

**MINUTES OF MEETING
BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA
JANUARY 28, 2003
(9:00 A.M.)**

Proceedings of a regular meeting of the Board of County Commissioners of St. Johns County, Florida, began and held in the Auditorium at the County Administration Building, 4020 Lewis Speedway (County Road 16-A) and U.S. 1 North, St. Augustine, Florida.

Present were: James E. Bryant, District 5, Chair
Karen Stern, District 2, Vice Chair
Nicholas Meiszer, District 1
Marc Jacalone, District 3
Bruce Maguire, District 4
Ben W. Adams, Jr., County Administrator
Laura Barrow, Assistant County Attorney
Lenora Newsome, Deputy Clerk

(01/28/03 - 1 - 9:08 a.m.)

Chairman Bryant called the meeting to order.

(01/28/03 - 1 - 9:09 a.m.)

Bryant gave the Invocation and Jacalone led the Pledge of Allegiance.

(01/28/03 - 1 - 9:09 a.m.)

ROLL CALL

Bryant stated, for the record, that all five Commissioners were present.

(01/28/03 - 1 - 9:09 a.m.)

PROCLAMATION RECOGNIZING LIBRARY APPRECIATION WEEK

Bryant stated that the Proclamation would be presented at next week's meeting.

(01/28/03 - 1 - 9:10 a.m.)

PUBLIC COMMENT

Robin Wilson, 1550 U.S. 1 South, spoke on the APAC Corporation's asphalt plant off of State Road 207. She stated that the residents of that area, who are elderly and ill, are having difficulty breathing due to some of the plant's operations. She presented an article from *The St. Augustine Record*, regarding a letter to the Editor about the how the plant disrupts the residents in the area with lights and noise. (9:12 a.m.) Michael Hunt, Assistant County Attorney, entered the meeting. (9:13 a.m.) Imy Pipes, 52 Sunrise Blvd., #C3, spoke on the properties that are adjacent to the APAC Corporation's plant and outlined her breathing difficulties and illnesses due to smoke and an odor, that smells like burning rubber, coming from the plant. (9:15 a.m.) Wilson stated that she went to the plant to find out what they were burning and was told waste (used) oil. She feels that the community should do something to put a halt to APAC's actions, as they have been cited previously. She stated that, per her research, there is a filter, or a chemical, that could be used during the distilling process to reduce the pollution. (9:16 a.m.) Bryant stated that he is not sure if there is an Ordinance that addresses those issues and that she should check with the EPA and the DEP. (9:16 a.m.) Barrow stated that her office has looked into this issue previously and that many agencies investigated

and could not find a violation of any local, state or federal laws. (9:17 a.m.) Wilson stated that they resolve the problem and then it becomes problematic again. Discussion followed on researching this item and what could be done now to protect the residents.

(01/28/03 - 2 - 9:20 a.m.)

DELETIONS TO CONSENT AGENDA

There were none.

(01/28/03 - 2 - 9:20 a.m.)

APPROVAL OF CONSENT AGENDA

Motion by Stern, seconded by Bryant, carried 5/0, to approve the Consent Agenda.

1. Approval of the Cash Requirement Report
2. Sheriff's Bonds:
Approve: Willie M. Wilcox Cancel: Keisha L. Gulley
Approve: Sheri L. Burns
3. Motion to adopt **Resolution No. 2003-18**, approving a Final Plat for Saddle Brook.

RESOLUTION NO. 2003-18

**RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA
APPROVING A SUBDIVISION PLAT FOR SADDLE
BROOK**

4. Motion to authorize the County Attorney to review, edit and prepare a Park Ordinance, in proper format, that can be returned to the Board of County Commissioners for further review
5. Motion to approve a Final Order approving an extension of the service area for St. Johns Service Company
6. Proofs:
 - a. Proof, Notice of Hearing, Investigation of Possible Overearnings of Intercoastal Utilities, Inc., January 28, 2003
 - b. Proof, Notice to Bidders, Bid #03-20
 - c. Proof, Notice to Bidders, Bid #03-49

(01/28/03 - 2 - 9:21 a.m.)

ADDITIONS/DELETIONS TO REGULAR AGENDA

There were none.

(01/28/03 - 2 - 9:21 a.m.)

APPROVAL OF REGULAR AGENDA

Motion by Bryant, seconded by Stern, carried 5/0, to approve the Regular Agenda.

(01/28/03 - 3 - 9:21a.m.)

1. DISCUSSION ON THE SCOPE OF THE RESIDENTIAL SOLID WASTE COLLECTION FRANCHISE

Maguire reviewed this item and stated that his biggest concern is bidding out the service for the entire county, to two franchise organizations, at the same time. If the same franchise retains their contract there would be no transition in service operations, but the other extreme could be that there could be two brand new organizations starting, or transitioning, at the same time. He recommended that the bids for the northern and southern parts of the county be addressed at different times. (9:25 a.m.) Barrow left the meeting. (9:25 a.m.) Bryant commented that he would not like to sacrifice service for price and that he is not afraid to address both areas at the same time. (9:26 a.m.) Jacalone stated that he would not support changing the current bidding process and stated his reasons. (9:28 a.m.) Meiszer commented on the bid process and stated that he would agree that the decision should not be based on cost alone, but should include service records and service quality, as well as other factors. He also feels that commercial service needs to be evaluated along with the residential to keep it on a competitive basis. (9:31 a.m.) Stern commented that she has spoken with several of the potential bidders and she feels that none of the haulers would have a problem making the transition. (9:33 a.m.) Maguire reassured the Board that this is not an attempt to change the process, but that the focus of his effort is to try to get an overlap of applications between the northern and southern halves of the County. He also addressed the legalities involved, cost and quality of service. (9:37 a.m.) *Motion by Maguire to split the franchise operation bidding process and do the south half this year and the north half in three years with six-year contracts. Motion died for lack of a second.* (9:37 a.m.) Bryant stated that they [the Board] have made great strides in reducing solid waste costs to the residents of the County three years ago with a \$35 per ton reduction in disposal cost. The assessment to homeowners has also been reduced from \$65 per year to \$47 per year, as well as a reduction for recycling. Discussion followed regarding making this decision after the bid proposals have been received.

(9:44 a.m.) Janie Coleman, Waste Management, 6501 Greenland Rd., Jacksonville, asked the Board to continue the course of the RFP for residential franchises and she requested that the Board open up the commercial for competitive competition by franchised haulers. (9:45 a.m.) Barrow returned to the meeting and Hunt left the meeting.

(01/28/03 - 3 - 9:45 a.m.)

2. UPDATE ON THE VILANO BOAT RAMP

Dan Weimer, Recreation and Parks Department Director, presented a progress report on the Vilano Boat Ramp expansion project and outlined the reasons for the delay with the project. (9:51 a.m.) Kim Allerton, Vice-President of Environmental Resource Solutions, Inc., gave background on the application process and outlined the issues and objections brought up by the various agencies, i.e., the Corp of Engineers, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. She stated that there would be a meeting with representatives of the various agencies tomorrow afternoon to hopefully aid in resolving their issues and objections. (10:01 a.m.) Weimer stated, in response to an inquiry from Jacalone, that to date, the only expense for this project has been for consulting services. (10:03 a.m.) Mike Rubin, Construction Services Manager, addressed the utilities that are going to be brought to the site and the associated cost and options. The cost to connect to the city's water line would be from \$150,000. to \$160,000. Discussion followed regarding the pros and cons of using the existing well or connecting to the City's line and mitigation options. (10:09 a.m.) Jacalone stated that it should be stressed to the agencies that this is not an effort to increase boat traffic, but to accommodate the current traffic. Also, there is a serious safety problem at the ramp as

trucks and trailers are being parked on the right-of-way. Weimer responded that the parking issue has been stressed from the very beginning as the reason, and the only reason, for doing this project, and that they have letters on file from various groups and law enforcement agencies, attesting to the dangerous situation there.

(10:12 a.m.) Weimer stated that to date approximately \$92,000. of the \$2.33 million budget for this project has been spent, and of that BHR's contract is \$75,800. He further stated, in response to Meiszer, that the permitting agencies are not in favor of improving the boat ramp to attract additional boaters. Discussion followed regarding the utility hook-up fees, the details of those fees, the costs of mitigation lands and fire protection. (10:23 a.m.) Jacalone directed Staff to investigate further the offer made by the City that would bring the water lines down A1A (May Street) for about \$20,000., if there were no objections from the Board. He also requested that Weimer come before the Board monthly for updates. There was further discussion regarding the details of the budget for this project and what the purpose of this project is and the possibility of charging fees to use the ramp to discourage over use. (10:32 a.m.) Meiszer stated that he could not understand why the County should pay for water from the City when there is a well already on site. Weimer stated that the City has offered to maintain the fire system at no charge, not supply the water at no charge. Discussion followed regarding the possibility of cost sharing the utility hook-up costs with Camachee Cove, as they are looking to connect to the City water system also. (10:38 a.m.) Weimer suggested that he report back to the Board after responses are received from the permitting agencies, rather than monthly.

