

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

9:00 AM

The Board of County Commissioners of Brevard County, Florida, met in regular session on February 19, 2013 at 9:00 AM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

**Call to Order**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Robin Fisher	Commissioner District 1	Present	
Chuck Nelson	Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Chairman/Commissioner District 5	Present	

**INVOCATION BY: PASTOR WARREN BENNETT, EMMANUEL UNITED METHODIST CHURCH, MELBOURNE**

Pastor Warren Bennett, Emmanuel United Methodist Church, Melbourne, gave the invocation.

**PLEDGE OF ALLEGIANCE: COMMISSIONER MARY BOLIN LEWIS**

Commissioner Mary Bolin Lewis led the assembly in the Pledge of Allegiance.

**APPROVAL OF MINUTES: JANUARY 29, 2013 AND FEBRUARY 5, 2013 REGULAR MEETING MINUTES**

The Board approved the minutes of January 29, 2013, and February 5, 2013, Regular Meeting Minutes.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM I.A., RESOLUTION, RE: PROCLAIMING MAY 2013 AS MOTORCYCLE SAFETY AWARENESS MONTH**

The Board adopted Resolution No. 2013-022, proclaiming May 2013 as Motorcycle Safety and Awareness Month in an effort to make Brevard a safer community for all motorcycle drivers.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM I.B., RESOLUTION, RE: DECLARING MARCH 16, 2013 AS ST. BALDRICK'S FOUNDATION DAY**

Commissioner Bolin Lewis read aloud, and the Board adopted, Resolution No. 2013-023, declaring March 16, 2013, as St. Baldrick's Foundation Day in Brevard County, and urged the community to come out and make a difference by shaving heads to conquer childhood cancers.

Garrett Lamp expressed appreciation to the Board for the Resolution, and for Chairman Anderson's participation. He went on to say that pediatric cancer is the number one childhood killer, and he would like to see everyone come out on March 16th at The Avenue where there will be all kinds of events going on that day for kids. He introduced Sarah Davis, who is one of the kids who will be shaving her head at the event with her mother and grandmother.

Chairman Anderson noted Library Director, Jeff Thompson, has also committed to the event, along with George Medina of Utility Services. He stated his family had a goal of \$1,500, and his two sons have said they would shave their heads at \$1,500; and if they raise \$2,500 his wife, Sabrina, said she would shave her hair as well.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM I.C., RESOLUTION, RE: CELEBRATING MR. FRED WOELK'S 80TH BIRTHDAY**

Commissioner Nelson read aloud, and the Board adopted, Resolution No. 2013-024, recognizing and celebrating Mr. Fred Woelk's 80th birthday and encouraged all those whose lives he has touched to celebrate with him.

Mr. Woelk expressed appreciation to the Board for the Resolution, and commented living at Sam's House; and stated he is grateful the County took over the house because it would have been too much for him to handle by himself.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Chuck Nelson, Commissioner District 2
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM II.A. HOWARD TIPTON, COUNTY MANAGER**

Howard Tipton, County Manager, advised Item VII.E.2., Approval, Re: Payment of Award to Francis Gordon Mark of \$100.00, under the Employee Innovations Program, will be pulled from the Agenda and will return to the Board at a later date.

**ITEM II.D., CHUCK NELSON, DISTRICT 2 COMMISSIONER**

Commissioner Nelson stated on Sunday he attended the Vietnam and All Veterans of Brevard's Annual recognition ceremony, as well as to install the new officers; Greg Welch is the new President; and noted Greg is also the one who hauls the moving wall around the country. He stated Greg told him that originally, the wall was supposed to only be displayed in the southeast United States, but they have taken it as far west as Arizona.

**ITEM II.G.1., APPROVAL RE, LETTER TO PRESIDENT OBAMA**

Chairman Anderson advised he has been contacted by some local defense contractors who are facing an upcoming issue from Congress and the White House over sequestration; the contractors are requesting that the Board of County Commissioners give him approval to send a letter to President Obama asking the White House and Congress to review the issue, as it could have a big impact on Brevard County if the cuts go through as currently structured.

Commissioner Fisher suggested Chairman Anderson copy the Brevard County Federal Legislative Delegation on the letter also, as they are also part of the issue. Commissioner Nelson advised he has received a letter from Northrop Grumman, and they are recommending the same thing.

The Board authorized the Chairman to send a letter to President Obama and Brevard County's Federal Legislative Delegation, to ask the White House and Congress to review the issue of sequestration.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Robin Fisher, Commissioner District 1
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEMS PULLED FROM CONSENT AGENDA**

Commissioner Infantini pulled Items III.D.2., Resolution, Re: Ad Valorem Tax Exemption for D4 Energy Group, Inc.; and III.D.3., Resolution, Re: Qualifying D4 Energy Group, Inc., as a Qualified Targeted Industry, from the Agenda for discussion. She advised she will be voting in opposition to Item III.D.7., Approval, Re: Billfolder.

Commissioner Nelson pulled Item III.D.7., Approval, Re: Billfolder, from the Agenda for discussion.

**ITEM III.A.1., APPROVAL, RE: DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) GRANT FOR MICCO I/LITTLE HOLLYWOOD EXFILTRATION AND BAFFLE BOX**

The Board executed Contracts with the Florida Department of Environmental Protection (FDEP) (Grantor) for cost-share grants for the Board approved Capital Improvement Projects, subject to approval by the County Attorney's Office and Risk Management; approved the legal venue as Leon County; authorized the County Manager or designee to execute future contract amendments subject to approval by the County Attorney's Office and Risk Management; and approved the associated budget change requests.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.A.2., BINDING DEVELOPMENT PLAN, RE: SHERWOOD LANDS, LLC**

The Board executed a Binding Development Plan Agreement with Sherwood Lands, LLC, for property located on the south side of London Town Road, approximately 300 feet west of North Carpenter Road in the Titusville area.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.A.3., BINDING DEVELOPMENT PLAN, RE: MCDONALD'S RESTAURANTS OF FLORIDA, INC.**

The Board executed a Binding Development Plan Agreement with McDonald's Restaurant of Florida, for property located on the north side of Wickham Road, approximately 710 feet west of Murrell Road (8280 N. Wickham Road, Melbourne).

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.A.4., BILL OF SALE WITH CITY OF MELBOURNE, RE: TRANSFER OF OWNERSHIP AND MAINTENANCE RESPONSIBILITY OF WASTEWATER FORCE MAIN**

The Board executed the Bill of Sale with the City of Melbourne for transfer of ownership and maintenance responsibility of wastewater force main.

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Mary Bolin Lewis, Vice Chairman/Commissioner District 4  
**SECONDER:** Trudie Infantini, Commissioner District 3  
**AYES:** Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.C.1., APPROVAL, RE: BUDGET CHANGE REQUESTS**

The Board approved the Budget Change Requests as submitted.

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Mary Bolin Lewis, Vice Chairman/Commissioner District 4  
**SECONDER:** Trudie Infantini, Commissioner District 3  
**AYES:** Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.C.2., ITEM APPROVAL, RE: SALE OF SURPLUS REAL PROPERTY BY BIDDING PROCESS**

The Board granted permission to advertise and sell one surplus parcel of real property located at 7195 Kimball Avenue, Cocoa, by bidding process, pursuant to Florida Statute 125.35(1)(a).

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Mary Bolin Lewis, Vice Chairman/Commissioner District 4  
**SECONDER:** Trudie Infantini, Commissioner District 3  
**AYES:** Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.C.3., BOARD CONSIDERATION, RE: REQUEST FOR REDUCTION OF FINE AND RELEASE OF CODE ENFORCEMENT LIEN FOR CHARLES E. ARNOLD, JR., 809 DUNBAR STREET COCOA, FL 32927**

The Board adopted the Special Magistrate's recommendation to reduce the accrued fine for Case No. 10CE-02388 from \$9,575 to the reduced sum of \$1,932; and directed staff to prepare and execute a release and satisfaction of lien upon receipt of payment.

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Mary Bolin Lewis, Vice Chairman/Commissioner District 4  
**SECONDER:** Trudie Infantini, Commissioner District 3  
**AYES:** Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.C.4., PERMISSION TO PURCHASE, RE: NETAPP STORAGE CONTROLLERS AND SERVICES FROM DATALINK CO. OFF OF FLORIDA STATE CONTRACT NUMBER 250-000-09-1**

The Board approved the purchase of a new NetApp Storage Controllers and services from Datalink Co. under Florida State Contract number 2250-000-09-1; and authorized the Chairman

February 19, 2013

to execute the associated contracts for the purchase and implementation services upon the approval of the County Attorney.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.D.1., PERMISSION TO ADVERTISE ORDINANCE, RE: REPEALING SECTIONS 202-266 TO 202-274, OF THE CODE OF ORDINANCES RELATING TO THE SPACE COAST COMMERCE PARK BOARD, AND AMENDING SECTION 98-147 OF THE CODE**

The Board granted permission to advertise an ordinance repealing and amending Sections of the Code of Ordinances related to the Space Coast Commerce Park Authority Board, establishing the North Brevard Economic Development Board (NBEDZ) as the Park Advisory Board and authorized agent for the Commerce Park.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.D.4., RESOLUTION, RE: COMMERCIAL LAUNCH INDUSTRY SUPPORT**

The Board adopted Resolution No. 2013-027, to encourage the efforts of the State of Florida to provide the commercial launch industry all of the capability and flexibility superior to that available anywhere else in the nation.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.D.5., APPROVAL, RE: AT LARGE APPOINTMENTS**

No at-large appointments at this time.

**ITEM III.D.6., APPOINTMENTS/REAPPOINTMENTS, RE: CITIZEN ADVISORY BOARDS**

The Board appointed/reappointed, Nancy Mitts to the Public Golf Advisory Board, with term expiring December 31, 2013; Alan Brech to the Historical Commission, with term expiring December 31, 2013; and Dr. Carolyn Feltus-Atkinson to the Melbourne Beach Public Library, with term expiring December 31, 2013.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.D.2., RESOLUTION, RE: AD VALOREM TAX EXEMPTION FOR D4 ENERGY GROUP, INC.**

Commissioner Infantini stated the item refers to giving a tax abatement to a company to establish some jobs in Brevard County; she agrees with tax abatements, but she was recently on the Bill Mick Radio Show talking about the jobs that are being promised, and according to the agenda item, they plan to create 105 jobs with an average salary of \$124,000; however, the supporting documentation says they will create 105 jobs with an average salary of \$82,000; and the problem she has is that tax abatements are still awarded when companies only create 10 jobs and still keep the entire tax abatement. She inquired if the Board would consider offering a percentage abatement of taxes in relationship to the number of jobs created, rather than giving them 100 percent of the tax abatement for 10 jobs, instead of the 105 they planned to create. She noted she is referring to Items III.D.2. and III.D.3.

Commissioner Fisher requested staff give a brief history of tax abatements and how they work.

Stockton Whitten, Deputy County Manager, advised tax abatements are issued on three criteria of wages, number of jobs, and capital investments; all of those criteria are weighted; ten jobs does not give the same percentage of weight as 100 jobs; and stated he can provide the Board with a report.

Commissioner Fisher stated there have been a few companies over the last couple of years that the Board has rescinded their abatements because they did not meet the requirement. Mr. Whitten stated over the last ten years the Board has rescinded 41 tax abatements; annually, the Board looks at the performance of companies, and either they are allowed to keep their abatements, or the ordinance can be appealed; and stated it is entirely the Board's decision.

Commissioner Infantini stated the documentation says the company plans to create jobs, which is how the Board determines how much of an abatement they will receive; when she has mentioned this in the past, it has been pointed out to her that as long as they employ 10 or more people, they would be able to keep the abatement; and inquired if they do not create 105 jobs will they lose the tax abatement. Mr. Whitten stated it is an option on the part of the Board; if a company promises 300 jobs and their performance lags and they only have 275 jobs, then he will not recommend to the Board that the company lose the abatement; the criteria for being in the program is 10; and they cannot participate if they have under 10 employees, but that is not an absolute in terms of how staff analyzes whether or not the abatement is continued. He stated if the company does not have a net increase of 10 employees, it is an automatic in terms of staff's review of whether or not to recommend to the Board that the abatement be repealed.

Commissioner Infantini clarified that the company could create just the 10 jobs and not the 105 that was promised, and keep the abatement for at least the first year; and inquired if the Board can tie that to a percentage of jobs completed. She stated she feels it would be more appropriate as an incentive to the businesses; and stated she does not want to give them 100 percent of the abatement that was based on establishing 105 jobs, but they only actually create 10 jobs.

February 19, 2013

Commissioner Nelson pointed out that the authority for the tax abatements came from the voters of Brevard County; and it passed with 62 percent of the vote. He stated staff will evaluate when the numbers come in, and if there is a problem and the company goes from 105 jobs to 10 jobs, staff will bring it back to the Board for discussion, and it will be up to the Board to decide to continue the abatement or not. He noted there is a capital portion of the process where the company has to commit to build and add to the taxable value of the County by adding improvements and/or inventory that is able to be taxed. He further pointed out that the tax abatements are related only to the General Fund; it does not impact other taxes; it has been a great program; and the Board has rescinded some tax abatements based on failure to perform.

