

BOARD OF COUNTY COMMISSIONERS

MAY 27, 2008

A regular meeting of the Board of County Commissioners was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman D'Aprile, Commissioner Duffy, Commissioner Cummings, Commissioner Moore, and Commissioner Loftus. Also in attendance were County Attorney Knowlton, Interim County Administrator Baltz, Finance Director Navan, Executive Assistant Hunter, and Deputy Clerk Manley. The following members were absent: None. The meeting was called to order at 9:00 AM.

Invocation was given by Father Leo Riley, St. Charles Borromeo Catholic Church, followed by the Pledge of Allegiance.

Changes to the Agenda:

Addition #1: Requested By: Administration - Regular Agenda Item Z-8 - RECOMMENDED ACTION: Set a Public Hearing on June 10th to have the Board accept Public Input for the proposed changes to the CDBG Hurricane Recovery Grant 06DB-3C-18-01-W05 for the reallocation to the New Operation Cooper Street addition project.

Change #1: Requested By: Growth Management - Public Hearing VI-1 moves to Regular Agenda Item Z-7: RECOMMENDED ACTION: Consider the following a) Adopt a Resolution establishing the Boca Grande Advisory Committee; and b) Appoint the members of the Advisory Committee.

COMMISSIONER LOFTUS MOVED TO APPROVE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER MOORE.  
Motion Carried 5:0.

Special Recognition

Proclamations - Commissioner Duffy

AAA Twelfth Annual Safe Teenage Driver Awareness Month the month of June 2008.

COMMISSIONER LOFTUS MOVED TO APPROVE AAA TWELFTH ANNUAL SAFE TEENAGE DRIVER AWARENESS MONTH PROCLAMATION THE MONTH OF JUNE 2008, SECONDED BY COMMISSIONER MOORE.  
Motion Carried 5:0.

The Proclamation was accepted by Steve Carter. Chairman D'Aprile thanked Mr. Carter for his support and efforts with young people.

Myasthenia Gravis Awareness Month the month of June 2008.

COMMISSIONER MOORE MOVED TO APPROVE MYASTHENIA GRAVIS AWARENESS MONTH PROCLAMATION THE MONTH OF JUNE 2008, SECONDED BY COMMISSIONER LOFTUS.  
Motion Carried 5:0.

The Proclamation was accepted by Raymond Melaugh.

National Garden Club Week the week of June 1, 2008 through June 7, 2008.

COMMISSIONER LOFTUS MOVED TO APPROVE NATIONAL GARDEN CLUB WEEK PROCLAMATION THE WEEK OF JUNE 1, 2008 THROUGH JUNE 7, 2008, SECONDED BY COMMISSIONER MOORE.  
Motion Carried 5:0.

The Proclamation was accepted by Lee Ann Ferriola, President of the Port Charlotte Garden Club.

OCEAN'S Sunflower Senior Appreciation Day the 28th day of May, 2008.

COMMISSIONER MOORE MOVED TO APPROVE OCEAN'S SUNFLOWER SENIOR APPRECIATION DAY PROCLAMATION THE 28TH DAY OF MAY, 2008, SECONDED BY COMMISSIONER LOFTUS.  
Motion Carried 5:0.

No one was present to accept the Proclamation.

Race Unity Week the week of June 8, 2008 through June 14, 2008.

COMMISSIONER LOFTUS MOVED TO APPROVE RACE UNITY WEEK PROCLAMATION THE WEEK OF JUNE 8, 2008 THROUGH JUNE 14, 2008, SECONDED BY COMMISSIONER MOORE.

**Motion Carried 5:0.**

The Proclamation was accepted by Albert Sensley.

Joan E. Sensley read a prayer for America.

Employee Recognition - None

Award Presentations - None

**I. CITIZEN INPUT - AGENDA ITEMS ONLY**

Jane Brenner, Vice President of the Charlotte County Historical Advisory Committee, spoke in support of agenda item L-2 and the importance of completing Phases II and III of the countywide survey of historical resources in Charlotte County; indicated historical resources and archeological sites are being damaged and/or disappearing rapidly; and in order to save them we must know they are there, which is why the countywide survey is so vital.

Attorney Geri Waksler spoke on behalf of her client, Harbor Nissan, in support of Regular Agenda Item Z-6.

Jack Fawsett, Chairman of the NW Port Charlotte Advisory Board for Waterway MSBU, spoke in support of agenda items F-1, F-2, and in support of retaining the services of Mr. Baltz (Z-5).

Charlotte Ventola commented on agenda item Z-6; indicated that she was a member of the CRA, which was going through the redesign at the time hurricane Charley hit; stated that it was never the intent of the CRA Board for property owners to incur excessive expenses; and spoke in support of retaining the services of Mr. Baltz (Z-5).

Deary Hamilton, Mission Development Specialist from the Bread of Life Mission, and Volunteer Leader with the Charlotte County Collectives Ten Year Homeless Plan spoke on Regular Agenda Item Z-1; indicated that elected official are very important to the Continuum of Care (COC) plan; and requested that the Board offer to serve to solicit as a stakeholder to the plan.

**II. COMMITTEE VACANCIES**

*Charlotte County is seeking volunteers to serve on the following Committees:*

*Beaches and Shores Advisory Committee - is seeking one member. Must be a resident of Charlotte County and have an interest in the preservation of beaches and shores.*

*Boca Grande Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to serve as the alternate member. The term shall be for two-years.*

*Construction Board of Adjustments and Appeals - is seeking one member to serve as an alternate. Must be a licensed member of the construction industry.*

*Environmentally Sensitive Lands Oversight Committee - is seeking two volunteers who are residents and electors of the County. One volunteer is needed representing the "business/land development" category and another is needed to represent the "environmental expertise" category.*

*Gardens of Gulf Cove Street and Drainage Unit Advisory Committee - is seeking four regular members and one alternate member. Must be landowners and residents within the unit.*

*Gulf Cove Waterway Advisory Committee - is seeking one member to serve as the alternate for a two year term. Must be a landowner and reside within the unit.*

*Environmentally Sensitive Lands Oversight Committee - is seeking two volunteers who are residents and electors of the County. One volunteer is needed representing the "business/land development" category and another is needed to represent the "environmental expertise" category.*

*Harbour Heights Street and Drainage Unit Advisory Committee - is seeking two volunteers to finish the remainder of unexpired terms. The first will expire on February 13, 2009 and the second will expire on February 13, 2010. Must live within the unit.*

*Lemon Bay Street and Drainage Advisory Committee - is seeking two volunteers to serve as regular members, and one volunteer to serve as the alternate member. The terms for the regular members are for two and three year terms, and the term for the alternate member is for two-years. All volunteers must be landowners and reside within the boundaries of the Unit.*

*Manasota Key Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to serve as the alternate member. The term shall be for two-years.*

*Placida Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to serve as the alternate member for a two-year term.*

*Charlotte Ranchettes Street & Drainage Unit Advisory Board - is seeking one alternate member. Volunteer must be a resident of Charlotte County and reside within the unit. Length of term - until January 23, 2009.*

*Rotonda West Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to complete a vacated term as the alternate member. The term shall expire on February 27, 2009.*

*South Bridge Waterway Municipal Service Benefit Unit - is seeking five (5) members and one (1) alternate member to the newly approved Board. All members shall be residents of the South Bridge Waterway Municipal Service Benefit Unit and the criteria for selection shall include technical knowledge or expertise in matters related to the work program of the MSBU or demonstrated interest in community service. To provide for continuity of membership, the initial terms of office shall be drawn by lot and be as follows: One member shall be appointed for one year, two members shall be appointed for two years and two members shall be appointed for three years. After the initial term, members shall serve a term of three years, except that of the alternate member shall always be two years.*

*South Gulf Cove Street and Drainage Advisory Committee - is seeking one volunteer who is a landowner and resides within the*

boundaries of the Unit to complete a vacated term ending February 13, 2009, as the alternate member.

South Gulf Cove Waterway Advisory Committee - is seeking one volunteer who is a landowner and resides within the boundaries of the Unit to complete a vacated term as the alternate member. The term shall expire on January 9, 2009.

Suncoast Waterway Maintenance Unit Advisory Board - is seeking five (5) members and one (1) alternate member to the newly approved Board. All members shall be residents of the Suncoast Waterway Maintenance Unit and the criteria include technical knowledge or expertise in matters related to the work program of the MSBU or demonstrated interest in community service. To provide for continuity of membership, the initial terms of office shall be drawn by lot and be as follows: One member shall be appointed for one year, two members shall be appointed for two years and two members shall be appointed for three years. After the initial term, members shall serve a term of three years, except that all terms of the alternate member shall be two years.

Tourist Development Council - is seeking one member who is involved in the tourist industry, who has demonstrated an interest in tourist development but who is not an owner/operator of motels, hotels, recreational vehicle parks or other tourist accommodations in the county and should be an elector of the county. This term is for four years.

Marine Advisory Committee - is seeking two volunteers to fill the unexpired terms of two Member-at-Large positions. These terms will expire December 31, 2008 and December 31, 2010.