(10:39 a.m.) Victoria Smith, 211 Porpoise Point Drive, stated that she feels that these improvements are greatly needed. She is concerned with the boat traffic on the Intracoastal in this area. She suggested that the County and the Coast Guard should implement a no wake zone from the Vilano Bridge to the inlet.

(10:41 a.m.) Roger Van Ghent, 4005 Moultrie Foreside Blvd., representing The Audubon Society, stated that he would recommend support of this project to the Society at their next meeting. He stated that wildlife viewers, as well as boaters, use this area.

The meeting recessed at 10:44 a.m. and reconvened at 10:53 a.m.

(01/28/03 - 4 - 10:53 a.m.)

3. CONSIDER FREE USE OF THE ST. JOHNS COUNTY CONVENTION CENTER TO THE EMMA GUILD TO HOLD THEIR SPRING FASHION SHOW ON FRIDAY, MARCH 28, 2003

Dena Masters, Office Manager, TDC, reviewed this item. (10:54 a.m.) **Motion by Jacalone, seconded by Bryant, carried 5/0, to approve the request of the free use of the St. Johns County Convention Center to the EMMA Guild on Friday, March 28, 2003.**

(01/28/03 - 4 - 10:55 a.m.)

4. CONSIDER CONSTRUCTION OF SIDEWALKS ON BOTH SIDES OF FRUIT COVE ROAD

Joe Stephenson, Public Works Director, addressed this item by explaining the two proposed alternate plans, Alternate A and Alternate B, for widening the road, to include a bicycle lane, and the cost and funding involved for both plans. He outlined the results of a survey that was taken after the Public Meeting, as to which option the public prefers. The most commonly approved alternative, by a considerable margin, was the plan for sidewalks. Discussion followed on supporting the recommendation for implementing Alternate B.

(11:08 a.m.) Sarah Bailey, 2202 Bishop Estates Rd., spoke in support of this project and expressed concern about children riding their bikes on the sidewalks. She also stated that she would like to see something like this done on Bishop Estates Road as well.

(11:11 a.m.) Motion by Jacalone, seconded by Stern, carried 5/0, to approve construction of Alternate B, to include sidewalks on both sides of Fruit Cove Road.

(01/28/03 - 5 - 11:11 a.m.)

5. DISCUSSION OF FOUR LANING COUNTY ROAD 210 FROM THE INTERCOASTAL WATERWAY TO SR A1A

Joe Stephenson, Public Works Director, presented the details of the options, utilizing visual display (Exhibit A), for four-laning County Road 210, from the Intracoastal Waterway to State Road A1A. He outlined the parameters of the corridor study, but wanted to focus on the area between the Intracoastal to A1A for purposes of this discussion. He reviewed the current and projected traffic counts on the affected roadways and updated the Board on some other project priorities. He also addressed how Nocatee would affect traffic in the area and, per their Development Order (Exhibit B), which improvements they are required to make to CR 210. He compared what would be needed for right-of-way acquisition and improvements for a 100-foot right-of-way versus a 120-foot right-of-way. He highlighted the differences in features between the proposed Alternative A) using all of the County owned right-of-way; Alternative B) using the Sawmill Lakes side edge as the construction limit; and Alternative C) relocate the entire roadway in the Guana State Park. (11:41 a.m.) Jacalone stated that the direction that the County should go is to use Alternative B. He feels that trying to get approval from the Cabinet to go through Guana would be impossible, and unnecessary, as there are other options.

(11:44 a.m.) Bryant questioned if there has been any public input regarding Alternatives A and B. Stephenson responded that Sawmill Lakes has stated that they do not want the roadway brought any closer to their development than it already is. He also said that there has been opposition to moving the road into Guana, as well. Bryant stated that public safety, being a responsibility of the Board, is the number one issue on this corridor. Discussion followed regarding the impact that this would have on Neck Road and the hurricane evacuation route. (11:50 a.m.) Meiszer stated that the maximum intrusion into Guana that he would support is 56 feet. He does not think that having a 120-foot right-of-way, as opposed to 100-feet, would aid in hurricane evacuations. (11:52 a.m.) Stern questioned the possibility of a using a round-about and Stephenson responded that he would be glad to study that as an alternative to traffic signals.

(11:55 a.m.) Bryant stated, for the record, that an e-mail from Michael Sherwood was received, that requested that the County stay with the current CR 210 alignment.

(11:56 a.m.) Heather Allen, 1900 Corporate Square Blvd., Jacksonville, representing the The Sembler Company, stated that they have entered into a contract to purchase property for a shopping center at Mickler and Palm Valley Roads, and that an application for concurrency has been filed and, that once the Certificate of Concurrency is obtained, it is their intent to proceed with the Civil Engineering for the shopping center. She stated further, that if the recommended realignment is chosen it would devastate the proposed development of the shopping center, therefore, they would like a resolution as to whether the County intends to pursue acquisition of this property so that decisions could be made about the development of the site. Utilizing visual display, Allen illustrated on the site plan (Exhibit C), the part of the property that the County has an option on. (11:59 a.m.) Stephenson pointed out that what is shown on

her site plan, that illustrates the effect the realignment would have on their project, is not exactly what he presented today.

(12:00 p.m.) Mary Ann Blount, Real Estate Manager, explained that the property that the County currently has an option on would effect the development of the shopping center.

(12:01 p.m.) Marilyn Jacobs, 1173 Neck Road, is opposed to taking any part of Guana and the widening of the road. She suggested that a public transportation system be developed to ferry people to the beach from Nocatee or Julington Creek to Mickler's Landing, including a local trolley to move people around at the beach.

(12:04 p.m.) Roger Van Ghent, 4005 Moultrie Foreside Blvd., representing The St. Johns County Audubon Society, addressed the need to protect Guana State Park. He asked if a need has been established for the widening of the road and what the real impacts, benefits and cost of the widening would be. The Audubon Society is not opposed to widening the road, if it is in the interest of public safety, but they would not support Alternative C, at all.

(12:07 p.m.) Curtis Anthony, 1205 Neck Road, spoke in favor of Alternative A, he could accept Alternative B if necessary, but absolutely not Alternative C.

(12:09 p.m.) Kathleen Anthony, 1205 Neck Road, stated that there has been a negative impact on CR 210 from the changes that were made to Roscoe Blvd. and she commented that the animals in the preserve also needed to be considered, as well as, the property owners, who could be affected, and public safety. She would not support Alternative C.

(12:11 p.m.) Phillip Parsons, 4601 Nottingham Rd., Jacksonville, addressed the property that is currently under contract by The Sembler Company. He stated that Publix has already committed to moving into the proposed shopping center and he would like the County to give that some consideration when making its' decision.

(12:14 p.m.) Steve Harrison, 310 Genoa Road, President of Friends of Guana River State Park (FROG), stated that they would not support any activity in the park that is not currently in the Land Use Management Plan.

(12:15 p.m.) Bob Kroner, 1298 Ponte Vedra Blvd., recommended that before an option is chosen, a taskforce be formed to study the entire transportation needs of the community. He feels that a rotary should be used at the Mickler/Palm Valley intersection (Exhibit D), as they are very efficient.

(12:18 p.m.) Marcy Silkebaken, 1145 Neck Road, requested that Option C be removed from any further consideration and that the Board consider a rotary, or round-about, at the Mickler/CR 210 intersection. She also asked that the County purchase three parcels at the Mickler/CR210 intersection before they have commercial developments constructed.

(12:20 p.m.) Mary Kohnke, 29 South Roscoe Road, spoke in favor of Alternative B and suggested that the Board make a decision quickly, as Nocatee will begin roadway construction very soon. (12:24 p.m.) Jacalone left the meeting.

(12:26 p.m.) Hal Hitch, 367 South Millview Way, representing the Civic Affairs Committee of Saw Mill Lakes, spoke in support of Alternative B and stated that he likes the idea of a round-about and would like the Board to investigate that further.

(12:29 p.m.) Walter Rohrer, 2315 Clubview Court, spoke in favor of Alternate B with a 100-foot right-of-way.

(12:29 p.m.) Sarah Bailey, 2202 Bishop Estates Road, spoke in opposition of any taking of land in the Guana State Park.

(12:31 p.m.) Tom Hareas, 7170 Pebble Beach Lane, Seminole, spoke as the developer for The Sembler Company and commented that since there is some confusion about where the right-of-way is going to go it is complicating the permitting and concurrency processes for their proposed shopping center and could even effect the viability of doing the project.

(12:34 p.m.) Joe Russo, 5858 Central Ave., St. Petersburg, with The Sembler Company, clarified the agreement, or option to buy, that the County has on the property that they plan to develop. He stated the their site plan already includes provisions to honor the terms of that agreement. He reviewed their plans for the site, to include a Publix store, and stated that their current plan allows for a 100-foot right-of-way. He suggested that the intersection at Mickler Road and CR 210 could be moved further north and then it would not affect their property.

(12:40 p.m.) Maguire stated that he is in favor of roundabouts and he feels that the need is there for four-laning, as there will be a tremendous increase in traffic. He supports Alternative B. Discussion followed on the transportation modeling system that is currently being used.