Chairman Anderson stated Commissioner Infantini can place the issue on a future agenda for Board discussion.

Commissioner Fisher stated the voters will decide again in 2014 whether or not the program works or not. Chairman Anderson stated he agrees, but if Commissioner Infantini has some concerns, the Board can review them. Commissioner Infantini stated she thinks there is a misconception on the part of the voters; and she is just trying to close the gap.

Commissioner Nelson stated when talking about taxable value, it is not about the jobs, but about the improvements that are made; if new businesses do not come to Brevard County, the County does not get any taxes; and that is the critical part, that they have to improve the taxable value of the County to actually have an abatement.

Chairman Anderson stated he agrees, and the Board may want to review each company periodically. Mr. Whitten stated there is an annual review; the Board has the opportunity to address the monitoring and criteria for the monitoring; stated Commissioner Nelson is correct that if a company does not produce the jobs, they are not going to have the tangible property, or the real property, to receive the abatement, because the abatement is based on building something that would accommodate 200 employees; and noted staff has never recommended to the Board that a company going from 200 to 10 employees maintain their abatement. He pointed out that over the life of the 19-year old program, approximately 128 companies have been approved by the Board, and only 75 have actually received a tangible property abatement, which is about 60 percent of the companies that the Board actually approved for an abatement; and out of the 75 that have received the abatements, 41 in the last 10 years have been repealed.

The Board adopted Economic Development Tax Abatement Resolution No. 2013-025, qualifying D4 Energy Group, Inc., as an eligible business under the County's Tax Abatement Program; and authorized a public hearing to consider adopting an exemption ordinance.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.D.3., RESOLUTION, RE: QUALIFYING D4 ENERGY GROUP, INC. AS A QUALIFIED TARGETED INDUSTRY**

The Board adopted Resolution No. 2013-026, qualifying D4 Energy Group, Inc., as a Qualified Targeted Industry.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM III.D.7., APPROVAL, RE: BILLFOLDER**

Commissioner Nelson pointed out that the items in the Billfolder are related to travel for the Mosquito Control, Tourism, and Elections, and he does not see any problem with them; and he is not sure why Commissioner Infantini is in opposition.

The Board approved the Billfolder as submitted.

<b>RESULT:</b>	<b>ADOPTED [4 TO 1]</b>
<b>MOVER:</b>	Chuck Nelson, Commissioner District 2
<b>SECONDER:</b>	Robin Fisher, Commissioner District 1
<b>AYES:</b>	Robin Fisher, Chuck Nelson, Mary Bolin Lewis, Andy Anderson
<b>NAYS:</b>	Trudie Infantini

**ITEM V.A., PUBLIC HEARING, RE: ORDINANCE AMENDING ARTICLE III, DIVISION II, SECTION 2-73 OF THE BREVARD COUNTY CODE OF ORDINANCES**

Chairman Anderson called for the public hearing to consider an ordinance amending Article III, Division II, Section 2-73 of the Brevard County Code of Ordinances.

Howard Tipton, County Manager, advised the ordinance references some of the changes that have been occurring in the organization and ultimately ends with the merging of Mosquito Control into the Natural Resources Management Department; and stated he feels there will be greater organizational efficiencies and increased effectiveness through this change.

There being no objections heard, the Board adopted Ordinance No. 2013-04, amending Article III, Code of Ordinances of Brevard County, Florida, amending Section 2-73 providing for the Departmental Structure of County Government; providing for conflicting provisions, severability, and an effective date.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM V.B., PUBLIC HEARING, RE: ORDINANCE ECONOMIC DEVELOPMENT TAX EXEMPTION FOR PROJECT TRICOLOR**

Chairman Anderson called for the public hearing to consider an ordinance granting Economic Development Tax Exemption for Project Tricolor.

February 19, 2013

Stockton Whitten, Deputy County Manager, advised the item is the final adoption of a Tax Abatement for Tricolor, which plans to create 40 new jobs over the next four years with an average wage of \$40,555.00, and a capital investment of approximately \$1.2 million.

Commissioner Infantini stated she knows in the past the Board approved and agreed that it would allow the Chairman to be the only person to sign off on a confidentiality agreement with the Economic Development Commission, as well as the County Manager being aware of what companies are coming into the County; and stated moving forward, she will not be approving any tax abatements or incentives for a company when she does not know who they are. She noted, it is not that they are not a good company, or that she would not like to have them in her district; she is willing to sign a confidentiality agreement, but she is not willing to give tax incentives to a company when she does not know what they represent and she cannot do due diligence to research how well they will do in the County. She advised she will be voting in opposition.

Chairman Anderson advised each individual company can determine who they want on the non-disclosure agreement.

There being no further comments, or objections, the Board adopted Ordinance No. 2013-05, granting an Economic Development Ad Valorem Exemption to Project Tricolor; specifying the items exempted; providing the expiration date of the exemption; finding that the business meets the requirements of Chapter 196.012 F.S.; providing for proof of eligibility for exemption; Project Tricolor; and providing an effective date.

<b>RESULT:</b>	<b>ADOPTED [4 TO 1]</b>
<b>MOVER:</b>	Robin Fisher, Commissioner District 1
<b>SECONDER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Robin Fisher, Chuck Nelson, Mary Bolin Lewis, Andy Anderson
<b>NAYS:</b>	Trudie Infantini

**ITEM V.C., PUBLIC HEARING, RE: ORDINANCE GRANTING EXTENSION TO TRANSPORTATION IMPACT FEE MORATORIUM**

Chairman Anderson called for the public hearing to consider an ordinance granting an extension to the Transportation Impact Fee Moratorium.

Robin Sobrino, Planning and Development Director, advised staff has brought back an ordinance for a temporary extension of the Impact Fee Moratorium for a period of two months; the extension is a prelude to the Transportation Workshop scheduled for March 14th; and the extension gives the Board the opportunity to continue the Moratorium until some policy decisions can be made at the workshop. She noted the extension would extend the building permit window until May 1, 2013, and the C.O. window to May 1, 2014.

Tim Harber stated he is the immediate past president of the Space Coast Board of Realtors, and he currently serves on the Local Planning Agency. He encouraged the Board to keep the moratorium in place; now is not the right time to add any additional fees to new construction; and stated it will be hard to get builders to build residential or commercial with extra fees in place.

Elizabeth Porter stated she is the General Manager for Adams Homes, and is the vice president of the Homebuilders and Contractors Association. She stated she would like an extension of

the moratorium, if not permanent elimination; she deals first-hand on the front line of the home buyer and appraisers; and noted she has many contracts coming through that have significant appraisal problems. She explained Adams Homes' target buyer is the first-time home buyer; most segment buyers are renters that Adams hopes to get into home ownership; many of the appraisals come in at \$100,000 or \$200,000; and stated some of them have come in as low as \$20,000 to \$30,000. She stated Adams' most recent appraisals have been in Titusville with price points as low as \$130,000 and the appraisals are coming in at \$20,000 to \$30,000 below the asking price; and they are moderate homes that first-time home buyers are looking to get into. She stated Adams has been struggling with trade base and materials shortages, along with appraisals, but is now starting to break through, only to have appraisal values shut them down; and stated unfortunately, they cannot add \$4,000 to \$5,000 to the price and the first-time home buyers do not want them to either. She encouraged the Board to consider extending the moratorium, if not eliminating it.

Jason Stanley stated he is a custom home builder in Brevard County, and he is the president of the Homeowners and Contractors Association. He advised his company builds approximately 25 custom homes throughout the unincorporated areas per year; and stated the moratorium will affect him in three ways. He stated as Ms. Porter mentioned, home builders are having problems with the appraisals; the appraisers are basing their values on short sales and foreclosures versus the actual cost to build; and adding another \$5,000 to the cost of a home will put them out of the market. He further stated the government revenue will be affected by the increase in the impact fees and the decrease in the builders' ability to finance the homes; his company creates \$575,000 per year in State and local government revenue; the National Association of Home Builders estimates that every new home creates \$67,000 in federal government revenue, and \$23,000 per home in State and local government revenue; and noted that could disappear if the impact fees are not eliminated. He noted the National Association of Home Builders also estimates that three new jobs are created per home built; without the moratorium there would be 75 job losses per year; and pointed out that only half of those jobs are in construction.

Steve Cook stated he is the vice president of design and development for Westminster Services, which provides reasonably priced senior housing throughout the state; he would like the County Manager to have the option of extending the end date of the moratorium if Westminster is not able to build its building; stated unfortunately, Westminster is subject to HUD requirements; and they are nine months into the HUD process, but it takes HUD 12 months to approve something. He stated he would like some flexibility in the wording to extend the time frame for commercial projects, and also for non-profit organizations.

Bruce Moia stated he would like the Board to extend the moratorium longer than two months; when the moratorium was first passed, there was no interest by developers to come to Brevard County to build, but now that interest is coming around; and stated there is no better way to kill the interest than to bring back the impact fees. He stated he is currently working on a project that is close to being finished, but if the impact fees are brought back the project will go away; other engineers have also told him they have projects that would die if the impact fees are brought back; and stated if it cannot be extended beyond two months, he would like to see some exemptions made.

Bob Wille, Joyal Construction, stated his company has been building in Brevard County for over 50 years; the industry is still struggling; and he would like the Board to recognize that the industry has not recovered by any sense of the word. He noted the Board has already heard about the appraisal problems; his company went five years without selling a home that had financing; and stated there are still problems with appraisals. He stated the problems the Board has already heard about are beyond what an additional \$5,000 would do, regardless of the size of the home; large commercial projects are a part of providing jobs for people who will

February 19, 2013

eventually buy either existing homes or new homes; and stated he implores the Board to extend the moratorium longer than two months, or eliminate it.

Don Simms, Falcon Development, read an excerpt from the business section of the *Florida TODAY*. He stated in addition to land development, his company does commercial work; stated a 2,000 square-foot restaurant in Viera employs 25 people; if it is permitted by March 1st, the impact fee would be \$1,816; and if it is permitted after March 1st, that fees goes to \$73,542. He further stated if the impact fees are brought back, developers will not come to Brevard County.

Carmine Ferraro requested the Board support the continuation of the Transportation Impact Fee Moratorium, and to extend it beyond two months; stated he has been a commercial developer in Brevard County since 1989; like many, he has had one of the worst periods of time that he has seen in a long time, but he is very optimistic about 2013; and so far this year, he has had several people contact him that are interested in developing. He noted he has one particular client who has purchased land and is considering building a 8,000 square-foot phase one facility, and they have plans for another 8,000 square feet; the impact fee to the developer would be approximately \$25,000 and \$30,000; and the developer is now considering not building in Brevard County because of all the fees. He stated there is a vacant commercial piece of land that is being taxed as vacant land, but if the developer can build the building that they would like to, in 2013, there will be a \$700,000 to \$800,000 value on the property, and then the tax base on that property that the County would receive would be significantly more. He reiterated he would like to see the moratorium extended for at least another year, and commented on all Brevard County has to offer.

Motion by Commissioner Infantini to extend the Transportation Impact Fee Moratorium for two years. She went on to say two years would give the construction community and potential developers time to find property and build; stated extending it by two months is not long enough; and opined that a two-year time frame is long enough to give the construction industry a little bit of time to rebound while at the same time, give the Board time to have a transportation workshop and figure out how it wants to help businesses in the future.

Motion died for lack of a second.

Commissioner Nelson stated there is an alternative side to the issue; for example, Sam's Club on S.R. 520 would have had to pay around \$600,000 in impact fees; Sam's Club could have afforded that, as they were two weeks away from opening; and the Board waived that impact fee. He noted that the moratorium did not bring Sam's Club to Brevard; in effect, it created the traffic problems that are on S.R. 520; to solve those problems, he had to use County tax dollars and make an improvement to the intersection of Cox Road and S.R. 520; and that problem that was created by Sam's Club was passed to the public. He stated by waiving the impact fees, they are being passed along to the taxpayers; and noted it cost the County over \$580,000 to solve a problem created by a multi-national company that could have afforded it and was already committed to pay it. He stated The Viera Company is being hurt because of the moratorium because they are making significant improvements as part of their DRI, and they are counting on getting the impact fees so they can actually make the improvements that they are required to do. He stated he supports the extension to have the discussion of what the Board has done to itself in terms of transportation. He noted to date, the Board is up to approximately \$20 million in waived fees that will have to be made up somehow; the County does not tax for roads because there is a gas tax; the Board is going to have to find that \$21 million somewhere; and the last he heard, the Board was about \$700 million in the hole on road projects. He stated there are some impact fees the Board needs to look at in terms of what the Board does charge, but it is called an impact fee for a reason. He reiterated he supports the two-month extension, but the Board needs to have the discussion about what the impact is to the County's transportation dollars.

February 19, 2013

Chairman Anderson noted for the public that impact fees can only be used for capacity, and they do not solve the County's road maintenance problems.

