

**Official Minutes of
MARION COUNTY
BOARD OF COUNTY COMMISSIONERS**

October 6, 2009

The Marion County Board of County Commissioners met in regular session in Commission Chambers at 9:01 a.m. on Tuesday, October 6, 2009 at the Marion County Governmental Complex located in Ocala, Florida.

The meeting opened with invocation by Chairman Payton and the Pledge of Allegiance to the Flag of our Country.

Upon roll call the following members were present: Chairman Payton, District 2; Vice-Chair Barbara Fitos, District 4; Commissioner Mike Amsden, District 1; Commissioner Stan McClain, District 3; and Commissioner Charlie Stone, District 5. Also present were Deputy Clerks Cindy Bonvissuto and Cassandra Li, Acting County Attorney Robert J. Fowler, County Administrator Lee Niblock, a representative of the Sheriff's Office and a member of the news media. It was noted that Clerk David R. Ellspermann was in Tallahassee attending to legislative business.

Proclamations/Projects & Programs – (1.A. through M.) – Upon motion of Commissioner Stone, seconded by Commissioner McClain, the Board approved the following:

- A. Employee Service Awards.
- B. Proclamation designating October 7, 2009 as "National Walk Our Children to School Day."
- C. Proclamation designating October 2009 as "4-H in Marion County."
- D. Proclamation designating October 11, 2009 as "Marion County 9-1-1 Appreciation Day."
- E. Certificate of Appreciation to Richard F. (Dick) Nelson.
- F. Certificate of Appreciation to Michelle M. Hernandez.
- G. Proclamation designating October 10, 2009 as "Dale I. Goehrig Day."
- H. Proclamation designating October 10, 2009 as "Marion-Dunn Lodge Day."
- J. Proclamation recognizing Joseph Harding upon attaining the status of Eagle Scout in the Boy Scouts of America organization.
- K. Proclamation recognizing Jack David Kendall upon attaining the status of Eagle Scout in the Boy Scouts of America organization.
- L. Proclamation recognizing Luis F. Velez upon attaining the status of Eagle Scout in the Boy Scouts of America organization.
- M. Proclamation recognizing Joshua Blake Wikstrom upon attaining the status of Eagle Scout in the Boy Scouts of America organization.

County Employees/Proclamations – (1.A.) – The Board, along with Administrative Staff Assistant Linda Rackmyre, Human Resources, presented Employee Service Awards to the following:

Rita D. Wilemon, Information Technology Department, for 15 years of service;
Suzanne M. Futch, Transportation Department, for 20 years of service;
Kimberla J. Hawkins, Fire Rescue Department, for 20 years of service; and
Jeffrey Jerrel, Collection Department, for 20 years of service.

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(Ed. Note: Kimberla Hawkins was not present.)

Proclamations/Projects & Programs – (1.B.) – It was noted the Proclamation designating October 7, 2009 as “National Walk Our Children to School Day” was withdrawn.

Proclamations/Projects & Programs – (1.C.) – The Board presented the Proclamation designating the month of October 2009 as “4-H in Marion County” to representatives from 4-H that noted future events, including a picnic and open house open to the public. It was noted the County website would provide more information.

Proclamations/Projects & Programs – (1.D.) – The Board presented the Proclamation designating October 11, 2009 as “Marion County 9-1-1 Appreciation Day” to 9-1-1 Management Director Karl Oltz, Administrative Manager Michelle Hirst, 9-1-1 Department, and Richard F. “Dick” Nelson. Mr. Oltz noted the 9-1-1 Department received a grant that would be used in the Ocala Police Department and Sheriff’s Office. He thanked staff for completing the first phase of the transition.

Projects & Programs – (1.E.) – The Board presented the Certificate of Appreciation to Richard F. “Dick” Nelson for his notable service in regard to the 9-1-1 Department in Marion County, as follows:

Certificate of Appreciation

Board of County Commissioners of Marion County, Florida

Presented to Richard F. “Dick” Nelson

Richard F. “Dick” Nelson joined Marion County on September 21, 1987. He was hired by the Board of County Commissioners to head the newly created 9-1-1 Department. Dick was director of the 9-1-1 Department from 1987 to 2007. He was the first 9-1-1 Coordinator in the history of Marion County.

Richard F. “Dick” Nelson retired on February 28, 2007. Throughout his 20 years of dedicated service Dick was able ensure that Marion County stayed in touch with the latest in technological advancements. Because of his foresight the citizens of Marion County have one of the most reliable enhanced 9-1-1 systems in the Country.

It is only fitting that Dick be here with us today to celebrate the 20th Anniversary of 9-1-1 in Marion County and that we thank him for his years of hard work, dedication and commitment.

Now, therefore, be it proclaimed by the Board of County Commissioners of Marion County, Florida, that:

1. Richard F. “Dick” Nelson, be and hereby is, congratulated and honored for his notable service by the Board of County Commissioners of Marion County, Florida.
2. This Certificate of Appreciation shall be furnished to Richard F. “Dick” Nelson, and shall be made a part of the Public Records of Marion County, Florida, in the minutes of the meeting of the Board of County Commissioners in and for Marion County, Florida.

Duly recognized this 6th day of October, 2009.

It was noted that the Certificate was signed by all five Board members and attested to by David R. Ellspermann, Clerk.

Mr. Nelson noted the 9-1-1 project was always backed by all the Boards (of County Commissioners) and County Administrators throughout the years and stated most of the heavy lifting was accomplished by the employees of the 9-1-1 Management Department. He thanked all those employees and noted they also deserved the honor.

Projects & Programs – (1.F.) – The Board presented the Certificate of Appreciation to 11 year old Michelle M. Hernandez for her heroism in helping to assist her mother deliver her new little sister, Abigail, on September 12, 2009, as follows:

Certificate of Appreciation

Board of County Commissioners of Marion County, Florida

Presented to Michelle M. Hernandez

Michelle M. Hernandez is a 9-1-1 Hero — at 11 years of age, calmly dialed 9-1-1 on Saturday, September 12, 2009, while her mom was about to deliver a baby.

Michelle M. Hernandez, a 6th grade student at The Villages Charter Middle School, followed detailed instructions given to her by Public Safety Communications Dispatchers, Donna Redner and Brian Tucker. She followed Donna and Brian's instructions and asked her mother the appropriate questions. Michelle accurately translated the dispatcher's questions in Spanish to her mother.

Michelle M. Hernandez never lost her composure or her good manners. This polite little girl was in a very stressful situation and demonstrated immense courage. Her brave actions and fearlessness helped her to assist her mother deliver her new little sister, Abigail at 8:15 a.m.

Now, therefore, be it proclaimed by the Board of County Commissioners of Marion County, Florida, that:

1. Michelle M. Hernandez is hereby congratulated and honored for her heroism and notable service by the Board of County Commissioners of Marion County, Florida.

2. This Certificate of Appreciation shall be furnished to Michelle M. Hernandez, and shall be made a part of the Public Records of Marion County, Florida, in the minutes of the meeting of the Board of County Commissioners in and for Marion County, Florida.

Duly recognized this 6th day of October, 2009.

It was noted that the Certificate was signed by all five Board members and attested to by David R. Ellspermann, Clerk.

Manager of Communications Bill McConnell, 9-1-1 Department, advised that every aspect of the process fit together seamlessly as it should. He explained that Miss Hernandez activated the 9-1-1 system in Marion County, where the Sheriff's Office was the primary public safety answering point (PSAP) and determined it was a medical situation and transferred the call to the Public Safety Department. Mr. McConnell advised that Brian Tucker was one of the communications training officers and was working as a call taker while training Donna Redner, a new hire. He noted staff was providing directions and trying to reassure Miss Hernandez of what was going to happen next and stated everything she heard was translated in Spanish back to her mother, who gave birth to Abigail. Mr. Oltz presented Miss Hernandez with a 9-1-1 bear.

Proclamations/Projects & Programs – (1.G.) – The Proclamation designating October 10, 2009 as "Dale I. Goehrig Day" was withdrawn.

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Proclamations/Projects & Programs – (1.H.) – The Proclamation designating October 10, 2009 as “Marion-Dunn Lodge Day” was withdrawn.

Commissioners – (2.A.) – Brian L. Creekbaum, NE 31st Terrace, appeared to address the Board in regard to “Open Government”. He recalled a Commission meeting held on December 5th, 2000 in regard to censorship of the public library collection and noted statements made regarding the types of issues that were considered “fair game.” Mr. Creekbaum noted much was said and done publicly over the next several years that raised questions about the views of some County officials toward various groups of citizens and advised that his purpose today was to make public something that was not publicly spoken. He noted in March of 2004, (then) County Administrator Pat Howard made his first and only appearance in a Library Advisory Board meeting that considered whether a public library collection should contain writings of Osama Bin Laden.

Mr. Creekbaum noted he had a telephone conversation later with Library Director Julie Sieg, where she informed him of a conversation with Mr. Howard regarding the library experiencing a substantial increase in patron demand for material about Islam following the terrorist attacks on 9/11. He stated he had subsequent conversations with Ms. Sieg regarding Mr. Howard’s remark in reference to material about Islam in general.

Mr. Creekbaum advised that he refrained for five years from publicly referring to the reported remark, however, Mr. Howard’s departure from Marion County government had cleared the way. He opined that Mr. Howard would not make the same remark “in the Sunshine,” noting concern that the County Commission employed, for over 6 years, a County Administrator whose reported remark involved race and religion. Mr. Creekbaum noted that by appearing today, he had informed the public.

County Employees/Insurance – (2.B.) – Julie Scott, NW 115th Avenue, appeared to address the Board in regard to life insurance. She noted she was an agent from American General Life and Accident and commented on a product that was being offered called, “Quality of Life Insurance.” Chairman Payton noted a commercial appeal was being made to the Board and this was not the appropriate forum for this matter. He suggested Ms. Scott contact Human Resources Director Drew Adams.

Ms. Scott stated she was told that any elected official could make the decision. Chairman Payton stated the process started with the Human Resources Director who evaluated the issues along with the County Administrator’s Office before recommendations were made and brought to the Board of County Commissioners (BCC) for a decision. In response to Ms. Scott, Chairman Payton recommended any information to be provided be left with Commissioners’ Aide Bob Foraker.

Minutes – (3.A. through C.) – A motion was made by Commissioner Stone, seconded by Commissioner McClain, to adopt the meeting minutes of August 4, 18 and September 1, 2009. The motion was unanimously approved by the Board (5-0).

Budgets/Supervisor of Elections – (4.A.) – Supervisor of Elections Dee Brown presented the following memorandum requesting approval of two Certificates of Matching Funds for Federal Election Activities:

We have once again been awarded funding for Federal Election Activities. The law requires that counties provide a 15% match to receive funding. I have set this amount aside in my 2009-2010 budget so it will not be a concern of the Board.

I am requesting you please execute two (2) "Certificate Regarding Matching Funds". Please return the completed certificates so I may forward them to the Division of Elections with my agreement. This money will assist with tasks of educating our voters about federal elections.

If you have any questions, please feel free to contact me. I thank you for your prompt attention to this matter.

Have a nice day!

A motion was made by Commissioner Stone, seconded by Commissioner McClain, to approve and execute two Certificate Regarding Matching Funds for the Federal Elections Activities grant for fiscal year 2009-10 in the amount of \$5,727.12 (15% matching funds). The motion was unanimously approved by the Board (5-0).

Property Appraiser/Tax Collector – (4.B.) – A motion was made by Commissioner Stone, seconded by Commissioner McClain, to approve the request of Property Appraiser Villie Smith to extend the 2009 Assessment Rolls of Marion County prior to the completion of the Value Adjustment Board (VAB) pursuant to Florida Statute 197.323. It was noted that the request was made with the Tax Collector's knowledge and any changes made by the VAB to the assessment roll would be resolved following the same procedure used for correction of errors. The motion was unanimously approved by the Board (5-0).

Budgets/Resolutions – (5.A.1. through 4.) – Upon motion of Commissioner Stone, seconded by Commissioner McClain, the Board adopted the following Budget Amendment Resolutions presented by Deputy Clerk Bonvissuto on behalf of Clerk Ellspermann:

1. 09-R-479 transferring \$12,586 within the General Fund for the Animal Services Department.
2. 09-R-480 transferring \$15,513 within the General Fund for the Public Library System.
3. 09-R-481 transferring \$36,277 within the General Fund for the Public Safety Communications Department.
4. 09-R-482 transferring \$58,300 within the CIP Capital Project Fund for Capital Improvement Projects.