(12:46 p.m.) Meiszer reiterated that he supports the plan with the 100-foot right-of-way and feels that having a 120-foot right-of-way would not make the road any safer. He would like to see Alternative B used with the right-of-way limited to 100 feet, unless there is a safety issue.

(12:50 p.m.) Stephenson stated that they would need to continue to do studies on the impacts. He made a correction to a previous comment stating that the study recommends a 120-foot right-of-way to Neck Road. He stated that roundabouts are generally less expensive than traffic signals, but have a slightly larger footprint. He asked for direction from the Board as to how to proceed. (12:52 p.m.) Bryant stated that he should get with each Commissioner individually.

(12:54 p.m.) Bryant stated that Items 6 and 7 and all Reports would be moved to the end of the day and recessed the meeting.

The meeting recessed at 12:54 p.m., and reconvened at 1:42 p.m. with Bryant, Jacalone, Stern, Meiszer, Maguire, Adams, Bosanko, and Cecelia Aldrich, Clerk present.

(1:43 p.m.) Bryant announced that Staff requested that Items 6 and 7 be moved to next Tuesday. **Motion by Jacalone, seconded by Stern, carried 4/0, with Maguire absent, to move Items 6 and 7 to next Tuesday.** (1:43 p.m.) Maguire returned to the meeting.

(01/28/03 - 7 - 1:43 - p.m.)

8. PUBLIC HEARING - INVESTIGATION OF POSSIBLE OVEREARNINGS OF INTERCOASTAL UTILITIES, INC. DOCKET #2001-0007-0023. THE PURPOSE OF THE HEARING IS FOR THE BOARD TO CONSIDER WHETHER TO CONFIRM, MODIFY, OR REJECT THE RECOMMENDED ORDER NO. 02-00013 DATED DECEMBER 2, 2002, ENTERED BY OMER CAUSEY, HEARING OFFICER IN THE ABOVE STYLED CASE AND TO CONSIDER ANY NOTICES OF OBJECTION TO CONFIRMATION FILED BY THE PARTIES. THIS

INVESTIGATION OF POSSIBLE OVERTURNINGS BY INTERCOASTAL UTILITIES, INC., ("INTERCOASTAL") WAS INITIATED PURSUANT TO BOARD ORDER NO. 01-00006 ISSUED ON MAY 3, 2001. PURSUANT TO BOARD ORDER NO 01-00009, PRELIMINARY ORDER ESTABLISHING AMOUNT OF REVENUES SUBJECT TO REFUND AND SECURITY TO SECURE REFUNDS, THE BOARD FOUND AND ORDERED THAT THE AMOUNT OF REVENUES SUBJECT TO REFUND WITH INTEREST WAS \$144,235 FOR WATER AND \$250,751 FOR SEWER ON AN ANNUAL BASIS, AND THAT A BOND OR BANK LETTER OF CREDIT, CALCULATED ON THE BASIS THAT THIS PROCEEDING WOULD LAST EIGHTEEN MONTHS, SHOULD BE SET IN THE AMOUNT OF \$592,500. A BANK LETTER OF CREDIT WAS ISSUED AND NAMED THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY AS BENEFICIARY. A HEARING OFFICER WAS APPOINTED AND HEARINGS WERE HELD ON MAY 8, 9, 10, AND 24 OF 2002. THE HEARING OFFICER ISSUED A RECOMMENDED ORDER ON DECEMBER 2, 2002 FOR THE CONSIDERATION OF THE BOARD

Proof of Publication of the Notice of Public Hearing on the Investigation of Possible Overearnings of Intercoastal Utilities, Inc., was received, having been published in *The St. Augustine Record* on January 10, 2003 and the *Ponte Vedra Recorder* on January 17, 2003.

(1:43 p.m.) Bryant stated that he would set a two-hour time limit due to the amount of information on this item and if needed, continue to a later date, as a Special Meeting.

(1:44 p.m.) Bosanko stated that he distributed a revised Order of the Hearing and read the recommendations for the procedures. (1:47 p.m.) Michael Hunt, Assistant County Attorney entered the meeting. Bryant and Bosanko discussed the procedure for hearing witnesses and public comments.

Kenneth Gatlin, Esq., Ruden, McClosky, et al., for St. Johns County Water and Sewer Authority

(1:48 p.m.) Kenneth Gatlin, 215 South Monroe Street, Ste. 800, Tallahassee, stated that the investigation started May 3, 2001. He said there was an indication that Intercoastal was receiving revenue outside the allowed rate of return. He reviewed the actions taken by the Authority that started the investigation and the limited proceeding case in which the Board approved a settlement. Gatlin stated that the investigation led to questions of overearnings and to the substantiation of certain costs which Intercoastal contended should be allowed. Staff and the Office of Public Counsel (OPC) held the position that Intercoastal failed to furnish the costs for a \$2.56 million wastewater treatment plant investment. Gatlin said there was a question as to whether documents proving cost should be produced by Intercoastal or Jax Utility Management (JUM). He said the Hearing Officer and the Board found Intercoastal to be an affiliated company with JUM. He continued that Intercoastal denied affiliation with JUM, said they did not have the documents being requested, that JUM did and would not give them to Intercoastal. Gatlin commented that the largest number in the controversy was the cost of the water treatment plant, which the Hearing Officer disallowed because he said there was no credible evidence to support the cost. As a result, the Hearing Officer determined that Intercoastal's rates should be reduced and should pay a penalty of \$330,000 for its refusal to produce the cost numbers for the plant. He explained how the charges were determined by the Hearing Officer. He continued, stating that Staff and the OPC have consulted on the issues they could resolve between them, and that they agree with the Hearing Officer's Order that Intercoastal should pay a refund of \$527,789 (to start with the next billing period of March 1st). Gatlin said Intercoastal

maintains that the refund should be reduced by 28% for water and 25% for wastewater and the start date should be June 6, 2001. He said the OPC and Staff agree it should be perspective, and not retrospective, and recommended that the Board not start a limited proceeding to determine the cost of the water plant. Gatlin said that should be Intercoastal's option. He questioned whether the Hearing Officer had the authority to assess the County's expenses in its' case against Intercoastal, otherwise, they agree with the Findings of Fact. In summary, he said that the case has been fully heard, everyone has had due process, and the Board should adopt the Hearing Officer's Recommended Order, except to the extent stated.

Stephen Reilly, Esq., Office of Public Counsel

(2:02 p.m.) Stephen Reilly, 111 West Madison Street, Tallahassee, stated that it is Public Counsel's position that the Hearing Officer did an excellent job, particularly the burden of proof and the issue of the affiliated party transaction. Reilly talked about Intercoastal's argument as to why they should be able to continue to charge existing rates. He responded to Intercoastal's objection filed on January 22nd, saying that it is a mischaracterization of the Hearing Officer's position on the burden of proof. He said audits determined that there was probable cause that Intercoastal was overearning and they believe that the Hearing Officer's findings and the Recommended Order are correct and consistent with Florida and National Utility Law. He said it was Intercoastal's strategy to establish that Staff had the burden of proof, refuse to give Staff the critical information needed, and then argue that Staff failed to meet the burden. Reilly argued that Intercoastal must have the burden because it's the utility that possesses the information. He said they always understood it was a critical issue and there was no sandbagging. Reilly referred to the other critical issue, the affiliated party transaction issue, and said JUM benefited at the expense of Intercoastal and its' rate payers. He said there is no question that these two companies are related parties. He gave examples of them subsidizing each other and noted that their own records and witnesses readily admitted that they are related partners. He noted that there were a few things that should be changed. He said since the rate base item has been taken out, there is no further need to demand this information, though he added that Intercoastal is on notice that it's not going to be put back in until they provide that information. He said the facts of the case support 15.04% reduction in water rates and a 7.95% reduction in wastewater rates. Finally, he said with those minor modifications they strongly recommend that the Board confirm the Recommended Order and approve the Proposed Order that Public Counsel and Staff have concurred on.

(2:16 p.m.) Bosanko asked for an explanation of the refund schedule. (2:17 p.m.) Reilly said the Order confirming the Recommended Order details the issue of refunds. He noted that Staff, Public Counsel and the Company have signed off on procedure and dollars. He noted that the customer refund portion is based on usage. Reilly said the only thing they have not signed off on is the rate case expense. He said normally, amortizing starts when the rates go into effect and stops at the end of four years, then drops off and the rates are reduced accordingly. (2:20 p.m.) Meiszer asked for clarification on who initiated the rate case. (2:21 p.m.) Following discussion it was determined that initially, customers brought concerns to Staff and then the Water and Sewer Authority engaged a national firm, Larkin & Associates, to conduct an audit. Following that, Mr. Schultz, who worked for Larkin and the Authority, investigated Intercoastal's books and records. (2:23 p.m.) Meiszer asked if there was any other legal action pending between Intercoastal and a customer. (2:23 p.m.) Gatlin said there is legal action pending on the rate matter just discussed.

(2:24 p.m.) Bosanko advised the Board that they could ask questions at any time during the proceedings.

