

AUGUST 30, 2011

The Regular Meeting of the Board of Lee County Commissioners was held on this date with the following Commissioners present:

- Frank B. Mann, Chairman
- John E. Manning, Vice Chairman
- A. Brian Bigelow
- Ray Judah
- Tammara Hall

The Chairman called the meeting to order at 9:30 a.m. The Invocation was given by Chairman Frank Mann, followed by the Pledge of Allegiance.

ANNOUNCEMENTS

Referring to the Agenda Recap Sheet dated August 30, 2011, the Chairman announced that:

One Walk-On and one Carry-Over item would be heard at the appropriate time in the Agenda.

9:30 A.M. AGENDA ITEM - Public Comment on Agenda Items
Consent (C) and Administrative (A)

C8A - Lovers Key State Park Assistant Park Manager Matt Kruse

C7A - Edd Weiner representing Lehigh Acres Development Team and Transit Development Task Force.

The following are Consent Agenda items that each Board member wished to have discussed:

- Commissioner Bigelow – 3A, 3B and 8A
- Commissioner Judah - none
- Commissioner Mann - none
- Commissioner Manning - none
- Commissioner Hall - 8A

CONSENT AGENDA

1. COUNTY ADMINISTRATION

No requests received.

2. COMMUNITY DEVELOPMENT

No requests received.

3. CONSTRUCTION AND DESIGN

A) ACTION REQUESTED/PURPOSE:

Approve Budget Resolution and Budget Transfer in the amounts of \$34,650.00 from Capital Improvement Fund Reserves and \$248,872.00 from Unincorporated Reserves for a total of \$283,522.00 to the Ten Mile Linear Park (n.k.a. John Yarbrough Linear Park). Also amend the CIP budget for FY 10/11 - 14/15 accordingly.
(#20110640-CONSTRUCTION AND DESIGN)

FUNDING SOURCE:

Fund - Capital Improvement Fund; Program - Capital Project; Project - Ten Mile Linear Park (n.k.a. John Yarbrough Linear Park).

WHAT ACTION ACCOMPLISHES:

Provides funds for attorney fees and expert witness fees and costs for eminent domain cases related to construction of Ten Mile Linear Park.

MANAGEMENT RECOMMENDATION:

Approve.

PULLED FOR DISCUSSION

Commissioner Bigelow disclosed a potential conflict of interest, as a result of property owned by his father in close proximity to the subject property, and stated he would recuse himself from the vote. Commissioner Judah moved approval, seconded by Commissioner Manning, called and carried with Commissioner Bigelow abstaining ([Form 8B on file in the Minutes Office](#)).

[RESOLUTION NO. 11-08-40](#)

B) ACTION REQUESTED/PURPOSE:

Authorize staff to act as the Construction Manager and solicit informal sub contractor local bids for the Pine Manor Community Center and Page Park Community Center projects, in accordance with Florida Statute 255.20, where each project cost cannot exceed \$300,000.00 and the electrical work cannot cost more than \$75,000.00.

[\(#20110662-CONSTRUCTION AND DESIGN\)](#)

FUNDING SOURCE:

Fund: Human Services Grant-Construction; Programs: CDBG YR 17 (FY06-07), YR 18 (FY07-08), YR19 (FY08-09), YR20 (FY09-10) AND YR21 (FY10-11), Projects: Pine Manor Community and Page Park Community Center.

WHAT ACTION ACCOMPLISHES:

Pine Manor:

Construct a 1,000 square foot Community Center with associated site work including but not limited to site preparation, driveway, parking, landscaping, gates.

Page Park Community Club:

Construct a storage addition of 433 square foot with site work including, but not limited to, site preparation, driveway, parking, landscaping.

MANAGEMENT RECOMMENDATION:

Approve.

PULLED FOR DISCUSSION

Commissioner Bigelow moved approval, seconded by Commissioner Judah. Commissioner Bigelow explained that he wished to commend staff for their handling of this project with an in-house Construction Manager. The motion was called and carried.

4. COUNTY COMMISSIONERS

No requests received.

