A CLASSIFICATION AND PAY STUDY

Human Resources Director James Sexton gave a brief history of the County's pay plans. He provided comparative pay plan studies of neighboring and other counties.

Chairman Wheeler talked about the 12% raise across-the-board to the Sheriff's Office that brought this about. He was hoping they would have something done before going into budget this year by having a better idea and a better plan on how they would deal with this, not only County employees, but also Constitutionals. He read a Motion passed months ago directing staff to conduct a salary study for County employees and Constitutional officers. He felt the 12% raise given to the Sheriff's department was "blatantly unfair" to the rest of the County employees.

Discussion ensued regarding the total pool of percentages given on gross salaries.

Administrator Baird mentioned that he was involved in the first pay plan study. He believed we should have a policy and the Constitutionals do not have to cooperate, and if we do any unusual adjustments it should be backed by a salary study authorized by the Board from this point on. He also felt it was important to compare benefits as well, and if the Board wished, they could move forward with an RFQ and try and piggyback from another county.

Chairman Wheeler wanted to get some numbers on cost of living and Administrator Baird offered to work on that.

On Motion by Commissioner O'Bryan, SECONDED by Commissioner Flescher, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) approved for staff to conduct an in-house analysis based on recruiting and retention data of non-bargaining unit positions; or to develop an RFP process to select a qualified consulting firm to conduct a Countywide Classification and Pay Study, as recommended in the memorandum of February 23, 2007.

11.E. HUMAN SERVICES - NONE

11.F. LEISURE SERVICES – NONE

11.G. OFFICE OF MANAGEMENT AND BUDGET - NONE

11.H. RECREATION - NONE

**11.I.1 PUBLIC WORKS – GIFFORD PARK MULTI-PURPOSE
FIELD LIGHTING SYSTEM PRIVITY MUSCO SPORTS
LIGHTING, LLC**

Public Works Director Jim Davis recapped his memorandum of January 20, 2007 providing background on the request. He asked the Board to approve the “Privity Agreement” to piggyback the City of Jacksonville’s Bid in the amount of \$184,414.00.

Commissioner O’Bryan asked how competitive was this price and how qualified was the Bid they got. Director Davis felt they got good competitive Bids but they would have to look at the scope of work and specifications further. Discussion then ensued regarding the size of the fields.

ON MOTION by Commissioner Flescher, SECONDED by Chairman Wheeler, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) approved the “Privity Agreement” and authorized the Chairman to execute same, with funding from the FRDAP grant at \$102,250.00 with the remaining from park impact fees, as recommended in the memorandum of January 20, 2007.

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

11.J. UTILITIES SERVICES –

1. LAKEWOOD TERRACE WATER SERVICE WEST SIDE OF 27TH AVE.

**NORTH OF THE ST. LUCIE CO. LINE, INDIAN RIVER COUNTY
PROJECT NO. UCP-2317, RESOLUTION IV – FINAL ASSESSMENT**

ON MOTION by Commissioner O’Bryan, SECONDED by Chairman Wheeler, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) approved Resolution 2007-021 certifying “As-Built costs for installation of water service to Lakewood Terrace Subdivision (west side of 27th Avenue, north of St. Lucie County line) in Indian River County, Florida, and such other construction necessitated by such project; providing for formal completion date, and date for payment without penalty and interest.

**11.J.2. NORTH COUNTY REVERSE OSMOSIS WATER TREATMENT
PLANT, TECHNICAL ASSISTANCE IN WATER SUPPLY PLANNING
PROJECTS, CAMP DRESSER & MCKEE, INC. (CDM) – AMENDMENT
NO. 1 TO WORK ORDER NO. 5**

ON MOTION by Commissioner Flescher, SECONDED by Chairman Wheeler, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) approved Amendment No. 1 to Work Order No. 5 to CDM Inc., in the amount of \$50,000.00 - not to exceed, for Professional Services related to Technical Assistance with Water Supply Projects, and authorized the Chairman to execute said amendment, as recommended in the memorandum of January 26, 2007.

**11.J.3 SOUTH COUNTY WATER TREATMENT FACILITY: LIQUID
CHLORINE CHEMICAL STORAGE TANK REPLACEMENT**

ON MOTION by Commissioner O’Bryan, SECONDED by Commissioner Flescher the Board by a 3-0 vote (Commissioners Bowden and Davis absent) authorized the Department of Utility Services and the Purchasing Division to proceed with bidding and award of the proposed project the South WWTF Chlorine tanks, as recommended in the memorandum of February 20, 2007.