(2:24 p.m.) John Wharton, 2548 Blairstone Pines Drive, Tallahassee, indicated they were not as impressed with the Recommended Order and stated that Intercoastal turned over boxes of records and answered hundreds of interrogatories. He said there are some very complex issues and he would address only the major ones. Wharton said that the rate case expense is being amortized incorrectly and that Gatlin's calculations would require the refund to be about 25% overstated in both water and wastewater. He said you don't amortize rate case expense until the rates go into effect and noted that this is an overearnings investigation, the rates are being reduced retroactively and that's why they owe a refund. He argued that is why the rate case expense should be in there and commented that what was originally recommended by Staff has the potential to bankrupt the company. Wharton reviewed the activities and procedures of the 1998 Order and the 1990 water and wastewater rate case, as well as the reduction in rates currently being proposed. He noted that Staff's proposal was that Intercoastal pay \$1.23 million in refunds and fines. (2:29 p.m.) Bryant asked if it was a limited rate case and noted that they didn't have to produce all the information required in a full rate case. He suggested that's how this Board's investigation developed. (2:29 p.m.) Wharton said that the 1998 case was a limited proceeding and explained that the nature of a limited proceeding deals with trying to get a couple of very specific things put into a rate base. Wharton described what he saw the problem to be with the re-visitation and the rate given in 1998. (2:30 p.m.) Bryant said the Board did not have all the information at that time. Discussion followed regarding the earlier proceedings. (2:32 p.m.) Wharton continued that Intercoastal has been a St. John's County business for 18+ years, pays \$300,000 per year in taxes, and does not pay fees or salaries to directors, shareholders, or officers. He stated that the County's connection fees are much higher than Intercoastal's and added that Intercoastal is charging the rates they were given after investigation. He said earlier, Intercoastal was looking at a 15.05% reduction in water and a 7.95% reduction in wastewater, as well as, a payment of \$1.23 million (\$525,000 for refunds and the rest in the nature of a fine). He said Staff is now reducing that by \$375,000, back to what the Hearing Officer had recommended. Wharton said, based on his research, \$330,000 is the highest fine ever levied by a County. He said this case was not a reduction of Intercoastal's rates, because it did not have the investment to support those rates, but rather a reduction by disallowing the investment of the water plant. In regard to the relationship between JUM and Intercoastal, he said it has existed since Intercoastal has been in St. Johns County. He noted that the Hearing Officer in this case accepted testimony that there were some billing anomalies inside the JUM organization and that the document controversy overwhelmed the issues in this case. Regarding the fines, he said they are now told they are not going to be more than \$335,000. He said they did cooperate with discovery in this case and gave the Board and Staff everything they had. Wharton said it was the documents that were in the possession of JUM (documents between JUM and their subcontractors) that were not turned over. He said this came up in the audit and we paid the fine. He said they were hoping the case would go away then, but they dug deeper into JUM's construction business. Wharton stated that the Hearing Officer determined there was a discovery violation, said Intercoastal would be fined \$330,000 for being in contempt and directed them to pay \$83,000 in Staff costs. He noted that Staff said it's illegal, in what it filed last week, but didn't get rid of it, just converted it over to Rule 14.2. He stated that there was no indication in advance of the Hearing Officer's Order that there was money involved in the motion for Sanctions. Wharton read Staff's Motion to Impose Sanctions filed November 6, 2001. He stated that they were not going to be allowed to testify about the water plant because they said the documents were vital to determining whether the water plant should be in the rate base. Wharton said the first time they ever heard about the \$1,500 per day fine was when they got the Recommended Order. Wharton

explained that the hearing was originally set for February 13th and a Pre-Hearing Conference was set for January 30th, including several days of depositions. He was en route when he got word that his father had died. He said he came on and went to the pre-hearing conference and it was determined that the case should be continued because he was supposed to be there for the depositions and they talked about a two or three week continuance. Because the facilities were not available, the hearings were continued to May 8th. He said in that regard, his father's death and the unavailability of the facilities cost Intercoastal \$124,500. If he had known that there was a \$1,500 per day penalty, he wouldn't have agreed to a continuance even given the circumstances. He said he would have conducted the activities differently if he knew a fine was accruing. He stated that in December, JUM offered to voluntarily supply the documents to Intercoastal if they could be held confidential by Staff. The County Attorney said it could not be done under the Public Records Law. Wharton said they filed documents yesterday (January 27th), as they didn't know Staff was going to come down \$400,000. He said Staff also asked for an assessment of penalties because it was a violation of a rule. Wharton asked the Board to consider the punitive nature of the fine. He said their witness in this proceeding acknowledged that he wasn't aware of anything in the Rules and Regulations of the St. Johns County Regulatory Authority that indicated that invoices were a required piece of supporting documentation for a utility like Intercoastal. He commented that the Board issued an Order in October that said they wanted the Hearing Officer to determine whether Intercoastal was in violation of the Rules. He said Staff then filed a Motion asking him to do what the Board ordered and he declined at the time, and said he would do it after the Hearing. Wharton said he issued a Recommended Order, which is just a recommendation, on December 2nd and Intercoastal has never received an Order informing them that not having these documents is a violation of the Ordinances. Wharton commented that a Motion was filed to obtain the documents directly from JUM, and then withdrawn. He added that the Hearing Officer has now said that JUM's records were subject to access by Staff, but that Staff never requested those documents from JUM. Wharton said JUM has never been a party to this proceeding and he does not represent JUM. He said Staff was happier to get rid of the whole plant rather than get the documents. Wharton said the rule says when supporting cost you may rely upon a prior determination of the Authority and with regard to the wastewater treatment plant, that was the case. He said Intercoastal invested \$2.57 million in a substantial expansion of its' water treatment plant, which was completed prior to commencement of this case. The Recommended Order has recommended that the amount of investment that should be allowed into rate base is zero. He said if the 1998 rate order had not been gutted, and if the \$2.57 million plant had been put into the rate base, there would have been a negligible reduction in Intercoastal's rates. He said the Staff Engineer inspected the plant and said it was well built. Wharton commented that Staff said since there was no documentation, they would only allow 60% of what was asked for. He said Staff did nothing to determine the amount of Intercoastal's investment. Regarding the original cost records, he said Intercoastal gave them everything they had.

(2:57 p.m.) Jacalone asked Wharton about the adjusted Order, with modifications and the time of assessment that has been recommended. He also asked if Wharton was satisfied with the refund amount schedule as being proposed by the Hearing Officer. Wharton said that the schedule correctly implements the Recommended Order, but indicated they didn't necessarily agree with the Recommended Order. Discussion followed about the fine and the retroactive issue. (2:58 p.m.) Wharton said he wanted the fine to be reduced to zero. (2:59 p.m.) Jacalone said he would check to see if it was accurate that they had no idea that there was a \$1,500 per day fine being imposed and if Rule 14.2 allows for no notification. (2:59 p.m.) Wharton concluded his remarks about the water treatment plant by requesting that it be put into the rate base. He continued that Intercoastal came before the Authority in 1998 and got a prudency determination

from the Board in relation to the water treatment plant. Wharton said that, at that time, the County, Staff and related consultants, reported that it was the right size and found costs to be reasonable. He said they came before the Board before they built the plant and according to related agencies, it was the right size and it met requirements. Now, he said 25% of that plant is being disallowed because it is overbuilt. Wharton commented that they came in and got a 40% wastewater increase in 1998 and since Martinelli and Friedman became members of the Authority, things have gone pretty rough for Intercoastal. He then stated that the OPC is the publicly funded entity that has the sole purpose to depress rates. Wharton asked the Commission to consider the nature of the fine, the circumstances and the amount. He reminded the Board of the cost of the water treatment plant and said at no point did JUM overcharge Intercoastal for either one of the plants. (3:10 p.m.) Meiszer asked about the water treatment plant. (3:11 p.m.) M. L. Forrester, Vice President of JUM, responded that the plant involves four wells, the construction of additional reservoir capacity, an upgrading of the chlorination, and changing out and adding pumps. (3:13 p.m.) Wharton asked the Commissioners for consideration of the penalty, to include the water treatment plant, preserve the sanctity of the 1998 order, that the rate case expense should begin to be amortized when the new rates go into effect, and asked that refunds due be changed to 180 days. (3:14 p.m.) Bryant stated that penalties are usually issued for a reason. (3:14 p.m.) Stern asked for clarification on the fines. Wharton responded. (3:16 p.m.) Discussion followed on procedure and it was decided to go to public comment.

Public Comment:

(3:17 p.m.) Walter Rohrer, 2315 Clubview Ct., Sawgrass Association, indicated he didn't need to elaborate on the Recommended Order and stated that he thinks it is a very strong document. He asked that the Commission confirm the Order.

(3:18 p.m.) Michael Korn, 6620 Southpoint Drive South, Jacksonville, introduced himself as a representative for the Sawgrass Association. He noted that they are the largest single group of Intercoastal customers. Korn said he thought the Hearing Officer did an admirable job. He acknowledged the number of people in the audience who are Intercoastal customers. He disagreed with an earlier statement that there have been no complaints from Intercoastal customers and commented that Intercoastal could be sold at some point.