**III. REPORTS RECEIVED AND FILED - None**

**IV. CONSENT AGENDA**

**COMMISSIONER LOFTUS MOVED TO APPROVE CONSENT AGENDA, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

Clerk of the Circuit Court

A. Finance Division

(1) **RECOMMENDED ACTION:** Approve Clerk's Finance Memoranda.  
**BUDGETED ACTION:** None

Memorandum #1 - Status of Contingency Reserves - FY 06/07

Memorandum #1A - Status of Contingency Reserves - FY 07/08

Memorandum #2 - Total Disbursements for the Period May 6, 2008 through May 16, 2008 in the amount of \$11,057,357.59.

B. Minutes Division

(1) **RECOMMENDED ACTION:** Approve Minutes For:

March 11, 2008 9:00 AM BCC Regular Board Meeting

March 14, 2008 9:00 AM Joint Meeting BCC/Punta Gorda City Council

**BUDGETED ACTION:** None

Board of County Commissioners

C. Commission Office

(1) **RECOMMENDED ACTION:** Approve the appointment of Daniel Cormier to the Construction Industry Licensing Board representing the "specialty contractor" category. Length of term is four years.  
**BUDGETED ACTION:** None

(2) **RECOMMENDED ACTION:** Approve the appointment of Daniel Gawenda to the Deep Creek Non-Urban Street and Drainage Unit Advisory Committee to finish a term vacancy created by a resignation. This term will expire January 2009. **BUDGETED ACTION:** None

(3) **RECOMMENDED ACTION:** Approve the reappointment of Dr. Bill Coy and Kreg Maheu to the West Charlotte Stormwater Utility Advisory Committee. Both Dr. Coy's and Mr. Mahue's appointments expired on March 16, 2008. Since that date, the vacancies have been duly advertised and no letters requesting appointment have been received. **BUDGETED ACTION:** None

(4) *RECOMMENDED ACTION:* Approve the reappointment of Eugene Leapley as the District #1 Representative on the Charlotte County Recreation and Parks Advisory Committee for a three year term that will expire on June 14, 2011. *BUDGETED ACTION:* None

(5) *RECOMMENDED ACTION:* Approve a Resolution of Charlotte County BCC for FL Congressional Delegation to urge the National Aeronautics and Space Administration to use domestic capabilities and options, and utilize the Kennedy Space Center in the integration and launching of future crew and cargo logistics missions to the International Space Station. *BUDGETED ACTION:* None

**Resolution 2008-050**

D. Administration

(1) *RECOMMENDED ACTION:* Set a Public Hearing on June 10th to have the Board accept Public Input for the proposed changes to the CDBG Hurricane Recovery Grant 06DB-3C-18-01-W05 for the reallocation to the New Operation Cooper Street addition project.

E. County Attorney

(1) *RECOMMENDED ACTION:* Adopt Resolution setting the maximum fees tow truck operators can charge for nonconsensual towing services. *BUDGETED ACTION:* No budget action is necessary.

**Resolution 2008-051**

(2) *RECOMMENDED ACTION:* Approve a settlement in the amount of \$62,500 in the lawsuit captioned Thomas Scruggs and Sandra Scruggs v. Charlotte County; Civil Case No. 05-703-CA. *BUDGETED ACTION:* The settlement amount will be funded by the Risk Management Department Self Insurance Fund.

F. Budget Office

(1) *RECOMMENDED ACTION:* Approve mailing the required first-class notification of proposed Municipal Services Benefit Unit (MSBU) assessment rates for FY08/09 for those units with a proposed rate increase above the previously established maximum rate or units assessed for the first time. *BUDGETED ACTION:* Mailing costs are

budgeted in Board Discretionary Funds, and will be charged back to the appropriate MSBU.

(2) *RECOMMENDED ACTION*: Cancel the public hearing scheduled for Wednesday, July 30, 2008 at Lemon Bay High School in Englewood to discuss MSBUs. *BUDGETED ACTION*: None

(3) *RECOMMENDED ACTION*: Request the Board set a public hearing for June 10, 2008 at 10:00 a.m. or as soon thereafter as may be heard, to adopt a revised ordinance to update the Five Year Capital Improvements Program (CIP) for FY2007/2008 through FY2011/2012. *BUDGETED ACTION*: None

G. Growth Management - No Items.

H. Economic Development

(1) *RECOMMENDED ACTION*: Approve and execute Economic Incentive Development Code Program Agreement between Charlotte County and Arcadia Aerospace Industries, LLC. *BUDGETED ACTION*: Funds have been paid through Economic Development Incentive Funds.

**Agreement 2008-022**

J. Environmental Services

(1) *RECOMMENDED ACTION*: a) Approve the funding of Environmental Lands Management Budget for the management of Environmental Lands using Capital Projects funding. This Budget will fund costs incurred by the Conservation Charlotte Program and other County mitigation properties, including, but not limited to, appraisal costs, consultants, staff time, and property management cost of current and future properties; and b) Approve Budget Amendment #08-A31 in the amount of \$225,794 and Budget Transfer #08-013 in the amount of \$225,794. *BUDGETED ACTION*: Approve Budget Amendment #08-A31 and Budget Transfer #08-013 in the amount of \$225,794.

K. Facilities Construction and Maintenance - No Items.

L. General Services

(1) *RECOMMENDED ACTION*: a) Rescind award of File #08-026, Ambulance Replacements in the amount of 368,519.04 to American

LaFrance, LLC of Sanford, Florida; and b) Award to Hall-Mark Fire Apparatus, of Ocala, Florida in the amount of \$358,500, to purchase Emergency Medical Units. BUDGETED ACTION: Budgeted amount for this is \$378,000.

(2) RECOMMENDED ACTION: a) Approve the ranking of firms for Request for Proposal #08-170, Charlotte County Survey of Historical Resources - Phase II, ranking as follows: 1st - Environmental Service, Inc; 2nd - Southeastern Arch Research, Inc; and b) Approve start of Negotiations; and c) Authorize the Chairman to sign the contract after completion of negotiations provided the fee does not exceed \$40,000. BUDGETED ACTION: \$40,000. Funding for this expenditure comes from the General Fund, Ad Valorem Taxes.

(3) RECOMMENDED ACTION: Approve Change Order #2 to Safety Mowing-Rights-of-Way, Section C-West County only, with Florida Mowing & Landscape Services, Inc., for the annual amount of \$5,700, for a revised total annual amount of \$313,244.16. This is an annual contract for Safety Mowing throughout Charlotte County. The South Gulf Cove area which is in Section C-West County, is requesting litter removal be included with their mowing cycles at the unit rate of \$950/cycle. There are currently six cycles per year; however, as we are already into the Contract, only five cycles will be required for this fiscal year, at a total increase of \$4,850. However, the additional annual cost is \$5,700, and will be included in the next term, should the contract be renewed. BUDGETED ACTION: Budget for this change order is available in the South Gulf Cove Streets and Drainage MSBU.

M. Human Resources - No Items.

N. Human Services - No Items.

P. Information Technology - No Items.

Q. Parks, Recreation and Cultural Resources - No Items.

R. Public Safety

(1) RECOMMENDED ACTION: Approve Budget Transfer # 08-014 in the amount of \$155,755 to provide additional funds for the annual contract for Baker Act Transport Services, which are provided by

Ambitrans Medical Transport, Inc. Current budget amount of \$45,000 is insufficient to fund the costs for the entire fiscal year. Expenses incurred from October 1, 2007 through April 30, 2008 are \$105,755. Budget transfer will allow for the estimated expenses to be covered for through September 30, 2008. BUDGETED ACTION: Approve Budget Transfer #08-014 in the amount of \$105,755. Funding provided from the General Fund-Ad Valorem Taxes.

S. Public Works - No Items.

T. Real Estate Services

(1) RECOMMENDED ACTION: Approve the attached Resolution approving the release of a portion of a ten-foot (10') wide drainage and utility easement located in Port Charlotte Subdivision, Section Forty-Four, and further authorizing the Director of Real Estate Services to execute the County Deed releasing said portion of said easement. (Owners: James F. and Paula A. Dexter) BUDGETED ACTION: None

**Resolution 2008-052**

(2) RECOMMENDED ACTION: Approve the attached Resolution approving the release of a portion of a recorded twenty-foot (20') wide canal maintenance easement and a portion of a platted twenty-five foot (25') wide canal maintenance easement, both located in Port Charlotte Subdivision, Section Forty-Four, and further authorizing the Director of Real Estate Services to execute the County Deed releasing said portion of said easements. (Owners: Evan B. and Jessica Robinson, Jr.) BUDGETED ACTION: None

**Resolution 2008-053**

(3) RECOMMENDED ACTION: Approve the Resolution authorizing the Board of County Commissioners to approve the Agreements for Exchange of Real Property between the County and Julio A. Morales, Julio C. Morales & Amy P. Morales, and Julio Alexander Morales & Amanda Christina Morales. BUDGETED ACTION: The \$3,006.27 funding for this item is budgeted in the South Gulf Cove Street and Drainage Municipal Services Benefit Unit.