11.J.4 LAKEWOOD VILLAGE MOBILE HOME PARK DEPOSIT

ON MOTION by Commissioner O’Bryan, SECONDED by Chairman Wheeler, the Board by a 3-0 vote (Commissioners Bowden and Davis absent) upheld the provisions of Ordinance 91-1, Section 201.08, approving that the Utilities Department retain the \$19,000.00 deposit on which Lakewood Village Mobile Home Park had requested a waiver.

Utilities Director Erik Olson explained staff’s disapproval of the project. In regard to waiving the deposit, the ordinance precluded his ability to waive that and he had talked with the Attorney’s office and was told that even if the Board decides to waive the deposit, it would

require a change or modification of the Resolution associated with the deposit.

Attorney Collins stated that the ordinance requires deposits of any utility customer and you could not treat one customer different from the other without being arbitrary and capricious. At a minimum, the Ordinance would have to be amended, and if exceptions were to be given to the policy, there would have to be some direction as to what criteria would qualify for an exemption from the deposit.

12. COUNTY ATTORNEY

A. EXECUTIVE AIDE – MUTUAL RELEASE AND COVENANT NOT TO SUE

County Attorney William Collins explained the nature of this request by recapping his memorandum of February 28, 2007. He asked the Board to approve the legal staff's recommendation to (1) authorize the Chairman to execute the Mutual Release and Covenant Not to Sue with the severance package attached as Exhibit "A" to that Release, which was executed by Ms. Massung on February 5, 2007; and (2) Move **not** to obtain a Release from Age Discrimination Claims under the Older Workers Benefit Protection Act in consideration of an additional \$1,000.00 compensation.

(Clerk's Note: Administrator Baird departed the meeting at 5:23 p.m.).

Attorney Collins summarized, for the Board, the severance package given Ms. Massung. He recommended that the Board approve the already executed Release and forego the Age Discrimination Claims.

Commissioner Flescher considered this matter "a fresh layer of snow on the

avalanche”, as regards disbursements of more taxpayers’ funds. He was opposed to the request and felt they needed more information.

Attorney Collins tried to clarify for Commissioner Flescher the nature and intent of the recommendation.

More discussion ensued and Commissioner Flescher restated his opposition to the whole matter of the severance package and this latest request. He felt this was an insult to taxpayers and could not support it.

Commissioner O’Bryan asked if it would be appropriate to table this item because of its sensitive nature and the lack of a full Board sitting (Commissioners Bowden and Davis absent).

Attorney Collins said it would be appropriate to holdover to another meeting and recommended they get their Labor Employment Counsel involved.

Chairman Wheeler discussed the termination of Ms. Massung’s contract, which was at her request. He would support \$1.00 to sign the Age Discrimination Claim, would not sign off on either recommendation unless there is a full release for all Releases signed, and would increase the Severance by \$1.00 to sign the Age Discrimination Claim.

MOTION WAS MADE by Commissioner O’Bryan,
SECONDED by Chairman Wheeler, to defer this item to
the meeting of March 13, 2007.

There were no further discussions among Board Members,

The Chairman CALLED THE QUESTION and the Motion carried by a 3-0 vote (Commissioners Bowden and Davis absent). This item was deferred to the meeting of March 13, 2007.

John Massung, husband of Ms. Massung, suggested Ms. Massung was still a County employee because the County was still holding her sick and vacation leave package that is due to her.

Attorney Collins rebutted that Ms. Massung was not a County employee as she was terminated January 23, 2007. He advised that the County would be paying Ms. Massung for the sick and vacation leave accrued, and the money was in her Attorney's Trust account until the County receives a satisfactory release of Claim from her.

Mr. Massung said Kim signed the releases. He felt the County was not acting in good faith because they were not living up to the terms of the contract.

Chairman Wheeler felt it has to be straightened out and they could all discuss the matter next week.

13. COMMISSIONERS' ITEMS

A. CHAIRMAN GARY C. WHEELER - NONE

B. COMMISSIONER SANDRA L. BOWDEN, VICE

CHAIRMAN - NONE

C. COMMISSIONER WESLEY S. DAVIS - NONE

D. COMMISSIONER JOSEPH E. FLESCHER- NONE

E. COMMISSIONER PETER D. O'BRYAN - NONE

14. SPECIAL DISTRICTS AND BOARDS

A. EMERGENCY SERVICES DISTRICT - NONE

B. SOLID WASTE DISPOSAL DISTRICT - NONE

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.

15. ADJOURNMENT

There being no further business, on Motion duly made, seconded and carried, the Board adjourned at 5:36 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/AA/2007 Minutes