

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020792

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt resolution approving the issuance of Lee County Industrial Development Authority Bonds on behalf of Bonita Springs Utilities, Inc. in an amount not to exceed \$65,000,000.00 for the primary purpose of financing or refinancing all or part of the cost of certain capital improvement costs incurred or to be incurred by Bonita Springs Utilities, Inc. in connection with its water and sewer utility system.

WHY ACTION IS NECESSARY: Authorizes Industrial Development Authority to issue industrial development bonds pursuant to Chapter 159, Florida Statutes.

WHAT ACTION ACCOMPLISHES: Provides Board consideration of proposed Industrial Development Authority Bonds as required by Internal Revenue Code and Florida Statutes. Board approval will authorize and adopt approving bond issuance resolution.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #

C12D

3. MEETING DATE:

07-09-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE F.S. Ch. 159
- ORDINANCE
- ADMIN. CODE
- OTHER Sec. 147 IRC

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION
- BY: James G. Yaeger
County Attorney

7. BACKGROUND: The Lee County Industrial Development Authority has entered into an agreement for issuance of private activity revenue bonds with Bonita Springs Utilities, Inc. On November 29, 2001 and June 21, 2002, the Industrial Development Authority held noticed public hearings and has adopted an inducement resolution for the proposed issuance of Industrial Development Authority private activity revenue bonds in an initial amount not to exceed \$65,000,000.00 for the primary purpose of financing the acquisition, construction and equipping of capital improvements to be owned and operated by Bonita Springs Utilities, Inc.

The Internal Revenue Code and Florida Statutes require an applicable elected body to approve the prospective bond financing for the project. The county resolution approves the issuance of the bonds and the project. Section 3 provides that Board action is a limited approval.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	RISK	GC	
N/A	N/A	N/A	N/A	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i> 6-27-02

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
6/27/02

RECEIVED BY
COUNTY ADMIN. *JA*
6/27/02
COUNTY ADMIN.
240m
6/27 330

NABORS, GIBLIN & NICKERSON, P.A.

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(407) 426-7595
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June 24, 2002

James G. Yaeger, Esq.
Lee County Attorney
2115 Second Street
Fort Myers, Florida 33901

Dear Jim:

Enclosed please find ten copies of a proposed resolution for consideration by the Board of County Commissioners at the earliest available meeting. Adoption of the resolution would provide the Board's limited approval to the issuance of not exceeding \$65,000,000 of Lee County Industrial Development Authority Utility System Revenue Bonds, Series 2002 for the benefit of Bonita Springs Utilities, Inc. The approval of the County is extremely limited and is required by Section 147(f) of the Internal Revenue Code and Section 159.47(1)(i), Florida Statutes. In essence, these provisions provide that an elected public body must give its approval to the issuance of private activity bonds prior to their issuance. The Board's approval is given in accordance with Section 125.01(1)(z), Florida Statutes.

Section 3 of the Board's resolution makes it clear that the approval being given by the Board is limited and, importantly, that the Board is not incurring any liability as a result thereof. Please note that Section 8 of the Authority's resolution adopted by the Authority on June 21, 2002 (after a public hearing on the issue) which is attached as an Exhibit to the Board's resolution, also contains the same provision.

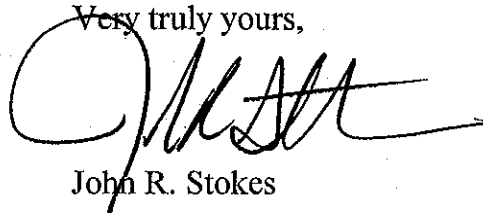
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LEE CO. ATTORNEY

James G. Yaeger, Esq.
June 24, 2002
Page 2

Please let us know whether or not it will be necessary to have any representatives from the Authority, the Company or their counsel present at the meeting. Also, please provide me with a certified copy of the adopted resolution at your convenience.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. R. Stokes", written over the typed name below.