(3:22 p.m.) Howard Renforth, 144 Crosstide Circle, Ponte Vedra Beach, noted that he was in Seaside and there are 264 families in the community. Renforth said Intercoastal built a water plant behind his home. He asked that the Board confirm the Order in its' entirety.

(3:23 p.m.) Robert Sandla, 110 Willow Pond Lane, Ponte Vedra Beach, stated he was a past President of the Sawgrass Association. He referred to comments made earlier about Martinelli and Friedman and said they were spirited public citizens of St. Johns County and he was pleased to say both are his friends. He read from the Recommended Order, stated that the case is citizen based, and asked the Board to confirm the Order.

(3:27 p.m.) Bill Webster, 177 Elmwood Drive, Fruit Cove, stated that he sits on the St. Johns County Water and Sewer Authority. He noted that he disagreed with Wharton's remarks about the comparison in rates between Intercoastal and St. Johns County Utilities. (3:28 p.m.) Wharton objected. Bryant responded that he would have an opportunity to rebut. Wharton said it was a quasi-judicial hearing proceeding and this is the Authority testifying. Bosanko determined that Webster was speaking for himself, as opposed to the Authority. (3:28) Webster responded to accusations against Staff by Wharton. In reference to the water plant, he said there is a remedy for that and they

could come before the Authority or the Board at any time. He also said the innuendo that Martinelli or Friedman had anything negative to do with this proceeding was totally out of line. He reviewed how the proceedings started and recommended approval of the Order, as modified by Staff and the Office of Public Counsel.

(3:31 p.m.) Charles D. Towers, Jr., 4579 Ortega Blvd., Jacksonville, expressed concern at the amount of hostility he has observed. He reviewed his, and his family's, ongoing involvement in the community and expressed his affection for the area. He said his company, Florida Title, did own Jacksonville Utility Management and sold it five years ago. Towers said he has nothing to do with JUM other than Intercoastal, which he owns 20% of. He said his nephew's family owns 10%, another family from Georgia owns better than 40%, and Buddy James and another person own 10% of the company. He said 90% of it is owned by people who don't have anything to do with JUM. He said they contract with JUM to manage it. Towers said Buddy James is President of both companies, his associates own JUM and 10% of this company.

(3:37 p.m.) Bob Hochstein, 349 Crossroad Lakes Drive, Ponte Vedra Beach, expressed concern about comments that had been made. He asked the Board who advised them, what effect bankruptcy would have on this company, and would they be able to get papers after the company goes bankrupt. He suggested that, in the future, more studies are conducted before decisions are made.

(3:40 p.m.) Bryant responded that they asked for a limited rate case, but as proceedings progressed, residents brought forth some accusations that turned out to be true.

(3:40 p.m.) Jacalone asked about the water plant expansion cost not being recouped because the supporting documentation was not submitted. (3:41 p.m.) Gatlin said all that was presented were estimates of the cost, and the Hearing Officer determined that JUM was an affiliated company and therefore Intercoastal had access to the information. (3:43 p.m.) Jacalone asked if there was evidence that approximately \$2.4 million was paid to JUM. Gatlin responded in the negative. (3:45 p.m.) Jacalone asked about the retroactive part of the rate expense. Gatlin said the Board established an amount that was subject to refund and this was nothing new. (3:46 p.m.) Jacalone received clarification from Gatlin that Rule 14.2 allows imposition of the fine if there's a violation and that Intercoastal had an opportunity to address that.

(3:48 p.m.) Maguire expressed gratitude to Towers for his contributions to the community.

(3:48 p.m.) Bosanko interjected, to point out that the St. Johns Water and Sewer Authority has an opportunity to rebut. (3:49 p.m.) Discussion followed on procedure and it was decided that the Authority would give the final rebuttal.

(3:50 p.m.) Maguire asked Wharton about the reference to bankruptcy and his awareness of the fine that could be levied. (3:52 p.m.) Wharton said nobody ever raised 14.2, until the Hearing Officer filed on December 2nd and though he is aware of 14.2, doesn't believe it authorizes a retroactive fine when none has been requested. (3:53 p.m.) Maguire said he didn't think Wharton's commentary answered all the questions to the charges of the 129 pages. (3:55 p.m.) Meiszer said he would vote to refund to the customers any overage that they were improperly charged if it is determined they were overcharged, which he feels could be done without bankrupting the company. He added that if there was going to be a fine it should be levied in such a way that there is a consequence.

(4:00 p.m.) Bosanko asked that any ex-parte communication be revealed. Bryant said he only talked to Bosanko and it related to continuance of the case. (4:01 p.m.) Stern said

she spoke with Bosanko and with Michael Korn concerning refunding customers. (4:02 p.m.) Maguire clarified that the fines will be levied as a percentage of revenue over time and will not come from the customer. He said he wasn't sure the shareholders should carry the brunt of the fines, when management seems to be the one who made the decision to withhold data. (4:05 p.m.) Gatlin said that it is covered by Section 14.2 of a County Ordinance. (4:08 p.m.) Jacalone clarified that the County only has the ability to fine Intercoastal.

(4:11 p.m.) Gatlin referred to the 1998-99 proceedings in which that Order says the Authority reserves the right to reconsider the allowable rate of return, the rate base, and other rate adjustments made. Gatlin said Wharton didn't go far enough down on the list and read from the Order. He reviewed the circumstances surrounding the request for documentation and noted that Intercoastal had an opportunity to request a stay of the penalty, and other aspects of the proceeding, but chose not to. Gatlin explained that there is no exemption under the Sunshine Law that would allow staff to enter into the confidentiality agreement and look at the records and not disclose them. He reviewed the determination of violation as well as the Burden of Proof issue. In regard to the affiliation with JUM, Gatlin reviewed ownerships as found by the Hearing Officer, that would assume any decisions made by Mr. James on behalf of Intercoastal, with reference to JUM, directly affect Mr. James and his son, as they own 65% of JUM. (4:21 p.m.) Reilly stated that there is no precedence for amortizing rate case expense back to the beginning of the proceedings and that the new rates contemplate the recovery of the rate case expense. He said Staff did the right thing by going directly to the utility to get the documents to support the plant. Reilly stated that case law is clear, that if you don't supply the support, you don't get the rate base.

(4:23 p.m.) Wharton commented that the Commissioners that had only read the Recommended Order and not the testimony and exhibits, do not have a complete picture of what has occurred. He argued that Intercoastal was not able to get the documents, the original costs that Intercoastal had utilized from previous rate cases, was the original cost to Intercoastal, not the original cost to the General Contractor, JUM. He continued that neither the motion, nor the oral arguments on the motion, asked for money. Wharton said that JUM is not a party and has never been represented. He said the County's financial expert testified that he was satisfied Intercoastal paid JUM for everything they said they did. Wharton said there was no opportunity at the Hearing to talk about penalties.

(4:30 p.m.) Reilly said there was a substantial discussion about fines at the conclusion of the Hearing. He said also, there was one issue that Public Counsel did not agree with Staff on, which was Staff asking to recoup its' cost. (4:31 p.m.) Wharton asked the Commissioners to go to the record and see that what he said is true.

(4:32 p.m.) Gatlin stated the Hearing Officer's Order is detailed and Staff is in agreement with the following exceptions: penalty would not run any farther than the Hearing Officer recommended; the Board would not undertake, on its own motion, to have a rate proceeding so Intercoastal could file these documents; and, there would be no fines after today.

(4:33 p.m.) Bryant commented that Intercoastal and JUM had some common owners and they did have access to the documents. He said his opinion was that cancelled checks don't prove or disprove the cost of that facility.

(4:34 p.m.) Bosanko said the penalty assessed could only be imposed against an entity subject to the Water and Sewer Authority Jurisdiction and that is not JUM. He said the issue about the plant is the cost, not the value, and records weren't produced to prove cost. Bosanko summed up that he has reviewed a Final Order, which has been

prepared by the Water and Sewer Authority in conjunction with the Office of Public Counsel, finds nothing contrary to law. He suggested that if the Commissioners are going to change any part of the Hearing Officer's Recommended Order, they should say specifically where the Hearing Officer was wrong.

(4:37 p.m.) Stern said she finds the Findings of Fact to be very clear and is in agreement. She said the customers needed to be refunded fairly and also queried the County's expense. (4:38 p.m.) Bosanko said the penalties aren't intended to cover costs.

(4:39 p.m.) Jacalone stated that the bulk of the reason for the fines being imposed is the result of Intercoastal's willfully and knowingly violating provisions of Rule 5.10. (4:41 p.m.) **Motion by Jacalone, seconded by Stern, carried 5/0, to confirm the Recommended Order with modifications that implements fines of \$330,000, gives a time limit of 30 days and also gives a time limit on the refund process of 90 days, and granting a refund to the customers that was a part of Docket No. 2001-0007-00023.**

(4:42 p.m.) Bryant called a five-minute recess and the sound system was shut off. Wharton approached the podium and began speaking. (4:43 p.m.) The sound system was turned on.

(4:43 p.m.) Wharton moved respectfully, *ore tenus*, that the provision of the Final Order addressing fines and requiring a rebate be abated until such time as Intercoastal is at least able to complete first tier review at the Circuit Court, sitting as the Appellate Court. Bryant suggested that funds be held in escrow. Jacalone said they couldn't answer that request without advice from Staff and Attorneys. It was decided that it would be discussed after the break.