Commissioner Fisher stated he was supportive of waiving the impact fees when the issue first came up three years ago, but the theory behind it was to generate the small businesses and provide a stimulus package; in his mind, it was never intended to do what Commissioner Nelson mentioned about Sam's Club; and he does not think Sam's Club, or Publix, is going to make a decision on whether they come to the area or not because of the impact fees, but he thinks it does make a difference for the smaller developers. He stated the smaller developers are who he wanted to give the incentives to; and he is not supportive of the two-year extension, but he is very supportive of having the workshop and having a conversation with the community about how to go about planning long-term and understanding that if developers want to take advantage of not having impact fees, the moratorium will not last forever because the County cannot afford for it to be forever. He stated he would like to come up with a time frame that would allow developers to get projects finished, whether it is six months or a year or a year and a half, or whether it is generated by trips, but there has to be another formula that the Board decides on. He stated the speakers on the housing issue had great points; and it will be nice to have a workshop to come up with a better formula.

Commissioner Bolin Lewis stated because the Publix in Viera did not have to pay impact fees, they were able to open a year earlier than anticipated; there needs to be a thorough discussion in detail on both sides of the issue; and stated she would like to move forward with the two-month extension to allow time to have a workshop.

Chairman Anderson stated he has never been a big fan of impact fees, he understands the intent is to build capacity. He stated staff is proposing an extension of the moratorium to May 1st; he would like to extend it six months to a year to give the Board more time; and inquired between now and May 1st, can the Board put in place that the developers do not have to have all their permits in place, but just have an application.

Ms. Sobrino inquired if the Chairman is suggesting that an application should be sufficient as opposed to the issuance of a building permit. Chairman Anderson replied yes, for the two-month extension. Ms. Sobrino advised staff can craft that into the language; the downside of it is it would not be outside of the norm to receive just some shred of an application as opposed to a bona fide application. Chairman Anderson stated that is why he wants language built in that says within six months of that application, they have to have sufficient progress. Ms. Sobrino stated staff will work with the County Attorney on language.

Commissioner Infantini stated that is a good idea in concept, but the problem she has with the site plan approval is that the Board has people like the Cocoa Expo who are still going back and forth over site plan approval. Chairman Anderson stated it does not necessarily have to be site plan approval, but some movement in that direction. Commissioner Infantini stated the Board can create its own stop-guard so that if it does not like a certain business, theoretically it can hold up the site plan approval; and stated she thinks there will be a lot of businesses that will not be able to apply for a permit in that short amount of time. She stated she does not know how the construction industry is going to move forward knowing they only have a two-month window to get a permit. She noted she has been in touch with Pollo Tropical ever since they opened in her district; and they have notified her that they will not add a location in Viera if they do not have their permit because it will cost them \$135,000 in impact fees. She stated the moratorium should be extended for a minimum of six months.

February 19, 2013

Chairman Anderson stated he knows of two other chain companies looking to locate on S.R. 192, but they are waiting to see what the Board does; and they would be building right now if the moratorium deadline was not near.

Commissioner Fisher stated he is not supportive of eliminating impact fees today, but he is supportive of having a conversation when they are eliminated; and stated builders should start their processes, because the moratorium is not going to last forever.

Commissioner Nelson stated he would be comfortable extending the moratorium to July 15th, which will give the Board a chance to have a workshop; and if there needs to be follow-up there will be time to do that.

There being no further comments or objections, the Board adopted Ordinance No. 2013-06, amending Ordinance No. 09-08E, imposing a two-year moratorium on the collection of Transportation Impact Fees from residential or commercial projects; providing for an extension of the Moratorium; providing for severability; providing for an area embraced; providing for an effective date; and providing for inclusion in the Code.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Chuck Nelson, Commissioner District 2
<b>SECONDER:</b>	Robin Fisher, Commissioner District 1
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM V.D., PUBLIC HEARING, RE: TRANSMITTAL OF COMPREHENSIVE PLAN PACKAGE 2013-1 PLAN AMENDMENTS**

Chairman Anderson called for the public hearing to consider Transmittal of Comprehensive Plan Package 2013-1 Plan Amendments.

There being no comments or objections, the Board approved transmittal of the 2013-1 Comprehensive Plan Amendments, including one private application for Paladin Estates Investment LLC (2013-1.1) and two County-initiated amendments (2013-1.2 and 2013-1.3).

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Chuck Nelson, Commissioner District 2
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM V.E., PUBLIC HEARING, RE: ORDINANCE AMENDING CHAPTER 62 CODE OF ORDINANCES TO ENACT THE FARMTON MIXED USE ZONING OVERLAY CLASSIFICATION**

Chairman Anderson called for the public hearing to consider the first reading of an ordinance amending Chapter 62, Code of Ordinances, to enact the Farmton Mixed Use Zoning Overlay Classification.

Robin Sobrino, Planning and Development Director, advised the item is the codification of a zoning classification for the Farmton Mixed Use area; a Future Land Use Map change has been

February 19, 2013

done to create policies to support the Farmton Mixed Use area; and today's item is the zoning regulations to allow implementation.

Glen Storch, Miami Corporation, stated today's request is the next step in accomplishing the goal that has been set for the economic development area at the 5A interchange; stated the partnership he has experienced with Brevard County and its staff has been wonderful; and he uses it as an example of how other governments should work together to create economic development in their areas. He noted the Comprehensive Plan was approved, and the State now sees the development as a model for how to do the correct kind of economic development that also preserves environmental areas; now it is time for the zoning districts; and everyone is on the same page of trying to create the quality that the County wants, as well as what the Miami Corporation wants. He advised there is one change he would like to make if possible; the Miami Corporation wants to make certain that the development works for the County and has the aesthetics everyone is looking for; and he would like to add a provision to Section 13, Utilities, and state that above-ground utilities are discouraged throughout the Farmton Mixed Use area, and that there shall be no above-ground utilities in the Village Zoning District, which is the residential area.

Jabez Coggan stated he is not opposed to the Miami Corporation; there are a couple of things he does not like about the plan; stated his family has owned property in the 5A area for 33 years; and his concern is the road and sewer plant. He stated his family's concern is if the proposal affects their land; he has not seen any maps for the zoning change; the last time the Comprehensive Plan was changed, some of his property was changed as well; inquired if the position of Stuckway Road is affected; and stated he also has not seen the location of the treatment facility or the wastewater plant.

Ms. Sobrino assured Mr. Coggan that what the Board is doing today is legislative action, creating the script of the zoning regulations that would apply to a piece of property, which will eventually be the Farmton Project; and reiterated that right now, all the Board is doing is writing the narrative regulations that would be applied. She further stated the rezoning request on the Farmton land would be a subsequent action that would come back to the Board and would be advertised with notice to neighbors and a legal description outlining exactly what properties would be encumbered by the zoning classification.

Mr. Storch noted the area being discussed today would only apply to the Farmton area; Mr. Coggan's property is by the 5A interchange; Miami Corporation is trying to be a good neighbor and buy additional land to place the wastewater treatment facility away from Mr. Coggan's land; and stated he is not aware of any Comprehensive Plan amendment the Miami Corporation has done that would have affected Mr. Coggan's land. He went on to say the Stuckway Road access that will extend into the area will do nothing but improve and increase the value of Mr. Coggan's property.

Chairman Anderson inquired if staff has met with Mr. Coggan. Ms. Sobrino replied yes, Mr. Coggan has been in the Planning and Development Office numerous times over the years. Chairman Anderson stated zoning and comp plans are not the easiest thing to understand, and he wants staff to make sure that Mr. Coggan knows there is no harm coming to him or his property. Mr. Coggan stated all he is trying to do is protect what he has; he is not trying to create a problem or be adverse to anyone; he is not against the Miami Corporation, but he does not like certain things; and stated he would like to sit down and discuss it properly, because what he sees is not necessarily what everyone else sees.

Commissioner Fisher stated if there are other issues Mr. Coggan would like to talk about, he can set up a meeting with him and Mr. Storch.

February 19, 2013

There being no further comments or objections, the Board approved tentatively scheduling a second reading to adopt the Farmton Mixed Use Zoning Overlay Classification Code Amendment to the April 4, 2013, Board meeting.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Robin Fisher, Commissioner District 1
<b>SECONDER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM V.F., PUBLIC HEARING, RE: EMERGENCY ORDINANCE AMENDING SECTION 102-122 OF THE BREVARD COUNTY CODE OF ORDINANCES**

Chairman Anderson called for the public hearing to consider an Emergency Ordinance amending Section 102-122 of the Brevard County Code of Ordinances.

Howard Tipton stated as the stadium bonds get ready to retire, it was discovered that in Section 102-111(b) of the Code of Ordinances, which was drafted in 1986, that it is no longer consistent with the Florida Statutes, as a change to the Statutes was made in 2000; and essentially, the way things currently stand, if the Board does not enact this emergency ordinance, which requires a super majority vote, when the payment is made on March 1st to retire the stadium debt, all five cents of the tourist tax will go away. He pointed out that the money is primarily used for promotion and advertising for tourism; and staff is requesting the Board adopt the amended language to the Ordinance as provided.

Dave Netterstrom, Mayor, Cocoa Beach, stated he would like to make sure that in the language of the Emergency Ordinance that the Board is not accidentally restricting how the money can be used, and that the money can continue to be used in any way allowed by the Tourist Development Act, per Florida Statutes.

Scott Knox, County Attorney, advised the language does not restrict the money at all.

There being no further comments or objections, the Board adopted Emergency Ordinance No. 2013-07, providing for the amendment of Section 102-122 of the Code of Ordinances of Brevard County, Florida, to bring that Section in conformity with the current section 125.0104(7), Florida Statutes as and thereby prevent the Tourist Development Tax from expiring; providing for severability; providing for an effective date.

The Board recessed at 10:30 a.m. and reconvened at 10:42 a.m.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Robin Fisher, Commissioner District 1
<b>SECONDER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

February 19, 2013

**ITEM VII.F.3., RESOLUTION, RE: INITIATE CONFLICT RESOLUTION PROCEEDINGS WITH THE BREVARD COUNTY SCHOOL DISTRICT**

Chairman Anderson explained the Roberts Rules of Order for the Board and for the public. He stated there will be one round of discussion, then he will accept a motion, then a second onto discussion. Commissioner Infantini stated sometimes speakers have a question, and inquired if the Board can answer them. Chairman Anderson stated all questions can be answered when all the speakers have spoken.

Commissioner Fisher stated on February 12th the School Board chose to close three out of the four schools; there is a Capital Outlay Committee (COC), which is comprised of the Planning and Development Director, City Managers, and all of the municipalities; the COC not only looks at school concurrency, but also at proposals for significant renovations, potential closure of existing schools, and the opportunity to co-locate schools with other public facilities. He advised the COC met prior to the February 12th School Board meeting and made a recommendation to the School Board that it not close any schools at this time, and to wait a year; since the School Board announced in November it was going to make these changes, a lot has changed, such as Governor Scott has offered teachers pay to put \$2 billion into education, property values are starting to tick up, and so there is a lot of good stuff going on that should have weighed the School Board's decision. He stated the COC recommended not closing any schools; the School Board is not taking the COC's recommendation; when a recommendation is not taken, there is a process the Board of County Commissioners can go through; and that process is a conflict resolution for dispute. He read aloud a letter that was written to the School Board on February 11th on behalf of the North Brevard Economic Development Zone outlining reasons to keep the schools open. He stated Courtney Barker, City of Titusville, made a good point that the School Board Administration has severely ignored the requirements of the Interlocal Agreement with the local government, as well as the Florida Statute requiring coordination with local government on school facility planning and growth management, and also that the School Board has ignored public comments before the COC. He stated it really concerns him that Commissioner Nelson tried to speak at the last School Board meeting and they would not give him the courtesy to do that; there has been arrogance on the part of the School Board about how it wants to handle the situation; the School Board has not gotten the community involved at all until later; and stated there is a process to follow when there is a dispute and he would like to see the Board go through that process.

Chairman Anderson requested County Attorney Scott Knox explain the conflict resolution. Attorney Knox advised the genesis in this particular matter was a contract between the School Board and the cities in Brevard County, as well as the County; that Interlocal Agreement was entered into in June 2008; part of the Interlocal Agreement is the creation of the Capital Outlay Committee; under the Agreement, the COC has a responsibility to give a recommendation on school closures; the School Board interprets that as applying only to concurrency issues, which means it determines if school capacity is going to be sufficient in the future, but the County and the cities have a different view of the same language, which is that the provision deals with a recommendation from the COC, based upon information they accumulate during the review process; and the issue the County was concerned about was that there was not enough information to support any kind of recommendation from the COC, which is they voted to defer their recommendation for a year. He stated an example of that information is that the school closure represents a \$3 million portion of a \$30 million cut that the School Board is trying to enact, which is 10 percent of the overall cut; there were 62 items that came to light during the last meeting of the COC, none of which were specifically identified; and the COC was not given an opportunity to look at that information and decide whether or not there were other cuts that could have been made besides closure of the schools that would have supported a budget cut, but would not have required closing of the schools. He stated in his point of view, the COC did not have enough information to make an informed decision, which again, is why it was

February 19, 2013

postponed for a year; given that difference in opinion about what the contract means, there is a possibility that there is a dispute between what the School Board believes the contract means and what the County or cities believe the contract means; and there is a difference in view of how that process should work based upon that difference of opinion. He further explained, in the event that there is a dispute like that, Florida Statutes provides that there are two ways to proceed; if the Board feels there is an eminent problem that will affect the public interest immediately, it can file a suit challenging the interpretation the School Board has of that contract, or alternatively, the Board can move for dispute resolution under Chapter 164 F.S.; and the dispute resolution basically says that the County, or city, can initiate a dispute resolution process by passing a resolution calling for that process to begin, and then serving a copy of that, as well as a letter, putting the School Board on notice that that is what the Board wants to do, and the School Board is then bound to set up some kind of a meeting with staff within a certain time frame. He stated before the Board today is the resolution initiating that conflict resolution process and the letter putting the Superintendent on notice that that is what the Board intends to do.