**Resolution 2008-054**

(4) *RECOMMENDED ACTION*: Approve a resolution authorizing the acquisition of real property and easement interests in the Burnt Store Road Corridor as part of the Burnt Store Road Widening and Improvement Project Phase 1. *BUDGETED ACTION*: The FY08 Budget contains \$1,283,000 for land acquisitions in CIP Project c419901, Burnt Store Road Safety & Widening from US 41 to Lee County, Project total \$60,758,000. Land acquisitions in excess of \$1.2 million in FY08 will be covered by construction funding. Estimated costs for Phase 1 land acquisition is \$6.0 million. CIP funding will be re-budgeted for FY09.

**Resolution 2008-055**

V. Tourism Development - No Items.

W. Utilities

(1) *RECOMMENDED ACTION*: Set a workshop for June 10, 2008, at 2:00 p.m., or as soon as thereafter as may be heard, to discuss future wastewater expansion areas. *BUDGETED ACTION*: None

(2) *RECOMMENDED ACTION*: Approve a Resolution to borrow an amount not to exceed \$18,000,000 from the Pooled Commercial Paper Loan Program to (1) accomplish the expansion of the Burnt Store Reverse Osmosis Water Treatment Plant (BS WTP), and (2) to refinance a 2004 loan previously made to finance the acquisition of a utility system from Florida Water Services (FWS), including associated costs. *BUDGETED ACTION*: FY08 requested borrowing is (1) \$8,740,000 for the BS WTP, CIP project c330404, project construction total \$22,140,000 including deep well, production wells and monitoring wells, and (2) \$9,260,000 for a Commercial Paper Loan refinancing.

**Resolution 2008-056**

X. Building & Construction Services - No Items.

Y. Other Agencies - No Items.

V. REGULAR AGENDA

Z. Regular Agenda

(1) Human Services - RECOMMENDED ACTION: Consideration of County's role in the Continuum of Care Lead Agency Designation for Homeless Programs.

Director of Human Services Victoria Carpenter advised this item is a consideration for the County to become the lead agency in the Continuum of Care, which was requested by United Way and Homeless Coalition; summarized her Memorandum dated May 12, 2008 contained in the Board packet and requirements of the lead agency; recommended that the Human Services Department and the County continue working with the Homeless Coalition and COC in providing assistance with grant writing and some of the activities that are required, but not take on the lead; commented on the survey contained in the packet material of other county governments that have homeless programs and homeless coalitions, and pointed out that very few of the counties take on the full responsibility of lead agencies; encouraged the Homeless Coalition to look at partnering with other homeless coalitions in a regional approach; advised that a decision needs to be made today as to what role the Board wants to take the County into because by the middle of June 2008 a decision must be made on who will be the lead agency for the following year, which is necessary in order to compete for Federal and State grants that are coming; and advised that representatives from United Way and the Homeless Coalition are available to answer questions.

Commissioner Duffy requested clarification that based upon the survey Lee County's Human Services and some others take on the role of lead agency. Ms. Carpenter replied affirmatively and commented on the administrative oversight and financial responsibility for operations.

Commissioner Loftus stated he believes strongly in regionalism and would like to work more on a regional basis with this issue.

COMMISSIONER LOFTUS MOVED TO APPROVE STAFF RECOMMENDATIONS THAT CHARLOTTE COUNTY NOT TAKE RESPONSIBILITY AS LEAD AGENCY DESIGNATION FOR THE CONTINUUM OF CARE; THAT CHARLOTTE COUNTY HUMAN SERVICES IS WILLING TO ASSIST THE HOMELESS COALITION, ALONG WITH ITS OTHER PARTNERS, IN COMPLETING THE HUD GRANT APPLICATIONS FOR THIS NEXT FUNDING CYCLE AND IN REMAINING A MEMBER OF THE CHARLOTTE COUNTY COLLECTIVE; AND CHARLOTTE COUNTY

HOMELESS COALITION SHOULD EXPLORE A COLLABORATIVE PARTNERSHIP WITH OTHER LEAD AGENCIES OUTSIDE CHARLOTTE COUNTY SUCH AS SUNCOAST PARTNERSHIP TO END HOMELESSNESS WHICH SERVES SARASOTA AND MANATEE COUNTIES COMPLETELY WITH APPLICATIONS AND REMAIN; THAT CHARLOTTE COUNTY HOMELESS COALITION WORK WITH OTHER AGENCIES OUTSIDE CHARLOTTE COUNTY TO HELP END HOMELESSNESS, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

(2) Commission Office - RECOMMENDED ACTION: Appoint to the Edgewater North Waterway Advisory Committee one member by ballot. Howard Shaw and Herb Koenig has expressed a desire to serve, term ends September 12, 2010.

Chairman D'Aprile requested submittal of ballots. Mr. Baltz advised that Herb Koenig received three (3) votes and Howard Shaw received two (2) votes.

COMMISSIONER CUMMINGS MOVED TO APPROVE APPOINTMENT OF HERB KOENIG TO THE EDGEWATER NORTH WATERWAY ADVISORY COMMITTEE FOR A TERM ENDING SEPTEMBER 12, 2010, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

(3) Commission Office - RECOMMENDED ACTION: Appoint to the Tourist Development Council Donna Cutler as the owner/operator representative to replace Marian Schneider who has resigned, term ending April 12, 2012. Also, two volunteers have expressed interest in filling the position vacated by Kristine Wishard. Please choose by ballot one volunteer, Patti Pierron or Kim Lovejoy, term ending June 2, 2012.

Commissioner Duffy advised that the agenda and the ballots do not match. Mr. Baltz asked that this item be delayed until the proper names are clarified and brought back later in the meeting. (Board consensus to bring back later in the meeting.)

(4) Administration - RECOMMENDED ACTION: Discussion and possible direction on public safety radio system.

Assistant County Administrator Kelly Shoemaker advised that at the last Board meeting Chairman D'Aprile asked for this item to be brought back; that staff was given general direction at the Capital Improvement Program (CIP) meeting to eliminate the

purchase of a new radio system; provided a brief history of dates regarding Requests For Proposal (RFP); indicated that a contract was never approved because it was pulled before going to the Board to be awarded; and that the RFP was cancelled by letters sent to the firms on January 8, 2008, by the Director of Purchasing rejecting all proposals. Ms. Shoemaker stated that at the CIP meeting it was decided we would go with five (5) controllers from Motorola at a cost of \$296,000, which is an upgrade to our existing system, and one cell tower at a cost of \$2,181,000. Ms. Shoemaker reported it is staff's recommendation to stay with the decision made at the CIP meeting, but if the Board is interested in going back for an RFP staff requests that in addition to a bid request for the purchase of a digital system that a cost request be done for a lease in regards to a digital system.

**Chairman D'Aprile** stated he was the one who requested the item be brought back; that he was not present at the CIP meeting; provided an explanation of why he requested the item be brought back; stated he was told the new towers and system would not be compatible to some of the radios we currently have and that the cost of new radios would be about \$1500 per radio for 1200 new radios, and inquired if new radios was part of the new system cost or if the County had to buy new radios separately.

David Jacobs, Sales Manager with Tyco Electronics, explained that the proposal price of \$7 M does not include the radios. **Chairman D'Aprile** asked the cost of the radios. Mr. Jacobs stated the radios Tyco sells are different than what the County is buying now, have more capability, have the ability to interface with the State of Florida system, and costs approximately \$3,000 each versus the per radio cost of \$2,000 through the County's contract with E.F. Johnson. Mr. Jacobs said his understanding of the original plan is there was a CIP budget of \$8.6M, that Tyco's proposal is \$7M, and the remaining funds was intended for use to buy the radios that need replacing. **Chairman D'Aprile** questioned buying Tyco's equipment when the radios the County currently has cannot be used with it. Mr. Jacobs explained that the system Tyco offers is today's industry standard P25 digital system; that about half of the County's current radios will flash program to the new P25 standard and about 1200 of the older radios will not upgrade to the P25 standard; but his

understanding is those radios are rather aged and eventually will have to be replaced anyway.

**Chairman D'Aprile** stated he does not think the other Board members were aware of what he had gone through before voting and why he wanted this issue brought back for further discussion; expressed concern that when the County asked for a radio system bid that Tyco did not include the equipment to make the full bid accurate; indicated he does not like change orders; that he does not believe the County furnished Tyco all the information needed for the bid required, but that Tyco should also have advised that the additional radios would be needed and that the bid would be higher as a consequence; believes the ball was dropped by both parties; that he is not happy with the entire situation; and that for any future bid he wants to know the price for a complete system.

Fred Galert, East Coast Director for Tyco Electronics, explained that the system proposed by the County is a P25 system, a totally open protocol system, which means the County is no longer held hostage by any vendor with regards to the terminals/radios it buys in the future. Mr. Galert stated the system would take approximately a year and a half to two years to implement; opined the logic was the County could extend the life of any user equipment and add those units on in the future; and indicated that Tyco listed as an option the end-user equipment, or radios, that could be purchased at a later time. Mr. Galert pointed out that if this system is implemented, because the protocol is totally open, equipment does not have to be purchased from Tyco but can be purchased from any other vendor. Mr. Galert said Homeland Security is trying to make all the systems totally open protocol so in the event of a disaster users from other municipalities could come here and work in your network.