Clerk – (5.B.) – Upon motion of Commissioner McClain, seconded by Commissioner Amsden, the Board accepted recommendations of the County Attorney's Office regarding the following claims for overbid monies from Tax Deed Sales:

1. Granted claim from Stephen A. Hould, Esquire, representing Cash Recovery Systems, Inc., on behalf of Joyce H. Kalina regarding Tax Deed Sale No. 284100.
2. Granted claim from Forest Lakes Park Community Association, Inc. & Road Trust Fund regarding Tax Deed Sale No. 284321.
3. Granted claim from East Winds Consulting LLC, on behalf of David and Ingried Steinnagel regarding Tax Deed Sale No. 284429.
4. Granted claim from US Asset Recovery d/b/a Jupiter Asset Recovery LLC

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on behalf of Nancy Fitch, Carole Evans and Elaine Glover regarding Tax Deed Sale No. 284749.

5. Granted claim from Jupiter Asset Recovery LLC d/b/a US Asset Recovery on behalf of Donald B. Linsky, Trustee, regarding Tax Deed Sale No. 284784.
6. Granted claim from Swearingen & Associates, Inc. on behalf of John Sheehan regarding Tax Deed Sale No. 285013.
7. Granted claim from Swearingen & Associates, Inc. on behalf of Clotaire Pierre as Secretary of A2Z Multiservice Corp. regarding Tax Deed Sale No. 285092.

(Ed. Note: d/b/a is the abbreviation of doing business as.)

Upon motion of Commissioner McClain, seconded by Commissioner Fitos, the Board acted on the Consent Agenda for the Development Review Committee item 7.A.1., Growth Management items 7.B.1. and 2., Human Resources Department item 7.C.1., Marion County Sheriff's Office items 7.D.1. and 2., MSTU/Assessment Department items 7.E.1. and 2., Procurement Services Department items 7.F.1. through 16., Solid Waste Department items 7.G.1. and 2., Transportation Department items 7.H.1. through 8., and Utilities Department item 7.J.1., as follows:

Subdivisions – (7.A.1.) – Accepted recommendation of the Development Review Committee (DRC) to execute and record the final plat of Ocala Jockey Club Replat of Tract "B".

County Planning/Resolutions/Transportation – (7.B.1.) – The Board considered the following recommendation from Impact Fee Coordinator Kimberly Hatcher and Acting Growth Management Director Jimmy Massey in regard to a five year payment plan of the Transportation Impact Fee as an economic incentive for Good Morning Daycare:

Description/Background: Good Morning Daycare has requested to use the mechanism in Section 10-276, Payment of Fees, to make five (5) annual payments of the transportation impact fee in lieu of a total payment before issuance of a certificate of occupancy for the new use of the building as a daycare.

The Board must approve the business as a plan the encourages and facilitates the growth and creation of business enterprise pursuant to FS 125.045, County Economic Development Powers which states, *"The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the counties of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state; to enhance and preserve purchasing power and employment opportunities for the residents of this state; and to improve the welfare and competitive position of the state."*

The owners of Good Morning Daycare have applied for the five (5) year payment plan and submitted portions of their business plan indicating the creation of 15 teaching positions at the daycare.

Budget Impact: The impact to the budget will be that the full payment of the transportation impact fee of \$29,859.82 will be made over a period of five (5) years.

Recommended Action: Motion to approve the attached Resolution if it is decided that the business encourages and facilitates the growth and creation of business enterprise pursuant to FS 125.045.

Chairman Payton questioned if there was a lien that would be issued on the subject property. Mr. Massey advised that this was the first kind of this type of request and would have to defer to the Acting County Attorney. He stated staff was reviewing the inclusions of assurances so the County could be repaid. Acting County Attorney Fowler noted he would research the matter and present it to the Board.

Chairman Payton stated he would not oppose the request.

Office Manager Lauren Molloy, applicant, appeared and commented on the day care being located in the building since last November. She noted Progress Energy was supposed to advise about the re-connect permit, which never occurred. Ms. Molloy noted they did not discover the impact fee until a couple of months after their Small Business Administration (SBA) loan was received. She stated if there was knowledge of the impact fee, it would have been included in the request for the SBA loan as it was currently the only obstacle to keep Good Morning Day Care (and its 20 employees) from opening.

Chairman Payton stated there was a housekeeping item that had to be considered in the future.

A motion was made by Commissioner Stone, seconded by Commissioner Fitos, to adopt Resolution 09-R-483 authorizing an economic incentive transportation impact fee payment plan to Good Morning Daycare. The motion was unanimously approved by the Board (5-0).

(Ed. Note: This matter was again discussed later in the meeting.)

Comprehensive Plan/Easements – (7.B.2.) – Accepted the following recommendation from Senior Planner Lisa Walsh and Acting Growth Management Director Massey in regard to revision of the Conservation Easement with Triple Bell Farms, LLC:

Description/Background: On September 15, 2009, the Board considered a conservation easement by Triple Bell Farms, and by unanimous vote, agreed to accept the conservation easement and issue the appropriate Transfer of Development (TDR) credits. On September 21, 2009, the applicant sent a revised conservation easement. The only change from the previous conservation easement is that a different person has signed the document. Attached is a fully executed conservation easement submitted by the petitioners, which will be recorded after acceptance by the Board of County Commissioners.

Budget Impact: None.

Recommended Action: Motion to accept the revised conservation easement attached, as executed by Triple Bell Farms.

County Employees/Resolutions – (7.C.1.) – Accepted the following

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recommendation from Human Resources Director Drew Adams to adopt Resolution 09-R-484 creating the Revised Employee Handbook for Marion County, effective November 2, 2009:

Description/Background: The last employee handbook was approved with an effective date of January 1, 2006. The proposed Employee Handbook has been reviewed, revised and updated.

Budget Impact: Recommended revisions will result in an undetermined cost savings.

Recommended Action: Respectfully request the Board motion to approve the attached Resolution for the changes to the Employee Handbook with an effective date of November 2, 2009.

Contracts & Agreements/Sheriff/Subdivisions/Traffic Control – (7.D.1.) – Approved and executed Agreement with Dalton Woods Homeowners' Association and the Sheriff to provide additional traffic enforcement service over private roads or roads located within the Dalton Woods community from October 1, 2009 through September 30, 2010, as submitted by the Marion County Sheriff's Office.

Contracts & Agreements/Sheriff – (7.D.2.) – Accepted the recommendation of the Marion County Sheriff's Office to execute the State and Federally-Funded Subgrant Agreement (Contract Number 10-BG-25-05-52-01-__) with the State of Florida, Division of Emergency Management to enhance the Emergency Management Preparedness and Assistance (EMPA) program. It was noted that the Agreement would increase the Sheriff's Emergency Management Budget by \$102,724 and required a dollar for dollar match from a non-federal source.

Drainage/Subdivisions/Road Improvements – (7.E.1.) – Accepted the following recommendation from MSTU/Assessment Director Myra Tedder in regard to petitions from property owners in the Pinecrest Subdivision, Plat Book "A", page 30:

Description/Background: The Pinecrest property owners requested that the MSTU/Assessment Department forward petitions to the affected property owners within the Pinecrest Subdivision to determine if the property owners wished to overlay the existing paved roads within this community. A map is attached for the Board's convenience.

The petitions were sent out by certified mail. The following represents a tabulation of the petitions:

TOTAL PROPERTY OWNERS:	09
TOTAL RESPONSES RECEIVED:	06
TOTAL OWNERS IN FAVOR:	05
TOTAL OWNERS NOT IN FAVOR:	01
TOTAL PERCENTAGE IN FAVOR:	56%

Budget Impact: All costs associated with this proposed road assessment will be borne by the affected property owners.

Recommended Action: Motion to accept the petitions and place Pinecrest Subdivision on the road assessment list for future road and drainage improvements.

Subdivisions/Road Improvements – (7.E.2.) – Accepted the following recommendation from MSTU/Assessment Director Tedder in regard to petitions from property owners in the Bryan Woods Subdivision, Plat Book “T”, page 062:

Description/Background: The Bryan Woods property owners requested that the MSTU/Assessment Department forward petitions to the affected property owners within the Bryan Woods Subdivision to determine if the property owners wished to overlay the existing paved roads within this community. A map is attached for the Board’s convenience.

The petitions were sent out by certified mail. The following represents a tabulation of the petitions:

TOTAL PROPERTY OWNERS:	27
TOTAL RESPONSES RECEIVED:	20
TOTAL OWNERS IN FAVOR:	16
TOTAL OWNERS NOT IN FAVOR:	04
TOTAL PERCENTAGE IN FAVOR:	59%

Budget Impact: All costs associated with this proposed road assessment will be borne by the affected property owners.

Recommended Action: Motion to accept the petitions and place Bryan Woods Subdivision on the road assessment list for future asphalt overlay improvements.

Buildings & Grounds/Contracts & Agreements – (7.F.1.) – Accepted recommendation of Procurement Services Director Susan Olsen to approve and execute the Fifth Amendment to the Agreement with USSI for cleaning services in various County buildings, as requested by the Facilities Management Department pursuant to 05P-091. It was noted that sufficient funding was available for each department utilizing the cleaning services.

Contracts & Agreements/Landfills/Solid Waste – (7.F.2.) – Accepted recommendation of Procurement Services Director Olsen to terminate the landfill mowing contract with Taylor Maid, Inc. and allow the Solid Waste Department to seek a provider for the service through the solicitation process, as requested by the Solid Waste Department pursuant to 07P-025.

Districts/Purchasing – (7.F.3.) – Accepted recommendation of Procurement Services Director Olsen to approve and authorize staff to issue a Purchase Order to Gator Tank Trailer for tank replacement for the Marion County Fire Rescue Tanker #11, at a cost of \$38,910, as requested by the Fire/Rescue Department pursuant to Bid No. 09B-138.

Contracts & Agreements/Projects & Programs – (7.F.4.) – Accepted recommendation of Procurement Services Director Olsen to approve and execute the Second Amendment to the Agreement with Ocala Recycling for sale of lead acid batteries for recycling, as requested by the Solid Waste Department pursuant to Bid No. 07B-077. It was noted that the contract renewal was revenue generating.

Contracts & Agreements/County Employees – (7.F.5.) – The Board considered the recommendation of Procurement Services Director Olsen regarding the Third Amendment to the Agreement with Fowler White Boggs, PA as the Labor Relations

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Attorney, as requested by the Human Resources Department pursuant to 08C-002. It was noted that there was no impact to the budget at this time; costs for services would vary depending on the County's need for this type of services.

Commissioner Fitos noted the Board was in the process of looking at a Request for Proposals (RFP) for the County Attorney and questioned if this request could be referred to monthly until the structure of the County Attorney's Office was fully vetted. She advised that the requested services were only used on a needs-identified basis. Commissioner Fitos questioned if it would be possible to have the request every month or renewed.

Human Resources Director Drew Adams recommended considering it for another year as he was not sure what the attorney RFPs would result in and whether it would include the labor side. Commissioner Stone advised that the information from the RFPs for attorney services did not include labor relations, although there was an option to have it provided. He agreed that the contract should be continued for another year and if at some future point in time, the new firm wanted to handle labor relations, it could be addressed.

Commissioner McClain questioned how the County could get out of the contract. Mr. Niblock noted there was a termination clause included. Mr. Adams clarified that the contract was a no-clause contract.

Commissioner McClain inquired if the contract could be terminated after one year by issuing a written letter either 60 or 90 days advising of the decision. Mr. Adams noted there was a 30 day period for notification.

A motion was made by Commissioner Fitos, seconded by Commissioner Stone, to approve and execute the Third Contract Amendment with Fowler White Boggs, PA under Contract #08C-002 for the labor relations attorney. The motion was unanimously approved by the Board (5-0).

Contracts & Agreements/Utilities – (7.F.6.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute the First Amendment to the Agreement with TAW Orlando Service Center, Inc. for electrical motor repair services, not expected to exceed \$50,000, as requested by the Utilities Department pursuant to 08PB-090. It was noted that renewal was contingent upon the City of Lakeland's renewal of its original contract under Bid No. 7250.

Contracts & Agreements/Projects & Programs – (7.F.7.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute the contract with Recovery Road, Inc. for substance abuse evaluation and drug treatment services, pursuant to 08C-005. It was noted that the services were paid through the State and funds were provided to Marion County to administer those services for offenders in need of financial assistance.

Contracts & Agreements/Projects & Programs – (7.F.8.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute the Second Amendment to the Agreement with Taylor Maid, Inc. for additional roadside mowing for the NE and SE quadrants, not to exceed \$8,324.39, as requested by the Transportation Department pursuant to RFP No. 07P-025.

Contracts & Agreements/Projects & Programs – (7.F.9.) – Accepted the recommendation of Procurement Services Director Olsen to approve and allow staff to update the name and Federal Employee Identification Number (FEIN) on the contract amendment for execution with Conrad Enterprises, Inc. to change the name to Shawnee Mission Tree Service, Inc. d/b/a Conrad Tree Service as well as the FEIN, as requested by the Transportation Department pursuant to 05Q-078. It was noted that there was no budget impact.

Contracts & Agreements/Litter Control/Projects & Programs – (7.F.10.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute the Second Amendment to the Agreement with Taylor Maid, Inc. to allow for additional roadside mowing and litter pick-up for the NW and SW areas, not to exceed \$18,152.58, as requested by the Transportation Department pursuant to 08P-026.

Contracts & Agreements/Projects & Programs – (7.F.11.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute contract amendment to renew with Clear Zone Maintenance, Inc. to provide roadside tree trimming and countywide tree removal services, with a project cost not expected to exceed \$150,000, as requested by the Transportation Department pursuant to Bid No. 07B-023.

Contracts & Agreements/Purchasing/Road Improvements – (7.F.12.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute contract with Rainey Construction for the SW 60th Avenue (SW 95th Street to SW 80th Street) project, with a project cost of \$2,388,194.43 (a 10% contingency of \$238,819.94 to be added to the Purchase Order), as requested by the Transportation Department pursuant to Bid No. 09B-113.

Contracts & Agreements/Purchasing/Road Improvements – (7.F.13.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute contact with Daly & Zilch (Florida), Inc. for the Marion Oaks Sidewalk project, with a project cost of \$456,707.15 (a 10% contingency of \$45,670.72 to be added to the Purchase Order), as requested by the Transportation Department pursuant to Bid No. 09B-135.

Contracts & Agreements/Roads, Miscellaneous – (7.F.14.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute contract amendment to renew with a) Dick Corp., b) Eisman & Russo and c) URS Construction Services for construction and engineering inspection services, as requested by the Transportation Department pursuant to 06Q-067. It was noted that there was no budget impact at this time as fees would be determined with each project and those projects exceeding \$25,000 would be brought back for Board review and approval.

Communications/Contracts & Agreements – (7.F.15.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute the Equipment and Service Agreement with Embarq Florida, Inc. for equipment and services relating to the 9-1-1 System through September 30, 2010, at a cost not to

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exceed \$504,547.20, as requested by the Public Safety Communications Department pursuant to 10C-013.

Contracts & Agreements/Road Improvements – (7.F.16.) – Accepted the recommendation of Procurement Services Director Olsen to approve and execute contract with Counts Construction Co., Inc. for the NW 80th Avenue Resurfacing (40 to 27) project, with project cost of \$980,252.74 (a 10% contingency of \$94,594.39 to be added to the Purchase Order), as requested by the Transportation Department pursuant to Bid No. 09B-134.

Litter Control/Solid Waste – (7.G.1.) – Accepted the following recommendation from Solid Waste Director Ken Whitehead to provide assistance for a community trash clean-up event in Southeast Marion County scheduled for October 16 through 19, 2009:

Description/Background: The Marion County Sheriff has requested the assistance from the Solid Waste Department to provide two solid waste collection boxes for a weekend community clean-up event in southeast Marion County. The event will be held on the weekend of October 16 - 19, 2009. Both boxes will be placed at the St. John's River Water Management District's Sunnyhill Restoration Area parking lot. The communities participating in the clean-up event are the Big Scrub Campsites, Big Tree Campsites, Forest Park, Oak Cove and Moss Bluff Ridge. The Department also request waiving tipping fees for the disposal of collected waste from this community trash clean-up event. Solid Waste clam shell trucks and operators will provide removal of the collection boxes as necessary through out the event, with an inmate litter crew assisting with a final clean-up of the collection site parking area prior to final removal of the collection boxes.

The intent of this community clean-up project is to allow residents an opportunity to voluntarily remove unwanted debris and trash from their communities. Following this voluntarily clean-up event, the Sheriff's Office will work with the County's Code Enforcement and Animal Control to conduct a code enforcement sweep through the communities to take enforcement action as necessary on criminal violations.

Budget Impact: Budget estimated for clam shell support, delivery and pick-up of collection boxes and waste disposal for 100 tons is \$5,760.00.

Recommended Action: Motion to approve the Solid Waste Department's support for the community trash clean-up in southeast Marion County planned for October 16 thru 19, 2009.

Contracts & Agreements/Municipalities/Solid Waste – (7.G.2.) – Accepted the following recommendation from Solid Waste Director Whitehead to approve and execute the State of Florida Department of Environmental Protection (FDEP) Agreement No. S0446 to establish a hazardous waste cooperative collection arrangement grant with Sumter County:

Description/Background: The Florida Department of Environmental Protection Agreement No. S0446 establishes the arrangements for a grant to reimburse Marion County for hosting a hazardous waste cooperative collection event for Sumter County and their residents. The Marion County Board approved an Interlocal agreement with Sumter County on September 6, 2005, to provide the

residents and small businesses in Sumter County with a cost-effective opportunity to properly dispose of hazardous waste.

The FDEP Agreement will provide for 75% reimbursement for the collection and disposal cost. Sumter County has agreed through the Interlocal Agreement to provide the remaining 25% of the collection event cost. Reimbursable costs include Marion County's labor, supplies, advertisement, on-site packaging, transportation and proper disposal of collected hazardous waste.

Budget Impact: There will be no budget impact with the approval of the FDEP Agreement. All cost associated with hosting the cooperative hazardous waste collection event in Sumter County will be reimbursed, the FDEP Agreement No S0446 provides 75% of the funding and the Interlocal Agreement with Sumter County provides for the remaining 25% funding.

Recommended Action: Motion to approve the FDEP Agreement No. S0446 to establish a hazardous waste cooperative collection arrangement with Sumter County using State of Florida Grant Assistance.

Contracts & Agreements/Subdivisions – (7.H.1.) – Accepted the following recommendation from County Engineer/Transportation Department Director Mounir Bouyounes to approve and execute the First Amendment to Marion County Subdivision Improvement with JB Ranch Associates, RLLP; authorize the Clerk's Office to release the expired original Letter of Credit in the amount of \$344,232.00 issued by Regions Bank; and authorize execution of letter to developer stating same:

Description/Background: The Marion County Transportation Department staff and the County Attorney's office has reviewed and recommends approval of the attached first amendment. JB Ranch Phase 1 has not completed their improvements to date and due to the current economy is unable to secure a new Letter of Credit for their current improvement agreement. This amendment establishes a third party escrow account with proceeds from individual lot sales in the amount of \$3,362.68 each to be used to complete the remaining subdivision improvements. The developer has indicated ownership of approximately 261 lots all of which, per this agreement, will have building permit holds placed on them until confirmation of funds deposited into the account at time of sale. Once the fund reaches \$336,268.20 or the remaining improvements are completed all the holds will be released. This subdivision is located in southwest portion of the county and contains 156 acres, 346 lots, and 4.6 miles of private paved roads and private drainage facilities.

Budget Impact: N/A.

Recommended Action: Recommend the Board accept the first amendment to the original improvement agreement, which was recorded in OR BK 04880 PGS 1290-1298. Authorize the Chairman to execute the attached first amendment and direct the Clerk of the Courts to release the expired original letter of credit in the amount of \$344,232.00 issued by Regions Bank. Also, authorize Chairman to execute letter to developer stating same.

Contracts & Agreements/Subdivisions – (7.H.2.) – Accepted the following recommendation from County Engineer/Transportation Department Director Bouyounes

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to approve and execute the First Amendment to Marion County Plat Improvements Agreement with Irrevocable Letters of Credit [Maricamp Market Centre Plat] with Albert Peek, Trustee; authorize the release of the Letters of Credit in the amounts of \$4,212,735.26 and \$2,268,395.91 currently held by First American Title acting as Escrow Agent; and authorize execution of letters to the Escrow Agent and developer stating same:

Description/Background: The Marion County Transportation Department has inspected the roads and drainage facilities in the above referenced project and found the same to be in apparent conformance with the approved project plans. Furthermore, it is agreed that the remaining sidewalk construction will be completed with future site development as outlined in the attached amendment. The developer will contribute \$46,937.00 in funds for the traffic signal interconnect in lieu of construction. This project is located in the southeast portion of the county and contains 110 acres, 4 lots, and 0.4 miles of private paved roads and private drainage facilities. The conditions set forth in the Improvement Agreement have been met.

Budget Impact: N/A (\$46,937.00 developer contribution).

Recommended Action: Recommend the Board accept the first amendment to the original improvement agreement which was recorded in OR BK 04946 PGS 1151-1228. Authorize the release of the letters of credit in the amounts of \$4,212,735.26 and \$2,268,395.91 currently held by First American Title acting as escrow agent. Also, authorize Chairman to execute letters to the escrow agent and developer stating same.

Contracts & Agreements/Subdivisions – (7.H.3.) – Accepted the following recommendation from County Engineer/Transportation Department Director Bouyounes to find the developer of the Lake Weir Heights Second Addition Replat Unit 3 (a/k/a Hills of Tuscany subdivision) in default of the Improvement Agreement and authorize the Chairman to execute the letter to the developer; accept roads and drainage facilities in the Hills of Tuscany Subdivision (including Parcel No. 4508+006-001) for County maintenance; also, direct that collection activity be initiated against the Hills of Tuscany, LLC and its officers to recover \$21,447.76 in County funds used for emergency road and drainage repairs:

Description/Background: The Marion County Transportation Department has inspected the roads and drainage facilities located in the Lake Weir Heights second addition Replat Unit 3 (aka Hills of Tuscany subdivision) and found that they appear to be constructed per the approved plans. Deficiencies were noted due to a lack of maintenance requiring \$24,392.76 in repairs, including \$21,447.76 in emergency repairs completed to date by county. \$2,945.00 in remaining repairs needed to bring the subdivision to the minimum county standard for road maintenance. The developer has been notified of the repairs made by the county and every attempt has been made to recover the funds expended for the emergency repairs. Furthermore, the developer has failed to provide the required documents associated with subdivision completion as required by the Land Development Code.

1. Hills of Tuscany as indicated in the attached map contains approximately 151 lots with 1.6 miles of paved public roads. To include parcel # 4508+006-001, this DRA is shared with the adjacent platted subdivision.

Budget Impact: N/A.

Recommended Action: Recommend the Board find the developer, Hills of Tuscany LLC, as indicated in the Improvement Agreement recorded in OR BK 04045 PGS 1191-1199, in default of said agreement. Authorize the Chairman to sign the attached letter to the developer. Accept for county maintenance of the roads and draining facilities in the Hills of Tuscany subdivision including parcel 4508+006-001. Direct that collection activity be initiated against Hills of Tuscany LLC and its officers to recover \$21,447.76 in county funds used for emergency road and drainage repairs.

Contracts & Agreements/Road Improvements – (7.H.4.) – Accepted the recommendation of County Engineer/Transportation Department Director Bouyounes to approve and execute the Purchase Agreement with Federal Home Loan Mortgage Corporation in the amount of \$87,900 for Parcel No. 3507-021-032 to acquire necessary right of way associated with the SW 95th Street Phase IIIA Road Improvement Project.

Contracts & Agreements/Road Improvements – (7.H.5.) – Accepted the recommendation of County Engineer/Transportation Department Director Bouyounes to approve and execute the Purchase Agreement with Richard and Kate Kilpatrick in the amount of \$8,750 (plus closing costs) for Parcel No. 51038-001-00 (a portion of) to acquire necessary right of way associated with the CR 42 Road Improvement Project.

