

RESOLUTION NO. 99- 82

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, FINDING, PURSUANT TO SECTION 164.103, FLORIDA STATUTES, THAT AN IMMEDIATE DANGER EXISTS TO THE WELFARE OF THE PUBLIC REQUIRING IMMEDIATE ACTION, THE FILING OF SUIT AGAINST THE CITY OF ST. AUGUSTINE, FLORIDA, A FLORIDA MUNICIPAL CORPORATION.

WHEREAS, the Board of County Commissioners of St. Johns County, Florida, has filed an Objection to City of St. Augustine, Florida (City) Ordinance 99-14, effective April 1, 1999, which purported to establish an exclusive water and wastewater service area for the City within a five-mile radius of the City's limits except for those areas currently being served by the County and private utilities; and

WHEREAS, City Ordinance 99-14 breaches the Interlocal Agreement between the City and the County entered into on May 9, 1989 (Interlocal Agreement), by usurping service territory previously reserved to the County; the Ordinance uneconomically duplicates existing water and wastewater services provided by the County as shall be hereinafter demonstrated; the Ordinance disenfranchises County residents within the five mile area of control over water and wastewater rates; the Ordinance imposes water and wastewater rates on County residents which are 25% higher than rates charged City residents for the same services; the Ordinance prevents the efficient operation of existing County water and wastewater facilities by denying the County the ability to "loop" its transmission and distribution systems; the Ordinance violates §§180.02(2), 180.03(1), 180.02(3), 180.06, Florida Statutes; the Ordinance violates County Ordinance 97-62, effective November 24, 1997, and the Ordinance violates the County's Comprehensive Plan; and

WHEREAS, the City has already laid water and wastewater transmission and distribution

lines along U.S. 1 in the Department of Transportation right-of-way in reliance on Ordinance 99-14 in an area currently reserved to the County under the Interlocal Agreement, thereby breaching the Interlocal Agreement; and

WHEREAS, on March 23, 1999, the City signed an Utility Service Agreement (Hines Agreement) with Hines Interests Limited Partnership (Hines) to serve the Marshall Creek Development of Regional Impact (Marshall Creek Project) and has begun installation of water and wastewater lines to serve that project; and

WHEREAS, the Marshall Creek Project lies wholly outside the corporate city limits of the City and wholly outside the five-mile area described in City Ordinance 99-14; and

WHEREAS, the Hines Agreement by its terms allows Hines only 120 days from March 23, 1999, to terminate the Agreement; and

WHEREAS, on May 18, 1999, the County enacted Ordinance 99-36, establishing exclusive and designated County water and wastewater water and wastewater service areas which encompass the Marshall Creek Project and areas reserved to the City by Ordinance 99-14; and

WHEREAS, on April 20, 1999, the County and JEA executed a Water and Wastewater Utility Services Agreement (JEA Agreement), in which the County and JEA agreed to cooperatively provide water and wastewater services to areas within the County, among which is the Marshall Creek Project; and

WHEREAS, Florida Statutes and the Florida Constitution empower the County to: protect the health, safety and welfare of its citizens by efficiently operating its existing water and wastewater facilities; cooperate with other local governments by adhering to executed interlocal agreements; honor existing contractual agreements with private entities; and act to prohibit the uneconomic

duplication of water and wastewater services within the unincorporated areas of the County; and

WHEREAS, the County has filed a timely objection to Ordinance 99-14 which has not stayed the City's actions that are offensive to the enabling statute, Chapter 180, Florida Statutes, and thereby has exhausted all remedies available to the County other than suit; and

WHEREAS, due to the City's enactment of Ordinance 99-14 and its subsequent actions in reliance upon Ordinance 99-14, the County must immediately file suit against the City to prohibit actions in contravention of Chapter 180, Florida Statutes, and to protect the County's interests and the integrity of its Comprehensive Plan; and

WHEREAS, Section 164.03, Florida Statutes, requires that 45 days notice be given to a municipality when a county intends to file suit against the municipality unless the county finds that immediate action is needed to protect the health, safety or welfare of its citizens.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA (the Board) as follows:

Section 1. Findings. The Board hereby finds and determines that each of the statements set forth in the above recitals are true, correct and accurate.

Section 2. Welfare of citizens. The City is installing water and wastewater lines in breach of the Interlocal Agreement, in contravention of the County's contract with JEA, in violation of County Ordinance 99-~~36~~ establishing County water and wastewater exclusive and designated service areas, in violation of the County's Comprehensive Plan, and in violation of County Ordinance 97-62. The failure of the County to immediately pursue all legal remedies, including seeking injunctive relief, in these circumstances may be construed to be acquiescence to these illegal actions and a waiver of the County's rights under the Interlocal Agreement, an abrogation of its

duties under its contract with JEA and a violation of its own ordinances and Comprehensive Plan. For these reasons, the County finds that an immediate danger to the health, safety and welfare of its citizens exists that requires the immediate filing and prosecution of a suit for breach of contract and for injunctive relief to require the City to cease violating the above described statutes, ordinances and the County's Comprehensive Plan.

Section 3. Exhaustion of Remedies. The County has fully complied with the provisions of Chapter 180, Florida Statutes, for challenging the City's violation of Chapter 180, Florida Statutes, by reason of its illegal enactment of City Ordinance 99-14. Therefore, the Board also hereby finds and determines that significant legal rights of the County will be compromised if court proceedings do not take place immediately.

Section 4. Effective Date. This Resolution shall take effect upon adoption by the Board of County Commissioners of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 18 day of May, 1999.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

BY: Marc A. Jacalone  
Marc A. Jacalone, Chairman

ATTEST: CHERYL STRICKLAND, CLERK

BY: Patricia DeBlonde  
Deputy Clerk