**Commissioner Moore** clarified Tyco's original proposal was \$6.7 M; that the proposal was for infrastructure only; that the 1200 replacement radios were included in the proposal as an option, but were not part of the \$6.7 M; that some radios in service will be replaced through the Nextel re-banding process and capable of working on P25 digital; that some radios in service can be upgraded to P25 digital; and about 1200 radios are analog only and will not re-program to the new digital standard. Ms. Shoemaker advised the total number of radios is almost 2700.

**Commissioner Moore** requested further clarification for the need of a tower.

Mr. Jacob explained that during the RFP process the need for coverage in the South County area was noted; that a couple State sites were proposed but the County had a landfill site they wanted to use, which was part of the RFP requirement. **Commissioner Moore** inquired if Tyco's \$6.7 M proposal included a tower. Mr. Jacobs advised Tyco's proposal included the tower and site equipment to enhance coverage in South County and could be removed if it was not desired. **Commissioner Moore** inquired if staff now wanted the tower out of the scope. Ms. Shoemaker explained that for ease of trying to move on staff recommended taking the tower out of the scope in regards to the radio system and putting it on the street now to get the tower taken care of; and indicated if we put off making a decision on a brand new radio system we could go ahead and implement the tower and get the coverage piece taken care of. **Commissioner Moore** requested clarification that the original bids to the two companies have expired by County standards and were formerly canceled. Ms. Shoemaker replied affirmatively.

**Commissioner Loftus** stated the scope of service was not clear when the RFP went out; indicated his initial understanding was different than what came about since the RFP was issued; and commented on his ethical concern with Motorola trying to appease the County after bids went out.

**Commissioner Duffy** asked why when the two RFPs went out and the two proposals came in, was it pulled from the agenda before being presented to the Board. Ms. Shoemaker explained there were questions regarding the scope as to whether it was all inclusive and took care of the complete needs. **Commissioner Duffy** commented on her conversation with Ms. Shoemaker about the need for 1200 additional radios and her thoughts that was the first time the Board was learning about it and found out later that the radios were in the original proposal. Ms. Shoemaker stated that it was not originally thought there would be so many radios. **Commissioner Duffy** requested clarification that this issue began because a letter was received from Motorola advising they could not support the current system and an upgrade was necessary. **Chairman D'Aprile** replied affirmatively. **Commissioner Duffy** expressed concern with communications from Motorola, indicated

that the cost to upgrade and build the new tower is almost the same as buying a whole new digital system, and opined we should go with the lowest bid on a new system.

**Commissioner Cummings** requested cost clarifications. Ms. Shoemaker advised \$300,000 would get us through 2014. **Commissioner Cummings** questioned why it was through 2014 when he thought we were only figuring two years. Ms. Shoemaker explained that what was presented to the Board at the CIP discussion is that the five controllers would get us through the year 2014 and could be serviced through that period. **Commissioner Cummings** asked what options other than suing for breach of contract were available to make it in Motorola's best interest to meet the terms of the contract and if there is a way to build in liquidate damages when writing the contract. Attorney Knowlton advised she did not immediately know but would check into it.

**Commissioner Cummings** commented on the price of this type technology possibly coming down and indicated he would rather go into a system like this a year or two late rather than being first. **Commissioner Cummings** stated that Motorola has not earned a trusting relationship with the County and pointed out it is our job to be skeptical, not trusting with any of the vendors; that on that basis we should write the tightest contract possible; and that if delayed a year and then go to the Tyco system money has still been saved. **Commissioner Cummings** does not agree the responsibility is as one-sided as has been described, indicated it is cheaper to upgrade to this system, and stated if the Chief says he can still effectively do his job with this system he is willing to accept that.

**Chairman D'Aprile** suggested holding off completely and going out for a new RFP; and asked Charlotte County Fire Chief DiDio if the current system needs to be fixed immediately. Chief DiDio explained it is not a "fix"; that in 2003 Motorola upgraded the system except for the five controllers at the Edgewater tower, which Motorola said are going obsolete and they can no longer service or get parts for. Chief DiDio advised the proposal in front of the Board for \$300,000 is to change out the five controllers at the Edgewater site, at which time the system would be good until 2014; that the analog system would stay; that all the radios we currently have would be used, but some of the radios would be replaced through re-banning because the Sheriff's

Department has some very old radios that need to be upgraded. Chief DiDio pointed out the Board has included in the packet material a contract by Motorola guaranteeing they could support the system to 2014 if the \$300,000 upgrades are done. **Chairman D'Aprile** stated he has no objections to Motorola or Tyco and that the entire thing should be stopped in order to determine the most economical way to go and the best system that can be obtained for the longer period of time. Chief DiDio stated that he, staff, and Administration agree with **Chairman D'Aprile's** recommendation to go back out to the RFP, get quotes on upgrades, on a new system with all equipment included, and lease/purchase options, so there would be three options for the Board to consider. **Chairman D'Aprile** agreed.

**Commissioner Loftus** stated that one of the main issues he questioned at the time of the original bids was the radios and he was assured the radios would be with the new system; and believes the wrong information was given from the beginning. Chief DiDio said he would accept the blame for the misconception, commented on the original intent for the RFP on the radios, and stated that now all the information is available we need to start fresh.

**Commissioner Duffy** clarified that a new digital system would be compatible with the State of Florida system. Chief DiDio replied affirmatively. **Commissioner Duffy** asked if our current system, upgraded with the five controllers, would make us compatible with the State of Florida system. Chief DiDio replied negatively. **Commissioner Duffy** asked what happens in the event of a disaster. Chief DiDio explained the capabilities the current analog system had by means of patching frequencies together and National Mutual Aid channels that are on the radios; and pointed out that the current system and the new P25 system have patch and Mutual Aid capabilities. **Commissioner Duffy** inquired about the difficulties the School Board had using their radios after hurricane Charley. Captain Regusco with the Charlotte County Sheriff's Department, Professional Standards Section, explained that at the time of hurricane Charley the School Board radios could not be utilized because of so many users on the system; that during the first five to seven days there were so many Fire and Law Enforcement agencies in from other areas, which required prioritization for Fire and Law Enforcement use first; and that after additional capability was added School Board and Public Utility radios could be used. **Commissioner Duffy** inquired about

Collier County's system. Mr. Jacobs explained that Collier County has a Tyco system and are currently in the process of upgrading their system to become a P25 system. **Commissioner Duffy** inquired if there were grants from Homeland Security to pay for this system. Ms. Shoemaker explained there are not as many grants available as there had been and there are requirements that we don't fit into.

**Commissioner Cummings** inquired if any of the type servers we were talking about now have had to be replaced in the past. Chief DiDio said no. **Commissioner Cummings** opined that delaying a couple years could cause the price to be less rather than more; and questioned where the money would come from to purchase a new system now.

**Commissioner Moore** asked who uses the radios. Ms. Shoemaker reported the radios are used by Fire/EMS, Sheriff's Department, School Board, and the City of Punta Gorda Police Department. **Commissioner Moore** asked how many from the School Board use the radios. Chief DiDio replied about 800. **Commissioner Moore** expressed concern there are 2700 radios. Chief DiDio explained that this includes all the radios, including those from Public Works, and indicated that many of the departments have portable radios.

Mr. Jacobs thanked the Board and staff for their patience and understanding and pointed out that this was a targeted County for Tyco Electronics to be aggressive and make a showpiece for the State of Florida to show that Tyco can not only put in a P25 system in Charlotte County, but connect to the State of Florida and have a marketing plan to be aggressive in pricing. **Chairman D'Aprile** advised that no decision would be made today and reviewed the options.

**Commissioner Loftus** said he would like to go out for a new RFP on this, believes it has been flawed from the beginning, has an ethical problem with it, and is not in favor of moving forward with Motorola. **Commissioner Moore** inquired if the Motorola representative should be given the opportunity to address the Board. **Chairman D'Aprile** indicated we understood Motorola's proposal but clarification had been needed from Tyco; that it is his intent for both Tyco and Motorola to have an opportunity to

bid again; that the safety of the County is of utmost importance; and asked Chief DiDio if it is necessary to do this immediately.

Chief DiDio explained that they would love to have a P25 system because it is state of the art new system but if the 5 controllers are upgraded the system we have now will still function well. **Chairman D'Aprile** stated consensus of the Board has been given to go for an RFP on a new digital system. **Commissioner Duffy** requested further clarification on Board direction. Ms. Shoemaker stated that her understanding of Board direction is go for an RFP that includes a cell tower, digital system, purchase and lease, and a price for radios. **Chairman D'Aprile** replied affirmatively.

**RECESS: 10:40 AM - 10:50 AM**

**V. REGULAR AGENDA** (continued)

**Z. Regular Agenda** (continued)

(3) Commission Office - **RECOMMENDED ACTION:** Appoint to the Tourist Development Council Donna Cutler as the owner/operator representative to replace Marian Schneider who has resigned, term ending April 12, 2012. Also, two volunteers have expressed interest in filling the position vacated by Kristine Wishard. Please choose by ballot one volunteer, Patti Pierron or Kim Lovejoy, term ending June 2, 2012.