Christine McClure stated she has three children at Gardendale Elementary School; and thanked the Board for voting to proceed with the resolution opposing the school closures on January 29th. She also thanked Commissioners Fisher and Nelson for their vocal support of the schools. She stated she agrees that closing schools is a direct and detrimental effect on the quality of life, especially for those who attend the schools that have been voted to close, and those who live near the schools; and stated due to the decisions made by the School Board, and the lack of due process, a Brevard Parents Action Committee has been formed, which is dedicated to giving a voice to the parents, grandparents, and guardians of school-aged children. She stated the last three months have been very difficult for parents; they have attended board meetings, workshop information meetings, and some have even had private meetings with the School Board members; in the end, the parents were left with the perception that their voices were not being heard; and it was again illustrated by the fact that the School Board refused to allow speakers, even elected officials, such as Commissioner Nelson, during the February 12th meeting. She went on to say, despite the fact that the Board of County Commissioners unanimously voted to oppose school closures, the COC passed a motion unanimously to keep the four schools proposed for closure open for as long as possible and evaluate future alternatives, and the city councils within Brevard County all oppose closure; however, Clear Lake Middle School, South Lake Elementary School, and Gardendale Elementary School were closed by a 3:2 vote. She stated all elected officials should be held accountable to their constituents, especially the School Board, which represents the most innocent of Brevard County residents. She further noted parents have spent countless hours reading School Board meeting minutes, financial documents, facility reports, and capacity assessments, but have repeatedly found discrepancies in their data, which has been manipulated and inflated to support their position; and stated, for example, the 2012 Facilities Capital Renewal Assessment was just posted to the School Board's website after it voted to close three schools on February 12th. She stated some have asked questions about the recall process in the State of Florida, but she has learned through the Florida Department of Education that there is no recall process for School Board members, even in cases of malfeasance or misfeasance, as may be the case in Brevard County; and advised the only person who can remove any School Board member is the Governor. She stated the parents are asking the Board to continue its support of the schools; she hopes the Board adopts the conflict resolution; and stated the parents will work cooperatively with the Board in any capacity.

Mark Ryan, City Manager, City of Titusville, stated the issue is so important that the City Council has moved three of its meetings so that the entire Council could attend the School Board's meetings; on February 12th, when the School Board voted to close three schools, the City Council was not afforded the opportunity to speak; and on February 14th, the City Council directed staff to prepare a dispute resolution and begin the process that the Council believes

February 19, 2013

there may be some inconsistencies with compliance with the Interlocal Agreement, and the Council will be presented with the information on February 26th, when the Council will be voting to proceed.

Greg Cope stated he is not only a parent, but a County taxpayer who will be affected by the February 12th outcome of the School Board's vote; there were many parents at that meeting who had sat through countless hours of meetings and forums; there were also people there who sit on the various committees that the School Board has formed, and they are the same faces that not only voice their opinions, but also voice their concerns and did not agree with the decision, or thoughts, of closing four schools; and there were many elected officials at the meeting who also did not agree with the closing of schools and did not even have an opportunity to speak to the School Board as they were promised. He stated he represents Gardendale Elementary Magnet School, or what is referred to as GEMS, which by definition is a cut, polished, precise stone or pearl fine enough for use in jewelry, something likened or prized as such as stone because of its beauty and its worth; and stated there are 492 precious GEMS worth fighting for. He added, it is because of the school's dedicated staff of 62 people who not only educate, but truly care about the children; and noted Gardendale became a magnet school in 1992 and offered four distinct magnets within the school; the magnet program is self-funded. He stated the parents and families have logged over 10,000 hours of volunteerism, which equates to 32.3 Hours per volunteer; Gardendale should have been celebrating its 20 years of dedicated service to the community, but yet as parents have been trying to solve an issue before them to provide 20 more years of dedicated service to the community; and thanked the Board for its commitment in supporting the parents and children of the County and for responding to the School Board's proposed school closures. He stated unfortunately, the issue is far from resolved and the Board's help is still needed in unwavering solidarity and support to resolve this issue; and the parents respectfully request the Board continue the support in resolving the issue by voting to proceed with invoking the dispute clause of the Interlocal Agreement. He noted the Titusville City Council has directed the City Attorney to proceed with such discovery and present the findings at the next City Council meeting.

Karen Proctor stated she is the P.T.O. President at Gardendale Elementary Magnet School, and the very outspoken parent of two school-aged children. She went on to say in a February 2011 from Ohio University article, titled "Consolidation of Schools and Districts", it is believed that low-wealth and minority populations tend to be inordinately and negatively affected by consolidation initiatives; some have noticed that the schools chosen for closure are found and minority and economically disadvantaged communities; and stated it is in contrast with other schools which serve more privileged students and/or have been deemed excluded from consideration for closure by the School District. She stated choice schools rank among the highest in economic advantage based on the percentage of free and reduced lunch, and are being protected at the expense of community schools in minority neighborhoods; Gardendale is in a cluster of six elementary schools in central Merritt Island; at 46 percent, GEMS has the highest minority rate of all schools in the cluster and has the highest rate of African American students amongst its peers; at South Lake Elementary School the contrast is even more dramatic in a cluster of seven schools in the north County; and at 59.2 percent, South Lake has the highest minority rate and is essentially twice that of its nearest peers; and stated without examining all of the middle schools, it is evident that Clearlake Middle School also has a high minority rate of 40.6 percent. She stated the School Board lacked a fair and consistent documented process for selecting the closing of schools; they loosely tried to follow their policy 7120 for boundary changes, but that policy does not address how to select and go about closing schools when conditions warrant; and as recently as last month, the School Board touted in its presentations in community forums that it accounted for ethnic diversity and economic makeup for the schools being affected. She advised it is evident in the 'How' chart, which was used to communicate with the public; in the chart, balance, ethnic diversity, and balanced free and reduced lunch between schools were third and fourth priority; it was implied by Dr. Theodore in

February 19, 2013

community meetings that they were performing their due diligence; when asked via public records request to produce the score sheets, Mr. Theodore replied via email that the score sheets did not exist; and stated interestingly, as of January 8, 2013, the School Board's website had a new process for selecting schools, and in direct contrast to their previously advertised approach, the criteria no longer being considered in the selection process were demographics, free and reduced lunch, and academic performance. She stated while she does not accuse Dr. Binggeli and his staff of outright racism, she does believe the School Board's actions are disproportionately going to adversely affect minorities; and noted there are many citizens who will agree with her observations.

Misty Belford stated she has two children who attend Oak Park Elementary and her son attends South Lake Elementary; what happens in any part of the County will affect everyone in the County; although parents are concerned for the welfare of their children in the school closure decision, the truth is that they are all citizens of the County and are also concerned for the ability for development and for access to jobs and property values if the school closures go forward; and stated she appreciates the Board for giving a voice that the parents have not had in many respects regarding the issues. She stated she hopes when the Board has the discussion about the dispute resolution process, that it will take into account the strength it has, as she fears the woes of the School Board are not over. She shared a quote with the Board, "If you plan to live longer than today you must plant seeds now so that you can reap the harvest in the future".

Reverend Glenn Dames stated in the north end of the County, South Lake will be the second school in two years to close; many of the children will have been moved to three different schools in three years; and he urged the Board to do everything in its power, not excluding filing suit, because of the imminent impact it will have on the community. He stated the children have been left devastated by the decision of the School Board and have been rendered voiceless; and asked the Board to fight for the children and be their voice. He noted he attempted to speak at the last School Board and was rudely interrupted mid-sentence that he could no longer speak; the word 'arrogance' is an understatement for the School Board; and stated with the closing of the three schools, there is a clear issue of race.

Motion by Commissioner Fisher to proceed with the dispute resolution process. Commissioner Nelson seconded the motion for discussion.

Commissioner Nelson stated the Board gets questioned as to why it is getting involved, but it is the Board's community and it gets down to the County budget; the School Board wants to move kids from Gardendale to Lewis Carroll, but Lewis Carroll is back in the middle of a neighborhood; the County has already expended money for the school crossing at that location; the turn lane has had to be expanded because of the additional traffic; and stated it costs the County money to live up to the decisions being made by the School Board. He advised when he attended the School Board meeting he asked for a speaker card and they would not give him one; the Board needs to send as strong a message as possible that what has occurred is part of its responsibility as much as it is the School Board's; and he was disappointed that there was no discussion of the COC meeting, and no discussion of the Board's meeting it had with the Superintendent, as if they did not happen and did not matter. He added, to not let parents speak was the last straw. He stated he has been speaking with the County Attorney about the steps the Board needs to take, and he believes the Board should start with a suit that forces the School Board to do the mediation and to hold closings in abeyance until the issue is resolved, because it is going to have long-term impacts.

Attorney Knox explained if the Board decides that a lawsuit would be in the immediate interest of the public, it can file a suit; there is a provision in the law that allows the judge to decide that he can put everything on hold and require the Board to go back to Chapter 164 proceedings, but

February 19, 2013

as part of that the Board would be asking the judge to put the whole thing on hold until that occurred, and then the Board can go forward after that point; and stated the other option is to go forward on Chapter 164, the dispute resolution process, by meeting with staff, but if it cannot be resolved on the staff level, it goes to a joint meeting of the School Board and whoever is involved in the dispute resolution process, which would be the County and any other cities that are part of the Interlocal Agreement.

Commissioner Infantini stated last year when the Board was voting on the budget, the citizens brought forth 2,700 petitions and over 500 people attended to speak in protest of a tax rate increase for the second year in a row, but the Board basically sat unresponsive to all those citizens; and stated she did not see the School Board come crying to the Board telling it how to do its job. She stated on January 8th, the Board voted in spite of the recommendation of the Selection Committee to approve Waste Pro as the trash collection provider and decided to re-negotiate with Waste Management; and those are examples of two things the Board is criticizing another board for doing. She stated if the School Board is not acting appropriately, and if they changed the criteria for how they were going to evaluate schools, then that is not right; moving forward, she agrees with the parents' positions; and if the School Board changed the criteria, then she is in support of the decision to go after them. She stated she does not know how the other Commissioners can judge the School Board when they did exactly the same thing.

Commissioner Bolin Lewis inquired if a lawsuit would stop the closing of the schools. Attorney Knox replied the Board would ask the judge to stop the closing of the schools pending the dispute resolution process. Commissioner Bolin Lewis inquired if the Board adopts a conflict resolution, would that also stop the process of the schools being closed. Attorney Knox replied that would not stop anything, but it would require the Board to work it out with the School Board over a period of 83 days before a suit could be filed.

Commissioner Fisher stated he does not take lightly the decisions the School Board has to make; he just hoped closing schools would be the last decision and not the first one; secondly, the School Board has not done what the Board has done, which was laid off 500 employees and also cut the budget by \$300 million; the Board listened to the 500 people who came before it, but it also listened to the other 550,000; and the difference is that the School Board refused to listen.

Commissioner Nelson stated Commissioner Infantini was on a radio show last week and said the County should not be mucking around in School Board activities, and then criticized them for the orchestra pit at Heritage High School; and stated in addition, she went before the City of West Melbourne to tell them not to take a park that had been offered to them by the Board of County Commissioners. He noted the Board weighs in on other governments all the time; as an action today, the Board is sending a letter to the President; and it is not unusual or inappropriate for the Board to do that. He stated in the end, it comes down to supporting the community or not. He pointed out that Palm Bay High School has 57 percent occupancy, which is the lowest high school in the entire system and there was no discussion about closing it; the entire funding problem could have almost been solved by closing that one high school; and he does not want to close Palm Bay High School, but it was not a fair process, and a certain part of the County is being punished as a result. He noted Gardendale and South Lake are both 'A' schools, and now those kids will be going to 'B' schools; and that does not make any sense to him. He stated he has a responsibility to his constituents and he supports the lawsuit because it sends a strong message; his fear is that the Board will continue to be ignored by the School Board; and the Board needs to start the process to let the School Board know it is serious.