5. COUNTY LANDS

A) ACTION REQUESTED/PURPOSE:

Approve, and authorize Chair to execute, [Right-of-Way Donation Agreement](#) with property owner Lowe’s Home Centers, Inc., for donation of ±8,177 square foot (SF), STRAP No’s.: 35-47-25B3-00117.002B, 35-4-25-B3-00119.0010, 35-47-25-B3-00120.0010, Fee Simple interest parcel, located at 10550, 10650, and 10750 Bonita Beach Road SE, Bonita Springs, FL, identified as Parcel 301, for the Bonita Beach Road Widening Project No. 5720; also, authorize payment of costs and fees to close in the approximate amount of \$100.00; and the Division of County Lands to execute and accept all documentation necessary to complete this transaction.

[\(#20110655-COUNTY LANDS\)](#)

FUNDING SOURCE:

Fund: Road Impact Fees Southwest District; Program: Capital Projects; Project: Bonita Beach Road Widening Project 5720.

WHAT ACTION ACCOMPLISHES:

Provides donated fee interest right of way for right turn lane.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

B) ACTION REQUESTED/PURPOSE:

Approve, and authorize Chair to execute, an Easement Purchase Agreement with property owner [Crown Castle GT Company, LLC](#), for acquisition of Parcel 4, STRAP No. 32-45-24-05-00000.0010, for a Force Main Replacement (Pine Ridge Road L256 to Kelly Road) Project 7313, in the amount of \$5,000.00; authorize payment of estimated costs to close of \$500.00, and the Division of County Lands to handle all documentation necessary to complete this transaction. [\(#20110657-COUNTY LANDS\)](#)

FUNDING SOURCE:

Fund: Utilities Capital Improvements Program: Capital Projects Project: FM Repl – Pine Ridge, Orange Riv, Ortiz.

WHAT ACTION ACCOMPLISHES:

Acquires a permanent utility easement necessary for construction of the Force Main Replacement (Pine Ridge Road L256 to Kelly Road) Project and avoids condemnation proceedings.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

C) **ACTION REQUESTED/PURPOSE:**

Approve, and authorize Chair to execute, an Easement Purchase Agreement with property owner [Barbara Jean Bassine, Trustee](#), for acquisition of a 105 square foot (SF) [perpetual utility easement](#), Parcel 110 PUE, a 193 SF [temporary construction easement](#), Parcel 110 TCE, located at 909 Pondella Road, North Fort Myers, FL., STRAP No.: 09-44-24-00-00002.0150., for Waste Water Treatment Plant Flow (WWTP) Diversion Project No. 7315, in the amount of \$600.00; also, authorize payment of estimated costs and fees to close of \$500.00, and the Division of County Lands to execute and accept all documentation necessary to complete this transaction. ([#20110658](#)-COUNTY LANDS)

FUNDING SOURCE:

Fund: Utilities Capital Improvement; Program: Capital Projects; Project: Waterway Estates Wastewater Treatment Plant Flow Diversion.

WHAT ACTION ACCOMPLISHES:

Acquires Parcel 110 PUE and 110 TCE necessary for Project.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

6. HUMAN SERVICES

No requests received.

7. INDEPENDENTA) **ACTION REQUESTED/PURPOSE:**

Adopt LeeTran's 2011 Transit Development Plan for fiscal years 2012 through 2021. ([#20110620](#)-TRANSIT)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

Meets the FDOT planning requirement, and provides a growth plan for LeeTran which is consistent with the Lee County Metropolitan Planning Organization's Long Range Transportation Plan.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

8. NATURAL RESOURCES/ SOLID WASTEA) **ACTION REQUESTED/PURPOSE:**

Award CN-11-06, Bonita Beach Nourishment, to [Coastal Technology Corporation](#) (non-local firm) for a not-to-exceed amount of \$413,748. In accordance with the Request for Proposal and concurrence with the Florida Department of Environmental Protection, staff has included the design and permitting of Lovers Key Beach Restoration project in this award. Also, approve [transfer](#) from TDC Beach Reserves to Lovers Key Beach Restoration project in the amount of \$136,144.00, and authorize the Chair to execute the Professional Services Agreement. ([#20110664](#)-NATURAL RESOURCES)

FUNDING SOURCE:

Fund – General Fund (City of Bonita Springs Reimbursement) and Capital Improvement Tourist Development Beach Projects; Program – Marine Services Major Maintenance

Projects; Project – Bonita Beach Nourishment and Lovers Key Beach Restoration.

WHAT ACTION ACCOMPLISHES:

To provide services required to complete the design and permitting of Bonita Beach and Lovers Key Beach Nourishment projects.