Contracts & Agreements/Subdivisions – (7.H.6.) – Accepted the following recommendation from County Engineer/Transportation Department Director Bouyounes to approve and execute the Subdivision Improvement Agreement with Irrevocable Letter of Credit (No. S600544) with NJH, LLC in the amount of \$729,138.42; authorize the Clerk's Office to release the current Improvement Agreement and Bond in the amount of \$1,684,854.42; and authorize execution of letter to developer stating same:

Description/Background: The Summer Crest subdivision phase 3 was recently granted a 1-year extension by DRC to extend the plans expiration until May of 2010. The developer has provided an updated Improvement Agreement with Letter of Credit in the amount of \$729,138.42 as a replacement for the current agreement and letter of credit which is set to expire later this month. The current amount reflects work remaining to complete construction.

1. Summercrest Subdivision is located in the southeast portion of the county as indicated in the attached map and contains approximately 683 lots with 8.2 miles of private paved roads.

Budget Impact: None.

Recommended Action: Recommend the Board approve the attached Improvement Agreement with Letter of Credit in the amount of \$729,138.42. Authorize the chairman and clerk to execute. Authorize the Clerk to release the current Improvement Agreement and bond in the amount of \$1,684,854.42 as

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recorded in OR BK/PG 04999/0302 on 3/14/2008. Authorize the chairman to execute letter to the developer stating same.

Contracts & Agreements/Subdivisions – (7.H.7.) – Accepted the following recommendation from County Engineer/Transportation Department Director Bouyounes to approve and execute the Satisfaction of Mortgage releasing any claim against said property by the County:

Description/Background: The Board of County Commissioners on 2 June 2009 accepted maintenance of the roads and road right of way in Golf Park Unit 1. The developer was released from the Maintenance Agreement as recorded in OR BK/PG 04057/0408. The developer has further requested that the Board execute a Satisfaction of Mortgage release for the property, which was posted as security and indicated in the attached copy of the maintenance agreement. Budget Impact: N/A.

Recommended Action: Recommend the Board authorize Chairman to execute the attached Satisfaction of Mortgage releasing any claim against said property by the County.

Contracts & Agreements/Districts/Grants/Municipalities/Water – (7.H.8.) – Accepted the following recommendation from County Engineer/Transportation Department Director Bouyounes to approve and execute the Reinstatement Agreement with St. Johns River Water Management District (SJRWMD) for Stormwater Management Cost-Sharing Agreement regarding the Silver Springs/River Pollution Reduction Project (SR 40 Stormwater Retrofit):

Description/Background: This item is a reinstatement of the above referenced funding agreement, which is a request to extend the expiration date to December 31, 2010. This funding was approved in the amount of \$722,000 for the Silver Springs/River Pollution Reduction Project (aka Marion County State Road 40 Stormwater Retrofit) and is granted and managed by the St. Johns River Water Management District (SJRWMD).

This project is part of the joint effort by the County, the City of Ocala, SJRWMD, Florida Department of Transportation, and FDEP to provide water quality treatment for stormwater runoff from State Road 40, which is primarily untreated prior to its discharge into Half-Mile Creek and then into Silver River. Construction of the project is scheduled to commence at the end of October 2009.

Budget Impact: Credit of \$722,000 to the Grant Revenue Account 189000-33730030

Recommended Action: Motion to approve and authorize the Chairman to sign the amendment.

Easements/Utilities – (7.J.1.) – Accepted the following recommendation from Assistant Utilities Director of Engineering Todd Petrie and Assistant County Administrator of Public Works Lawrence Thacker to accept and execute the Utility Easement with Camala McCarter Hogue, individually as and Trustee of the Nancy K. McCarter Family Trust dated August 22, 1990; Cheryl Diann Cullen n/k/a Cheryl M. Meyers, individually and as Trustee of the Nancy K. McCarter Family Trust dated August 22, 1990; Dawn Michelle McCarter, individually and as Trustee of the Nancy K.

McCarter Family Trust dated August 22, 1990; and Bonnie McCarter Meyer, individually and as Trustee of the Nancy K. McCarter Family Trust dated August 22, 1990:

Description/Background: Marion County Utilities requests the above easement be accepted by Marion County. The easement will be utilized for a water main constructed by the County in 2000. The water main serves existing homes along SE 157th Ln and SE 134th Ave located on the south side of Lake Weir.

Budget Impact: N/A.

Recommended Action: Marion County Board of County Commissioners approve a motion for the Chairman to accept the above easement on behalf of Marion County.

(Ed. Note: n/k/a is the abbreviation of Now Known As; Ln is the abbreviation of Lane and Ave is the abbreviation of Avenue.)

Contracts & Agreements/Zoning – (8.A.) – Acting County Attorney Robert J. Fowler presented the following recommendation requesting a closed meeting pursuant to Florida Statute (F.S.) 286.011(8) to discuss settlement negotiations and/or litigation strategy in the case of John Lake versus (vs.) Marion County:

Description/Background: Marion County is currently involved in a claim by John Lake alleging that his rights under the Firefighter's Bill of Rights were violated and he suffered discrimination/retaliation under the Age Discrimination/ Employment Act.

Florida Statutes, 286.011(8), provides for Closed Meetings with the Board, the County Administrator, the Attorney representing the County, and a court reporter, to discuss settlement negotiations and/or litigation strategy. I am requesting that the Board authorize such a meeting on Tuesday, October 20, 2009 at 8:15 a.m.

Fiscal Impact: The only impact will be the court reporter and defense counsel fees which are included in the current budget.

Recommended Action: Motion to authorize closed meeting pursuant to F.S. 286.011(8) on the date mentioned above and the advertisement thereof.

In response to Commissioner McClain, Mr. Fowler noted the meetings would be held in a different room and not the auditorium.

A motion was made by Commissioner McClain, seconded by Commissioner Amsden, to schedule a closed meeting on Tuesday, October 20, 2009 at 8:15 a.m. to discuss settlement negotiations and/or litigation strategy in the case of John Lake vs. Marion County. The motion was unanimously approved by the Board (5-0).

Clerk/Suits – (8.B.) – Acting County Attorney Fowler presented the following update in regard to the matter of GMAC Mortgage, LLC vs. Ascension Group, LLC, et al, Case No. 09-5269-CA-B:

Description/Background: Several months ago I advised the Board of a request from the attorney representing GMAC Mortgage, LLC, for payment of overbid proceeds related to Tax Deed Sale #284600. My response is attached. On September 24, 2009, a complaint was received by the Board which names the Marion County Board of County Commissioners as a Defendant in the above case. The lawsuit has been forwarded to the Risk Management Department for handling per my attached memorandum.

Budget Impact: None.

Recommended Action: None

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(Ed. Note: GMAC is the acronym for General Motors Acceptance Corporation.)

Mr. Fowler advised that the attorney representing GMAC claimed the County had wrongfully paid overbid proceeds and tax deed sales and that the person or persons that were paid had allegedly forged the documents when submitting their claim. The County denied the request for payment and a lawsuit was filed naming Marion County as a defendant.

Clerk/Property Appraiser/Suits – (8.C.) – Acting County Attorney Fowler presented the following recommendation in regard to the Final Judgment in relation to David Nourachi vs. United States of America, Marion County Property Appraiser Villie M. Smith and Marion County:

Description/Background: In 2002, a tax deed was sold in error to the Plaintiff in the above case, David Nourachi. The property was actually owned by the US Forest Service. In 2008 the Plaintiff filed a quiet title suit against the United States of America, Villie M. Smith, Marion County Property Appraiser and Marion County.

On August 19, 2009, final judgment was entered which denied the relief sought by the plaintiff. The final judgment ordered Marion County to refund the amount paid for the tax deed, \$22,600.00, plus interest at the lawful rate since December 28, 2002. The attached interest calculation establishes interest in the amount of \$12,975.50 as of October 6, 2009. The interest will be paid by the Property Appraiser.

Budget Impact: Payment of \$22,600.00 plus interest.

Recommended Action: The Board is requested to authorize payment to David Nourachi as Trustee as ordered in the above case.

Mr. Fowler noted the US District Court ordered the County to refund money paid for the tax deed, as well as interest from December 28, 2002, which was the date of the sale of tax deed.

A motion was made by Commissioner Stone, seconded by Commissioner Fitos, to authorize payment in the amount of \$22,600 plus interest to David Nourachi as Trustee as ordered. The motion was unanimously approved by the Board (5-0).

Resolutions/Suits/Zoning – (Walk-On) – Mr. Fowler advised that he was contacted a few days prior by the attorney representing Hasty-Greene Investments, Inc. regarding a prior zoning request for a Special Use Permit (SUP) application. The attorney stated that the client intended to appeal the Board's decision. Mr. Fowler noted he was expecting that the appeal would be received sometime between now and the next Board meeting. He requested Board authorization to retain a litigation firm to defend the County in the appeal. In response to Chairman Payton, Mr. Fowler advised that he contacted several law firms and was turned down by two. He opined that there was a firm that could represent the County as they were experienced litigators who represented local governments in the past and were well recommended. Mr. Fowler requested Board authorization as there were 20 days to respond and if the matter was prolonged until the next Board meeting, it would reduce the amount of time available to obtain counsel and respond.

Mr. Fowler stated he would advise the Board at the next meeting of the status of the situation.

A motion was made by Commissioner Stone, seconded by Commissioner Fitos, to authorize the County Attorney to pursue legal counsel, if necessary. The motion was unanimously approved by the Board (5-0).

Drainage/Road Maintenance/Subdivisions – (9.A.) – County Administrator Niblock presented the following recommendation from County Engineer/Transportation Department Director Bouyounes in regard to the Whispering Pines & Forest Glenn Subdivisions in relation to maintenance of roads and drainage:

Description/Background: Whispering Pines and Forest Glen Subdivisions are part of the larger Kingsland Country Estates Development. Maintenance of the road and drainage are being provided by the Property Owners Association in accordance with the Development Agreement. Late last year, members of Kingsland Country Estates Property Owners Association (KCPOA) requested that the County accept the maintenance responsibilities in their subdivisions similar to any other public road subdivision. The two subdivisions are platted with public roads and contain 1,532 lots, 17 miles of roads and 94 acres of drainage retention areas (DRAs).

Based on the KCPOA request, the B.C.C. directed the Transportation Department to examine the condition of the roads and drainage system within the subject subdivisions and provide recommendations regarding future maintenance.

Over the last several months, the Transportation Department conducted an evaluation of the road and drainage networks to develop an assessment of the long term and short term needs for repair and/or maintenance. For pavement, consideration was given for normal wear expected of each area by recognizing typical lifecycles and the current condition. Also, this investigation was conducted in a manner where the roads and lot information were examined independently from stormwater features.

The summary and details of this evaluation are presented in the attached staff report for your review. Based on this evaluation, the estimated cost per lot for long term roads and drainage maintenance is approximately \$100.00 annually.

Budget Impact: Cost of routine maintenance.

Recommended Action: Motion to accept the subdivision for routine maintenance after a MSTU with an annual assessment of \$100.00 per lot is established to provide for long term road resurfacing and critical drainage repairs as identified in the attached report.

Mr. Niblock advised that the item was requested to be brought back by the Board and noted MSTU/Assessment Director Myra Tedder and County Engineer Bouyounes would work together on the assessment program.

In response to Commissioner Stone, Chairman Payton stated the subdivision was located in his district. Commissioner McClain inquired if the County had provided maintenance up to this point. Mr. Bouyounes stated the County had not. He advised that the homeowners' association was supposed to provide maintenance based on the Developer's Agreement when the subdivisions were developed. Mr. Bouyounes noted the homeowner's association came before the Board a year prior and requested that the County take over the maintenance. He advised that the Board directed the two subdivisions be investigated as to costs.

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In response to Chairman Payton, Mr. Bouyounes advised that there was no developer default on the project and noted this was one of the very old subdivisions in Marion County where many lots were under moratorium because all the improvements were not completed. He stated the developer was finishing some improvements and the old improvements that were completed were supposed to be permanently maintained by the homeowners' association.

Commissioner McClain questioned if the work would be subcontracted out. Mr. Bouyounes explained that most of the regular maintenance, especially mowing the drainage retention areas (DRAs) and other major drainage easements would be done by contract. He clarified that the routine day to day road maintenance would be completed by in-house crews, with the major road drainage improvements and road improvements accomplished through a Municipal Service Taxing Unit (MSTU) as the assessments fund the projects through the contractors.