**COMMISSIONER MOORE MOVED TO APPROVE THE APPOINTMENT TO THE TOURIST DEVELOPMENT COUNCIL DONNA CUTLER AS THE OWNER/OPERATOR REPRESENTATIVE TO REPLACE MARIAN SCHNEIDER WHO HAS RESIGNED, TERM ENDING APRIL 12, 2012, SECONDED BY COMMISSIONER LOFTUS.**

**Motion Carried 5:0.**

**Chairman D'Aprile** requested submittal of ballots. Mr. Baltz advised that Kim Lovejoy received four (4) votes and Patti Pierron received two (1) vote.

**COMMISSIONER MOORE MOVED TO APPROVE THE APPOINTMENT OF KIM LOVEJOY TO FILL THE POSITION OF VOLUNTEER TO THE TOURIST DEVELOPMENT COUNCIL VACATED BY KRISTINE WISHARD, SECONDED BY COMMISSIONER LOFTUS.**

**Motion Carried 5:0.**

VI. PUBLIC HEARING AGENDA - 10:00 AM

(2) Human Services - RECOMMENDED ACTION: Conduct a Public Hearing to pass and Adopt Ordinance amending County Code Sec. 1-8-64 Creation of the Affordable Housing Advisory Committee.

Victoria Carpenter explained that each County that receives State Housing Initiative Partnership Program (SHIP) funding Must meet Florida Statute 420.9076 requirements in creating a local Affordable Housing Advisory Committee; that committees must consist of eleven (11) members who represent various industries and interests; and that this public hearing is to make changes to the Code to reflect the statutory requirements. Ms. Carpenter read the eleven (11) member positions into the record as they relate to affordable housing that are required to amend the Ordinance.

COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-048, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

Ms. Carpenter requested the Commission invite eligible candidates to submit resumes to the Board of County Commissioners as soon as possible in order to have the members approved by the Board in June. **Commissioner Duffy** inquired if there were persons on the current Affordable Housing Advisory Committee that meet the criteria. Ms. Carpenter replied affirmatively and advised those persons have been invited to re-submit their applications in addition to those who have been waiting for the Ordinance to be amended. **Commissioner Duffy** recommended getting an article to the newspaper with the specific criteria. Ms. Carpenter advised staff would work with getting the advertisement out and invited anyone to call her directly if they would like to know more about the Affordable Housing Advisory Committee and the operations.

(3) Environmental and Extension Services - RECOMMENDED ACTION: Conduct a Public Hearing to consider approving changes to Chapter

4-4 of the County Code, changing the Sanitation District boundaries to include Don Pedro and Knight Island.

Jim Thomson explained that residents on Don Pedro and Knight Island requested those areas be considered for sanitation collection services; that in moving forward with this project all residents living on the island were invited to attend a Town Hall public meeting; that knowing not all residents would be able to attend the meeting a phone number and email address was given to assist residents in responding with their approval or opposition. Mr. Thomson reported that from the public meeting and email/phone responses received 80% of the residents are in favor of the change in the County Code and 20% are opposed. Ms. Thomson read emails from three residents who requested their positions be read into the record.

Ron Plotkin spoke in support of agenda item VI (3).

**COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

**COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-049, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

(4) Public Works - RECOMMENDED ACTION: Conduct a Public Hearing to consider approving an ordinance creating an advisory board for the Mid-Charlotte Stormwater Utility Unit. The proposed advisory board shall consist of one representative each from the Deep Creek (Non Urban) Street and Drainage Unit, Harbour Heights Street and Drainage Unit, Northwest Port Charlotte Street and Drainage Unit, Suncoast Boulevard Street and Drainage Unit and the Greater Port Charlotte Street and Drainage Unit.

Tara Musselman advised this agenda item is to create a MSBU advisory committee for the Mid-Charlotte Stormwater District.

Jack Fawsett spoke in support of Agenda item VI (4).

**COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-050, SECONDED BY COMMISSIONER MOORE.  
Motion Carried 5:0.

V. REGULAR AGENDA (continued)

Z. Regular Agenda (continued)

(5) Commission Office - RECOMMENDED ACTION: Discussion and possible direction regarding the County Administrator position.

Attorney Knowlton reminded the Board that an affirmative vote of four (4) Commissioners is required under the County Charter to appoint a new County Administrator.

Commissioner Moore asked who put this on the agenda. Attorney Knowlton advised that at the last Board meeting direction was given to bring this back to the Board and indicated that Mr. Baltz' current sixty-day contract expires June 16, 2008.

Commissioner Cummings said he is familiar with this process through other organizations; that the most difficult part when selecting candidates is having a deep confidence that you understand the character, integrity, and talent of the person being hired; that nothing replaces having worked with a person for years and when you have the confidence that you have the right person it is not fair to the other candidates coming in because you would never have that deeper understanding for the individual involved; and opined that Mr. Baltz is the right person for the job. Commissioner Cummings stated it has been presented if we do not go through a national search there would always be a cloud over Roger's head; indicated that within six (6) months Mr. Baltz' performance would speak for itself; and that a national search would be counter-productive, even setting aside the issue of costs involved.

Commissioner Moore agreed with Commissioner Cummings, and indicated he would be very comfortable with Mr. Baltz in the position of County Administrator.

Commissioner Duffy agreed that Mr. Baltz is doing a good job but still believes a state-wide search should be done; stated that

she has already received one resume and understands there are two others interested; and believes it is in Mr. Baltz' best interest that a state-wide search be done.

**Commissioner Loftus** stated he has seen a tremendous change since Mr. Baltz came on board; that the Board receives better communication; and changes in personnel have been productive to the County. **Commissioner Loftus** said the County is going through tremendous times with the budget; that Mr. Baltz has taken the helm, been innovative, creative, and looks outside the box; that he would like to see this as a unanimous vote; that he is not certain he knows Mr. Baltz completely or can vote affirmatively for him today; but that he likes what he has seen so far.

**Chairman D'Aprile** stated he has no problem with Mr. Baltz and has always looked up to him; that Mr. Baltz has the ability to explain in layman terms to make things better understood; and has the ability, character, and demeanor to bring this County back to order.

**COMMISSIONER MOORE MOVED TO HIRE ROGER BALTZ AS COUNTY ADMINISTRATOR FOR CHARLOTTE COUNTY, SECONDED BY COMMISSIONER CUMMINGS.**

**Commissioner Cummings** stated he has met many County Administrators and believes Mr. Baltz will do an extraordinary job; and opined it is important to give unanimous support when bringing in a County Administrator. **Commissioner Cummings** indicated if the Board chooses to do a search the only thing gained is casting the net wider for more candidates; that no candidate on the outside can compete with having Mr. Baltz here working with him for many years; that if the Board does a search it should go all the way and cast a national net to get as many candidates from as broad of an area as possible; and stated that regardless of who comes forward he has already made his selection.

**Commissioner Duffy** pointed out the Board has not had discussion on what kind of person we are looking for, what kind of leadership skills, strengths, or qualifications we want in an Administrator, or have a strategic plan; agreed that Mr. Baltz has an excellent background; indicated that she will support the

motion, but in fairness to him believes he needs a lot more direction from this Commission. **Commissioner Loftus** agreed with **Commissioner Duffy**.

**Commissioner Moore** said we are constantly in the mode of setting goals and re-defining where we want to go, but the question today is do we have the courage to do the right thing and opined Mr. Baltz is the right thing. **Chairman D'Aprile** said he hears from two Commissioners that there is a need for a specific job description outline before considering Mr. Baltz or anyone else but questioned how it is known if that person would fulfill the job description or be successful. **Chairman D'Aprile** said the only way to find out if Mr. Baltz is successful in this job is to look at his past experience in Charlotte County; indicated he is comfortable with Mr. Baltz, believes he has the attitude, the knowledge, the fortitude, and the strength, to become a very good Administrator in this community; that he has the qualifications, has proven he can get the job done, simplifies situations, answers phone calls sooner rather than later; and is dedicated to the community and the Board.

**Commissioner Loftus** proposed that all five (5) Commissioners approve hiring Mr. Baltz today with a probation period of six (6) months. **Commissioner Cummings** pointed out that as acting County Administrator Mr. Baltz is currently in the probationary period mode right now; stated that his assumption of **Commissioner Moore's** motion to hire Mr. Baltz is that the County Attorney and Mr. Baltz would begin the contract negotiation process; that if there are specific goals and things the Board would like to incorporate into the contract that is an item of discussion for another day; and that the issue before the Board right now is do we do a search or initiate contract negotiations.

**Commissioner Duffy** commented on having a strategic plan and the interview process; and opined that in fairness to Mr. Baltz the Board should have this conversation.

**Chairman D'Aprile** reminded the Board if Mr. Baltz does not proceed in the right direction he can be removed; but opined he has earned the right to the position of Administrator at this time.

**Motion Carried 5:0.**

Mr. Baltz thanked the Board for the positive, generous comments; stated no promises are expected, he is very alert to what **Commissioners Duffy and Loftus** said, and appreciates the confidence; that his goal is to show the Board made the proper choice; and that he would get with Attorney Knowlton and **Chairman D'Aprile** to work on a contract that can be presented to the Board.

(6) Commission Office - RECOMMENDED ACTION: Requesting Board discussion regarding impact fees for the Harbor Nissan property located at 4318 Tamiami Trail.

**Chairman D'Aprile** explained that Chris Freeland, owner of Harbor Nissan, was a victim of hurricane Charley who was forced to re-build in a manner he would not normally have been required to do, which created more of a hardship for him and his establishment; and opined further evaluation is needed.

Jeff Ruggieri stated the petitioner has requested no impact fee be levied, essentially granting a waiver; that the petitioner tore down a substantial amount of square footage comparable to what he built in the new area; commented on conflicting portions in the ordinance; and advised that staff is looking at three decision points 1) will any impact fees be assessed at all 2) if impact fees are to be assessed, how would the impact fee be assessed, taking into consideration any credits to be granted, and 3) if we find there is an impact fee and make a decision on credits, determine what methodology would be used to assess impact fees.

**Commissioner Loftus** requested clarification that there were some credits given for buildings that were destroyed in the hurricane in a manner different than assessing the full amount. Mr. Ruggieri explained there is language in the County Ordinance that says when you build to the same footprint no impact fee will be charged; and stated there were some other decisions, which could be explained by Attorney Waksler.

**Chairman D'Aprile** explained that Mr. Freeland re-built the Harbor Nissan building not because he wanted to, but because he was forced to do so to meet the new CRA and County regulations; and inquired if the square footage was the same or less than the

buildings that were taken down. Attorney Geri Waksler stated that Mr. Freeland took down four (4) buildings totaling 32,000 square feet and re-built to a 28,000 square feet footprint, but there is a second level that houses offices, so the total usable square footage is 36,000, or 4,000 square feet more in usable square footage, and 4,000 square feet less in building footprint.

**Chairman D'Aprile** asked if Attorney Waksler thought the establishment with the new building impacted the roads any more than with the original buildings. Attorney Waksler said she is not a traffic engineer, commented on what was taken down versus what was built, and opined the impact would be a wash. Attorney Waksler advised when the rebuilding process began Mr. Freeland intended to consolidate the two buildings on the property into one building, and because of the economies of scale would actually have re-built a building that was less than the two buildings he had. Attorney Waksler stated that at the time of design this was permitted, but during the course of the design and the approval process the County implemented the new design standard for the CRA and the building could not be built because it was set back more than the allowed 9'; and that Mr. Freeland could not continue operating his business while building to the 9' on his existing building.

**Chairman D'Aprile** requested clarification that Mr. Freeland had to purchase additional property in order to build a building that conformed to the CRA and County requirements. Attorney Waksler replied affirmatively and explained that after Mr. Freeland purchased the lot, abandoned the original design, and built a new design on the new lot, the Board received considerable feedback from business owners in the CRA who had also received damage and were having to incur a tremendous amount of additional costs to meet the new codes; that the Board decided it was an unfair hardship; and that while the Board supported the new CRA codes, believed it placed too big a hardship on those who had existing businesses, so the existing businesses that did not move as quickly as Mr. Freeland did not have to meet the new CRA codes and were basically able to build in their existing footprint; and pointed out that had Mr. Freeland been able to do that he would not be before the Board today as he would have re-built less square footage and there would have been no impact fee issue.

Attorney Waksler stated that because Mr. Freeland complied as directed regarding the codes, was so far along in the process by having purchased property, and had invested so much when the Board changed and rescinded the requirement, he could not go back to where he originally started; as a result he is now in the situation where he built a new building and the County is seeking anywhere from \$150,000 to \$300,000 in impact fees; and why her client is before the Board today. Attorney Waksler explained that her client followed all direction given and as a result of following that direction has been placed in a significantly worse position than those that did not act as quickly as him to rebuild, but are also in the CRA, because they were able to rebuild in place and not pay any impact fees, but her client had to buy other property, put up a completely new building, and is now having to be pay additional impact fees.

**Commissioner Cummings** clarified that the request is to waive \$330,351.19 in impact fees. Mr. Ruggieri replied affirmatively. **Commissioner Cummings** inquired what the original starting point was when tabulating the impact fees. Mr. Ruggieri advised it started at approximately \$365,000; that there was a \$35,000 payment; and pending fees are about \$330,000. **Commissioner Cummings** stated it is within the ability of the Board not to charge impact fees but he is not comfortable it can be done on a case-by-case basis or if the ordinance would have to be modified. **Commissioner Cummings** inquired if Attorney Knowlton believed there is an inherent conflict in the ordinance, if it is a resolvable issue if the Board were to attempt to waive the impact fees, and what was required in order to do that and still have a legally defensible impact fee ordinance. Attorney Knowlton stated she was not aware of the section with the conflict and asked Deputy County Attorney Daniel Gallagher if he could comment on that section in the code.

Attorney Gallagher said until Mr. Ruggieri mentioned it a few moments ago he was unaware there was a conflict in the code, especially in regard to this issue because it was the first time it had been raised by Growth Management Department. Attorney Gallagher recalled the Board waived impact fees for the Family Services Center a year or so ago and in that case the County paid the impact fees that were owed by the Family Services Center, which is the normal procedure; and pointed out that there is also the issue of what is really a waiver and what is a credit for

impact fees. Attorney Gallagher explained that Statute provides the fee payer can commission an independent impact analysis to determine if the new site would generate additional traffic and other issues to warranty paying them, and if not, or dependent upon the results, the fees can be reduced; and indicated it was his understanding this was to be done some months ago, but that Mr. Freeland has apparently decided not to do that.

**Commissioner Cummings** recalled that the Board has never waived impact fees and was aware of only a couple instances where the County, rather than the applicant, deeming it in the public interest, paid the impact fees. **Commissioner Cummings** indicated he understands how that is legally supportable but he does not understand how it is legally supportable to not charge impact fees in this instance and continue charging everyone else. Attorney Gallagher agreed. **Commissioner Cummings** stated he is not qualified to determine if there is an additional impact; pointed out there is a process for making that determination; and indicated he is willing to hear the case set out through the process.

Attorney Knowlton explained that the process is under County code, not state law; and that at this point Legal would say the fee payer has the option of making the payment or going through the process, which, as laid out in the code, is to have an independent traffic analysis, and if it turns out there is no impact it is adjusted accordingly.

**Chairman D'Aprile** asked what "adjusted accordingly" means. Attorney Knowlton explained if the analysis shows there is no impact whatsoever there would be no additional fee. **Chairman D'Aprile** stated he also is not a traffic engineer; opined the impact would be less but agreed it needs to be proven; and inquired what impact fees are based upon. Attorney Knowlton advised impact fees are based upon usage, square footage, and traffic. Attorney Gallagher advised road impact is the largest part of the fee. Attorney Knowlton explained that the total square footage has increased; that the footprint of the building decreased, but is irrelevant under the ordinance; that it is based upon square footage, which has increased by 4,000 square feet. **Chairman D'Aprile** clarified the additional 4,000 square feet is being used for offices. Mr. Freeland stated it is mainly for parts and inventory and some offices. **Chairman D'Aprile**

inquired if the \$330,000 impact fee was based upon 4,000 additional square feet. Mr. Ruggieri explained Legal's position is we are not allowed to look at the 4,000 increment; that when we are in the credit situation we must look at what was paid in impact fees in the past on the properties being torn down; and in this case approximately \$8,900 was paid in impact fees to the County for the old buildings and credited back to Mr. Freeland for construction of his new building.

**Chairman D'Aprile** inquired about being allowed to re-build 10% of additional square footage after hurricane Charley and not pay impact fees. Mr. Ruggieri explained the 10% was specifically for residential.

**Chairman D'Aprile** agreed that the County cannot pay impact fees for a private organization; opined this is a situation that needs special compensation because Mr. Freeland is a victim of hurricane Charley and did not have this situation of his own accord; and that if there is additional to be paid it should be based on the 4,000 square feet added, and certainly not \$330,000.

Mr. Ruggieri stated there is no provision for waiver in the code but there is an appeal provision. **Chairman D'Aprile** explained he is not making a motion, only giving his opinion.

**Commissioner Duffy** reported the instances where the Board waived fees were for non-profit organizations; that in those cases the amount owed was not in dispute but in this case the amount owed is disputed; and indicated this is an entirely different situation. **Commissioner Duffy** opined that in fairness to the business owner an exception should be made and work out something that is reasonable based upon the 4,000 additional square footage.

Attorney Knowlton inquired if the 4,000 additional square footage accounted for the \$330,000 fee. Mr. Ruggieri explained that \$330,000 is the assessment of the entire property square footage; commented on the differences of credit situations and impacts and what the 4,000 square feet was versus what the new use would be; and stated that the answer to Attorney Knowlton's question in a round-about way is "no".

**Commissioner Moore** clarified impact fees and credits; stated he does not disagree on the morality issue; but that he is not certain what government can do.

**Commissioner Loftus** recalled that no impact fees were charged if re-building was done in the same footprint. **Chairman D'Aprile** agreed and explained that in this case the footprint is not the same; that because it did not meet the 50% rule they were forced to tear it down; commented on the need for Mr. Freeland to purchase additional property due to the new CRA and County code; and agreed with **Commissioner Moore** that we do not know what government can do about this situation.