John R. Stokes

JRS:mbw

Enclosures

cc: James T. Humphrey, Esq.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS PRIVATE ACTIVITY REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$65,000,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED FOR THE PRINCIPAL PURPOSE OF FINANCING AND REFINANCING ALL OR PART OF THE COST OF CERTAIN CAPITAL IMPROVEMENT COSTS INCURRED OR TO BE INCURRED BY BONITA SPRINGS UTILITIES, INC. IN CONNECTION WITH ITS WATER AND SEWER UTILITY SYSTEM

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Lee County Industrial Development Authority (the "Authority") has previously submitted to the Board of County Commissioners of Lee County, Florida (the "County"), a copy of a resolution of the Authority which was adopted by the Authority on November 29, 2001 (the "Inducement Resolution") granting its preliminary approval for the issuance by the Authority of its private activity revenue bonds (the "Bonds"), in an aggregate principal amount not to exceed \$60,000,000 for the primary purpose of financing (or providing for reimbursement of) certain costs of acquisition, construction and equipping of capital improvements by Bonita Springs Utilities, Inc. (the "Corporation") to its water and sewer utility system in Lee County, as more particularly described in the Inducement Resolution (the "Project").

B. On November 29, 2001, the Authority held a public hearing, which public hearing was duly conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project, and the issuance of the Bonds for such purposes.

C. On December 4, 2001 this Board adopted Resolution 01-12-02, approving the issuance of the Bonds for such purposes.

D. In order to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") that the public hearing on the issuance of private activity bonds be held if the amount of the Bonds to be issued is increased, the Authority held another public hearing as described in Section 1F below.

E. On June 21, 2002, the Authority held another public hearing, which public hearing was conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to (1) the location and nature of the Project, (2) increasing the size of the Bond issue to \$65,000,000 and (3) the issuance of the Bonds for such purposes.

F. The Authority has submitted to the County a copy of a resolution of the Authority which was adopted by the Authority on June 21, 2002 (the "Approving Resolution"), granting its limited approval for the issuance by the Authority of the Bonds in an aggregate principal amount not to exceed \$65,000,000 (which amount is an increase of \$5,000,000 of the previously approved amount) for the principal purpose of financing and refinancing the Project to be owned and operated by the Corporation. A copy of the Approving Resolution is attached hereto as Exhibit A.

G. The Authority has requested the County to approve the issuance of the Bonds in order to satisfy the requirements of Section 147(f) of the Code and Section 125.01(1)(z), Florida Statutes.

H. The purposes of Part II, Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interests of the County that the issuance of the Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project be approved by the Board.

SECTION 2. APPROVAL OF ISSUANCE OF BONDS; THE PROJECT.

The issuance of the Bonds and the use of the proceeds thereof to finance and refinance the costs of the Project as contemplated by the Approving Resolution be and hereby are approved.

SECTION 3. LIMITED APPROVAL. The approval given herein shall not be construed as (A) an endorsement of the creditworthiness of the Corporation or the financial viability of the Project, (B) a recommendation to any prospective purchaser to purchase the Bonds, (C) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (D) approval of any necessary rezoning applications or approval or

acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds or the acquisition and construction of the Project, and the Authority shall so provide in the financing documents setting forth the details of the Bonds.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED, this _____ day of _____, 2002.

(SEAL)

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

ATTEST:

By: _____
Chairman

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

County Attorney

EXHIBIT A

APPROVING RESOLUTION

A RESOLUTION OF THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY RELATIVE TO THE PROPOSED ISSUANCE OF TAX-EXEMPT PRIVATE ACTIVITY REVENUE BONDS FOR THE PRINCIPAL PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS TO THE WATER AND SEWER UTILITY FACILITIES OF BONITA SPRINGS UTILITIES, INC.; PROVIDING FOR THE APPROVAL BY THE AUTHORITY FOR THE ISSUANCE OF NOT EXCEEDING \$65,000,000 OF SUCH BONDS; PROVIDING FOR CERTAIN RELATED MATTERS IN CONNECTION THEREWITH AND FOR AN EFFECTIVE DATE.