In response to Commissioner McClain, Mr. Bouyounes advised that some of the roads were in very good condition (brand new) while others were very old and would need resurfacing in the near future. He clarified that most of the work would include resurfacing the roads and approximately 4 to 5 miles had not been constructed. Mr. Bouyounes stated in case the developer did not finish constructing the roads, the MSTU could fund the projects. Ms. Tedder advised that there were two or three MSTUs already implemented.

In response to Chairman Payton, Mr. Bouyounes advised that the subdivisions were requesting the County take over the maintenance on the roads, which would eventually require resurfacing in the future. He recommended the County accept the routine maintenance if an MSTU was instituted in place to start collecting fees for any major maintenance needed in the future, such as resurfacing and drainage repair. Mr. Bouyounes noted he spoke with a member of the homeowners association as they were in support and requested he and Ms. Tedder speak with them after the Board took action to explain the process and what needed to be accomplished. He advised that the MSTU would have to follow the same process that was already established in the County.

Ronald Kennedy, SW 115th Street Road, advised that he was authorized by the Board of Kingsland to provide any information that may be needed on behalf of the project and to inform the BCC that they were in favor of an MSTU. He noted there was already a road under an MSTU that would be constructed.

A motion was made by Commissioner Amsden, seconded by Commissioner McClain, to accept the subdivision for routine maintenance after an MSTU with an annual assessment of \$100.00 per lot was established to provide for long term road resurfacing and critical drainage repairs as identified in the staff report.

Commissioner McClain expressed concern that the County was committing itself to implement an MSTU. Mr. Bouyounes clarified that the request was to accept maintenance only after an MSTU was established.

Commissioner McClain inquired if a petition process would be completed. Mr. Bouyounes stated that was correct as the MSTU would have to follow the County process. Commissioner McClain noted his second stood.

Commissioner Stone noted a large part of the situation regarded drainage, with the estimate (as provided in the backup material) to be \$250,000 at the time. He asked how old the estimate was and if staff would go back and re-evaluate the drainage requirements before the petitioning was completed. Mr. Bouyounes stated the estimate

was approximately 6 months old and another evaluation could be provided, which may not be necessary. The proposal of the annual fee would cover all of the items to be fixed.

Commissioner Stone noted hesitation because \$250,000 may not cover the drainage in the entire area as it was a bigger issue than road maintenance. He clarified that he wanted to be sure that the drainage matter was not being sidelined because the costs may place the assessment at a rate that may not be approved by petition.

Mr. Bouyounes advised that staff tried to investigate the whole situation and identified a few projects that would need to be immediately completed, which included mostly the drainage projects before any resurfacing or overlay took place. The money collected in the first year would be enough to provide for some of the urgent drainage projects. In addition, the Cleanwater Fund would assist in mowing, as well as some work on the DRAs. Mr. Bouyounes opined that it would be a win-win situation for the residents of Marion County and the Board.

Commissioner McClain questioned if the engineering was in place for the project or would some items have to be reviewed. Mr. Bouyounes noted some minor engineering work could be completed in-house to prepare the projects as the set of plans for the subdivision were from years prior and not adequate to use to fix the problems.

Mr. Kennedy advised that the homeowners' association spent time and effort in hiring an outside firm to redo the engineering in the last 9 months, and along with the work already performed by the County, a cohesive plan was created that had been checked by the County. The engineering was individually completed, as well as by the County and the consensus was that it was more of a repair than an installation, which was why the \$100 figure seemed to work.

The motion was unanimously approved by the Board (5-0).

Southeastern Livestock Pavilion – (9.B.) – County Administrator Niblock presented the following recommendation in regard to the Final Invoice amount requested by Mindy Nolan-Morrow for the Horses N Heroes event:

Description/Background: On May 10, 2009, Mindy Morrow sent a letter to Commissioner Payton requesting a waiver of fees for her July 11-12 Horse Show, to be held at Southeastern Livestock Pavilion (SELP). Previously, on March 6, 2001, the Board ruled that waivers would no longer be granted to groups utilizing the Livestock Pavilion, with the exception of those groups/events that were "grandfathered".

Commissioner Payton responded with a letter dated May 13, 2009 denying the request for waiver. Upon receipt of the bill for her show, Ms. Morrow disputed the correctness of the bill, indicating SELP staff did not adequately explain the level of charges she would receive and that the standard paperwork did not properly indicate how charges would be assessed. Staff has met with Ms. Morrow on three occasions without resolution and finally she presented the item to the BCC on September 15, at which time the Board directed the County Administrator to bring a recommendation to the October 6 Board meeting. Ms. Nolan-Morrow met with the County Administrator on September 30 to discuss the disputed fees. While there may be minor areas of ambiguity with regard to the Fee Schedule form, I have not detected any error on the part of staff in its implementation. Following my conversation with Ms. Morrow, I am recommending a minor credit

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on stall usage. Recommendation is to credit the amount for two stalls that were not used. To avoid any future discrepancies and/or confusion, I am also recommending a further revision of the Fee Schedule form.

Budget Impact: Credit in the amount of \$56 for two stalls not used in the event.

Recommended Action: Motion to credit (Invoice #09-0057 – Revised) in the amount of \$56 reflecting a new total invoice amount of \$6,631.50.

Mr. Niblock noted the form had been in use for about 10 years and staff would revise it to provide more explanation to avoid any confusion in the future.

A motion was made by Commissioner Stone, seconded by Commissioner Fitos, to approve the credit to Ms. Morrow in the amount of \$56, reflecting a new total invoice amount of \$6,631.50 and further revision of the Fee Schedule form. The motion was unanimously approved by the Board (5-0).

Projects & Programs – (9.C.) – County Administrator Niblock presented the following recommendation in regard to the Marketing Communication Handbook:

Description/Background: As part of the “Doing More with Less” plan that commissioners unanimously approved on April 21, 2009, Marion County Administration has developed a Marketing Communication Handbook. This handbook addresses the five methods of proven marketing communication strategies by defining Marion County’s 1) market, 2) mission, 3) messages, 4) mediums and 5) measurements.

The Marketing Communication Handbook will serve as a reference tool and help us to:

- 1) Better inform and empower citizens.
- 2) Save taxpayer money.
- 3) Improve customer service and efficiency.
- 4) Enhance internal and external communication through greater coordination, uniformity and consistency of county messages and initiatives.
- 5) Increase reliability and credibility of the Marion County brand.
- 6) Strengthen Marion County’s public information, public education and public relations outreach efforts.

Marion County serves a diverse community, and various groups have different expectations of county government. Therefore, a one-size-fits-all approach to communication cannot effectively serve the citizens. That’s why Marion County’s public relations resources will use this handbook to better communicate with the public through use of the media (print and broadcast), printed materials (e.g. annual reports, brochures, public education activity books and e-publications), public service announcements (radio and television), face-to-face public education events, promotional items, sponsorships, partnerships, billboard advertisements and direct mail.

For the first time ever, Marion County’s public relations resources will also coordinate their messages and budgets, jointly determine the needs of the community and identify the best methods of reaching the county’s target markets. They will incorporate solid public relations tactics, including research/situational analysis, objectives, implementation, evaluation and budget. These efforts will save taxpayer money as well as significantly reduce functional silos, inconsistencies, mixed messages and duplication.

Five members of the Marion County SOURCE, a network of in-house county professionals, formed a Marketing Communication subcommittee. Together, they researched and compiled the information included in the 80-plus page handbook. The authors of the handbook include: Heather Danenhower, Office of Public Information, Elaine Delorio, Marion County Fire Rescue, Barbra Hernandez, Office of the County Engineer, Karen Jensen, Marion County Public Library and Peveeta Persaud, Marion County Fire Rescue.

Budget Impact: None.

Recommended Action: Marion County Administration requests that the Marion County Board of County Commissioners approves the Marketing Communication Handbook.

Public Information Manager Heather Danenhower stated that there were two requests received from the cities of Palm Bay and Coral Gables to use the plan as a template for them to create and develop their own marketing communication handbook.

A motion was made by Commissioner McClain, seconded by Commissioner Stone, to approve the Marketing Communication Handbook. The motion was unanimously approved by the Board (5-0).

(Ed. Note: SOURCE is the acronym for Steadfast, Open, United, Responsible, Credible and Engaged.)

Projects & Programs/Resolutions – (9.D.) – County Administrator Niblock presented the Resolution with Rasmussen College for an Economic Development Financial Incentive Grant (EDFIG):

Description/Background: The school was founded in 1900 as the Rasmussen School of Business by Walter Rasmussen in Saint Paul, Minnesota. Rasmussen believed that the need for skilled professionals by the local business community was not being met. This belief led to the development of the school's vision, which was:

1. To prepare young men and women for responsible positions in all lines of business.
2. To help pupils win their way to a noble manhood or womanhood.

Rasmussen College is an accredited, private, for-profit college offering Bachelor's and Associate's degrees at multiple campuses in Minnesota including Brooklyn Park, Eagan, Eden Prairie, Lake Elmo, Mankato, Moorhead and St. Cloud; three campuses in Illinois, two campuses in North Dakota, three campuses in Florida, including Fort Myers, Ocala and Pasco County; one campus in Green Bay, Wisconsin; and, an Online Division.

Rasmussen College offers on campus and online classes and awards Bachelor of Science (BS), Associate of Applied Science (AAS), and Associate of Science (AS) degrees including; Healthcare Management, Medical Administration, Accounting, Business Administration, business Management, Office Management, Early Childhood Education, Information Systems Management and Criminal Justice.

Rasmussen's Ocala campus is currently located at 2221 SW 19th Avenue Road and consists of two buildings totaling 23,000 square feet. The applicant has formed a partnership with Allybrad Properties for a long term lease/partnership to construct a new 23,000 square foot build to suit college facility on SR 200 adjacent to West Marion Hospital. Rasmussen College will maintain occupancy

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of the 10,000 sf building at its current location, as well as constructing a 23,000 square foot campus to accommodate a growing student population and campus staff and to provide state of the art learning and teaching facilities. Rasmussen will also be adding several degree programs in the fields of Engineering, IT, Healthcare, CPA and Psychology.

Proposed capital investment includes \$2,263,691 in land acquisition, \$5,814,000 in construction costs associated with the site and facility and \$1,100,000 in new capital equipment to be purchased for the facility. In addition, Rasmussen College has committed to providing ten new jobs in FY 2010 and ten new jobs in FY 2011, all twenty jobs will have an average annual salary of \$53,000.00. In total, Rasmussen will be investing approximately \$9,177,691 in the new campus and creating twenty (20) new jobs over a two year period, in addition to the ninety-four (94) current employees.

The Financial Review Committee met and reviewed the complete application on August 4, 2009 and recommended unanimous approval of the application.

Budget Impact: Payment made in the total amount of \$90,000, to be paid at a rate of \$9,000.00 per year for a period of ten years. The funds will be reserved and paid out of dept 1020 CC-Industry Development, account 581317 Aid to Private Org – EDFIG. Pending Marion County BCC approval, a performance based agreement with “claw-back” provisions will be coordinated with the County Attorney’s Office and the applicant. The first annual installment will be paid upon execution of said contract, and completion of the capital investment.

Recommended Action: Request approval to adopt a Resolution with Rasmussen College for an Economic Development Financial Incentive Grant (EDFIG) in the amount of \$90,000 based on the terms and conditions described above. The request is consistent with the Marion County BCC’s goals to support economic development.

Sustainable Growth Manager Lucienne Gaufillet commented on Rasmussen’s history, noting the average annual salary (\$53,000) consisted of approximately 175% of the current average annual wage in Marion County. The application exceeded the minimum requirements of the EDFIG program as established in Ordinance 08-33. Ms. Gaufillet noted the application met the intent of Florida Statute 288 regarding a definition of a targeted industry. She advised that Rasmussen would provide training and educational opportunities for the local workforce to secure jobs in other targeted industries which were anticipated to be located and expanded into Marion County.

Commissioner Stone questioned if the Board would have the opportunity to review the contract to make sure all the appropriate claw-backs were in the document. Ms. Gaufillet stated that was correct, as it would follow the same process as completed for Intellon.