Chairman Anderson stated he is leary to go beyond the conflict resolution; the reason the Board entered into an Interlocal Agreement with the School Board is because they were refusing to build schools in south Brevard; at that time, the City of Palm Bay took it upon itself to do its own

February 19, 2013

City Charter Schools so that growth could not be stopped, because under the concurrency laws, all the homebuilders would have been shut down; and stated the School Board decided it did not like Charter Schools and it spent millions of dollars building Sunrise Elementary in Micco just to close a Charter School. He added, to him it is personal because the School Board took action in another way just to be vindictive; he is willing to go forward with a conflict resolution because the Board signed a contract that the School Board agreed to and they need to uphold their side of the bargain; and as for the lawsuit, he would like to know the ramifications and would like to talk to the School Board members.

The Board recessed at 11:26 a.m. and reconvened at 11:36 am.

Commissioner Nelson stated one of the things that has been brought to his attention is that the School Board is moving forward with the closure process currently; and it is important for the Board to take action. He asked the County Attorney to explain the Board's actions.

Attorney Knox advised the Board has two choices; one is to invoke the dispute resolution process, which would mean the Board adopts the resolution and goes forward with a notice to the Superintendent and set up a meeting with staff; if that does not resolve the issue, it will go to a joint meeting; and the other option is to file a suit on the grounds that the closures are an immediate problem that affects the public's interest, and a judge is asked to stop everything in order to have mediation. He stated it will depend on the judge and how he reads the contract and whether there is a contractual issue he sees there and if he thinks there is an immediate public interest being impacted. He advised based on what he has heard, he would add some things to the letter and the resolution, one of which would be the issue of changing the criteria; and the other which would be the issue of due process because of the inability to make presentations to the School Board, which Commissioner Nelson was denied the right to do. He stated he would like to research those issues and include them in the letter and resolution.

Commissioner Nelson stated the lawsuit brings the issue into focus much quicker than the dispute resolution.

Motion by Commissioner Nelson, seconded by Commissioner Fisher, to proceed with a lawsuit to include an injunction, if possible, to force mediation and stop the closure process until there can be a meeting with the School Board.

Commissioner Fisher stated he seconded the motion because when the Board brought up the concerns with the COC, before there was the initial meeting, the School Board had only one more meeting; several citizens tried to speak at that meeting, but only 10 were allowed; the attitude by the School Board has been anti-community; and he does not believe that the School Board cares to have the Board's input. He stated the Board has the ability to stand up for something that matters and he thinks it should.

Commissioner Infantini stated she does not support moving forward with a lawsuit; a lawsuit should be the last course of action and she has not met with any of the School Board officials on the issue; and stated she does not want to sue someone before she has had a an opportunity to discuss all the available options.

Commissioner Bolin Lewis stated she has not gone to any of the School Board meetings, but she has watched them on t.v.; she has done all her correspondence in written form; she is concerned over whether or not the School Board would even entertain any further discussion of the Board goes to the dispute resolution; and that is why she would like to go forward with the lawsuit.

February 19, 2013

Attorney Knox stated once the conflict resolution is invoked, the School Board is under a duty to go forward with it. Chairman Anderson stated he is still uncomfortable going forward with the lawsuit.

The Board approved moving forward with a lawsuit against the School Board to resolve a school closure dispute with the School Board arising out of the June 2008 Interlocal Agreement between the District School Board, Brevard County, and multiple municipalities in the County.

<b>RESULT:</b>	<b>ADOPTED [3 TO 2]</b>
<b>MOVER:</b>	Robin Fisher, Commissioner District 1
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Robin Fisher, Chuck Nelson, Mary Bolin Lewis
<b>NAYS:</b>	Trudie Infantini, Andy Anderson

**ITEM VI.A., APPROVAL OF AWARD, RE: EXECUTE CONTRACT FOR REQUEST FOR PROPOSAL NO. P-4-12-33, SOLID WASTE RECYCLE AND COLLECTION SERVICES**

Howard Tipton, County Manager, advised staff is seeking approval of award and authorization to execute a contract for RFP No. P-4-12-23; and presented a PowerPoint Presentation. He stated on May 20, 2011, the Board directed that an RFP process be initiated prior to the current contract's expiration on September 30, 2013; on August 18, 2011, the Board provided direction as to what should be part of the RFP, including service level status, which was garbage collection two times per week, yard waste one time per week, and recycling once per week; an option to explore using automated carts versus the current manual collection system; and the term of the agreement. He advised there were five proposals in response to the RFP; on January 8, 2013, the Board directed staff to begin contract negotiations with Waste Management (WM); the Board also gave direction to the Negotiating Committee on January 8th to confirm Waste Management's commitment to building a Material Recovery Facility (MRF) in Brevard County and provide a timeline for its completion; clarify yard waste as part of the contract; revisit carts and commercial prices; revisit carts versus no carts option; and quantify WM's commitment as a good community partner. He advised the Negotiating Committee consisted of himself; Solid Waste Director, Euri Rodriguez; and Assistant County Attorney, Morris Richardson. He noted the Committee was also assisted by Assistant County Attorney, Christine Lepore. He stated the Negotiating Committee looked at both the current manual system of trash and recycling pick up, as well as automated pick up using carts; WM's initial proposal for residential manual service was \$10.60 per month, amounting yearly to \$127.20, totaling \$12,024,259; and WM's initial proposal for residential cart service was \$12.76 per month, amounting yearly to \$153.12, totaling \$14,474,370. He stated as the Committee progressed through the negotiations, there are new rates for WM's residential services; the new negotiated proposal for residential manual services is \$10.58 per month, amounting yearly to \$126.96, totaling \$12,001,572; and the new negotiated proposal for residential cart service is \$10.55 per month, amounting yearly to \$126.60, totaling \$11,966,934. He advised the negotiated contract rates provided a reduction in the cost of manual trash pickup of \$58,437.00 for the year, and the automated cart service is an annual reduction of more than \$2.5 million. He advised in order to obtain that pricing, there were three primary changes requested by Waste Management to the County's operating premise; first, is that the landfill would return to a six-day per week operating schedule for commercial haulers; this change has little fiscal impact other than scheduling and can be accommodated within Solid Waste's existing budget; second, the RFP provided price adjustments based on the Consumer Price Index (CPI); the RFP also contained two cost control caps on those CPI adjustments: one cap was the maximum annual increase and the other cap was on the cumulative increase over the life of the contract; and

February 19, 2013

noted the annual cap of three percent per year remains in place. He went on to say what WM requested was the removal of the cumulative cap of 11.5 percent for the first seven years of the contract and the 4.9 percent cap for the three year extension; and stated given the historic CPI of 1.82 percent during the current contract term, and the 2.5 percent average CPI over the past decade, the Negotiating Committee felt this was a trade off, remembering the three percent annual cap is still in place. He stated the last provision was the issue of the three year extension; WM requested in consideration of their pricing, that if they were living up to the performance expectations that were mutually agreed upon, that the extension should be an administrative function. He outlined the proposed performance metrics as follows: 1.) There are no more than one complaint per 1,000 customers reported monthly, and the number of complaints for mixed pick ups will be the consolidated number that Solid Waste and WM receive each month; 2.) The Customer Satisfaction Survey will be coordinated between Solid Waste and WM, and approved by the Solid Waste Director, and the tally of Very Satisfied and Satisfied must be at least 88 percent of those responding; 3.) WM will pick up Special Bulk Pickups within 72 hours of receiving the call of the Special Pickups, which include items such as appliances or sofas, and WM must comply with that standard 90 percent of the time; 4.) Bulk Yard Waste is that yard waste which cannot meet the properly prepared criteria will be picked up within 72 hours of receiving the call from the customer, and WM must meet that standard 90 percent of the time; 5.) WM will repair all containers and carts within five days of receiving a call from a customer, with a 95 percent compliance rate, and the calls will be tracked and reported to Solid Waste and WM on a monthly basis; and 6.) The contract spells out several reporting and other deadlines that must be met, such as recycling information must be reported by the 15th of every month for the previous month, the annual audit must be submitted by June 30th, hauler data must be submitted annually, and those deadlines must be met 95 percent of the time. He advised for reporting purposes, the Solid Waste Department will report on these metrics to the Board quarterly and then roll the information into an annual report; and the metrics will also be posted online.

Mr. Tipton further explained that the Board asked the Negotiating Committee to look at five specific areas: 1.) To confirm WM's commitment to build a Material Recovery Facility (MRF); staff reviewed WM's plans for the \$12 million facility that is to be located off of S.R. 520; when completed, the facility will provide 30 to 35 jobs, will increase tax revenues by \$200,000, which reflects payments to all taxing agencies, and will increase recycling revenues back to the County. 2.) The Board asked to confirm WM's Yard Waste commitment; in the RFP response, WM indicated they would increase their fleet of yard waste trucks from 14 to 17, and the commitment was confirmed in the negotiations. 3.) The Board asked to look at the value of carts and the commercial prices; through the negotiating process WM committed to provide a 64 gallon cart for garbage and a 64 gallon cart for recycling; yard waste will continue to be picked up as it is currently; the use of the carts has shown to improve recycling rates and recycling will extend the life of the landfill by diverting material away from it; the use of the carts will reduce roadside littering and improve the community's appearance; recycling carts will increase the volume of recyclables and increase revenues for the County; and compressed natural gas trucks will have lower emissions and will produce less roadside noise; and 4.) The negotiations also locked in commercial services at the current rates for opportunities for savings based on recycling improvements, and service right-sizing, which provides fewer pickups based on need and correspondingly lowers the cost in market-driven competition. He advised the fifth Board direction focused on quantifying WM's commitment to being a good community partner; WM was not required to provide financial commitments to various community organizations and/or economic development items, just as they were not asked to build a MRF in the County; both of those items were a voluntary addition to the other mandatory items required in the RFP process and have been a part of WM's proposal from their initial submission on September 13, 2012; and the Negotiating Committee did not negotiate the amount or the beneficiaries of these voluntary commitments. He further stated WM has continued its voluntary commitments to the following organizations: One-time payment of \$50,000 to the Brevard Zoo; \$50,000 annually to

February 19, 2013

the Board of County Commissioners for economic incentive programs; \$50,000 annually to the Board of County Commissioners for the solid waste recycling activities; \$15,000 annually to the Economic Development Commission to support economic development; \$20,000 annually to the United Way of Brevard to support the annual campaign; and one-time payment of \$150,000, and \$50,000 thereafter annually to the Field of Dreams for support of the program. He summarized the monthly WM residential contract price and yearly WM residential contract price as explained earlier in the presentation; and he compared WM's rates with other Brevard municipality rates, along with other Florida counties rates. He stated the difference between the current monthly contract rate of \$10.22, and what the Negotiating Committee is recommending, which is the automated carts option at \$10.55 per months, is a difference of .33 per month; and for that .33, the County will receive the lowest pricing and highest service levels in the surrounding counties, a Materials Recovery Facility, three additional yard waste trucks and a fleet converted to natural gas, \$185,000 in annual commitments to the community, as well as \$200,000 in one-time payments, automated carts for garbage and recycling, increases in recycling rates to help meet the 75 percent reduction recycling goal set by the state, and increasing the life of the existing landfill.

Robert Hyres, Executive Vice President, Waste Pro (WP), stated he was not able to make it to the previous meeting; in reading the minutes of that meeting, it seems the whole item focused on yard waste; WP knows how to collect yard waste; and stated he managed the division for Western Waste, which was the predecessor of WM in the north end of the County, for four years, so he is very familiar with it. He stated in reading the minutes, there were presentations from local mayors and town managers about the fact that when they switched to WP, not only did they get good service, their yard waste service actually improved; and stated he wanted to mention that for the record, because in reading the minutes, it seems that the impression was made that WP does not properly do yard waste collection. He noted prior to working for WP, he worked for WM and oversaw all the contracts in the state; WP knows what it is doing; and it could have provided the Board a very good service.

Commissioner Fisher stated what is interesting to him is that Waste Pro did not make a presentation, so the Board did not see how WP was going to provide the service; it was confusing to him because WM is going from 14 rear-loading trucks to 17, but WP was going to do the job with only eight trucks; and noted no one from WP could explain how it was going to provide the same service that the County is getting today. He stated something else that was disturbing was that Waste Pro has 1,250 manpower hours, and WM has 1,900 manpower hours; it was disappointing that on a contract of this size, none of that was explained; and stated service is a huge part of why the Board moved toward Waste Management.

Mr. Hyres stated it was his understanding that he would only get three minutes in front of the Board; no one told him he was allowed to make a PowerPoint Presentation; Waste Pro did a presentation for the Selection Committee, which got them ranked number one; and stated the numbers in Waste Pro's proforma are the same numbers it does on yard waste collection throughout the State of Florida. He reiterated he personally ran the division for four years and he knows what it takes to do yard waste.