The meeting recessed at 4:44 p.m. and reconvened at 4:50 p.m. with Deputy Clerk Lenora Newsome entering the meeting.

Bosanko advised the Commissioners that even if they didn't give a stay, Intercoastal Utilities, Inc. could still attempt to get a stay from the court. In his opinion, the court is more able to analyze all the factors including whether the letter of credit is sufficient in time and amount. (4:53 p.m.) **Motion by Bryant, seconded by Jacalone, carried 3/1 by roll call vote with Maguire absent and Meiszer dissenting, to deny the request for the stay.**

Roll Call Vote

Stern	aye
Jacalone	aye
Maguire	absent
Bryant	aye
Meiszer	nay

The motion passed 3/1 with Meiszer dissenting. Bosanko left the meeting and Maguire entered the meeting.

(01/28/03 - 15 - 4:55 p.m.)

9. PUBLIC HEARING - PURCHASE OF CRESCENT COVE WATER, INCORPORATED. THIS IS A CONTINUED SECOND AND FINAL PUBLIC HEARING REQUIRED BY FLORIDA STATUTES. THE PURPOSE OF THIS HEARING IS TO CONSIDER THE COUNTY'S PURCHASE OF CRESCENT COVE WATER, INCORPORATED, A WATER SYSTEM SUPPLYING THE CRESCENT COVE SUBDIVISION. THE CRESCENT COVE SUBDIVISION IS LOCATED ON THE NORTH SIDE OF STATE ROAD 206 (EAST OF U.S. 1 &

WEST OF THE MATANZAS RIVER). THE SYSTEM CURRENTLY SERVES 50 HOMES AND HAS THE POTENTIAL TO SERVE 40 ADDITIONAL HOMES. BASED ON THE ATTACHED ANALYSIS THE NEGOTIATED PURCHASE PRICE IS SET AT \$65,000. THERE WILL BE AN ADDITIONAL \$40,000 NEEDED TO CONNECT THE CRESCENT COVE SYSTEM TO THE COUNTY SYSTEM, ABANDON THE EXISTING PACKAGE PLANT, REPLACE THE WATER METERS WITHIN THE SUBDIVISION AND COVER ACCOUNTS RECEIVABLE PER THE ATTACHED AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS. THIS HEARING WILL ADDRESS THE ITEMS MANDATED BY FLORIDA STATUTE 125.3401 TO DETERMINE PUBLIC INTEREST

Proof of Publication of the Notice of Public Hearing regarding the purchase of a water utility owned by Crescent Cove Water, Inc. was received, having been published in *The St. Augustine Record* on January 18, 2003.

William Young, Utility Director, reviewed the Acquisition of Crescent Cove Water Inc. presenting the following: Acquisition Guiding Principals, Public Interest Requirements, most recent available income and expense statement for the utility, most recent available balance sheet for the Utility, statement of the existing rate base of the utility, physical condition of the utility being purchased, reasonableness of purchase contract price and terms, impacts of purchase on customers both positive and negative, additional investment and awareness to make such investment, alternatives to purchase and potential impact of no sale, ability of County to provide and maintain high quality and cost-effective utility service, financial analysis, and estimated structure-sources and uses. He stated that they are asking the Board to adopt a resolution and approve transfer of funds. Maguire questioned if any of the account receivables are past due. Young responded. Maguire stated that Young mentioned disassembling the existing facility and questioned if the facility was usable enough so it could be resold on the market. Young responded. Young explained how the purchase of Crescent Cove Water, Inc. fit into the County's plans for this area. (5:04 p.m.) **Motion by Jacalone, seconded by Stern, carried 5/0, to adopt Resolution #2003-19.**

RESOLUTION NO. 2003-19

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE PURCHASE AND EXECUTION OF A CONTRACT BY ST. JOHNS COUNTY, FLORIDA, OF A CERTAIN WATER UTILITY CURRENTLY OWNED BY CRESCENT COVE WATER, INCORPORATED; AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE THE PURCHASE AND SALE AGREEMENT; AUTHORIZING THE COUNTY ADMINISTRATOR AND OTHER COUNTY STAFF TO TAKE WHATEVER OTHER MEASURES ARE NECESSARY TO COMPLETE THE PURCHASE OF CRESCENT COVE WATER, INCORPORATED

(5:05 p.m.) Motion by Jacalone, seconded by Stern, carried 5/0, to transfer \$105,000 from the Utility Reserve Fund (4426-59920) to System Improvements Fund (4417-56302).

(01/28/03 - 17 - 5:06 p.m.)

10. PUBLIC HEARING - MAJMOD 2002-07 SIX MILE CREEK PUD, SAINT JOHNS DRI. THE SUBJECT PROPERTY IS WITHIN THE SIX MILE CREEK PUD AND THE SAINT JOHNS DRI. IT IS PHYSICALLY LOCATED AT 3977 PACETTI ROAD AND IS COMPRISED OF 4,350 ACRES. THIS REQUEST SEEKS TO MODIFY THE APPROVED PUD TO ALLOW TEMPORARY DIRECTIONAL SIGNAGE WITHIN THE RIGHT-OF-WAY ADJACENT TO THE WORLD GOLF VILLAGE PARCELS. THERE WILL BE A MAXIMUM OF 20 SIGNS PERMITTED AS SHOWN ON EXHIBIT D. THESE SIGNS WILL BE INSTALLED AND MAINTAINED WITHIN THE COUNTY RIGHT-OF-WAY BY THE DEVELOPER AND MUST MEET COUNTY BREAKAWAY STANDARDS AS SHOWN ON EXHIBIT E. THE DEVELOPER WILL GIVE THE COUNTY A HOLD HARMLESS AGREEMENT. THESE DIRECTIONAL SIGNS SHALL BE TEMPORARY AND SHALL EXPIRE UPON THE EARLIER OF COMPLETION OF AN FDOT AND COUNTY APPROVED DIRECTIONAL SIGNAGE PROGRAM OR THREE (3) YEARS FROM THE EFFECTIVE DATE OF THE APPROVED ORDINANCE. THE PROJECT IS EXEMPT FROM CONCURRENCY PURSUANT TO 91-CE-14 AND SECTION 11.08.04 OF THE LAND DEVELOPMENT CODE

Proof of Publication of the Notice of Public Hearing to allow temporary directional signage within the right-of-way at 3977 Pacetti Road was received, having been published in *The St. Augustine Record* on January 13, 2003.

Nicole Clayton, Planner II, requested to review items 10 and 11 together. Bryant agreed. Clayton stated that the subject property is within the Six Mile Creek PUD and the Saint Johns DRI, which is physically located at 3977 Pacetti Road and is comprised of 4,350 acres. She stated that this request seeks to modify the approved PUD to allow temporary directional signage within the right-of-way adjacent to the World Golf Village Parcels. She displayed a list of signs from the WGV Unified Sign Plans and explained what they were related to, Exhibit A.

Clayton stated in Item 11, there was a typing error in the Ordinance, under Section 1, the name of the title holders was incorrect and had been corrected to IT Land Associates LLC, Exhibit B. Maguire questioned what qualified this request as a major modification. Clayton replied that it was not in accordance with the Land Development Code. Jacalone stated that he supports this request. (5:10 p.m.) **Motion by Jacalone, seconded by Stern, to enact Ordinance 2003-6, the typo corrected version known as MAJMOD 2002-07 Six Mile Creek PUD adopting Findings that are included in the packet 1-6.** Clayton mentioned that the corrected Ordinance is actually for Item 11 not Item 10. Jacalone accepted the correction. **The motion carried 5/0.**

ORDINANCE NO. 2003-6

AN ORDINANCE OF THE COUNTY OF ST. JOHNS,
STATE OF FLORIDA APPROVING A MAJOR
MODIFICATION TO THE SIX MILE CREEK PUD,
ORDINANCE NUMBER 91-27, AS AMENDED,
MAKING FINDINGS OF FACT; REQUIRING
RECORDATION; AND PROVIDING FOR AN
EFFECTIVE DATE

(01/28/03 - 17 - 5:11 p.m.)