Commissioner Fitos inquired as to why the college met the criteria since it was not an industry in terms of the normal definition. Ms. Gaufillet advised that the establishment of a qualified industry in Florida Statute 288 provided a definition of targeted industry and an example list (that was continuously revised) contained six criteria identified as such: 1) a business or company must have a strong expectation of future growth; 2) must have a stable industry, which is resistant to the recession; 3) must create high wage professional jobs; 4) be market independent; for example, not related on the influxes of the tourist industry or weather related; 5) expands and diversifies the area’s economic base and must provide tangible economic benefits to the

local community. She stated Rasmussen College met the intent of all six of the requirements as defined.

Commissioner Fitos asked if a college/school was specifically listed as a targeted industry. Ms. Gauffillet noted it was not specifically listed, but provided an exclusion for industries engaged in retail activities, electrical utility companies, phosphate or other solid mineral mining or processing operations, oil or gas exploration or production operation or any firm subject to regulation by the division of hotels and restaurants of the department.

Commissioner Fitos questioned the legal interpretation of the Statute. Mr. Fowler noted the Board would have to follow what the Statute referred to as targeted industries and if the definition was met, then they qualify, even if it was not specified that it was a targeted industry by name. He clarified that if the criteria was met, then it satisfied the Statutory definition. Commissioner Fitos advised that she still had questions relative to the application and was not prepared to vote today.

Commissioner Amsden stated he appreciated the college's vision for the community and opined that they identified a targeted market for their organization. He expressed concern with the County having limited resources for the stimulation of economic development in the community and noted the request may meet the threshold of the County's criteria, but he philosophically believed that it did not meet the targeted industry qualifications and would not support the request.

Commissioner McClain stated he did not know how the request could not be supported as there was discussion amongst all of the Board to improve the workforce opportunities for people in Marion County as well as considering targeted industry, higher wages, etc. He commented on the bigger picture and opportunities provided to the workforce, which was a bigger part than just job creation. Commissioner McClain noted the only way to chip away unemployment was one job at a time as it would be one more than yesterday that would be contributing to the community. He stated he would be in support because it was what the Board was trying to create for the future of Marion County

Commissioner Stone commented on the capital improvements and questioned if a specific amount was budgeted for grant monies in the upcoming year. Mr. Niblock noted the Board had set aside approximately \$360,000. Commissioner Stone inquired if the Board had discussion regarding having a specific industry cap out at a certain dollar amount as he had concern with spending. Mr. Niblock stated when the Board created the fund and budget process, the criteria for capping was not included as the impression was that any industry would be thoroughly vetted from a staff perspective before bringing it to the Board for consideration.

Commissioner Stone stated he agreed that this request was borderline as to the qualifications and cautioned against bringing too many grant requests. Ms. Gauffillet opined that the EDFIG Ordinance was set up with criteria of establishing a minimum of 10 jobs, \$300,000 in capital investment and a certain minimum wage requirement. She commented on the checks and balances in the process before Board approval was requested.

Chairman Payton asked if this request was the third or fourth that the Board has considered. Ms. Gauffillet noted it may be the fourth and stated it was the second one that she had been involved with.

Chairman Payton expressed concern that the Board be kept abreast at all times of the continuing commitment and directed staff to bring forth a cumulative number of

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the Board's commitment on an ongoing basis. He stated he was in support of the request.

A motion was made by Commissioner McClain, seconded by Commissioner Stone, to adopt Resolution 09-R-485 approving Rasmussen College as a qualified applicant. The motion passed by a vote of 3-2, with Commissioners Fitos and Amsden voting nay. Resolution 09-R-485 was entitled:

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, FIND THAT RASMUSSEN COLLEGE, INC., OCALA, FL, BE APPROVED AS A QUALIFIED APPLICANT PURSUANT TO SEC. 288.106, FLORIDA STATUTES; AND PROVIDING AN APPROPRIATION OF UP TO \$90,000.00, TO BE PAID IN EQUAL ANNUAL INSTALLMENTS FOR 10 YEARS BASED ON PERFORMANCE OF CAPITAL IMPROVEMENTS AND JOB CREATION, AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Niblock noted staff would provide a recapture of prior Board action in the future when requests were brought forward. He clarified that this was the fourth request and future agenda items with any financial incentive would include an update as to prior actions.

(Ed. Note: sf is the acronym of square foot/feet; IT is the acronym for Information Technology; and CPA is the acronym for Certified Public Accountant.)

Municipalities/Projects & Programs/Resolutions – (9.E.) – County Administrator Niblock presented the following recommendation in regard to the Magna property:

Description/Background: The Office of Sustainable Growth, in conjunction with the City of Ocala Office of Long Term Planning & Sustainability, prepared an in depth analysis of the Magna Project, and presented the results of this analysis to the Board of County Commissioners and Ocala City Council at a joint workshop on September 22nd, 2009. The Magna Project represents approximately 677 acres of land at the NE quadrant of I-75 and US 27 which has been identified as a potential location for development of an Industrial/Business Park.

The analysis of this site includes physical and land use characteristics of the site, identifies infrastructure needs, potential funding sources for infrastructure construction and the next steps in positioning the project for development as an Industrial/Business Park.

The intent of the Resolution is to promote the Economic Development and job creation opportunities that development of an Industrial Park represents. This can be accomplished through a commitment to work jointly with the City of Ocala and private development entities to move the project forward in an expeditious and predictable manner. Action items include: entitlement assistance as necessary with annexation and land use designations, analysis of public investment of infrastructure, development of infrastructure construction agreements as necessary, facilitate expedited permitting through City and County agencies, manage Impact Fee credits as applicable and coordinate marketing efforts with the EDC.

While this Resolution is non-binding with respect to guarantee of any permit approvals or funding of infrastructure, it serves to solidify the Marion County/City of Ocala partnership and to ensure that economic development, Industrial Park

development and job creation are a primary focus of each entity, and that the Magna project represents a significant opportunity.

Budget Impact: None.

Recommended Action: Adoption of the attached Resolution identifying the Magna project as a project of significant Economic Development importance for Marion County.

Mr. Niblock noted at the joint City-County workshop held on September 22, 2009, a presentation was made by Marc Mondell, Director, Office of Long-Term Planning and Sustainability, City of Ocala, and Ms. Gaufillet regarding the Magna project.

Ms. Gaufillet noted the agenda item proposed the adoption of the Resolution regarding the Magna project as a follow up of the joint meeting. She advised that Mr. Mondell distributed the completed feasibility and due diligence analysis for the Magna project, as well as the draft Resolution. Ms. Gaufillet stated after the joint meeting, the Resolution was reviewed by Mr. Fowler and the City Attorney, where minor changes were made before it was brought forward to the Board today. She clarified that the Resolution addressed the significance of the Magna Project to the economic development of Marion County and City of Ocala by providing a commitment of inter-jurisdictional public and private partnership in moving the project forward and allowing for the potential of agreements to expand public infrastructure to service future development of the site of an industrial park to bring it to a shovel ready position.

In response to Chairman Payton, Ms. Gaufillet noted the signature page was separated into two pages.

Commissioner Amsden opined that the Resolution lacked a balanced approach in developing an industrial and business park. He commented on the developer's financial abilities, vision and plans for the property and questioned the due diligence. Commissioner Amsden noted the Resolution should be more encompassing of other properties and opportunities for industrial and business parks as the Board should let the market decide which site best fit the needs of the end user in terms of building a facility and structuring the needs around the locations and vicinity that were chosen. He stated there were other sites just as significant and important to the economic development of the community and that any off-site transportation, capacity or required infrastructure improvement as identified by the traffic analysis should be paid for by the developer.

Commissioner Amsden addressed expedited permitting, noting the Economic Development Corporation (EDC) should be committed to market any and all industries, businesses and parks within the County as it was not the Board's role to engage with the local investment community about funding for Magna or any other development. He commented on letting two business partners work out their business deals as the responsibility and accountability had to be borne by the developers, noting his hesitation as other developers may receive a mixed or incorrect message from the Board.

Commissioner Stone opined that the Resolution dealt with one specific piece of property and did not exclude the Board from adopting another Resolution for other properties to be brought forth. In fact, it would make it easier for the Board to adopt a Resolution for all of the other properties because the framework currently existed. Commissioner Stone noted the consensus at the joint meeting to promote partnerships on the particular site as it was the first and foremost site on the list of projects, but was not standing in the way of anything the property owner wanted to accomplish. He noted

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a conceptual plan had not been produced at this point and the Resolution noted the potential of the site. Commissioner Stone noted his support of the Resolution.

Commissioner McClain stated he wanted to support the Resolution, but was concerned about transportation and (high density residential) housing that would accompany the development. He addressed the issue with the location of current housing units. Commissioner McClain commented on considering one piece of property over another, noting the Board should not be in the development business, but rather offer every private industry or developer the same opportunity to create business. He acknowledged that the market would drive development and people would live closer to an area if the opportunity existed. Commissioner McClain noted the Board would not have reduced costs to citizens if people were traveling back and forth across Marion County to work at a business park as it would affect the impact fees.

Commissioner Fitos stated the request was the first step in the Board setting objectives to create sustainable growth in Marion County, noting this property happened to be in conjunction with the partners and was long overdue in regard to moving forward as a community. She noted the Resolution was one of intent and acknowledged that the concerns would need to be addressed.

Commissioner Fitos opined that the Resolution did not preclude any other simultaneous developments that would come forward. She noted there were many different moving parts in the equation and as other properties came forward, the Board needed to be prepared to deal with economic development in Marion County as doing otherwise negated the whole intent of what the Board set out to achieve.

Chairman Payton opined the Resolution was a benign document as it was the first step in codifying a relationship with the other governmental entity (City of Ocala), not to the exclusion of other municipalities. Magna offered itself and made themselves available. He stated he would take the same action if other properties came forth. Chairman Payton clarified that he believed the Resolution did not commit the Board to anything other than collaborating with partners and noted he was in support.

A motion was made by Commissioner Fitos, seconded by Commissioner Stone, to adopt Resolution 09-R-486 by Marion County and the City of Ocala concerning the development of the former Magna property; recognizing the significance of development; providing parameters for possible development; providing parameters for possible development Agreement and other action by the County and City to enhance such development.

In response to Commissioner Amsden, Chairman Payton noted any vehicle, whether a Resolution or request, to bring forth proposals regarding developing an industrial/business park was immaterial and would not be excluded as the Resolution only represented good faith effort to proceed.

The motion was approved by the Board by a vote of 4-1 with Commissioner Amsden voting nay.

Refunds/Schools – (9.F.) – County Administrator Niblock presented the following recommendation in regard to the request for Educational System Impact Fee Refund:

Description/Background: In accordance with Section 10-441(6), Exemptions, of the County Code allows an exemption from the Educational system impact fee if the residential construction qualifies as Housing for Older Persons and meets certain criteria related to age covenants.

In order for a project to qualify the County Code, which was amended in 2006 establishing this exemption, requires that the developer applies and is approved as Housing for Older Persons. The Developer of Stonecrest applied and was approved for the exemption on August 14, 2009. Armstrong Homes is requesting a refund of past educational system impact fees paid on 117 permits that were issued a final certificate of occupancy in Stonecrest from November 2006 through present in the amount of \$431,551.00.

Staff recommends denial based on the fact that the fees requested for refund were appropriately charged to building permits within a development in which an exemption of the educational system impact fee had not been requested, nor approved.

Attached is a letter from the Superintendent of Schools, Jim Yancey, supporting staff's recommendation.

Budget Impact: \$431,551.00 from the Educational System Impact Fee Trust Account.

Recommended Action: Motion to deny the refund request of the educational system impact fee for the 117 permits that were issued a final certificate of occupancy in Stonecrest from November 2006 through present.

Motion to approve a refund of the educational system impact fee on active permits in Stonecrest that were paid but have not yet received a final certificate of occupancy (\$15,568).

Motion to require proper documentation from both the contractor and the owners as to the recipient of the refund if the Board's decision is to refund any fees.

Mr. Niblock noted staff recommended denial of a refund request based on the fact that the fees were requested for refund where appropriately charged on building permits in a development in which an exemption of the education system impact fee had not been requested nor approved.

Acting Growth Management Director Jimmy Massey noted the educational impact fee was established (by an Ordinance approved in 2006), and the School Board subsequently approved it, to allow for projects that were age restricted to apply and receive an exemption. He noted staff had not entertained this type of request before as other refunds were issued for educational impact fees when projects received the exemption had the impact fee collected in error. Mr. Massey advised that Stonecreek, Pulte Homes, received the exemption, but staff inadvertently collected the impact fee and therefore approximately \$3,500 was refunded.