MANAGEMENT RECOMMENDATION:

Approve.

PULLED FOR DISCUSSION

Natural Resources Marine Operations Manager Steve Boutelle responded to questions by Commissioner Bigelow on the funding and reimbursement mechanism of this project, and the selection process. Commissioner Judah moved approval, seconded by Commissioner Manning. At the request of Commissioner Hall, Mr. Boutelle agreed to provide a letter outlining projected beach re-nourishment projects to insure adequate funds are being set aside. Following additional discussion, the motion was called and carried.

9. PARKS AND RECREATION

No requests received.

10. PUBLIC SAFETY

No requests received.

11. PUBLIC WORKS ADMINISTRATION

No requests received.

12. TRANSPORTATION

No requests received.

13. UTILITIES

No requests received.

14. COUNTY ATTORNEY

A) ACTION REQUESTED/PURPOSE:

Direct an ordinance amending the Lee County Airport Rules and Regulations Ordinance No. 94-09, as amended, to public hearing in the Lee County Commission Chambers on Tuesday, September 27, 2011 at 9:30 a.m., or as soon thereafter as it may be heard.
(#20110677-COUNTY ATTORNEY)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

Eliminates any potential violation of the regulatory preemption pertaining to firearms, ammunition and components thereof adopted by the Florida Legislature in Florida Statutes Chapter 790.

MANAGEMENT RECOMMENDATION:

Approve authorization to advertise for and conduct a Public Hearing on Tuesday, September 27, 2011 at 9:30 a.m.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried

15. HEARING EXAMINER

No requests received.

16. CONSTITUTIONAL OFFICERS

A) ACTION REQUESTED/PURPOSE:

Approve the Minutes for the following meetings of the Board of County Commissioners held during the week of August 15 through August 19, 2011:

August 15, 2011 (Zoning), August 16, 2011 (Regular).

[\(#20110675-MINUTES\)](#)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

Approval of the Board Minutes, pursuant to Florida Statute 286.011.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

B) ACTION REQUESTED/PURPOSE:

Approve [disbursements](#). The check and wire registers may be viewed on the Clerk's Website at WWW.LEECLERK.ORG by accessing the BoCC Minutes and Documents link. [\(#20110678-FINANCE\)](#)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

Florida Statute Chapter 136.06 (1) requires that all County disbursements be recorded in the Minutes of the Board.

MANAGEMENT RECOMMENDATION:

Compliance with the requirements of FS 136.06 (1).

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

C) ACTION REQUESTED/PURPOSE:

Present for information purposes interim reporting on selected financial activity and provide an update on the economic changes in today's market (see background information). [\(#20110679-FINANCE\)](#)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

To provide interim reporting on selected funds, revenues, and expenditures of the Lee County Board of County Commissioners. Included in this report in compliance with Chapter 218.415, Florida Statutes, Local Investment Policies, is the stated and fair market value of the investments managed by the Clerk's Office. To include the Lee County Ordinance 02-28 activity for the Driver's Education Safety Trust Fund.

MANAGEMENT RECOMMENDATION:

The purpose of this report is to convey the financial status of selected significant funds of the Lee County Board of County Commissioners, the status of specific revenues and expenditures as of the stated dates, and the market value of investments managed by the Clerk's Office on behalf of the Board.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried

17. PORT AUTHORITY AND OTHER GOVERNING BOARDS

No requests received.

ADMINISTRATIVE AGENDA

1. COUNTY ADMINISTRATION

No requests received.

2. COMMUNITY DEVELOPMENT

No requests received.

3. CONSTRUCTION AND DESIGN

No requests received.

4. COUNTY COMMISSIONERS

No requests received.

5. COUNTY LANDS

No requests received.

6. HUMAN SERVICES

No requests received.

7. INDEPENDENT

No requests received.

8. NATURAL RESOURCES/ SOLID WASTE

No requests received.

9. PARKS AND RECREATION

No requests received.

10. PUBLIC SAFETY

No requests received.

11. PUBLIC WORKS ADMINISTRATION

No requests received.

12. TRANSPORTATION

A) ACTION REQUESTED/PURPOSE:

Approve [budget transfer](#) from Project #5043 (US 41 Landscaping from Runway to the Charlotte Line) to Project #5045 (US 41 Landscaping from Littleton Road to Hancock Bridge Parkway), in the amount of \$140,000.00 to be used to upgrade the existing landscaping on Business 41 from SR 78 (Bayshore Road) to Littleton Road. Amend the FY 2010/11-2014/15 CIP accordingly. ([#20110654](#)-TRANSPORTATION)

FUNDING SOURCE:

Fund – General Fund; Program – Major Maintenance; Project – US 41 Landscaping from Littleton Road to Hancock Bridge Parkway.

WHAT ACTION ACCOMPLISHES:

Provides funds for the addition of trees and supporting irrigation to both US 41 from Hancock Bridge Parkway to Littleton Road and on Business 41 from Bayshore Road to Littleton Road in North Fort Myers.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

13. UTILITIES

No requests received.

14. COUNTY ATTORNEY

A) ACTION REQUESTED/PURPOSE:

Approve mediated settlement in Lee County v. Hoffman, et al., Case No. 10CA-913, Parcel 137, Burnt Store Road Project. ([#20110665](#)-COUNTY ATTORNEY)

FUNDING SOURCE:

Fund: toll surplus, land; Program: Capital Improvement Project; Project: Burnt Store Road.

WHAT ACTION ACCOMPLISHES:

Settles all claims for condemnation of Parcel 137 except taxable costs.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Manning moved approval, seconded by Commissioner Hall. Following a brief point of information by County Attorney Michael Hunt, the motion was called and carried.

B) ACTION REQUESTED/PURPOSE:

Approve the Resolution of Necessity for the acquisition and condemnation of Parcel 3, required for the San Carlos Force Main Replacement - Main Street to Hurricane Pass, Project No. 7320. ([#20110642](#)-COUNTY ATTORNEY)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

Allows the County to proceed with condemnation, if required, of the necessary parcels for construction of the San Carlos Force Main Replacement (Main Street to Hurricane Pass), Project No. 7320.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried.

[RESOLUTION NO. 11-08-41](#)**C) ACTION REQUESTED/PURPOSE:**

Approve the Amended Resolutions of Necessity for the acquisition and condemnation of Parcels 1 and 4 required for the Pine Ridge Force Main Replacement Project-San Carlos Boulevard to Fort Myers Beach Waste Water Treatment Plant, Project No. 7321.

([#20110643](#)-COUNTY ATTORNEY)

FUNDING SOURCE:

N/A

WHAT ACTION ACCOMPLISHES:

Allows the County to proceed with condemnation, if required, of the necessary parcels for construction of the Pine Ridge Force Main Replacement Project-San Carlos Blvd. to Fort Myers Beach Waste Water Treatment Plant, Project No. 7321.

MANAGEMENT RECOMMENDATION:

Approve.

Commissioner Manning moved approval, seconded by Commissioner Hall, called and carried.

RESOLUTION NOS. [11-08-42](#) and [11-08-43](#)**15. HEARING EXAMINER**

No requests received.

16. CONSTITUTIONAL OFFICERS

No requests received.

17. PORT AUTHORITY AND OTHER GOVERNING BOARDS

No requests received.

WALK-ON ITEM NO. 1**13. UTILITIES****ACTION REQUESTED/PURPOSE:**

Authorize the Lee County Utility Director to submit an electronic Economic Development Adjustment (EDA) Grant application; and provide electronic signatures, on behalf of the Board of County Commissioners. The EDA grant application is for the Investments for Public Works and Economic Development Facilities funds for 50% reimbursement for the engineering design services for expanding the wastewater force main along Alico Road.

([#20110694](#)-UTILITIES)

FUNDING SOURCE:

50% Grant and 50% Utilities Wastewater Connection Fees (48713).

WHAT ACTION ACCOMPLISHES:

Provides staff authorization to submit the EDA grant application electronically; and, allows the LCU Director to electronically sign all necessary forms for an EDA grant application on behalf of the Board.

MANAGEMENT RECOMMENDATION:

Approve.

REASON FOR WALK ON:

This is a time sensitive issue because the grant application must be submitted prior to September 15, 2011. EDA has suggested applicants submit electronically prior to September 8, 2011.

Commissioner Hall moved approval, seconded by Commissioner Manning. Utilities Director Pam Keyes responded to a question by Commissioner Bigelow, and the motion was called and carried.