11. PUBLIC HEARING - MAJMOD 2002-06 INTERCHANGE PARCELS PUD, SAINT JOHNS DRI. THE SUBJECT PROPERTY IS WITHIN THE

INTERCHANGE PARCELS PUD AND THE SAINT JOHNS DRI. IT IS PHYSICALLY LOCATED AT 3380 INTERNATIONAL GOLF PARKWAY AND IS COMPRISED OF 1,947 ACRES. THIS REQUEST SEEKS TO MODIFY THE APPROVED PUD TO ALLOW TEMPORARY DIRECTIONAL SIGNAGE WITHIN THE RIGHT-OF-WAY ADJACENT TO THE WORLD GOLF VILLAGE PARCELS. THERE WILL BE A MAXIMUM OF 20 SIGNS PERMITTED AS SHOWN ON EXHIBIT D. THESE SIGNS WILL BE INSTALLED AND MAINTAINED WITHIN THE COUNTY RIGHT-OF-WAY BY THE DEVELOPER AND MUST MEET COUNTY BREAKAWAY STANDARDS AS SHOWN ON EXHIBIT E. THE DEVELOPER WILL GIVE THE COUNTY A HOLD HARMLESS AGREEMENT. THESE DIRECTIONAL SIGNS SHALL BE TEMPORARY AND SHALL EXPIRE UPON THE EARLIER OF COMPLETION OF AN FDOT AND COUNTY APPROVED DIRECTIONAL SIGNAGE PROGRAM OR THREE (3) YEARS FROM THE EFFECTIVE DATE OF THE APPROVED ORDINANCE. THE PROJECT IS EXEMPT FROM CONCURRENCY PURSUANT TO 91-CE-14 AND SECTION 11.08.04 OF THE LAND DEVELOPMENT CODE

Proof of Publication of the Notice of Public Hearing to consider a modification to allow temporary directional signage within the right-of-way at 3380 International Golf Parkway was received, having been published in *The St. Augustine Record* on January 13, 2003.

This Item was discussed in Item 10. (5:11 p.m.) **Motion by Bryant, seconded by Jacalone, carried 5/0, to enact Ordinance 2003-7, known as MAJMOD 2002-06 Interchange Parcels PUD adopting Findings of Fact 1-6 to support the motion with the typo corrections.**

ORDINANCE NO. 2003-7

AN ORDINANCE OF THE COUNTY OF ST. JOHNS, STATE OF FLORIDA APPROVING A MAJOR MODIFICATION TO THE INTERCHANGE PARCELS PUD, ORDINANCE NUMBER 91-36, AS AMENDED, MAKING FINDINGS OF FACT; REQUIRING RECORDATION; AND PROVIDING FOR AN EFFECTIVE DATE

(01/28/03 - 18 - 5:12 p.m.)

12. PUBLIC HEARING - REZ 2002-21 SR 13 PHARMACY. THIS REQUEST SEEKS TO REZONE APPROXIMATELY 3.14 ACRES, LOCATED AT 332 SR 13 NORTH (THE NORTHWEST CORNER OF SR 13 AND FRUIT COVE ROAD) FROM COMMERCIAL INTENSIVE (CI) AND RESIDENTIAL SINGLE FAMILY (RS-2) TO COMMERCIAL GENERAL (CG) FOR THE DEVELOPMENT OF A 14,560 SF PHARMACY WITH A DRIVE-THROUGH WINDOW. THE SUBJECT PROPERTY IS LOCATED WITHIN THE COMMUNITY COMMERCIAL FUTURE LAND USE DESIGNATION. A FINAL CERTIFICATE OF CONCURRENCY (CONMAJ 2002-17) FOR A 14,560 SF PHARMACY WITH A DRIVE-THROUGH WINDOW WAS ISSUED. THE FCOC MEETS THE REQUIREMENT OF SECTION 11.00.01 REQUIRING CONCURRENCY APPROVAL FOR A MINIMUM OF 1/3 OF THE MAXIMUM DEVELOPMENT ALLOWED BY THE PROPOSED REZONING

Proof of Publication of the Notice of Public Hearing to rezone lands from CI & RS-2 to CG at 332 State Road 13 North was received, having been published in *The St. Augustine Record* on January 13, 2003.

Clayton reviewed this item, stating, this request seeks to rezone approximately 3.14 acres, located at 332 SR 13 North (the Northwest corner of SR 13 an Fruit Cove Road) from Commercial Intensive (CI) and residential Single Family (RS2) to Commercial General (CG) for the development of a 14,560 SF pharmacy with a drive-through window. She stated that they have a typo correction. Jacalone disclosed having ex-parte communication with the applicant's representative, Metcalf, regarding generalities of the project. Bryant disclosed having ex-parte communication with Metcalf about buffers and traffic circulations. Maguire disclosed have ex-parte communication with Metcalf. Stern disclosed having ex-parte communication with Metcalf and a couple of principals from Mathew Development regarding the plans of the property. Bryant questioned how many drug stores were in that area. Clayton replied about two. Jacalone questioned the status of the compatibility index. Clayton replied that they were consistent with the old compatibility index and the other one would come back to the Board in March. (5:16 p.m.) Hunt left the meeting and Isabelle Lopez, Assistant County Attorney, entered the meeting. Meiszer disclosed having ex-parte communication with Metcalf.

(5:17 p.m.) John Metcalf, 1104 Mill Creek Drive, representing Mathew Development and Jack Arnold, spoke on the history of the property.

(5:18 p.m.) Sharon Hartsell, 1471 Fruit Cove Road, neighbor of this property, voiced concerns on poor planning, not looking at the big picture, major issues not being resolved, and a part of the area not having buffers. She showed pictures of the area, Exhibit A. Meiszer mentioned that the last time he spoke with management at the shopping center, they assured him that they would be building a block wall along the back property. He requested that the County Code Enforcement check the plans to see what was required and to see if it was done.

(5:27 p.m.) Louise Thrower, 288 Orange Avenue, questioned, considering the Northwest Sector Plan, why wouldn't this be considered a zoning request, needing a public hearing, since this is a corner location with a drive-in window. She also queried how it would affect the traffic circulation, and will this parcel be included in a larger planned unit development or will it always be considered an out parcel.

(5:29 p.m.) Mary Cornwell, 2652 SR 13, expressed concerns with the Scenic Highway, regarding a six-lane highway and a 30-foot buffer, Exhibit B. Bryant stated that there is a big chance that the six-lane highway will not happen. Meiszer replied that he opposed any six-laning of SR 13. Stern agreed with Meiszer. Bryant mentioned that the County made an application for its own MPO to the State, which the State granted and is forth coming. Cornwell mentioned that she does check things out, and doesn't just listen to rumors. Maguire remarked that he would be going to a meeting in Jacksonville in February and would express the Board's feelings to the MPO, and would report back to the Board.

(5:43 p.m.) Ellen Whitmer, 1178 Natures Hammock Road South, spoke on the traffic being very heavy and having too many pharmacies in the area. Maguire remarked that there are a lot of pharmacies in Ponte Vedra. Discussion followed on having concurrency on the rest of the property, on the issue of imposing restrictions on adjacent properties with an adjacent development, and this being a rezoning not a PUD.

(5:53 p.m.) Phyllis Abbatiello, 1133 River Birch Road, mentioned that an overlay group is needed and that the traffic in that corner is unbelievable.

(5:56 p.m.) Sarah Bailey, 2202 Bishop Estates Road, spoke on this project taking up a third of the full parcel, Exhibit C. Discussion followed on the 220-foot separation between this area and the next property, compatibility level, considering concurrency for the whole area, and having a Northwest Sector Plan Committee.

(6:05 p.m.) Metcalf responded to the questions and comments from the public regarding the area being one third of the parcel and issues regarding buffers. (6:12 p.m.) **Motion by Jacalone, seconded by Bryant, carried 5/0, to enact Ordinance 2003-8, known as REZ 2002-21 SR 13 pharmacy adopting findings 1-4 contained within the packet.**

ORDINANCE NO. 2003-8

**AN ORDINANCE OF THE COUNTY OF ST. JOHNS,
STATE OF FLORIDA REZONING LANDS AS
DESCRIBED HEREINAFTER FROM THE PRESENT
ZONING CLASSIFICATION OF COMMERCIAL
INTENSIVE (CI) AND RESIDENTIAL SINGLE FAMILY
(RS-2) TO COMMERCIAL GENERAL (CG) MAKING
FINDINGS OF FACT; REQUIRING RECORDATION;
AND PROVIDING AN EFFECTIVE DATE**

(01/28/03 - 20 - 6:13 p.m.)

13. PUBLIC HEARING - PUD 2002-21 BARTRAM WALK (FORMERLY SUBMITTED AS BARTRAM VILLAGE. THE TOTAL PROPERTY THE APPLICANT SEEKS TO REZONE TO PUD IS 17.6 ACRES, WHICH IS LOCATED AT 5801 RACE TRACK ROAD. THE PUD PROPOSES THE DEVELOPMENT OF A COMMERCIAL CENTER WITH A MIX OF OFFICE AND RETAIL USES CONSISTING OF 140,000 SF PLUS A CONVENIENCE/GAS STATION WITH UP TO 20 PUMPS. THE SUBJECT PROPERTY IS LOCATED WITHIN THE COMMUNITY COMMERCIAL (CC) FUTURE LAND USE DESIGNATION. THE FINAL CERTIFICATE OF CONCURRENCY (CONMAJ 2002-16) WAS APPROVED ON SEPTEMBER 11, 2002 FOR 140,000 SF OF COMMERCIAL DEVELOPMENT, INCLUDING A GAS STATION/CONVENIENCE MARKET WITH 20 FUELING POSITIONS TO BE DEVELOPED IN TWO PHASES. RACETRACK ROAD AND SR 13 WILL PROVIDE ACCESS TO THE PROJECT. WATER AND SEWER WILL BE PROVIDED BY JEA. UTILITIES WILL BE INSTALLED UNDERGROUND. THERE ARE NO KNOWN SIGNIFICANT NATURAL COMMUNITIES HABITAT OR LISTED SPECIES ON THIS SITE

Proof of Publication of the Notice of Public Hearing to consider an Ordinance to rezone lands from OR to PUD at 5801 Racetrack Road was received, having been published in *The St. Augustine Record* on January 13, 2003.