Mr. Massey noted the current request was to refund an educational impact fee after the Ordinance had been adopted. Chairman Payton questioned if fees were paid subsequent to the adoption of the Ordinance. Mr. Massey noted it was paid after. Commissioner Stone inquired as to why the subdivision was charged an impact fee. Mr. Massey noted the Ordinance required the subdivision to apply and be approved for the exemption as there contained no automatic blanket exemption.

Commissioner Stone reiterated that the entire development had to apply and never did. Mr. Massey noted that was correct as it was only recently that an application was made.

Commissioner McClain inquired if a 55+ subdivision had to file with every permit. Mr. Massey noted the development was applied for as a whole and the exemption was either granted or denied. He noted examples of Stonecreek where groupings of subdivisions or phases were applied for.

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Commissioner Stone questioned if the application for exemption was made in July. Mr. Massey stated that was correct. Commissioner Stone expressed concern as to why an application was not made after the Ordinance was adopted and questioned if there were any families, not 55+, in the development. Mr. Massey opined there was not.

Commissioner Fitos questioned if Stonecrest developed (as a 55+ age restricted community) before the Ordinance was adopted. Mr. Massey stated that was correct as the original Development of Regional Impact (DRI) was issued in 1991. Commissioner Fitos stated the issue was that the Board adopted a new Ordinance in 2006 and there was subsequent building in Stonecrest afterward, but since it was obvious that it was age-restricted, there was the assumption that education fees would not apply. She clarified that the matter was that a formal application was not completed asking for the exemption on subsequent building that occurred after the Ordinance was adopted, so it was a paperwork issue. Mr. Massey stated that was correct.

Chairman Payton inquired if the Board was going to hold up the applicant because of a scrivener's error. Mr. Massey noted with the transportation, as well as the education impact fee, there was discussion regarding the creation of a retirement category. The Commission then decided to look at the issues on a case by case basis, so the process of applying was put in place.

Commissioner Stone stated when the workshops were held, the consultants, even from the School Board, noted the only way to charge impact fees was that an impact had to be created, justified and proved. He acknowledged the 55+ community and advised that there was no justification as to an impact being created on the educational system to charge an impact fee.

Jimmy Gooding, attorney representing Armstrong Homes, appeared and noted the issue was simple paperwork as Stonecrest had and always would be an age restricted community. He stated everyone knew that before the education impact fee Ordinance was adopted, but what his client did not know was that the developer had to apply to get the exemption and did not accomplish that task.

Mr. Gooding stated Chris Armstrong did not know that the money was paid in error because his staff, when pulling the Certificates of Occupancy (CO's), would pay whatever amount the County dictated. The County, not having any exemption on file, included the education impact fee as part of the overall fee that was paid. Mr. Gooding noted when his client found out, he applied for a refund. He noted the irony of being caught by the error because Mr. Armstrong supported the education impact fee, as well as the transportation impact fee since infrastructure was needed.

Mr. Gooding noted the Ordinance indicated the applicant shall file with the County Administrator an application for exemption prior to receiving a building permit. He advised that no one did apply, but the Code did not specifically state that if an applicant failed to apply for an exemption that the person could not come back and seek a refund. Mr. Gooding noted the Ordinance exacted money out of people and should not be construed in a way to punish the fee payer to the benefit of the wrongly enriched government entity. He stated there was no prohibition on applying for a refund afterward and the Board ought not read one into it.

Mr. Gooding noted staff was not recommending against the refund for all of the permits, but rather the ones which a CO had not been issued (approximately \$15,000). He advised that staff recommended the refund when the exemption was not applied for before those permits were issued. He stated he was suggesting that there was not a legitimate reason to deny the refund on approximately \$400,000 and advised of the

School Board's consultant remarking about a Florida Supreme Court decision (Volusia County versus Aberdeen) indicating that the school impact fees could not lawfully be assessed on age restricted communities because fees must confer a special benefit on the fee payers in a manner not shared by those paying the fee. Mr. Gooding advised that the benefit did not exist in an age restricted community, therefore the County could not lawfully collect the fee.

Mr. Gooding clarified that if the fee could not lawfully be collected from Mr. Armstrong, then the fact that it failed to turn in a piece of paper did not matter as it was an unlawful exaction. He commented on Mr. Yancey's letter, noting money should be returned if it was wrongfully paid, according to the Florida Supreme Court since it was not used to build schools to benefit those residents.

Mr. Gooding stated Mr. Armstrong was justified in assuming that everybody knew that Stonecrest was exempt as he did know about the Ordinance and applied for exemption in other communities that he developed, such as JB Ranch. He noted the issue was that Stonecrest had been in existence for 15 years ahead of time and no one thought the County did not know of the age restriction. Mr. Gooding commented on excusable neglect, noting Marion County was not a "government by gotcha," where money would not be returned for something paid for by mistake since it was not a principle that was and would be supported. He noted State law supported the principle in a different context and referred to State Statute 215.26 that indicated the State Financial Officer could refund money to any person who had paid it or its heirs, successors or assignees, either if it was overpaid where it was not due or any payment made into the State Treasury in error. Mr. Gooding noted the principle, even though the Statute was not applicable to the County as it dealt with the State, was that government should not keep money that was paid by mistake, which happened in this occurrence. He advised that it was a justifiable, reasonable mistake and noted that it was money that would go to a branch of the government that was not going to spend it for the purpose in which it was collected.

Mr. Gooding noted staff indicated that if any money was given back, Mr. Armstrong was required to obtain the consent of the residents of the homes that were living there before money was refunded. He clarified that the residents did not pay the fee, but rather Mr. Armstrong did. Mr. Gooding explained that when other government exactions were mistakenly paid, the government would refund it to the people who paid it, not the successors in title. The State Statute indicated the person who paid same (or his or her heirs, personal representatives or assignees) would be paid back. Mr. Gooding noted staff assumed that the impact fees were included in the purchase price when they were not as Mr. Armstrong inadvertently paid them, so it was not included in purchase price of the house. He addressed the administrative burden for Mr. Armstrong, noting it was a mistake that approximately \$400,000 was paid before a mistake was realized.

Mr. Gooding clarified that Mr. Armstrong should be refunded and not required to obtain the homeowners' consent.

Commissioner Fitos questioned how the error was discovered. Chris Armstrong, Armstrong Homes, noted it was realized in the accounting at the end. He stated both subdivisions were being developed (JB Ranch and Stonecrest) and two model homes from each were compared and the \$4,000 difference was discovered. Mr. Armstrong noted he did not normally review the COs, but did regarding lumber, concrete bills, etc.

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Commissioner McClain commented on the assumptions made, because the subdivision was a 55+ community, that it would not be charged an educational impact fee. Mr. Armstrong agreed, noting there were 150 homes going into the active adult community and once a mistake was made the first time and not caught, it would roll through since there was no difference in price. He stated Stonecrest was in existence 10 years before he started building homes in the community.

Commissioner Stone noted he did not see how the Board could refuse the request for refund and inquired if the School Board representatives could legally defend the impact fee charge.

Commissioner Fitos asked if a methodology was put in place that identified (post 2006 when the Ordinance was adopted) all of the requisite exemptions that needed to be filed. She clarified that the burden should not be placed on the clerical assistants to check, but something should be documented in the files for the age restricted communities.

Mr. Massey advised that the information on the subdivisions was already collected, especially on the age restricted subdivisions. He stated he would further explore other mechanisms that could be put in place, noting one of the items to look for was removing the requirement for applications if the County was to automatically grant the exemptions. Commissioner Fitos noted it would not occur on a new development, but Stonecrest was an established development where there was an intervening Ordinance in the middle of the process, with subsequent development after that point in time.

Commissioner Stone stated he would go back and review the adopted Ordinance that required the educational impact fee as to how it was worded and what was discussed at that time and commented on grandfathering in the subdivisions in existence up until that point (2006) as an impact fee could not be charged if there was no impact created. He suggested having all future 55+ communities' exemptions on file and grandfathering in the ones in existence prior to 2006.

Wally Wagoner, Deputy Superintendent of Operations, Marion County Public Schools, appeared and noted the School Board did not want anyone to pay any impact fee that was not due. He expressed concern with the School Board being responsible for knowing that the money the County provided could have been spent, noting the School Board should not be in the position of having to refund any money that was paid to them and used. Mr. Wagoner suggested that the proper accounting precautions were placed in the front end.

Commissioner Stone inquired as to whether funds from the impact fee account were paid to the School Board. Mr. Massey noted the funds had not been paid, but he would specifically find out. Mr. Niblock stated staff could go back and check. Mr. Wagoner noted the School Board had every dollar that was obtained from the impact fees still in the account as there had not been a project that met the criteria for using those funds.

Commissioner Stone questioned if it was better for the School Board to provide the reimbursement if the Board approved the item versus having County staff refund.

Commissioner Amsden inquired as to the number of years and process regarding the educational trust fund. Mr. Massey noted the School Board received a check from the County on a quarterly basis. In response to Commissioner Amsden, Mr. Wagoner noted the funds were currently sitting in the School Board account.

Commissioner Stone questioned why the County was included in the refund process if the applicant could have applied to the School Board system itself since it retained the funds. Mr. Wagoner stated it was a County Ordinance. Mr. Gooding noted the funds had to come from the County because it was a County Ordinance and the County collected the funds. He clarified that the applicant did not have any standing to go to the School Board and ask them to give money back because it was collected under the County's Ordinance. Chairman Payton noted the County was paid and paid to the School Board in error, so staff would have to ask the School Board to refund the money for the County to refund to the payer.

Mr. Gooding stated Mr. Wagoner did not sound like the School Board was being unfair as the money had not been spent. He disagreed that if it was included in the price of the home, then the builder would have known the impact fee was being paid and passed it onto the consumer, which was not what occurred. Mr. Gooding advised that if the money was not spent, then there should not be a problem requesting it back. Chairman Payton noted it was a matter of whether the County would or would not request the funds.

Commissioner Amsden inquired as to the number of subdivisions in a similar position as Armstrong Homes as it may be hard to detect. Mr. Massey noted it was possible to have some exposure, but most of the larger subdivisions had already received the exemption, including On Top of the World (OTOW), Stonecreek, Summer Glen, etc. He advised that exposure was more prevalent when going back and reviewing those subdivisions that were mentioned in terms of being grandfathered. Mr. Massey acknowledged there may be a possibility that a subdivision in years past was developed as age restricted and, over time, became non-age restricted.

Commissioner McClain commented on making two motions, with one approving the recommended action to pay the \$15,000 based on the request of an exemption. He noted the Board was not going to give the other amount based on an exemption, but on a refund due to having knowledge that the subdivision was a 55+ community and developed that way and a paperwork error was made. Mr. Fowler noted two motions could be made, but the underlying premise for the motions would be that it would be illegal to charge the impact fee in a community that the Board knew was age restricted and did not meet the legal requirement for charging an impact fee.

Commissioner Stone stated one motion could be made to refund any and all monies collected for the school impact fee. Mr. Fowler stated that was correct. He noted if the Board was considering amending the Ordinance to clarify the matter or revise the procedures for the exemption, he would recommend a blanket exemption as for other categories of properties, eliminate the requirement that they have to apply for an exemption, but yet maintain the provision in the Ordinance that acknowledges if there was a change in the future ownership requirements that affected the impact fees. Chairman Payton noted the discussion in regard to amending the Ordinance was for another day. He stated the current discussion considered if the applicant paid the money in error and did the County know.

Chairman Payton stated a mistake was made and needed to be rectified. He stated he understood Mr. Wagoner's point of view as he had the right to reasonably expect that any funds received from the County were unencumbered and staff needed to make certain of that on a going-forward basis.

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A motion was made by Commissioner Stone, seconded by Commissioner Fitos, to refund the request for the educational system impact fees for any and all funds that were collected for Stonecrest.

Mr. Gooding requested clarification if the motion included a requirement to obtain homeowners' consent. Commissioner Stone noted that was not part of the motion. Commissioner McClain inquired as to the specifics as to the reason why the refund was being allowed. Commissioner Stone noted the fees should not have been charged as it was illegal to charge it in the first place.