Attorney Waksler agreed with **Commissioner Loftus** that had Mr. Freeland re-built in the same footprint he would not be before the Board today; but because of changes in the codes it was not possible for him to build in the same footprint so he moved to another location, built in a lesser footprint, but created 4,000 square footage more of usable space because they are utilizing a partial second story. Attorney Waksler said the impact fee for the 4,000 additional square footage of space at warehouse rates is about \$12,000, which is about what her client would be out-of-pocket to do a traffic study to prove to the Board that he probably has less impact; and proposed since they were in an appeal, not asking for a waiver, that the Board look at how others were treated who were put in positions as a result of the hurricane; and her client would agree to pay \$12,000 in impact fees.

Attorney Knowlton indicated if the cost of the independent traffic analysis is as Attorney Waksler mentioned that in order not to undermine the current ordinance the better course would be to use the process that is in place, which is to do the independent traffic analysis. Attorney Waksler pointed out that the current process allows for an appeal. **Commissioner Cummings** indicated one of the things he is getting from the conversation is that for this type usage the impact fee assessment is based on the square footage of the building for a commercial intensive usage where probably the larger area sales floor is actually an exterior parking lot. Mr. Ruggieri explained that currently car sales is charged one of the highest rates in impact fees, more than retail or commercial. **Commissioner Cummings** stated it is not a discussion for today but may be something to consider when

looking at tiered impact fees that there are certain types of uses where the exterior area becomes important.

**Commissioner Loftus** said he believes very strongly that whatever is done must be legally defensible; that everyone must be treated equally; and if credits were given for other businesses affected by the hurricane it must be done here. **Chairman D'Aprile** agreed that consideration was given to others involved in the hurricane and that he is looking for fairness to be done because this was not something Mr. Freeland wanted to do, but was required to do. **Chairman D'Aprile** explained that after the hurricane many rules and laws were bent out of necessity; that in this particular case Mr. Freeland did not ask for anything special; and indicated there were others, such as McDonalds, where the changes created additional problems, but he does not believe anyone had to do what Mr. Freeland did.

Mr. Freeland said he did not believe there had been an impact fee paid in Charlotte Harbor. **Chairman D'Aprile** said he would like to find that out. Mr. Freeland said perhaps it could be handled by the Board adopting a law that no one in Charlotte Harbor because of the hurricane pays an impact fee. **Chairman D'Aprile** stated this is a most unusual situation but agreed that Mr. Freeland needs some help, and opined there are three (3) Commissioners that feel the same way he does; and asked where we go from here.

Attorney Gallagher clarified that while the impact fee code provides for an appeal process, this was not put on for an appeal, but for discussion; that the appeal process is for a written appeal to be provided to the Board in a certain amount of time prior to the appeal hearing with certain information required to be in it; and to his knowledge none of that was received so this issue was put on the agenda for Board discussion. Attorney Gallagher pointed out there is not a dispute under the code that the impact fees are not owed by Mr. Freeland; and opined Mr. Freeland is asking for mitigation and that the Board waive all or most of the impact fees under the code.

Attorney Waksler explained there is a dispute as to what is owed because the code provides two different directions for calculation; that there is also the fact that they looked at the

entire building as automotive sales when the larger portion of the building is automotive service, which is treated differently and has a lesser impact fee; and that Mr. Freeland is not in agreement on the amount of impact fees owed.

Attorney Gallagher indicated there have been multiple meetings over the past few months on this topic and it is the first time this issue has been raised. **Chairman D'Aprile** requested that a meeting be scheduled to set forth all the facts in their proper perspective and come up with a solution.

**Commissioner Duffy** indicated the footprint of the building did not increase and requested clarification of how the impact fee ordinance reads regarding no impact fee charge if the footprint is not increased. **Attorney Gallagher** explained if the original building is one story and it is re-constructed with a ten story building using the same footprint then it is based on the square footage of the project, and in this case an additional story was added. Attorney Gallagher reported the options are that as Mr. Freeland indicated would be done in the past, he can commission to have an independent impact analysis of the project conducted and provided to the County, or file a formal appeal detailing the legal reasons why he should not be required to pay the impact fees, but that Mr. Freeland is here today requesting that the Board waive his impact fees. Attorney Gallagher stated he is not arguing there is not mitigation in terms of whatever the CRA ordinance requirements were, but that is a separate issue to be resolved, as opposed to the impact fee code.

Attorney Waksler reminded the Board that we put out on the table something that would not be a waiver but would be consistent with the way the impact fee code has been interpreted with regards to hurricane victims; and stated that since Mr. Freeland created by choice an additional 4,000 square feet he be assessed \$12,000.00 for the 4,000 square feet, which would be consistent with the code and consistent with the way other people in hurricane re-builds were treated.

Attorney Gallagher stated it is not consistent with the code and he is unaware of any specific other hurricane victims that were treated this way; and indicated in effect they want to pay \$12,000 of a \$330,000, plus, impact fee. Attorney Waksler commented on her personal re-build experience after the hurricane

and indicated that no additional impact fees were assessed. **Chairman D'Aprile** said the handling of other hurricane victims in that type manner is why he is confused with Mr. Freeland's issue.

Attorney Knowlton explained that is why there is a process laid out in the ordinance for an appeal process; that things are being heard here for the first time; and the Board is asking for response to something that Legal has not had the opportunity to discuss with staff. Attorney Knowlton advised there is a written appeal procedure and suggested that if it cannot be agreed upon to do the traffic study that a written appeal should be done in order to evaluate the request. **Chairman D'Aprile** clarified that it would then be brought before the Board for decision. Attorney Knowlton replied affirmatively.

Mr. Freeland inquired what the time frame was for an appeal. Attorney Knowlton outlined the appeal process in Section 3-3.5-12. Mr. Freeland explained he has a mortgage to close and billboard issues to take care of. Attorney Gallagher stated none of these issues were raised several months ago at the meeting with Mr. Freeland and Attorney Waksler, and at that time the understanding was that Mr. Freeland would commission an independent impact analysis on the project. Attorney Knowlton indicated that Attorney Gallagher questioned Attorney Waksler last week about this matter being placed on the agenda when the understanding at the last meeting of the parties is that Mr. Freeland would commission an independent impact analysis on the project.

Mr. Freeland said he and Mr. Ruggieri spoke about eight businesses being removed and one business being left and that common sense tells you there is less traffic with eight businesses leaving and one staying. Attorney Gallagher said he was not aware of that conversation.

Attorney Waksler advised the decision not to proceed with the traffic analysis was her client's; that he has invested \$8 Million in the property; that he has had to do things that no one else had to do; and he did not know why he should have to spend another \$12,000.

**Chairman D'Aprile** said the decision is difficult and cannot be made today; that he does not want to break any laws; that he definitely wants to be certain Mr. Freeland is not charged that kind of money; that no one else in Charlotte Harbor had to pay impact fees and it does not make sense to him that Mr. Freeland must pay them.

**Commissioner Duffy** opined the Board should waive the fee and stated this is a perfect example of why we are so unfriendly to businesses in Charlotte County. **Chairman D'Aprile** agreed and inquired if that can be done now.

Attorney Knowlton explained if the Board waives the fee, which has been done once in the past, the Board would need to make the payment. **Chairman D'Aprile** stated the Board cannot spend \$330,000 of taxpayer money for Mr. Freeland's business; but what he needs done here is to figure out a way to reduce or eliminate the impact fees without affecting the County's budgetary system.

**Commissioner Loftus** stated he wanted to reiterate that whatever is done must be legally defensible; that Harbor Nissan must be treated the same as other businesses damaged or destroyed from the hurricane were treated; and opined a decision cannot be made today.

**Chairman D'Aprile** expressed frustration that assistance was given other businesses but not to Harbor Nissan; and indicated he does not want to break any laws, but needs direction.

**Commissioner Moore** requested an outline of the appeal system. Attorney Knowlton read from the ordinance that it must be a written appeal giving ten days notice before it comes back to the Board of County Commissioners stating in writing the following: the County action, order or policy or interpretation that is in error, the nature of the error and the reasons why the County's action resulted in error; you must submit the County action in writing, and the relief that is requested in a certified signed statement by the person filing the appeal.

**Commissioner Moore** clarified that the appeal is not negotiated and solved somewhere else; that it is filed with the County Attorney's office allowing ten days notice; and that it then comes back to the Board. Attorney Knowlton replied

affirmatively. **Commissioner Moore** suggested that Harbor Nissan file the appeal, which puts the Board back in a structure that government needs to work in.

Attorney Waksler asked if there was an ability for the Board to shorten the time frame.

Attorney Waksler asked if it was possible for the Board to shorten the time frame. Attorney Knowlton opined that Attorney Waksler has given notice here; indicated she did not know what else to say; that they are trying to get around everything that is in the ordinance, which was approved by the Board; that it can be shortened, but the process is the ordinance must be amended if the time is to be changed. **Commissioner Duffy** questioned the need to change the ordinance because Harbor Nissan did not increase their footprint and there were no impact fees paid by any other business in Charlotte Harbor, and asked if anyone worked for Growth Management now who worked here during the hurricane that could clarify this. There was no response and **Chairman D'Aprile** asked how a decision could be made. Mr. Ruggieri said staff would have to look up this information. **Commissioner Duffy** expressed concern this matter has taken so long.