Clayton stated that the applicant seeks to rezone the total property of 17.6 acres, to PUD located at 5801 Race Track Road. (6:14 p.m.) Lopez left the meeting and Daniel Bosanko, County Attorney, entered the meeting. Clayton reviewed the Master Development Plan, Exhibit A, utilizing visual display. She stated that the applicant requested two waivers and explained. Meiszer disclosed having ex-parte communication with Don Smith and Mr. Wilson regarding this project, with a number of citizens, and with the Northwest Coalition members. Bryant disclosed having ex-parte in apology to Mr. Wilson for missing his meeting. Maguire disclosed having ex-

parte with Mr. Wilson, Don Smith, and Louise Thrower. He stated that he expected everything to be in detail on a parcel of this size. He stated that this was a conceptual master plan and questioned how concept is enforced, what type of components would support the buffering, the phrase suggesting planting very large oaks, the phrase that larger trees require adequate space to grow, the phrase certain fences are suggested, opening an access to Westminster Woods Retirement to prevent traffic, right-of-way reservation, what kind of signs and where they are going to be located, and stated that the hard part is the intent versus making the developer do the things suggested. Clayton responded to Maguire's questions. Maguire spoke on conceptual master plans for PUDs and stated that this should have been a detailed PUD. Clayton responded. Jacalone spoke on what the Master Plan shows. Bosanko mentioned that if there was any development out there that didn't comply with these standards, that could be made a subject of code enforcement action and several penalties could be assessed until those things were corrected. Stern disclosed having ex-parte communication with Mr. Wilson and Louise Thrower regarding the project. Stern voiced concerns regarding the buffers, the fencing along the back part of the property, signs and traffic circulation. She suggested adding language to cover those areas. Clayton spoke on architectural review. Meiszer spoke on buffering the portion of the development that faces Race Track Road and SR 13.

(6:47 p.m.) Don Smith, England, Thims and Miller, representing the applicant, Gate Petroleum Company, gave a presentation using a presentation booklet, Exhibit B and presented the scenic buffer performance standards, Exhibit C.

(6:55 p.m.) Ken Wilson, 9540 San Jose Blvd., Vice-President of Gate Petroleum Company, addressed specific items brought up by the Commissioners: signage, fencing, lighting, large oak trees, development having architectural control, pedestrian access to Westminster, and the conceptual plan. Stern disclosed ex-parte communication with Don Smith. Maguire stated that Gate Petroleum has a very good reputation for quality projects. He questioned the tree credits, the size of the trees and the buffer length. Clayton replied that the size of the tree makes a difference. Jacalone stated that there are not a required number of trees, but there are a required number of credits. Smith explained the tree credits and the hedging system. Bosanko addressed the Architectural Review Standards. Discussion followed on the architectural review standards.

(7:16 p.m.) Phyllis Abbatiello, 1133 River Birch Road, spoke on the Northwest Sector and presented Goal A.2 of the Vision Statement, Exhibit D.

(7:26 p.m.) Nobel Enge, Jr., 3348 SR 13, spoke on six-laning the Julington Creek Bridge and there being a lot more traffic.

(7:28 p.m.) Sarah Bailey, 2202 Bishop Estates Road, speaking for Donna Lagano, 301 S. Bartram Trail, spoke on Julington Creek only being half built out at this time, concurrency lasting only two years and the developer asking for two phases at five years each. Bishop replied that a certificate of concurrency is valid for two years unless the impact fees are pre-paid to keep it valid for another five years, or unless you start construction and stay on that phasing schedule and as long as you are in the construction phase process, the certificate of concurrency remains valid.

(7:34 p.m.) Mary Cornwell, 2652 SR 13, stated that the six-lane highway was coming, and that she was going to push for the 9B North/South Corridor, presented the William Bartram Trail Scenic Highway map, Exhibit E.

The meeting recessed at 7:39 p.m. and reconvened at 7:44 p.m.

(7:45 p.m.) Louise Thrower, 288 Orange Avenue, spoke on property owner responses, adjoining property owner hindrances, the height of the buildings, differential dimensions of the eastern buffer, due process, not being noticed for her PZA appearance, having a problem with traffic, needing extensive buffers for the noise, signage, tree protection, and why buy wetlands, Exhibit F. Bosanko asked the Planning Department if they have the records regarding sending Louise Thrower a notice and stated that the rule requires that the notices be sent to the land owners listed on the last certified tax roll that have property within 300 feet of the property. Bishop replied that Louise Thrower was on the list and was sent a notice.

(7:59 p.m.) Ellen Whitmer, 1178 Natures Hammock Road S, spoke on Wilson coming back to the Board with the corrections, not reducing the buffers, having a problem with ingress and egress, and the gas stations locating their pumps behind the building. (8:02 p.m.) **Motion by Jacalone, seconded by Stern, to enact Ordinance 2003-9, known as PUD 2002-21 Bartram Walk adopting the Findings that are contained within the package 1-6, including conditions; 1) the developer will provide internal directional signage, 2) they will agree to fence the real property line, 3) they will baffle the lighting within the project, and 4) they commit to the signage as depicted in the scenic buffers enlarged section of the hand out that will be included in this package and give to the clerk.** Meiszer questioned the requested height limit of 40 feet when the limit is 35 feet. (8:04 p.m.) *Meiszer requested to amend the motion to reduce the height from 40 to 35 feet.* Wilson spoke on the 40 feet. **Wilson stated that they accepted the 2-story limitation on all structures with maximum height of 40 feet. Jacalone accepted that additional condition and the second accepted it also. The motion carried 5/0.**

ORDINANCE NO. 2003-9

AN ORDINANCE OF THE COUNTY OF ST. JOHNS,
STATE OF FLORIDA, REZONING LANDS AS
DESCRIBED HEREINAFTER FROM OPEN RURAL (OR)
TO PLANNED UNIT DEVELOPMENT (PUD);
PROVIDING FINDINGS OF FACT; PROVIDING A
SAVINGS CLAUSE; REQUIRING RECORDATION; AND
PROVIDING AN EFFECTIVE DATE

(01/28/03 - 22 - 8:07 p.m.)

14. CONSIDER APPOINTMENT TO THE HEALTH & HUMAN SERVICES
ADVISORY COUNCIL

Patsy Heiss, Assistant to the County Administrator, reviewed this item, stating that Janet Boes was recommended. Meiszer nominated Helen Toby. Died for lack of second. (8:08 p.m.) **Motion by Stern, seconded by Bryant, carried 4/1 with Meiszer opposing, to appoint Janet Boes to the At Large position on the Health & Human Services Advisory Council.**

(01/28/03 - 22 - 8:08 p.m.)

COMMISSIONERS' REPORTS

Commissioner Meiszer:

No report.

(8:08 p.m.)

Commissioner Stern:

No report.

(8:08 p.m.)

Commissioner Jacalone:

No report.

(8:08 p.m.)

Commissioner Maguire:

No report.

(8:09 p.m.)

Commissioner Bryant:

Bryant spoke on one member being incompatible with the other members on the Industrial Development Authority. (8:09 p.m.) **Motion by Bryant, seconded by Jacalone, carried 4/1 with Meiszer dissenting, to send Carter Henderson a letter removing him from the Industrial Development Authority.**

(01/28/03 - 23 - 8:10 p.m.)

COUNTY ADMINISTRATOR'S REPORT

Adams reminded the Board about the Joint BCC/School Board Meeting tomorrow at 9:00 a.m. at the Orange Street Offices.

Adams announced the Joint BCC/Airport Meeting is scheduled for 9:00 a.m. next Wednesday, February 5, at the airport.

(01/28/03 - 23 - 8:12 p.m.)

COUNTY ATTORNEY'S REPORT

Bosanko distributed an extra copy to the Board of Laura Barrow's memo regarding growth management legislation relating to schools, to help prepare for tomorrow morning.

(01/28/03 - 23 - 8:12 p.m.)

CLERK OF COURT'S REPORT

No report.

(8:12 p.m.) **Motion by Jacalone, seconded by Maguire, carried 5/0, to adjourn the meeting.** With there being no further business to come before the Board, the meeting adjourned at 8:12 p.m.

REPORTS:

1. St. Johns County Board of County Commissioners Check Register, Check No. 329651 through 329955 totaling \$2,144,205.35 (1/21/03)
2. St. Johns County Board of County Commissioners Check Register, Check No. 329956 through 329980 totaling \$57,009.07 (1/23/03)

CORRESPONDENCE:

1. Letter dated January 24, 2003 to Liz Cloud, Chief, Bureau of Administrative Code, forwarding certified copies of Ordinances 2003-4 and 2003-5, proofs of publication, and the CODRS Coding Forms.

Approved February 18, 2003

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant
James E. Bryant, Chair

ATTEST: CHERYL STRICKLAND, CLERK

By: Wannae King
Deputy Clerk