WHEREAS, Bonita Springs Utilities, Inc. (the "Corporation"), a Florida not-for-profit corporation, has heretofore applied to the Lee County Industrial Development Authority (the "Authority"), to issue certain tax-exempt revenue bonds in an initial aggregate principal amount not to exceed \$60,000,000 (the "Bonds") for the principal purpose of (1) financing and refinancing the costs of acquisition, construction and equipping of certain improvements (the "Project") to its water and sewer utility system, and (2) paying costs associated with the issuance of the Bonds. The Project is to be owned and operated by the Corporation in Lee County, Florida (the "County"); and

WHEREAS, by resolution adopted by the Authority on November 29, 2001, and after holding a public hearing in compliance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Authority gave its preliminary approval to the issuance of the Bonds in the aggregate principal amount not to exceed \$60,000,000 for the purposes set forth above; and

WHEREAS, in order to satisfy the requirements of Section 147(f) of the Code that the public hearing on the issuance of private activity bonds be held to increase the aggregate principal amount of the Bonds to \$65,000,000, the Authority did on the date hereof, hold another public hearing on the date hereof on the proposed issuance of the Bonds for the purposes herein stated, which date was more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in the County, which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of the County, such notice was reasonably designed to inform residents of the County of the proposed issue, stated that the Authority would be the issuer of the Bonds, stated the time and place of the hearing and

generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the Authority and provided sufficient time for interested persons to prepare for and to express their views at such hearing.

IT IS, THEREFORE, DETERMINED AND RESOLVED BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 159, Part II, Florida Statutes, and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into in order to permit the Corporation to continue to proceed with commitments for the Project and to incur costs in connection with the Project and to provide an expression of intention by the Authority, prior to the issuance of the Bonds, to issue and sell the Bonds and make the proceeds thereof available to finance all or part of the costs of the Project, to the extent of such proceeds, all in accordance with and subject to the provisions of the Constitution and other laws of the State of Florida, including the Code, and this Resolution.

SECTION 3. APPROVAL OF THE PROJECT. The acquisition, construction, equipping and development of the Project as described in the notice of public hearing attached hereto as Exhibit A and the financing thereof by the Authority through the issuance of the Bonds pursuant to the Act, will promote the economic development and health and welfare of the citizens of the County, will provide the residents of the County with new jobs, will promote the general economic structure of the County, will thereby serve the public purposes of the Act and is hereby reaffirmed and approved.

SECTION 4. AUTHORIZATION OF THE BONDS. There is hereby authorized to be issued and the Authority hereby determines to issue the Bonds, if so requested by the Corporation, in one or more issues or series of such tax-exempt revenue bonds in an aggregate principal amount not to exceed \$65,000,000 for the principal purpose of financing and refinancing the costs of the Project. The rate of interest payable on the Bonds shall not exceed the maximum rate permitted by law.

SECTION 5. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS. The Authority hereby recommends the issuance of the Bonds and the financing and refinancing of the Project for approval to the Board of County Commissioners of Lee County (the "Board"). The Authority hereby directs the Chairman or Vice-Chairman, either alone or jointly, at the expense of the Corporation, to cooperate in

seeking approval for the issuance of the Bonds and the financing of the Project by the Board as the applicable elected representatives of the County under and pursuant to the Act and Section 147(f) of the Code.

SECTION 6. GENERAL AUTHORIZATION. The Chairman, the Vice-Chairman and the Secretary are hereby further authorized to proceed with the undertakings on the part of the Authority and are further authorized to take such steps and actions as may be required or necessary in order to cause the Authority to issue the Bonds subject in all respects to the terms and conditions set forth herein.

SECTION 7. LIMITED OBLIGATIONS. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the State of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Authority and the Corporation prior to or contemporaneously with the issuance of the Bonds.


SECTION 8. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the Project and the Authority shall not be construed by reason of its adoption of this resolution to (a) attest to the Corporation's ability to repay the indebtedness represented by the Bonds, (b) a recommendation to prospective purchasers of the Bonds to purchase the same, or (c) have waived any right of Lee County or estopping Lee County from asserting any rights or responsibilities it may have in that regard.

SECTION 9. EFFECTIVE DATE. This Resolution shall take effect immediately.