Chairman Anderson advised he informed all of the vendors that they would have 10 minutes each to give a presentation; and noted he was lobbied by both companies to go to 15 minutes each, so it was well known that each company would have 10 minutes each. Mr. Hyres stated he was not aware of that. He stated the information he provided in the RFP listed letters from all over Florida about Waste Pro's capabilities and services; they are here today because the Board decided to take bids on commercial and residential garbage service; he is happy to see the Board has finally done that; and stated the Board has been presented with the savings from Waste Management, but it is mostly because of Waste Pro's competitive bid. He went on to say that Waste Pro is very successful and was just awarded three more contracts in the last 30

February 19, 2013

days; he would love to have a contract with the County; and stated the ideal situation would have been Waste Pro in the north, and Waste Management in the south. He noted since the yard waste and the yard waste trucks were so important in this process, he does not see anything in the contract requiring WM to keep any certain number of trucks or routes for yard waste; if it is such a big issue, it should be in the contract that WM has to maintain a certain number of trucks and a certain number of routes; there should be a process to verify that on a regular basis; stated he has seen the number of routes increase when the contract is renewed, and then it starts to slip back; and requested that be in the contract. He further stated in the Materials Recovery Center contract, he would request there be piggyback options for the cities; stated everyone is trying to meet the 75 percent goal for recycling by 2020; the cities should be given the same opportunity; and stated it will help incentivise and increase recycling for the cities. He stated another reason he would like to see piggyback options is because he does not want to see one company have a monopoly in Brevard County.

Commissioner Infantini stated page 18 of the RFP that was sent to the vendors requires them to submit a tab that says they have signed and acknowledged the criteria with which they will be evaluated; it further states there will be a Selection Committee; the bottom of the page reads, "The award of this service contract will be based on the evaluation criteria stated above", and stated that is why each of the vendors had to sign a statement saying they understood the evaluation criteria. She stated her biggest objection is that the Selection Committee selected Waste Pro; and on August 18, 2011, the Board told the public that if there is an objection to the bid, there is a protest process in which the vendor can go before a protest committee, but that never happened. She stated the Board is violating its own process; if going for the lowest price, Waste Pro would win delivery in the north at \$10.31 per month for manual delivery; Waste Management would win in the south at \$9.92; and what the Board is asking citizens to pay is \$10.58 per month. She stated Waste Pro also won on the cart financing by charging \$2.00 per month to rent an extra cart; Waste Management would charge \$4.00 per month to rent an extra cart; Waste Management is also charging 50 percent more for commercial when they were required to reduce the cost; and stated Waste Pro should be allowed to have the north area, and Waste Management should have the south area. She stated she does not understand why the Board is negotiating, but she understands why Waste Pro did not make a presentation, because they thought they were the highest bidder. She noted Commissioner Anderson stated in 2011, when a contract was awarded to a CPA firm, that he would never allow this type of thing to happen again where bids were switched out, giving the contract to someone other than the winner bidder. Commissioner Anderson stated he agrees; and stated Waste Pro knew they had 10 minutes to make a presentation, and he is sure as big as the contract is, everyone would want to come prepared.

Commissioner Fisher stated the Board went out for a Request for Proposals, not for bids; it was not all about price; it is kind of confusing and deceiving to say the County just went out for bid and whoever the lowest price was, was going to get it; and that was not the case, as the Board went out for an RFP. He stated to him, it was more about service than it was about price; he is not saying Waste Pro is not a good company, but when WP has eight trucks and WM has 17 trucks, that is a different level of service to him; and the manpower hours are also a different level of service. He reiterated that he was not looking at price, he was looking at service. Commissioner Infantini stated the price was the highest ranked and that is how the Board decided; stated she was the one who said the Board should not value it, and should only give it 30 percent based on price, but the rest of the Board overruled her and said 50 percent of the bids should come in based on price; and it is not appropriate to change the criteria and base the highest rank on service.

Chairman Anderson stated Commissioner Fisher's point is that proposals are different than bids. Commissioner Infantini stated it needs to be clearer because that is not what the language says.

February 19, 2013

John Weiler stated his biggest concern is that there was a four-person evaluation committee, and the RFP had criteria; at the end of the evaluation, the committee recommended Waste Pro based on the criteria, and it was not just on price; Waste Pro was the lowest bidder and it had the best evaluation overall; and so, on both criteria Waste Pro was the winner. He stated he has a hard time understanding why the Commissioners would overrule the committee that it was involved in appointing to make the evaluation independently; the whole point behind an evaluation committee is to have an independent evaluation; and as a taxpayer, he is concerned that the Board did not go to negotiation with Waste Pro. He suggested dividing the contract between the south and north areas of the County; and stated he does not see that the Board is doing the best thing for the taxpayer.

Judy Strahan stated she is also concerned about the process; there are a lot of good companies in Brevard County that take their time, energy, and money to do a good proposal based on the RFP; if there is different criteria depending on what each individual thinks, there is no way anyone can make a good bid based on that; and stated everything should be in the proposal so that everyone would be on a fair playing field. She stated it seems the Board had a commitment with Waste Management because that is who the Board likes doing business with; everyone needs to be given an opportunity; and the County taxes need to be as low as possible for the citizens who are losing their jobs and homes.

Vic Brungart stated the Board did a good job in its analysis; at the January 8th meeting, both companies had a chance to make presentations; what is being said today is that Waste Pro should get another bite at the apple, but they lost; and the process was fair and square. He advised he has heard some implications that there is something unethical on the part of three very fine people, Morris Richardson, Christine Lepore, and Howard Tipton; and he can say categorically that he has followed the issue very closely, and no one Commissioner holds the high ground over the five; no one Commissioner holds intelligence higher than the other five; and reiterated the process was done fairly. He stated Waste Management won fairly, and subsequently there was a negotiation that made them not only an economic winner, but a community partner; stated if he was a Commissioner he would have voted as one of the four in the four-to-one vote on January 8th to approve; and stated if he were on the Board today, he would want to move forward and finalize the contract.

Dave Norman stated his comment is in reference to the initial procurement decision; a County document dated January 8, 2013, read, "The Selection Committee chose Waste Pro as the preferred contractor in four of the five bid areas of north, south, 1A, 2A, and 3A"; and stated the Board voted to overturn the recommendations of its own committee in favor of Waste Management. He stated the Board's decision will result in approximately a \$3.25 million per year increased cost, or over \$32 million over 10 years by choosing Waste Management over Waste Pro; and inquired why the Board is forcing taxpayers to pay the increase.

Chairman Anderson asked County Attorney, Scott Knox, to address Mr. Norman's question about it being legal. Attorney Knox stated the item is an RFP and not a bid, so it is legal to negotiate with the party that the Board chooses.

Pat Pasley stated she was disturbed when she read minutes of the January 8th meeting; and stated she also heard some of the tapes, which she would like to play for the Board. Ms. Pasley played the audio tape for the Board, and identified the speakers as County Manager Tipton, and Assistant County Attorney's Lepore and Richardson. She inquired if the County is negotiating kickbacks; inquired what the motive is for County Attorney's to recommend that the contract be kept as vague as possible; and further inquired how it is in the best interest of taxpayers. She stated Commissioner Fisher had concerns over the number of trucks Waste Pro has, and asked him if Waste Pro has ever asked him how he plans to run his insurance business.

February 19, 2013

Bob White stated the Chairman mentioned earlier that by the time an issue such as this gets to the Board, it has already been reviewed by others, and the Board is able to rely on the due diligence of staff; however, in this case that seems to have been preempted by the County Manager; the Selection Committee received presentations from the interested vendors, and based on those presentations and the other criteria, recommended an entirely different company to the Board, but the County Manager and others decided to negotiate with a different company that did not receive the endorsement of the Selection Committee. He stated the Board feels it is in its purview to raise funds for the community; inquired when the County Commission became fundraisers for the Brevard Zoo; and stated it is taxpayer dollars at stake.

Peter Fusscas stated given the complexities of the issues that the Board addresses, it has its table full with school closings and the largest contract the County will have; as a citizen, it is hard to follow the issues; and stated he has questions about the process. He inquired if the contract awarded by County Commissioners is based on the stipulations in the RFP; and stated the RFP stipulated, award of this contract will be based on the evaluation criteria of price, approach, and qualifications; and inquired where in the RFP does it require the bidder to be a good community partner. He inquired why the Board awarded Waste Management the contract when their bid is \$32.5 million higher than Waste Pro. He stated in reference to the scores on the subjective criteria, which is the approach and qualifications, there was no real comparable differences between WP and WM; to him, it comes down to the economics; and summarized that the Selection Committee properly recommended WP for the contract based on the RFP criteria, and then the Board reversed it, costing taxpayers an additional \$34 million, including the loss of \$2 million more in recycling revenue by Waste Pro. He went on to say the Board then approved renegotiating in order to ask Waste Management to revise its winning bid, but Waste Pro was not asked to do the same thing; and inquired if that is fair and equitable. He stated WM revised its bid costing taxpayers \$22,873,000, but it is still costing the taxpayers more money to go with the high bidder; and inquired how it was justified that Waste Pro's bid was not final, and how was it justified to attach earmarks to a County trash contract for charitable contributions at taxpayers' expense. He stated both companies should have an opportunity to come back and give their last and best offer. He inquired if the County Attorney's Office has blessed the process and procedures against applicable law and regulation; and stated as was suggested, there might be some questions regarding the participation in the re-negotiating contract.

Dave Pasley stated a while ago the Board awarded an engineering contract and then gave it to another firm because they were local, and it looks like it is doing that again; the weight of community involvement smacks of kickbacks; he knows Commissioner Fisher is on the board for Field of Dreams, which is one of the organizations getting \$150,000 in funds from Waste Management; and noted WM does a great job and it is the best trash pickup service he has ever experienced. He stated it looks like the Board is leaving itself open for what looks like Pay to Play; and inquired if there is a list of all the vendors the Board does business with and how much they kickback to the County. He stated the bid was given for three criteria and Waste Pro won.

Barbara Gorin stated she feels the vote should be held off until the proposal is fully investigated for proprietary reasons; residents do not need an increase of any kind right now due to the economic conditions; and any increase in fees should be held off. She inquired why County lawyers are writing legislation to support the business and not the rights of the citizens.

Dale Young inquired why the Board bid the contract, and why is it wasting time of bidders and staff to take bids. He stated RFP's and bids are the same thing; and instead of wasting everyone's time, the Board should just ask Commissioner Fisher who the award should go to and move on. He inquired why should only the high bidder be asked to negotiate the contract. He noted Waste Pro has as good a record as Waste Management, as evidenced by testimony of people who use them; there is no difference in service; and stated it smacks of political

cronyism when it comes to awards. He inquired why the Board is dictating who the business owners must use as a dumpster provider; it should be up to the businesses to make their own best arrangements; and stated that is also political cronyism. He inquired why the MRF is part of the RFP; the MRF does nothing for the consumer; it is for recycling and to make money for Waste Management; and stated it was already on the books and has nothing to do with the contract whatsoever. He stated both companies are qualified vendors; the contract should go the way it was bid; there were people on the Selection Committee who are County directors; and they knew what they were doing, but the Board just ignored them. He inquired if the vendor will bear the burden of the rate increase notification; stated Florida Statutes say there should be notifications of rate increases yearly; and noted it is a considerable yearly expense. He inquired what Commissioner Fisher meant when he said he would not allow companies to get off the hook when getting a \$90 million contract; inquired if that is kickbacks, because that is what it sounds like to him; and inquired if it is the duty of the County Attorneys to advise bidders as to how to structure their bids and how to keep things away from the public. He stated it has been brought up before that the Waste Management contract contains over \$2 million in kickbacks to community agencies that have absolutely nothing to do with picking up trash; and inquired why that money is not going back into the solid waste revenue fund. He inquired if the EDC or Enterprise Florida kicked in any money for the MRF. He stated the use of a 10-year contract to allow equipment acquisition is the excuse to have a big investment, but every road contractor in the state has a big investment in equipment without a 10-year lease on the road; and stated it is not up to the citizens to provide the equipment. He inquired how an ethical bidding procedure can be established in the County; it is something that the Board needs to look at; and to him, it is a disreputable conduct of the County that embarrasses all.

Joyce Errecart stated she is happy to hear the Board talking about following processes, and fairly following the process for hearing citizens, and being concerned about an unfair process with the School Board; and she hopes the Board will follow a fair process. She stated minutes of the August 18, 2011, Board meeting show very clearly that it was the sense of the Commissioners to follow the normal procurement process with this contract, and to have a selection committee, which would award a contract; it would only come to the Board if a protest was filed by a vendor who did not win; and stated she checked the procurement policy, and that is in line with what happens in the procurement policy. She went on to say proposals were issued and made; the Selection Committee did its job and found that the qualified bidder with the lowest price was Waste Pro, and it awarded the contract to them; noted Waste Management did not file a protest; and that is completely outside of the process that is shown on the County's website with the procurement manual. She noted the procurement policy states that the objectives are to deal fairly and equitably with vendors to obtain maximum savings and to purchase goods and services at the lowest price consistent with quality performance and delivery; and she urges the Board to follow the objectives that are in its written procurement policy and follow the policy, and to save money for the residents of Brevard County.

