

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: October 3, 2006

Consent

Regular

Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: A Resolution declaring that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with Indian Trail Improvement District prior to court proceedings.

Summary: This action will declare that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with Indian Trail Improvement District prior to filing litigation to enforce the County's right to a decision on requested permits, and the County's right to public records. District 6 (ATP)

Background and Justification: The County has made application for several permits to Indian Trail Improvement District (ITID). ITID has not taken action on the permit applications, in spite of repeated requests from the County, and the County is unable to complete several important engineering projects in a timely fashion without the requested authorization from ITID.

Specifically, the County requested a permit from ITID on November 8, 2004, for drainage construction and work within their canal as required for the proposed Orange Blvd. and Royal Palm Beach Blvd. Intersection Improvements (Project No. 2001108). The request was resubmitted on March 3, 2005, and follow-up correspondence was sent on April 8, 2005, May 12, 2005, and June 6, 2005, with no response from ITID. Additionally, the County submitted a request for a permit from ITID on June 17, 2004, to connect Persimmon Blvd. S. Ext., 110th Ave. to Okeechobee Blvd., to Orange Grove Blvd. and Persimmon Blvd. ITID refused to take action on the June 17, 2004 permit application when the item was placed in front of the Board for a vote on August 5, 2004. The County sent follow-up correspondence to the June 17, 2004 request on November 29, 2004, requesting the status of the application, but has received no response. ITID has not promulgated appropriate rules and regulations regarding the issuance of permits, and has acted arbitrarily and capriciously in refusing to respond to the County's requests.

Further, the County has sent several public records requests to ITID, which have gone unanswered. The public records requests include requests for permitting information, and other public information related to ongoing water utilities and engineering projects within ITID's area. ITID's unlawful refusal to provide the County with the requested information deprives the County of its legal right to public records.

Attachments:

1. Resolution

Recommended by: _____

DmNSteman
Department Director

9/18/06
Date

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	—	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	—	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

Reporting Category ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

OFMB: *[Signature]* 9-20-06
 Contract Dev. and Control: *[Signature]* 9/20/06
 Legal Sufficiency: *[Signature]* 9-19-06

B. Legal Sufficiency:
[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

RESOLUTION NO. R-2006-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DECLARING THAT SIGNIFICANT LEGAL RIGHTS WILL BE IMPAIRED IF PALM BEACH COUNTY IS REQUIRED TO COMPLETE INTERGOVERNMENTAL CONFLICT RESOLUTION PROCEDURES WITH INDIAN TRAIL IMPROVEMENT DISTRICT PRIOR TO COURT PROCEEDINGS

WHEREAS, Palm Beach County requested a permit from Indian Trail Improvement District on November 8, 2004, for drainage construction and work within their canal as required for the proposed Orange Blvd. and Royal Palm Beach Blvd. Intersection Improvements (Project No. 2001108);

WHEREAS, Palm Beach County resubmitted the request for a permit from Indian Trail Improvement District on March 3, 2005, after receiving no response from Indian Trail Improvement District to the County's initial permit submittal;

WHEREAS, Palm Beach County sent letters requesting action on the permit application for Project No. 2001108 on April 8, 2005, May 12, 2005, and June 6, 2005, with no response from Indian Trail Improvement District;

WHEREAS, Palm Beach County submitted a request for a permit from Indian Trail Improvement District on June 17, 2004, to connect Persimmon Blvd. S. Ext., 110th Ave. to Okeechobee Blvd., to Orange Grove Blvd. and Persimmon Blvd;

WHEREAS, Indian Trail Improvement District refused to take action on the June 17, 2004 permit application when the item was placed in front of the Board for a vote on August 5, 2004;

WHEREAS, Palm Beach County sent follow-up correspondence to the June 17, 2004 request on November 29, 2004 requesting the status of the County's application for a permit to connect Persimmon Blvd. S. Ext., 110th Ave. to Okeechobee Blvd., but has received no response;

WHEREAS, nothing in Indian Trail Improvement District's enabling legislation expressly entitles Indian Trail Improvement District to require permits from Palm Beach County;

WHEREAS, Chapter 337.401, authorizes local government entities to "prescribe and enforce reasonable rules or regulations" regarding the use of public rights-of-way by utilities;