CARRY-OVER ITEM NO. 1**10. PUBLIC SAFETY****ACTION REQUESTED/PURPOSE:**

Approve Bid Waiver #W-110417 to waive the formal quotation procedure, and allow Public Safety to purchase radios, major and minor repairs and replacement parts, components and ancillaries; including, but not limited to, personal computers, servers and related peripherals from Motorola and their authorized subcontractor Wireless Technology Equipment Communications (a local vendor). A waiver has been requested because the equipment used in the Lee County Government Communication Network (GCN) contains proprietary and other protected design aspects which are only known to Motorola. It is also requested that the term of this waiver be on an on-going basis with a not-to-exceed annual amount of \$775,000.00. Funding will come from the individual division's budget and they will be responsible for monitoring their own expenditures. This item was deferred by the Board for one week on August 23, 2011. ([#20110636](#)-PUBLIC SAFETY)

FUNDING SOURCE:

Government Communication Network (GCN)

WHAT ACTION ACCOMPLISHES:

Allows Public Safety to purchase required parts, repairs, etc. on an as-needed basis in order to keep the GCN system fully operational.

MANAGEMENT RECOMMENDATION:

Approve.

REASON FOR CARRY OVER:

Deferred for one week by the Board on August 23, 2011.

Commissioner Judah moved approval, seconded by Commissioner Manning. Public Safety Director John Wilson responded to a concern expressed by Commissioner Mann on the inability to obtain competitive bids due to proprietary interests of the sole vendor. The motion was called and carried.

COMMISSIONER ITEMS

CONSERVATION FOUNDATION REQUEST – Commissioner Judah moved approval of a request by the Conservation Foundation to send Grant Application letters to [U.S. Fish and Wildlife](#) and [Gulf of Mexico Foundation](#) principals for Habitats Restoration on the Conservation Foundation's Pine Island Preserve at Matlacha Pass. The motion was seconded by Commissioner Manning, called and carried.

DEPARTMENT OF HUMAN SERVICES COMMENDATION - Commissioner Judah commended Human Services on receipt of a clean audit from the U.S. Department of Housing and Urban Development for the Neighborhood Stabilization Program stimulus funding provided to purchase, rehabilitate and re-sell foreclosed properties in Lee County.

FORT MYERS BEACH LIBRARY REPORT - Commissioner Judah referenced a letter to the Board from Fort Myers Beach Public Library Director Dr. Leroy Hommerding to defer action and allow the Library Board to discuss a newly-released investigative audit at their September 27th meeting. Commissioner Judah moved to approve deferral of action by this Board to a date in early October, seconded by Commissioner Manning. Under discussion, County Attorney Michael Hunt responded to a question on specifics of the audit, and the motion was called and carried. Following conclusion of Commissioner Judah's Commissioner Items, Commissioner Bigelow continued his questioning seeking certain specifics of the audit under discussion and Attorney Hunt responded citing Florida

Statutes. Attorney Hunt agreed to share his findings of actions taken by other Florida Counties facing a similar situation.

PAGE FIELD GENERAL AVIATION FACILITY GRAND OPENING - Commissioner Judah reported on the Grand Opening celebration held recently at Page Field, and pointed out the honor shown at this aviation facility to our local WW II veterans. He also paid special tribute to the late Commissioner Robert P. (Bob) Janes, noting that his approval vote for this facility was one of his final contributions to this County.

EXECUTIVE SESSION INQUIRY – Commissioner Bigelow expressed a potential conflict of interest concern with the Board’s selection of outside legal counsel for the Executive Session scheduled for August 31st, and asked how he could register his protest of the counsel selection and lack of a Waiver. County Attorney Michael Hunt responded to the concern; however, Commissioner Bigelow was still in protest and outlined his plan of complaint to the Ethics Commission and Florida Bar. Chairman Mann indicated that all concerns would be addressed in the Executive Session that would all ultimately be made public. Attorney Hunt assured Commissioner Hall that the question raised would be on the Executive Session agenda and discussed fully at that time.

PROPERTY ASSESSED CLEAN ENERGY PROGRAM (PACE) – Commissioner Mann requested approval to send a [letter to Rep. Connie Mack](#) regarding support for the PACE Program. Commissioner Judah moved approval, seconded by Commissioner Manning, called and carried.

CODE ENFORCEMENT MATTER – Commissioner Mann requested an update from the Community Development Director Mary Gibbs on their recommendation and that of the Lehigh Planning Council to retain the current County Ordinance which prohibits chickens on residentially zoned properties. Ms. Gibbs briefed the Board on their recommendation and survey results, which supported continued prohibition. Commissioner Bigelow moved to defer this action for a further report from the Community Sustainability Advisory Committee, which supported revising the Ordinance; however, the motion failed for lack of a second. Commissioner Mann advised that any one from the public wishing to speak on this matter would be able to do so at next week’s meeting during the Public Presentation of Matters by Citizens agenda item.

COMMITTEE APPOINTMENTS

Commissioner Manning moved to reappoint Michael Antone to the **CONSTRUCTION LICENSING COMMITTEE** and Liz Donley, Richard Ibach and Christine Kneeland to the **LAND DEVELOPMENT CODE ADVISORY COMMITTEE**, seconded by Commissioner Manning, called and carried.

Chairman Mann requested a motion to reappoint Armando Jorge to the **EQUAL OPPORTUNITY REVIEW COMMITTEE** ([RESOLUTION NO. 11-08-44](#)), Marven M. Smith III, and K. Peter Kemezys to the **LAND DEVELOPMENT CODE ADVISORY COMMITTEE**, Lawrence Freeswick to the **RIVER FOREST STREETLIGHTING UNIT**, and Charles L. Doss, Jr. to the **PALM BEACH BOULEVARD SPECIAL IMPROVEMENT UNIT**. Commissioner Hall moved approval, seconded by Commissioner Manning, called and carried.

Commissioner Judah moved to reappoint Michael Villalobos to the [HOUSING FINANCE AUTHORITY](#), Stephen Brown to the **ROADWAY LANDSCAPE ADVISORY COMMITTEE**, Patrick Vanasse and Theresa Artuso to the **LAND DEVELOPMENT CODE ADVISORY COMMITTEE**, and Dolores Miller Classon to the **CONSTRUCTION LICENSING ADVISORY BOARD**, seconded by Commissioner Manning, called and carried.

Commissioner Bigelow moved to appoint Owen Anderson to the **TANGLEWOOD IMPROVEMENT UNIT**, and to reappoint Robert Pease to the **TOWN & RIVER IMPROVEMENT UNIT**, A. B. Cook to the **CONSTRUCTION LICENSING ADVISORY BOARD**, and Gerald Murphy to the **LAND DEVELOPMENT CODE ADVISORY COMMITTEE**, seconded by Commissioner Hall, called and carried.

COUNTY MANAGER ITEMS

County Manager Karen B. Hawes requested that the Solar Water Heater presentation, originally scheduled to follow this meeting, be deferred for three weeks. Commissioner Judah moved for approval of a date certain of September 20, 2011, seconded by Commissioner Manning, called and carried. Ms. Hawes agreed to provide Commissioner Bigelow with more information on the conflict with Federal law as requested.

COUNTY ATTORNEY ITEMS

County Attorney Michael Hunt provided follow-up on a request of the County Attorney’s Office to research the legality of using Tourist Development Council (TDC) funds for contracted payments for consulting

services to John Fumero of Rose, Sundstrom & Bentley LLP. Attorney Hunt advised that the Clerk of Court notified the County that checks would not be issued for this contract, nor that of another similarly contracted law firm, as State law does not authorize the use of TDC funds for such indirect purposes. Attorney Hunt presented three options to the Board with the recommended and only useful option being to file a declaratory action in Circuit Court to seek a ruling on the parameters of the County with respect to use of TDC funds. At the request of Commissioner Judah, Attorney Hunt read the specific State Statute language in question and opined that State law does support use of TDC funds for the subject purpose. Following comments on the validity for use of these funds, and the necessity for this Board to find another means of payment at this time, Commissioner Judah moved approval of the County Attorney’s office to file a declaratory action in Circuit Court, seconded by Commissioner Hall. Attorney Hunt responded to questions from Commissioner Bigelow, and the motion was called and carried. As a point of order, Commissioner Judah requested, and there was Board consensus, that staff would review and recommend an alternative method of payment of the subject contract.

The Chairman adjourned the meeting at 10:43 a.m.

ATTEST:
CHARLIE GREEN, CLERK

Deputy Clerk

[Chairman, Lee County Commission](#)