Larry Weber, Keep Florida Beautiful, stated he would like to talk about the community involvement part of the contract; he is thrilled that Waste Management has offered to contribute to the community; and stated as the President of Keep Florida Beautiful, he represents 38 affiliates all over the state and over 600,000 volunteers, and large corporations such as FPL, Waste Management, Pepsi, Coke, etc., that support non-profit organizations also give their time and advice, and help run the corporation. He thanked Waste Management for adding community partnerships into the RFP.

Barbara Knick played an audio tape of a meeting between the County Manager, the County Attorney's, and Waste Management. She inquired why the County Attorney's counseled the vendor on how to fine tune the proposal so they can avoid the County Commission contract renewal time, which would also circumvent any public opinions; and inquired why the County Attorneys are not looking out for the best interest of the taxpayers. She stated she is upset

February 19, 2013

about the community partnership; to her, it sounds like a kickback to get the bid; and inquired why it is part of a proposal and an acceptance of a bid. She stated Waste Management is essentially donating her money; and she would rather give her money to an organization that she chooses. She stated her garbage fits into a Publix grocery bag; and she does not need two, 64-gallon cans to put her garbage in. She invited the Board to attend a five hour class given by Chris Ann Hall on the Constitution.

Reverend Glenn Dames stated the contract with Waste Management is good for the community; it is good that jobs are being created, as they are hard to find these days; and any time a company is offering to come and build a facility that will be a tax base creating 30 to 35 jobs, is exciting to him because he knows quite a few people out of work. He further stated that the fact that Waste Management has partnered with the community is exciting as well, since he runs a non-profit organization and knows what it is to struggle; and as a resident with young children, he is excited about the fact that Waste Management is doing things to enhance the community.

Dawn McCormick, Community Affairs Manager with Waste Management, stated she is in charge of WM's entire corporate contributions program for the State of Florida; WM has been giving back to the community through multiple organizations in Brevard County for many years; today, WM is going above and beyond what it always does, whether it is in the contract or not, and that is being a good and generous corporate partner; and she is proud of the role she has in the company and the responsibility it has given her. She advised the opportunity to continue to give back in the contract was just an opportunity to spell it out so the organizations might know what they would be getting above and beyond what WM always does. She stated the MRF is a \$12 million facility that will create up to 62 jobs throughout Brevard County; the EDC has said it will be a \$192 million impact over 30 years, which is a significant job creator and economic driver for the County; stated tomorrow she is going to a new MRF in Tampa that has a recycling education center that will open in the next month; and school students from around Hillsborough County will visit the facility called, Recycle Education Station Tampa Bay. She stated the same thing is planned for Brevard County and will be called, Recycle Education Station Space Coast; and noted it is not part of the contract, but it is something she is working on.

Chairman Anderson summarized the questions from the speakers.

Scott Knox, County Attorney, stated he would caution anybody coming before the Board making pronouncement about people taking kickbacks, or accusing people of criminal behavior; it is tantamount to libel, especially for people who are not public figures; and pointed out that the Commissioners are public figures and people can call them whatever they want, but calling his staff unethical, or criminal, is not tolerable, especially when people do not know what they are talking about and have no facts to back it up. He stated the issue is about a competition between five or six different vendors; there were three different vendors that were selected to come before the Selection Committee, which provides a recommendation, but is not the final decision makers in the process; the Board of County Commissioners is the final decision maker in the process; the Board is not a rubber stamp and does not have to approve Waste Pro or Waste Management, but it selects who it thinks is best based upon the recommendations that were provided by the Committee and based on the RFP's that are presented to it. He noted in case people did not get to read all of the applications and RFP's, each of the final three vendors has something in their proposals about contributions to the community; in fact, Waste Pro had indicated it contributed \$500,000 in 2012 as part of its proposal; and stated he does not hear anyone saying that Waste Pro was trying to conduct some kind of illicit activity. He advised if people listen carefully to what was actually recorded the first time, they will find that the two attorneys were trying to keep any contribution out of the contract entirely, because it is not really appropriate to put that into the contract; if Waste Management wants to proceed to contribute to the community, or if they want to proceed to contribute to one particular group in the community, that is up to them, but the folks who were negotiating the contract said it was not an appropriate

thing to put in the contract; and noted there were discussions about that before it ever came to the Board today. He stated Waste Management had made a representation that that is what they were going to do; it is fine if they want to do that; and it is one of the selection criteria dealing with qualifications. He pointed out that the three finalists all interpreted that provision in the qualifications to say that they could mention the fact that they contributed to the community, because each finalist had put that in their qualifications. He reiterated that the attorneys were trying to make it clear that those are not supposed to be placed in the contract, because it cannot be contractually be enforced; if it is something that WP or WM wants to present to the Board as a means to try to get it to accept them as the best qualified, that is up to them; the Board can make that selection based upon whatever criteria it has outlined; it is one of several criteria that the Board has to choose from; and the Board looked at all of the criteria and decided WM had the best approach, the best deal, the best project, and the best qualifications. He stated it was the Board's call, not the Selection Committee's call.

Chairman Anderson stated another question from the audience was who will bear the cost of the rate increase notification. Morris Richardson, Assistant County Attorney, replied in the proposal, WM had said that in the event there is a necessary rate increase, that it would pay the cost of advertising for one rate increase if it became necessary; it was set forth in the terms of WM's proposal; if there was to be a rate increase, the County would ultimately have to advertise, and the County pays for it, but there is nothing wrong the vendor paying if there has to be an advertisement; and noted the speaker was correct that if there is a rate increase above the maximum amount approved by the Board, then it does have to go back for hearing, but if the Board sets a maximum amount and charges less than that, there does not have to be a re-hearing, or if the Board sets a maximum amount and over time work up to that, as long as it does not go beyond it, it is not a new full-blown statutory hearing under the non ad valorem assessment statutes. He noted it is rates changes or changes in methodology that have to go for advertising.

Howard Tipton, County Manager, stated a couple of the speakers' comments alluded to the perceived power that he has, but he is not as powerful as people might think; staff went through the process and presented it to the Board; the Board chose another direction, which is within its rights; the Board then directed him and the Negotiating Committee to go forth and negotiate the best contract it could; and stated he takes his orders from the Commissioners who tell him which direction to go in. He stated if people want to accuse him of negotiating a contract that offers the highest level of service at the best level of cost in Central Florida, he is guilty, but that was the Committee's job to do and it did a fine job.

Commissioner Infantini inquired if the Board should just notify everybody that their rate could be increased. Mr. Richardson responded it is up to the Board, and there are a few ways it can do it; first, it would have to set forth the initial rate and the initial amount, and then it could say the maximum amount that people will be charged under the assessment is the lesser of three percent, or CPI increase every year; the Board would set forth what the maximum amount they may be charged under that would be per year; and stated that is one way to do the notice. He further stated another option is that the Board could do a blended rate over the life of the contract and break it down to one rate per year that will not change over the life of the contract. He advised those are all options the Board has when it sends out the notice and it is up to the Board how it chooses to go about that and how it chooses to make the assessment; and there has to be a public hearing process before the Board decides on what it is going to do with regard to that. He noted that is not part of the contract negotiation, it is a whole separate hearing process as to how the Board is going to assess the taxpayers for the cost of waste collection services.

Commissioner Infantini stated she has not seen her rate go up in approximately 10 years; what is being presented to the Board is primarily to go with the automated collection; there was a

boycott against the Board prior to herself being on the Board, when automated carts were originally proposed; her staff is already fielding phone calls from constituents making sure she understands they do not want to go with automated collection; and noted manual collection is the least expensive, and then there would not be any worry about renting carts from either vendor. County Manager Tipton pointed out that manual collection costs slightly more than the cart system. Commissioner Infantini replied only if using Waste Management, but if using Waste Pro it is less expensive. She stated the Board should consider instead of paying \$10.55, it should let WM collect in the south area for a cost of \$9.92, and let WP collect in the north area at a rate of \$10.31; and noted that would still be less than the \$10.55 that was negotiated as part of the original bid, and there would not be overtime hours in Solid Waste.

Euri Rodriguez, Solid Waste Management Director, advised staff revisited the overtime issue and decided it would have to reschedule; he was not aware that the department has increased overtime three days per week because everyone is rushing in; and the idea is that it would be spread out and there would be minimal additional overtime, over and above the normal. Commissioner Infantini inquired if the Board is allowed to change the RFP, because it stated operations would be five days per week. Christine Lepore, Assistant County Manager, replied it is an operational decision on the County's behalf and the change would be applicable to any vendor that would be selected, so it is considered a neutral change. Commissioner Infantini inquired if the Board would have to re-bid; with Ms. Lepore responding, no, it would not.

Commissioner Nelson stated Commissioner Infantini is correct that when the issue was before the Board a few years ago the issue was that it was an increase in the cost of the carts, and that the only cart available was the 96-gallon; the current contract has the ability to have 36, 64, and 96-gallon carts, and the 36-gallon is the same size as a standard trash can most people currently have; and those options are available now, as opposed to what was available a few years ago. He stated he would like clarification on the \$32 million, because what has happened is the Board has negotiated down to where there is no \$32 million dollar difference between the two bids; based on the new rate, the two companies are within \$100,000 of each other; the WM contract at \$10.55 is the same as WP for the carts; and he does not know how there is a \$32 million difference between them. He noted for the WM manual system, there is an \$87,000 annual difference on a \$12 million total contract; and he thinks it is misleading to say there is \$32 million in extra costs to what the Board is doing. He pointed out there were no protests filed, and stated over the years when the Board has looked at proposals, it is not unusual to listen to the vendors provide the information in detail and then to make the assessment as to who best provides the service; he concurs with Commissioner Fisher that Waste Pro was not as good as he would have hoped it would be under those circumstances; and stated he is appreciative that Chairman Anderson pointed out that WP had an opportunity to make their presentation. He stated in regards to yard waste, he does not know how WP can reduce the number of trucks and give better service; yard waste is a big issue for much of the County, particularly the more rural areas; and stated he thought WM putting more trucks on the road was a much better circumstance. He stated he is disappointed in the talk about kickbacks; the process has been very public; everything has been recorded; and he is disappointed it has been manipulated to this level because if talking about who provides the best price for the best service, the Board is making a decision that will be best for the community.

Commissioner Fisher advised the Board originally had the vendors make a presentation; the Board told them what was important to each Commissioner; and WM and WP were two of five that came before the Board. He advised what was important to him was that WM had 14 trucks and were increasing it to 17 trucks; he couldn't understand why WM was taking their current manpower hours from 1,700 to 1,900; and then he looked at WP, which said they could do it for 1,250 hours, not 1,900. He stated he gave WP an opportunity to explain, but that did not happen. He stated he will not apologize if the County, when all the facts are on the table, and somebody fairly gets a chance to win a County contract, that there is an expectation from the

February 19, 2013

Board that they should be good community partners; WM suggested that in their proposal; and stated he thinks they are being a good community partner. He pointed out that the Field of Dreams is not even in his District, but he does care about disabled kids, and wants to help them. He advised WM is building a Materials Recycling Facility, adding three additional yard waste trucks, making a commitment to the community, going to automated carts, increasing recycling, increasing the life of the landfill, and they are offering their service at the lowest price. He mentioned other municipalities in the County, and surrounding counties, that are paying higher prices for trash pickup than WM, and noted WM offers 208 pickups per year for \$10 to \$12.

Commissioner Infantini stated WM keeps saying they have the lowest price, but the lowest price came from WP; and in order for WM to meet one of the prices, which is the automated, but she would rather go manual, in which case the price would be even lower at \$9.92 for WM and \$10.31 WP based on which District they are working in. She stated herself and Chairman Anderson were both very concerned about the small businesses; WM did not bring down their commercial rates at all. She stated in the January 8th meeting minutes, Commissioner Fisher stated he had expectations in a \$90 million contract that is awarded to a company is going to give back to the community, and that it is something the Board should demand; WM met that demand, and for an extra \$20 million for the next 10 years, they are going to give back \$2 million. She stated she looks after the taxpayers, and every dime that she saves from paying out for her garbage collection, is another dime she can spend to give to the charity of her choice, not the charity of WM's choice; and noted they are all good charities, but she would rather choose who she donates to.

Commissioner Bolin Lewis stated she is also concerned about the level of service, as having it picked up correctly is very important; she does not want to tell her constituents when they call her office to complain, that the Board went with the cheapest possible rate so they would save .5 cents per month versus having a company that has given, and will continue to give, good quality service; and stated when she asked WP about their level of service and equipment, she was told if they needed to increase it they would, but her question was how many complaints she had to receive before it was increased. She stated that is why service was important to her, and she supports Waste Management.

Commissioner Nelson stated there were speakers today against the rate who are not impacted because they live in cities that are not going to be paying the rates. He pointed out that his neighborhood collection is going to be very different than Commissioner Infantini's, as hers will be more expensive because there are fewer homes and more vegetation; he lives in a classic subdivision that is cheaper and more efficient to operate; there has always been the same rate for everyone who is a County resident; and he will insist on doing that as opposed to splitting the County. He pointed out that on the commercial side, WM did not raise the rates, but the private sector has options.