Commissioner Fitos inquired as to the amount. Mr. Gooding clarified that it was the \$431,551 for which COs had been issued, plus the \$15,568. Mr. Massey concurred. Mr. Fowler advised that the motion did not require a specific amount. The motion was unanimously approved by the Board (5-0).

Mr. Gooding stated he just wanted whatever was owed and not more money than was paid in.

Projects & Programs – (9.G.) – County Administrator Niblock presented the following recommendation in regard to Doing More with Less Report, Moving Forward Initiatives:

Description/Background: Attached is the October update on the five (5) Major Issues facing Marion County that were identified in the "Doing More With Less" report that was presented to the BCC at the April 13, 2009, workshop and adopted unanimously on April 21, 2009. The report is divided into the following five (5) sections: Improve Internal/External Communication and Create a Continuously Improving Service Culture and Organization; Stimulate and Encourage Diversified and Sustainable Economic Growth; Address the Long-Term Disposal of Solid Waste; Address the Management of our Water Supply and the Long-Term Protection of our Springs and Aquifer; and Improve our Transportation Infrastructure. Each section details identified action items, time frames for completion, progress made on each action item, and finally the date of completion. Also, a second report called "Moving Forward Initiatives" is attached. These Moving Forward Initiatives are directly related to the Doing More with Less Report, but provide an additional overview by specific projects and/or initiatives by department.

Budget Impact: None.

Recommended Action: The Board is requested to review this report and provide comments or questions.

Advisory Committees/Ordinances – (10.A.) – A motion was made by Commissioner McClain, seconded by Commissioner Fitos, to accept the resignations and approve letters of appreciation to the following: Jack Rainford, David L. Craft and Timothy Nick for their service on the License Review Board/Construction Board of Adjustments and Appeals; and R. David Greer for his service on the Well Florida Council. The motion was unanimously approved by the Board (5-0).

Commissioner Stone questioned if the Advisory Committee was still in existence by accepting all the resignations. Mr. Fowler noted one of the resignations was an alternate and stated there were 11 members on the Advisory Committee.

Resolutions/Solid Waste – (11.A.) – A motion was made by Commissioner McClain, seconded by Commissioner Fitos, to schedule a public hearing on Tuesday, October 20, 2009 at 10:00 a.m. to establish operating hours for solid waste disposal at all County Solid Waste Facilities to include Memorial Day as an observed holiday.

In response to Commissioner Stone, Solid Waste Director Ken Whitehead noted the Resolution to be brought forward was to add Memorial Day as an observed holiday and allow the Solid Waste Director latitude to extend the hours at the landfill or the recycling centers as appropriate during emergencies or in response to unusual conditions. He noted there was unanimous consent from the haulers to close the landfill that day as long as the next day it could be opened an hour later. Mr. Whitehead noted that was not an unusual request and advised that customers would not see much difference as there would not be any sign changes, etc. He clarified that it was an opportunity for staff to assist the haulers in getting garbage off the ground after being dormant for a day.

Commissioner Stone expressed concern that the citizens would believe the County was going to discuss reducing the hours or closing up more days, etc. Mr. Whitehead clarified that the Resolution would specifically state what he just explained.

The motion was unanimously approved by the Board (5-0).

Contracts & Agreements/Municipalities/Road Improvements – (11.B.) – A motion was made by Commissioner McClain, seconded by Commissioner Stone, to schedule two public hearings on Tuesday, October 20, 2009 and Tuesday, November 3, 2009 at 10:00 a.m. to consider a proposed amendment to the SR 200 Master Traffic Mitigation Agreement. The motion was unanimously approved by the Board (5-0).

County Attorney – (11C.) – A motion was made by Commissioner McClain, seconded by Commissioner Amsden, to schedule the Selection Committee Meeting on Tuesday, October 27, 2009 at 9:00 a.m. to interview the top three ranked firms to provide County Attorney Services in regard to 09P-042. The motion was unanimously approved by the Board (5-0).

Comprehensive Plan – (11.D.) – A motion was made by Commissioner McClain, seconded by Commissioner Stone, to schedule a workshop on Tuesday, October 27, 2009 from 2:00 p.m. to 4:00 p.m. to discuss the proposed Evaluation and Appraisal Report (EAR). The motion was unanimously approved by the Board (5-0).

Budgets/Projects & Programs – (11.E.) – A motion was made by Commissioner McClain, seconded by Commissioner Amsden, to schedule a workshop on Thursday, November 19, 2009 at 8:30 a.m. to review County Departments as follows: Information Technology Department from 8:30 a.m. to 10:30 a.m.; Agriculture Extension Office from 10:30 a.m. to 12:00 p.m.; and Transportation Department from 1:30 p.m. to 5:00 p.m. The motion was unanimously approved by the Board (5-0).

Commissioners – (12.A.) – The Chairman acknowledged receipt of the October 2009 Commission calendar.

Parks & Recreation – Chairman Payton stated someone had signed up to address the Board. Mary Yochheim, SE 106th Court, appeared and noted she had a son

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that graduated from Hillcrest and had cerebral palsy making him wheelchair-bound. She stated he was an avid participant in the Special Olympics and noted an event held at Carney Island last Saturday called the Sports Ability, sponsored by the Florida Disabled Outdoorsman Association (FDOA) that allowed children and adults of all ages to enjoy water sports, kayaking, tubing, etc. with many of local Ocklawaha area residents that volunteered their boats, time and ensured safety above all.

Ms. Yochheim noted on behalf of her son Philip, who was 22, she wanted to thank the Board for the wonderful opportunity regarding the Special Olympics.

Utilities – Commissioner Fitos questioned the progress in regard to the hiring process for the Utilities Director. She clarified that the Board was at a critical juncture in terms of the last workshop with the City of Ocala as some of the objectives presented required further collaboration relative to this issue. Commissioner Fitos noted the new Utilities Director would need to have the wherewithal to not only navigate the County's own utility system, but be able to negotiate and collaborate with the City. Mr. Niblock noted Assistant County Administrator of Public Works Larry Thacker had been Acting Utilities Director for the interim and a point of contact with Assistant City Manager Matt Brower. He commented on the committee consisting of citizens and County staff that was involved with the process, noting a few of the outside paper candidates fell to the wayside and two in-house applicants came in at 3rd and 4th place in the voting, however, with the drop off of the top two candidates, one internal applicant became the unanimous recommendation of the committee. Mr. Niblock stated he would bring the item forward at the next Board meeting.

Commissioner Fitos expressed concern with the best interest long-term. Chairman Payton directed Commissioner Fitos to work with County Administration.

County Planning/Projects & Programs – Commissioner McClain commented on a low impact development seminar in Marion County that occurred several weeks prior, noting discussions were held regarding what government could do to help. He suggested staff compile a package of criteria for prospective developers interested in building low impact developments, even though there were many pieces in the Land Development Code (LDC), etc.

Commissioner McClain stated the package would provide another tool for the types of development in Marion County, including cluster and development, creating more green space, etc. Mr. Niblock stated staff could put that together and questioned if the Board wanted to review and comment or schedule a workshop. Commissioner McClain directed staff to circulate their recommendations before scheduling a workshop.

County Administration/County Employees - Mr. Niblock noted there may be a recommendation for the Assistant County Administrator of Public Services on the next agenda as the interview process would be completed this week.

Bonds/Commissioners – (12.B.) – A motion was made by Commissioner Stone, seconded by Commissioner McClain, to approve surety bond renewals for all County Commissioners. It was noted that the total cost was \$505 and funds were available. The motion was unanimously approved by the Board (5-0).

Municipalities/Parks & Recreation – Commissioner McClain noted the County took over the Belleview Sportsplex as of July 1, 2009 and commented on big improvements made. He thanked the Parks & Recreation Department.

Mr. Niblock provided a follow up, noting Mr. Harvey Vandeven was involved with the Rotary Sportsplex and helped operate the programs. He stated the Rotary Sportsplex had been awarded the 2010 National Cal Ripken Little League Tournament where 10 teams would play for 10 days. Mr. Niblock noted Commissioner Stone pointed out that Wrigley Field had been picked as the showcase park in the State publication for awards and recognition.

Parks & Recreation Director Gina Peebles advised (in regard to the Special Abilities event) that the City of Ocala, Marion County and the FDOA, in partnership, provided a two day outdoor experience for people of all abilities with the City hosting more traditional type functions, such as pool, tennis and basketball, while the County hosted outdoor recreation based events such as kayaking, pontoon boat rides, archery, target shooting, etc. She stated it was well attended and thanked the participants, Board and volunteers.

County Planning/Resolutions/Transportation – (7.B.1.) – Mr. Fowler noted with regard to whether or not the establishment of an impact fee created a lien (as discussed earlier), his review of the County Code indicated it did not create a lien.

Chairman Payton inquired as to the need for the Board to enact some legislation for even a subordinate lien (by amending the provision regarding annual payments to require it). Mr. Fowler noted he could understand a primary lien may be in the way of financing, but it could at least be a subordinate lien.

Commissioner Amsden asked if the same applied to leased property. Chairman Payton stated it should become a lien. Mr. Fowler noted he would review the issues regarding establishing a lien and advise the Board. He stated the Ordinance could be amended if desired.

Communications – (13.) – For information and record, the Chairman acknowledged receipt of the following Notation for Record correspondence, items A through C from County Administrator Niblock, and items D through K from Clerk Ellspermann:

County Administrator:

- A. County Administrator Informational Items:
 - 1. Old Business.
 - 2. Solid Waste Operations Report, Monthly Litter Control and Monthly Community Service Weekend Program Summary Reports – August, 2009
- B. Alcade & Fay Progress Report dated September 17, 2009, Fiscal Year 2010 Congressional Appropriations Process.
- C. Present Letter from City of Belleview dated September 10, 2009 regarding Marion County Parks Partnership Grant, Pavilion - Restroom at Fred King Playground.

Clerk Ellspermann:

- D. Present letter received from Secretary of State's office advising that Ordinance 09-27 (Zoning) was filed.
- E. Present homesteaded parcel which the County may purchase (within 90

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days from 9/9/09) for the opening bid amount, pursuant to Chapter 197.502(6)(c), Florida Statutes and 12D-13.063(5)(2) of the Florida Administrative Code.

- F. Present the adopted budget for the Village Center Community Development District for fiscal year 2009/2010 in accordance with Chapter 190.008(2)(b)(c), Florida Statutes.
- G. Present the adopted budget for the Village Community Development District No. 4 for fiscal year 2009/2010 in accordance with Chapter 190.008(2)(b)(c), Florida Statutes.
- H. Present the Acquisition or Disposition of Property forms authorizing changes in status, as follows: 22587, 27628, 29318, 29325, 29426, 29427, 29431, 29432, 30129, 30657, 31171, 31200, 32086, 32398, 32873, 33784, 34282, 34846, 35415, 36035, 36096, 37701, 38179, 38182 and 38195.
- J. Present regular Report of Utilization of Reserve for Contingencies received from Budget Director Tomich.
- K. Present for information and record, minutes and notices received from the following committees and agencies:
 - 1. Board of Adjustment – August 3, 2009.
 - 2. Code Enforcement Board – August 26 and September 9, 2009.
 - 3. Development Review Committee (DRC) – August 31, September 8 and 14, 2009.
 - 4. Marion County Housing Finance Authority – December 8, 2008, March 19 and June 9, 2009.
 - 5. Parks and Recreation Advisory Council (PRAC) – August 19, 2009.
 - 6. Public Service Commission (PSC) – Order Approving Standard Offer Contract and Associated Tariffs re: Progress Energy Florida, Inc.; and Order Approving Revised Tariffs re: Progress Energy Florida, Inc.
 - 7. Southwest Florida Water Management District (SWFWMD) – Notice of Public Input Meetings for Update to Schedule for Establishment of Minimum Flows and Levels. (For minutes, visit the website at www.WaterMatters.org.)
 - 8. St. Johns River Water Management District (SJRWMD) – Fiscal Year 2009-2010 Budget in Brief (the comprehensive budget document is available on the Districts website at www.sjrwmd.com).
 - 9. Transportation Planning Organization (TPO) – September 22, 2009 Agenda (For minutes, visit the website at wwwocalamariontpo.org).

There being no further business to come before the Board, the meeting thereupon adjourned at 11:39 a.m.

James T. Payton, Jr., Chairman

Attest:

David R. Ellspermann, Clerk

Adopted by the Board of County Commissioners on Tuesday, November 17, 2009.