Attorney Gallagher said they thought it was resolved as well; and only recently did they find out it was not; and pointed out the appeal option has always been open to the fee payer.

**Commissioner Loftus** indicated the ten day notice has been given today and inquired if the appeal could be heard at the next meeting. **Chairman D'Aprile** and Attorney Knowlton replied affirmatively. **Commissioner Loftus** said he would make a motion to move this forward to be heard at the next meeting. **Chairman D'Aprile** clarified no motion was necessary and requested Attorney Waksler go through the proper channels to get this placed on the next Board meeting agenda. Attorney Waksler stated she would immediately set to work getting the appeal in writing to allow as much time as possible for review prior to the hearing.

(7) Growth Management - RECOMMENDED ACTION: Consider the following: a) Adopt a Resolution establishing the Boca Grande

Advisory Committee; and b) Appoint the members of the Advisory Committee.

Jeffrey Crimer advised that last year the Board accepted the community plan for the Charlotte County portion of Gasparilla Island and they now wish to create the advisory committee to implement it; and that this agenda item is for consideration of a Resolution establishing the Boca Grande Advisory Committee and consideration of a letter from their consultant with names of individuals submitted for consideration to become the committee members.

Commissioner Moore inquired why this item was moved from a public hearing to a regular agenda item. Attorney Knowlton explained that this is a Resolution, not an Ordinance, and a public hearing is not required. Commissioner Moore expressed concern with this being done.

COMMISSIONER MOORE MOVED TO APPROVE RESOLUTION 2008-057, SECONDED BY COMMISSIONER LOFTUS.  
Motion Carried 5:0.

(8) Administration - RECOMMENDED ACTION: Set a Public Hearing on June 10th to have the Board accept Public Input for the proposed changes to the CDBG Hurricane Recovery Grant 06DB-3C-18-01-W05 for the reallocation to the New Operation Cooper Street addition project.

Robert Hebert reminded the Board that item Z-8 is an addition to the agenda.

COMMISSIONER MOORE MOVED TO APPROVE SETTING A PUBLIC HEARING ON JUNE 10TH TO HAVE THE BOARD ACCEPT PUBLIC INPUT FOR THE PROPOSED CHANGES TO THE CDBG HURRICANE RECOVERY GRANT 06DB-3C-18-01-W05 FOR THE REALLOCATION TO THE NEW OPERATION COOPER STREET ADDITION PROJECT, SECONDED BY COMMISSIONER LOFTUS.  
Motion Carried 5:0.

(7) Growth Management - RECOMMENDED ACTION: Consider the following: a) Adopt a Resolution establishing the Boca Grande Advisory Committee; and b) Appoint the members of the Advisory Committee. (continued)

Mr. Ruggieri advised that part of agenda item Z-7 is to appoint the members of the Planning Advisory Committee that are identified in the Board packet and it is not clear that the first motion did so.

COMMISSIONER MOORE MOVED TO ACCEPT THE RECOMMENDED LIST OF PARTICIPANTS SHOWN ON PAGE TWO (2) OF THE PACKET MATERIAL AS THE STARTING BODY MEMBERS OF THE NEW PLANNING ADVISORY COMMITTEE, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

VII. PRESENTATION AGENDA - No Items.

VIII. PUBLIC WORKSHOP AGENDA - Public input permitted. - No Items

IX. BOARD WORKSHOP AGENDA - No public input. - No Items.

X. CITIZEN INPUT - ANY SUBJECT

Grace Amodio congratulated Mr. Baltz and thanked the Board for their decision.

AA. County Administrator:

Mr. Baltz commented on a meeting with representatives of the Englewood Water District regarding its desire to proceed with some sewerage in West County tied to a franchise area whereby they are seeking to recoup some return on the investment they made as a part of the utility system; and advised there is still research to be done to ascertain a true picture of the value of different assets and determine a plan for how the County and Englewood Water District could work together.

Mr. Baltz explained that he and Commissioner D'Aprile spoke with FDEP representatives last week regarding the Babcock Ranch Management Plan (BRMP); that the BRMP is undergoing some changes and there are issues involving tenant farming and hunting on the property; and there has been a request that a representative from Charlotte County be available in Tallahassee in July when the issues move forward. Chairman D'Aprile indicated that if he is needed in Tallahassee to present Charlotte County's case on the management plan he will be there.

BB. County Attorney:

Attorney Knowlton indicated she received a request from the Curmudgeon Club to use Room 119 for a candidates forum; that the League of Women Voters has been allowed to use the room in the past and is scheduled for two upcoming event, which will be their final use of the facility; stated that we cannot discriminate between groups; and if the Board wants to uphold past policy that the room be used for governmental purposes only the League of Women Voters meeting in August 2008 should be canceled. Attorney Knowlton stated she conveyed this message to the League of Women Voters but was told by a representative of that organization that the Curmudgeons have indicated they would not raise claims if the Commission allowed the League of Women Voters to use the facility for their last event. **Chairman D'Aprile** suggested it be obtained in writing that the Curmudgeon Club has no objections. **Commissioner Loftus** stated his understanding is the League of Women Voters is folding up and will no longer be in existence. **Commissioner Cummings** stated we should go one step beyond and make it perfectly clear that the practice is being discontinued. **Commissioner Loftus** said we need this included in our written policy so it is clear with no exceptions.

Attorney Knowlton advised that during the Legislative Session two weeks ago there was a phosphate bill passed, which provided for an expedited hearing process to challenge phosphate permits; explained what the process had previously been, the new mandate process, and commented on Legal's concerns. Attorney Knowlton stated there is a small window of opportunity to seek a veto of the bill by the Governor; that representatives of the Department of Environmental Protection (DEP) had contacted us and voiced concerns of the manner in which the legislation was presented; commented on impacts to Charlotte County; and indicated that since it is our understanding Mosaic did not sponsor this bill there should be no objections to us seeking a veto of it. Attorney Knowlton reported a tentative meeting had been scheduled with the Governor's Chief of Staff for next week and she needs Board approval on whether or not to move forward with that. Attorney Knowlton stated staff recommendation is to go back to the normal process, which could be six (6) or nine (9) months before it is heard, or the parties should mutually agree upon the expedited process. **Chairman D'Aprile** stated he has no problem with it being six (6) months. **Commissioner Duffy** expressed

concern with this discussion taking place because there had been a 4:1 vote in November to enter into a phosphate agreement and inquired if we would be paying for our attorneys to do the oral arguments that begin in June. Attorney Knowlton replied affirmatively and explained that would be the appeal on the Ona case, which was discussed in Executive Session; and indicated another Executive Session could be had on the issue. Attorney Knowlton explained that although Charlotte County tentatively settled, because the settlement with phosphate was that the other two counties must sign on, which has not yet happened, the appeal moves forward and is doing so with Sarasota and Lee Counties as they are involved in the process. **Commissioner Duffy** inquired if we are the only county going to the Governor for this veto. Attorney Knowlton replied affirmatively and stated that Lee and Sarasota Counties are aware of it but she does not know if their Boards will be able to act in time to join. **Commissioner Cummings** recalled that the Board voted to continue the appeal on the Ona case. Attorney Knowlton pointed out that everything has been done as far as the writing of the briefs and the only thing left is that June 30, 2008 is the date for oral argument in front of the Court of Appeals, which two hours has been set aside for, and that costs involved would be two hours plus travel time. **Commissioner Cummings** commented on further conditions of the appeal, including twenty seven conditions the hearing officer wrote and indicated that unless every condition was upheld the State is required to deny the permit; opined there is a very strong case to be made here for that appeal; and that if we want to maintain our current negotiating position with Mosaic the new law needs to be vetoed. **Commissioner Loftus** opined there should be an Executive Session on the issue and expressed concern with expenses incurred by the County for Attorney de la Parte and Bill Byle's attendance at the Mosaic presentation to the Lee County Commission and the Peace River Maintenance Program Committee meeting. **Commissioner Duffy** expressed concern with this being done after the Commission voted on the phosphate agreement and opined the Commission needs to get the agreement in place for Charlotte County. **Commissioner Moore** agreed the bill would deal a blow to Charlotte County; opined that although Mosaic did not sponsor the bill Mosaic is much too intelligent not to have been aware of it; explained that Mosaic cannot sign with Charlotte County alone because it does not bring the package they desire; stated he has no problem with someone going to the Governor's office to determine what can be done to stop the bill, believes

it is within the right of the intent of the verbal agreement we have with Mosaic; and opined that trying to stop a bad bill is good in this particular case.

CC. Commissioner Comments:

Commissioner Cummings indicated an answer needs to be given now on whether or not to encourage the veto. Attorney Knowlton said she counted three in favor of doing so.

ADJOURNED: 1:00 PM

Signature on file in Commission Minutes  
Chairman

ATTEST:

BARBARA T. SCOTT, CLERK  
OF THE CIRCUIT COURT AND  
EX-OFFICIO TO THE BOARD  
OF COUNTY COMMISSIONERS

By: Signature on file in Commission Minutes  
Deputy Clerk

gm