Motion by Commissioner Nelson, seconded by Commissioner Fisher, to award the Proposal for Automated Solid Waste Recycle and Collection Services; authorized the Chairman to execute the associated contract upon review and approval by the County Attorney's Office; and delegated the County Manager the authority to execute and extension of the contract if certain contractual performance measurements are met by the Company.

Commissioner Infantini inquired what are terms of the contract; stated she has not actually received a contract; and the terms of the contract are not spelled out in agenda report provided to the Board.

The Board recessed at 1:28 p.m. and reconvened at 1:42 p.m.

Commissioner Nelson stated it is his understanding that WM and WP will have some conversations, but he would not want to begin to guide that discussion. Commissioner Fisher pointed out that WM has invested \$12 million. Commissioner Infantini stated there is already a company that has been permitted and received tax abatements to put in a single-stream recycling business in the Rockledge area, called East Coast Paper; and by having WM put theirs in and be able to haul all of the recycling there, it would virtually put East Coast Paper out of business.

George Geletko, Waste Management, advised currently, WM handles all of unincorporated Brevard County, so there will not be any impact on East Coast Paper at all.

Motion by Commissioner Nelson, seconded by Commissioner Bolin Lewis, to award the Proposal for Automated Solid Waste Recycle and Collection Services; authorized the Chairman to execute the associated contract upon review and approval by the County Attorney's Office; and delegated the County Manager the authority to execute and extension of the contract if certain contractual performance measurements are met by the Company.

Chairman Anderson stated both Waste Management and Waste Pro are good companies and good community partners, but for him it comes down to process; and he is still upset about the auditing contract, and still a little upset on how the Board did the proposal process for the helicopters. He stated it has nothing to do with either company before the Board today, but he is still not comfortable with the process and how the Board does procurement.

<b>RESULT:</b>	<b>ADOPTED [3 TO 2]</b>
<b>MOVER:</b>	Chuck Nelson, Commissioner District 2
<b>SECONDER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Robin Fisher, Chuck Nelson, Mary Bolin Lewis
<b>NAYS:</b>	Trudie Infantini, Andy Anderson

**ITEM VII.F.3., RESOLUTION, RE: INITIATE CONFLICT RESOLUTION PROCEEDINGS WITH THE BREVARD COUNTY SCHOOL DISTRICT (CONTINUED)**

Chairman Anderson advised during the last break, it was brought to his attention that there needed to be a super majority vote on the earlier motion. Scott Knox, County Attorney, noted the Statute requires a 3/4 vote, which is four votes in the case of this Board; and stated he neglected to mention it in his exposition of how the process works.

Commissioner Fisher stated the purpose of the injunction is not because the Board is looking for some kind of monetary damage from the School Board; the injunction would allow the School Board to stay from the school closures until the Board can meet and go through it; and stated it is not the Board's goal to get any dollars from the School Board.

Chairman Anderson stated he understood that part, but he does not know what adverse affect it will have on the School Board as far as their finances; stated he understands the issues with the reserves; and inquired if this will mean the School Board will have to re-do their process and go to other schools. He stated he does not want to get involved in that argument, but he does not have a problem with the Conflict Resolution; and if it does not turn out the way the Board wants it, it can revisit the issue.

February 19, 2013

Commissioner Nelson stated his only concern with Chairman Anderson's position is that by that time, there is the potential for it being too late; the School Board has options, and it did not follow the contract; the School Board has not had good faith discussions with the community and the elected officials involved; and stated the Board needs to make sure that it does not pass the point of no return.

Motion by Commissioner Nelson, seconded by Commissioner Bolin Lewis, to move forward with a lawsuit against the School Board to resolve a school closure dispute with the School Board arising out of the June 2008 Interlocal Agreement between the District School Board, Brevard County, and multiple municipalities in the County. Commissioners Infantini and Anderson voted nay. Motion died.

Commissioner Bolin Lewis stated the Board has seen the outcry from the citizens who have tried to go to the School Board to get some representation and they have not been able to achieve that; and the citizens are now coming to the Board because it has the power to stop and revisit the issue.

The Board adopted Resolution No. 13-028, initializing conflict resolution proceedings with the Brevard County District School Board; and authorized the Chairman to sign the associated letter.

Chairman Anderson stated the item was never part of the Board's agenda; he did not have time to prepare for going into an injunction-type of process; and he does not like it launched on him at the last minute.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Robin Fisher, Commissioner District 1
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM VII.A.1., WAIVER REQUEST, RE: BLOCK WALL FOR WILLOW LAKES SELF STORAGE - 13WV-00015**

Robin Sobrino, Planning and Development Director, advised the request is by a developer at the Willow Lakes Self Storage facility in Mims, to waive the requirement for a six-foot high masonry wall, where it abuts residential property; and noted there is one letter of objection from one residentially zoned lot to the south.

Bruce Moia, MBV Engineering, stated the project was previously designed and approved by another engineering firm, and his firm has taken over. He stated the request is for a waiver for the required buffer wall because it is adjacent to residential zoning; the project is a self storage warehouse on U.S. 1, just north of Parrish Road on the east side, and is probably the only hill in Brevard County that he knows of; it has a 15-foot elevation differential from the top to the bottom; and so the wall will be sitting at the grade level around the perimeter when the project will be 10 feet above it, and the only thing it will buffer is the required landscaping. He stated to the east is the undeveloped part of the trailer park, and to the south is a couple of residences, one of which is vacant; anyone driving into the storage facility would not be able to see the residential; and stated there is really no use for the wall, as it does not buffer anything.

Commissioner Fisher stated he is familiar with the property and a wall does not make sense there; and stated he tried to contact the Willow Lakes RV Park management, but was not able to reach anyone.

Tim Crannell stated he spoke with the management last night and the president of the committee said he supports the waiver, as they do not want a wall, they would rather look at the natural landscape. He noted the owner of the storage facility will landscape it nicely because he lives there as well and wants it to look nice for everyone.

Commissioner Fisher stated if the wall is not going to be built, a hedge would be nice. Mr. Moia stated there landscaping requirements that will be met around the perimeter, and the wall would actually hide that landscaping.

The Board approved a waiver to Section 62-3204(g)(4) of the requirement to construct a six-foot high masonry or solid wall along the perimeter of Willow Lakes Self Storage, which abuts residentially zoned property.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Robin Fisher, Commissioner District 1
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM VII.B.1., LEGISLATIVE INTENT/PERMISSION TO ADVERTISE, RE: AMENDMENT TO BREVARD COUNTY CODE OF ORDINANCES SECTION 14-60 (PUBLIC PARKS AND BEACHES) TO ALLOW “DOG-FRIENDLY” BEACHES IN UNINCORPORATED BREVARD COUNTY**

Jack Masson, Parks and Recreation Director, advised the item is for legislative intent for permission to advertise an amendment to the Code of Ordinances; and secondarily, requesting permission for staff to prepare a resolution that will come back to the Board at a subsequent meeting to allow dogs in certain geographically specified beaches in the unincorporated area. He noted it has been one year since the dog beach pilot program started.

Barbara Arnold, Sandy P.A.W.S., stated there have been monthly beach cleanups that have been successful; the feedback she has received has been overwhelmingly positive; and stated she hopes the Board continues the program.

Commissioner Bolin Lewis stated the dog beach has been a huge success; her office has gotten a lot of positive feedback; and every time she and her staff have visited the beach, it has been clean.

Commissioner Nelson stated he agrees with continuing the dog beaches, but he would like to see some more monitoring of the beaches; he has a problem with using the complaint process as the only sole determiner of success; and he would like more of an independent review of the beaches.

The Board approved legislative intent and granted permission to advertise an amendment to the Brevard County Code of Ordinances, specifically Section 14-60, Public Parks and Beaches, to allow for portions of unincorporated beaches to permit dogs as geographically defined in Board-approved Resolutions; directed staff to prepare a resolution establishing a portion of Canova

Beach Park as a "dog-friendly" beach; and directed staff to periodically monitor that portion of the Canova Beach Park.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM VII.E.1., APPROVAL, RE: PAYMENT OF AWARD TO MIKE MILES - \$711.02, COUNT GIBSON - \$711.02, AND KIRK DESOUZA - \$711.02, UNDER THE EMPLOYEE INNOVATIONS PROGRAM**

The Board approved payment of award, in the amount of \$711.02 each, to Mike Miles, Count Gibson, Dave Williams, and Kirk Desouza, for the cost savings associated with the Employee Innovations Program.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM VII.E.2., APPROVAL, RE: PAYMENT OF AWARD TO FRANCIS GORDON MARK - \$100.00 UNDER THE EMPLOYEE INNOVATIONS PROGRAM**

The Board pulled approval of payment of award to Francis Gordon Mark in the amount of \$100.00, under the Employee Innovations Program, from the Agenda.

**ITEM VII.F.1., CITIZEN REQUEST BY KENNETH WARD, RE: SECTION 62-2101.5 - ADDITIONAL BUILDING HEIGHT**

Kenneth Ward stated the issue first came to light during a staff review of a project that he has proposed for multi-family developments; having met all other criteria in the initial review, he was informed that the project did not meet this particular Code provision; and that was because County staff's application of the Ordinance was different from his own interpretation and the professional engineer's design. He advised the difference was significant enough, and impacted his project enough, that he had to begin historical research. He pointed out that he is not present to talk about additional height; the Ordinance does not allow any additional height, and it is not already permitted in a zoning classification; and if the Board agrees with his changes, it may want to change the language to Additional Setbacks, because that is really what happens in the Ordinance. He advised the requested change does not affect any single-family development; his project is multi-family and is permitted to go 45 feet high; the multi-family on either side of his project would be restricted to 35 feet because they are adjacent to single-family; and stated he is only allowed 45 feet because he happens to be adjacent to other multi-family parcels. He pointed to an illustration that shows how the Ordinance for additional building height is applied to a project; the trigger happens at 35 feet; the way the Code is written today, that ratio of 1.25 is applied to the entire height of the building at that point; and the result is that for one foot of additional height, it goes from a 10-foot side setback to a 45-foot side setback. He stated what he is proposing to do is build a 45-foot structure, which is permitted

under the multi-family zoning classification because it is adjacent to two multi-family parcels; he was told by staff that the building needed to be 56.25 feet for the side setback on both sides of the property; in effect, it is 112 feet that is open space, which is greater than the breezeway requirement; and he is proposing a change of a staggered setback starting at 10 feet for 35 feet of height, and then the additional height. He stated for a 45-foot structure, measured from the average grade, it would be 22.5 feet off the property line; and his request is that the Board take the proposed revision and support the revised Code language and direct staff to schedule the necessary public hearings for its adoption.

Chairman Anderson asked staff to go over the process; and stated if the Board were to make changes, it would have to go through all the necessary steps.

Robin Sobrino, Planning and Development Director, stated should the Board direct staff to examine a Code amendment, it would be brought forward for legislative intent and permission to advertise; and after advertisement, there would be a public hearing before the Local Planning Agency and then the Board of County Commissioners.

Commissioner Infantini inquired if it would have to go through all of those steps; and stated she would like to make the motion to start the process. Commissioner Nelson stated he agrees it needs to be looked at, but there is a history behind how the Code got where it is, but it is worth looking at.

The Board directed staff to examine a Code amendment to Section 62-2101.5, Additional Building Height, and to bring forward legislative intent and permission to advertise the Code amendment; and directed that the proposed amendment go through the standard process of public hearings before the Local Planning Agency and then the Board of County Commissioners.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Chuck Nelson, Commissioner District 2
<b>AYES:</b>	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

**ITEM VII.F.2., CITIZEN REQUEST BY JINGER KNOX, RE: CODE ENFORCEMENT FOR ATU SEPTIC VIOLATIONS**

Jinger Knox stated she is before the Board because the Special Magistrate for Brevard County is the enforcement body for the State; he is not able to look at the law to see how the State is actually reading the law; and she understands the Board is the Special Magistrate's boss. She stated Statute 381.0065(4) deals with ATU septic tanks and reads, "The owner of an engineered-based performance system must maintain a current maintenance service agreement with the maintenance entity permitted by the Department. The maintenance entity shall maintain a biannual system operating permit from the Department for each system under service contract". She pointed out that the Statute does not say that the 'homeowner shall', it says the 'maintenance entity shall'; the homeowner does not have the right to go into the State office and say they would like to buy a biannual operating permit for \$150, but the Special Magistrate is charging the homeowners with not getting that permit that they do not even have the ability to get. She stated the Board may be able to charge a homeowner for not having a maintenance entity contract, but it cannot charge them for a permit that they cannot get; and stated she would like that to be stopped.

February 19, 2013

Scott Knox, County Attorney, stated he will look into the situation; and stated staff is close to a resolution on Ms. Knox's other issue. Commissioner Infantini inquired if Attorney Knox has an estimate on when the research might be finished. Attorney Knox advised the staff member who has been working on the issue is on vacation.

**ADJOURNMENT**

Upon consensus of the Board, the meeting adjourned at 2:15 p.m.

ATTEST:

\_\_\_\_\_  
ANDY ANDERSON, CHAIRMAN  
BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
SCOTT ELLIS, CLERK