PASSED AND ADOPTED this 21st day of June, 2002.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)



Chairman

ATTEST:



Secretary

EXHIBIT A

**AFFIDAVIT OF PUBLICATION OF
NOTICE OF PUBLIC HEARING**

NEWS-PRESS

*Published every morning - Daily and Sunday
Fort Myers, Florida*

Affidavit of Publication

**STATE OF FLORIDA
COUNTY OF LEE**

Before the undersigned authority, personally appeared

Kieanna Henry

who on oath says that he/she is the

Asst. Legal Clerk of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of **Public Hearing on 6/21/02 Lee Co. Ind. (Bonita Springs)**

in the _____ Court

was published in said newspaper in the issues of

June 5, 2002

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Kieanna Henry

Sworn to and subscribed before me this

5th day of June 2002 by

Kieanna Henry

personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public *Brenda Leighton*
Print Name _____

My commission Expires:



Brenda Leighton
MY COMMISSION # CC808905 EXPIRES
February 14, 2003
BONDED THROUGH FAIN INSURANCE INC

NOTICE OF PUBLIC HEARING
The Lee County Industrial Development Authority (the "Authority") will hold a public hearing on June 21, 2002 at 1:00 P.M., at the Authority's offices located at 2180 West First Street, 5th Floor Conference Room, Saxon House, Fort Myers, Florida to consider adoption of a resolution providing for the preliminary approval of the issuance by the Authority of not exceeding \$65,000,000 of its Utility System Revenue Bonds, Series 2002 (Bonita Springs Utilities, Inc. Project) (the "Series 2002 Bonds"). The Authority previously held a public hearing related to this matter on November 29, 2001. The Authority is holding an additional public hearing in order to receive comments on increasing the size of the Series 2002 Bond issue from \$60,000,000 to \$65,000,000.
The Series 2002 Bonds will be issued for the principal purposes of (A) financing the acquisition, construction and equipping of certain capital improvements to the utility system for the Bonita Springs Utilities, Inc. service area more particularly described below (the "Project") and (B) funding any necessary reserves and paying costs associated with the issuance of the Series 2002 Bonds. The Project consists of the following: (1) the continuation of the gravity expansion wastewater collection system program replacing septic tanks within the utility's central sewer service area, (2) water treatment plant expansion to provide 9 mgd of total capacity, (3) expansion of the water reclamation facility to provide 7 mgd of total wastewater capacity, (4) construction of a new well field and new reverse osmosis water treatment plant with the capacity of 6 mgd, (5) construction of a major water main and force main extension, and (6) system improvements and upgrades throughout the service area. The utility system is owned and operated by Bonita Springs Utilities, Inc., a Florida not-for-profit corporation (the "Borrower"). The Project will also be owned and operated by the Borrower. The mailing address of the Borrower is 11840 East Terry Street, Bonita Springs, Florida 34135. A map of the Borrower's service area may be obtained by requesting the same from Patti Garrett, Director of Finance (941) 992-0711. The Series 2002 Bonds shall be payable solely from the revenues derived by the Authority from a loan agreement to be entered into by and between the Authority and the Borrower prior to or contemporaneously with the issuance of the Series 2002 Bonds. Such Series 2002 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the

State of Florida or any political subdivision or agency thereof. Issuance of the Series 2002 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on the Series 2002 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Lee County Industrial Development Authority prior to the hearing at 2180 West First Street, Suite 301, Fort Myers, Florida 33901, Attention: Janet Watermeier.
ALL PERSONS FOR OR AGAINST SAID APPROVAL CAN BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO SUCH HEARING OR MEETING, (S) HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SUCH HEARING OR MEETING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED.
In accordance with the Americans with Disabilities Act persons needing a special accommodation to participate in this proceeding should contact the individual or agency publishing this notice no later than seven days prior to the proceeding at the address given in this notice. Telephone: (941) 338-3161.
By order of the Lee County Industrial Development Authority.
LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
/s/ Thomas Hoolihan, Jr., Chairman
Jun 5 No. 30448