WHEREAS, Indian Trail Improvement District has not formally passed rules or regulations regarding the use of its public right-of-way, and such rules that it does apply are not reasonable, because they do not identify a time frame within which a permit applicant can expect a decision on a pending permit, and because they do not contain sufficient criteria and guidelines from which a reasonable person could determine his/her rights and obligations under the permitting process;

WHEREAS, Section 164.1052, Florida Statutes (2003), requires the passage of a resolution by three-fourths vote, in which it is determined that significant legal rights will be compromised if court proceedings do not occur prior to the completion of intergovernmental conflict resolution procedures;

WHEREAS, Palm Beach County's significant legal rights will be compromised if court proceedings do not take place prior to the completion of intergovernmental conflict resolution procedures.

WHEREAS, Palm Beach County has made several public records requests to Indian Trail Improvement District, including but not limited to, a public records request dated June 21, 2005 requesting copies of the Resolution or other official act of Indian Trail Improvement District ("ITID") Board of Supervisors approving the special permit documents; a public records request dated October 30, 2005 requesting all documents regarding 1) the reconstruction of the intersection of Royal Palm Beach and Orange Boulevards; 2) transferring easements along Seminole Pratt Whitney Road between Northlake Boulevard and 100th Street; 3) developing drainage structures along Seminole Pratt Whitney Road between Okeechobee Boulevard and Sycamore Boulevard; 4) creating connections for the Persimmon Boulevard S. extension at Orange Grove Boulevard and Persimmon Boulevard; 5) all documents or materials pertaining to the ITID Board Meeting on October 17, 2005; 6) all maintenance records regarding expenses for maintenance done by or on behalf of ITID in the area known as Unit 11; a public records request dated March 6, 2006 requesting a copy of the ITID M-1S Water Control Plan Bayhill Bond Issue; and a public records request dated March 21, 2006, which was resent on April 24, 2006 and May 24, 2006, requesting copies of all legal expenses/billings for cases/matters listed for City of West Palm Beach et. al. v. Department of Community Affairs, Case Nos: -4-4336GM, 04-4337GM, 04-4650GM (Division of Administrative Hearings)(Administrative Law Judge Donald Alexander), West Palm Beach et. al.

v. Florida Department of Community Affairs, Fourth District Court of Appeal, Case No. 4D05-4377 consolidated with Indian Trail Improvement District v. Department Community Affairs et. al., Fourth District Court of Appeal, Case No. 4D05-4379, City of West Palm Beach et. al. v. Palm Beach County, Case No. 50 2004 CA 012091 XXXX AB consolidated with Indian Trail Improvement District v. Palm Beach County, Case No. 50 2005 CA 000965 XXX MB (Fifteenth Circuit Court)(Judge Gerber); Indian Trail denied having a copy of the ITID M-1S Water Control Plan Bayhill Bond Issue and failed to provide any response to the remaining public records requests.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The Whereas clauses stated above are true and correct and form a part of this Resolution.
2. It is the intent of the Board of County Commissioners of Palm Beach County to file suit prior to the completion of intergovernmental conflict resolution procedures, pursuant to Chapter 164, Florida Statutes (2004), because significant legal rights will be compromised if court proceedings do not take place prior to the completion of intergovernmental conflict resolution procedures.
3. It is the intent of the Board of County Commissioners of Palm Beach County to pursue intergovernmental conflict resolution concurrent with litigation, pursuant to Chapter 164, Florida Statutes (2004).
4. Pursuant to Section 164.1052(1), Florida Statutes (2004), the County will send to the Board of Supervisors of the Indian Trail Improvement District, within five days of the passage of this Resolution, a certified copy of the Resolution and a letter stating the nature of the conflict, the reason for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting, and suggestions regarding the officials who should be present at the conflict assessment meeting.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Tony Masilotti, Chairman
Commissioner Addie Greene, Vice Chairman
Commissioner Karen Marcus
Commissioner Jeff Koons
Commissioner Warren H. Newell
Commissioner Mary McCarty
Commissioner Burt Aaronson

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2006.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

DOROTHY H. WILKEN, CLERK

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney