

ST. JOHNS COUNTY, FLORIDA
ORDER
REZONING/EXCEPTION/VARIANCE

NAME OF APPLICANT

APPLICATION NUMBER

John J. and Crystal Sulik,
represented by Rick Joyce

V-88-023

**DECISION OF
COUNTY COMMISSION**

GRANTED

**GRANTED WITH
STIPULATIONS**

DENIED

Location of Property: 2403 Ponte Vedra Boulevard - South Ponte Vedra, Florida 32082

Present Use of Property: Residential, Home is under construction. Building exceeds maximum height limitations. Building permit was issued for plans as built; hardship created to change now; integrity of structure is destroyed.

Change, Variance or Exception Requested: Allow height variance of approximately 4 feet 8 inches total height of 39 feet 8 inches

Condition: That any fill put in must meet requirements that conform to County Engineering Department in regards to fill containment

*See Attached

DATE OF COMMISSION ACTION: September 27, 1988

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: Lawrence O. Halliday
Chairman

ATTEST: CARL "BUD" MARKEL, CLERK

BY: Connie E. McDaniel
DEPUTY CLERK

(Pursuant to St. Johns County Zoning Code, Section 11-9-5b: failure to exercise an exception or variance by commencement of the use or action approved thereby within one year, or such longer time as approved by the Board, shall render the exception or variance invalid and all rights granted thereunder shall terminate)

requested the opportunity to continue his presentation following Mr. Space. Charlie Space, 2823 S.R. #13, Switzerland distributed additional information to the Board indicating the Site Plan and conditions as reflected in this packet are now being offered as an addition to the original application. With the use of several aerial maps Mr. Space explained current utilities within the County, utility needs for the area in question and commented on current County requirements for utilities. At this time Mr. James commented on operational aspects of the proposed utility plant and with the use of aerial photos he explained each utility presently owned and operated by Sunray Utilities. Mr. James read a letter from the Public Service Commission dated August 31, 1988 to Mr. M. L. Forrester stating the Division of Consumer Affairs has received no complaints against Intercoastal Utilities in 1987 or through August 19, 1988. Mr. James distributed and discussed a Staff Report on Sunray Utilities from the PSC. Many concerned citizens were present. Persons speaking against this request were: (3.0235) Darrell Harrington, 2470 C.R. #210 West, Lot-A. (3.0397) Mrs. Harrington, 2470 C.R. #210 West, Lot-A read and submitted into the record Petition in opposition. (3.0945) Mary Kohnke, 29 S. Roscoe Blvd. (3.1036) Robert Wheeler, 10805 Russell Sampson Road. (3.1093) Carolyn Strickland, 2470 C.R. #210 West. and (3.1120) Bill Tomlinson, 10785 Russell Sampson Road. (3.0828) Alec Lawson, 172 Barberrry Lane, Ponte Vedra Beach commented on the proposed plant and recommended approval. (3.0873) Cliff Pettitt, 960 Alcala Drive questioned how the County can approve a utility prior to approval of a development. At this time the item was brought back to the Board. There was discussion regarding concerns such as the proposed location, noise and order from the plant and future risks of endangering the wetlands and wildlife. Motion by Waldron, seconded by Brubaker, carried 4/1 with Bailey dissenting, approving the Essential Public Service request No. EPS-88-001 for Sunray Utilities, Inc. sewer and water facility with the following conditions as submitted by the applicant: 1) Construct building to enclose blowers. 2) Shield light fixtures. 3) Construct entrance road on west side of property -- opposite side from out parcel. 4) Provide Ground Water Monitoring Program. 5) Limit plant capacity to 4 MGD as shown on Site Plan. 6) Preserve wetland buffer adjacent to plant. 7) Provide additional 50' buffer as shown on Site Plan. 8) Plant trees and shrubs in 50' buffer to provide additional visual screenwork.

(09/27/88 - 9 - 3.1975)

Hearing on R-PUD-88-039, Crossroads Planned Unit Development, Stockton Land Corporation located approximately 850 feet north of the intersection of S.R. A1A North and Mickler Road containing 184 acres of land with proposed mixed residential and commercial uses, a total of 432 units and commercial tract on A1A of 5.9 acres. Proof of publication of notice of public hearing to consider passage of an ordinance was received having been published in The St. Augustine Record on August 15, 1988; upon motion by Waldron, seconded by Brubaker, carried 5/0, was ordered filed. Report of the Planning & Zoning Agency finding the request in compliance with the Comprehensive Plan but making no recommendation in that four affirmative votes were not received was filed. Debby Bunting, Stockton Land Corp. was present requesting approval; she gave the general location of the proposed PUD and explained the Master Plan indicating the PUD will be developed in five phases. Ms. Bunting submitted a revised letter from Stockton Land Corp. dated September 21, 1988 regarding the donation of one acre of land and a twelve foot beach access to St. Johns County for a park and/or parking purposes. Dale Eberhart, Land Planner, Stockton Land Corp. commented on the extended land plan use for this project. Rick Wells, Connelly & Wicker addressed engineering concerns of the proposed PUD. Citizens present and commenting were: (3.3290) Mary Kohnke, 29 S. Roscoe Blvd. (3.3544) Hoke Sisk, 14 LaVista Drive. (3.3666) Kathy Mobley, Palm Valley. (3.3726) Harold Baker, 4240 Coastal Highway. (4.0117) Fred Connelly, no address given. (4.0150) Cindy Voss, Palm Valley. (4.0213) Marjorie Blocksidge, 3272 Coastal Highway. (4.0265) ?, 2923 S. Ponte Vedra Blvd. (4.0288) Hank Adams, 105 Plantation Circle South. (4.0310) Richard Forbis, no address given. (4.0375) Roy Davidson, 180 Laurel Lane, Plantation. At this time the item was brought back to the Board. There was discussion regarding the proposed commercial tract and density of the proposed PUD. Motion by Waldron, seconded by Lydon, carried 4/1 with Bailey dissenting, adopting PUD Ordinance No. 88-57.

At this time Deputy Clerk Connie E. McDaniel replaced Deputy Clerk Lynn M. McDonald.

(09/27/88 9 4.0729)

Continuance of hearing on Application #V-88-023; John and Crystal Sulik, appeal denial of Variance of height from 35 feet to 42 feet for a single-family home located at 2403 South Ponte Vedra Boulevard. Court Reporter was present recording. Attorney Rick Joyce was present on behalf of John and Crystal Sulik. Joyce distributed a copy of a Specific Purpose Survey to the Board members. Joyce commented the Sulik's are requesting a variance of six (6) feet eight (8) inches to

allow for a roof monitor designed for light and ventilation; Joyce wanted to make it clear that this is not going to be a portion of any living area. He clarified that the Specific Purpose Survey was prepared by St. Johns Survey Company for the County in anticipation of this hearing; the survey showed the height differential from lowest grade to the top of the house as being 46 feet; Joyce indicated this is incorrect, the Sulik application requested a 41 feet 8 inch variance; four (4) feet four (4) inches worth of fill will be placed underneath the home, this being the maximum amount of fill to enable a garage area under the home. He indicated the height variance is warranted for several reasons: the most important being topographical, it is not contrary to the public interest and by reason of this exceptional topographical condition, being our fragile dune system; the literal interpretation of the Ordinance causes undue hardship and is contrary to the spirit and the purpose of the zoning ordinance. More specifically the dunes system surrounding the home precludes a view of the ocean for an ocean front home. William L. Sabella, the architect that designed the home, addressed the issue regarding the dunes system and where it hits on this particular house. Joyce requested all witness be sworn in by James Sisco, County Attorney. (4.0831) William L. Sabella, Barnett, Fronczak Architects, 225 S. Adams St., Tallahassee, Fl.; sworn by Sisco; Sabella indicated the primary topographical feature on this property is the dune; it rises 16 feet 10 inches above the average ground elevation on this property; scrub oaks and palmettos grow another 6 feet above the dune; on this lot the dune is continuous from north to south forming a natural barrier to the ocean. The first floor elevation has been built 6 inches below the dune; so when you look out of the first floor window you are looking into the vegetation; there is no doubt the dune seriously effects the utility enjoyment of the property. (4.0895) Rick Joyce noted that the framing of the structure itself is already completed; a building permit was issued; the building was begun and reached a certain point and at that time the parties came to realized that under one definition under the zoning code definitions the structure did exceed 35 feet from the lowest point on the perimeter to the highest point on the building; perhaps some of the confusion arose from the fact the grade is defined differently under the Standard Building Code which was adopted under Ord. 85-60, where grade is defined as the average grade around the perimeter of the building. If we took the average grade around the perimeter of the building to the top of the building, we would not even be here for a variance application, it would be under 35 feet. If we take the zoning application of grade, which differs from the Standard Building Code, it says from the lowest point on the perimeter to the highest and at that point then we would concede it would be above the 35 feet height limitation; those two codes do differ from one another as to the definition of average grade. Joyce read letters from the following people who live in the neighborhood of the Sulik property and approve of the height variance application; Exhibit S-1 letter from Robert C. Gobelman; Exhibit S-2 letter from Beverly Barrs; Exhibit S-3 letter from Bob Spohrer; Exhibit S-4 letter from A. R. Shaaber; Exhibit S-5 letter from James V. Facciolo; Exhibit S-14 letter from Mark Green; said letters were filed with the Clerk. Joyce read a letter from the South Ponte Vedra Association, dated July 17, 1988, regarding this application; the Association requested that whatever decision is made is not to be so construed as to allow this type of situation to appear again. Joyce indicated this is a unique situation; it is very likely it carries any precedential value whatsoever; height limitations were not part of the review process on the zoning clearance sheet when the building permit was originally issued; since that time the zoning staff has remedied that and now does indicate clearly on its zoning clearance sheet that it is checking for maximum height limitations to be sure that buildings do not exceed the maximum height limitations. Joyce feels this is a very special case because the home is constructed as far as the framing goes; the cost to date of the home is \$156,692.38. (4.1131) Sabella indicated it would cost between 18 to 25 thousand dollars to remove the clerestory. (4.1138) Joyce thanked Don Germain and Jerry Napier for their patients in this matter. Joyce indicated that Sabella suggested to the Sulik's placing an additional two (2) feet of fill underneath the home; they could still walk in their driveway and also accommodate the machinery and things that are underneath the home. Joyce offered as a condition that this variance be limited to four (4) feet eight (8) inches, and also conditioned that fill permits must of course be gotten from engineering and must comply with all County regulations in connection with the fill underneath the home. Joyce pointed out that several immediate neighbors who have approved in writing this height variance application; this height variance does not present any type of precedential problem with regards to the County; the topography of this particular system warrants the granting of the application; and finally because of the particular circumstances here regarding the financial impact on the Sulik's; Joyce requested that the Board grant this variance application. Joyce also submitted photo's to be filed with the Clerk of the view from the first floor of the Sulik home showing the vegetation and ocean view; these photo's are marked Exhibits S-6, S-7, S-8, S-9, S-10 and S-11. Joyce commented the necessity for his clients to go any further in connection with some other issues that may be

connected with this particular matter becomes moot in the event this variance is granted. Joyce commented that in the event the variance is going to be denied there is another portion of this that must be addressed in order to preserve testimony for any kind of further action that the Sulik's feel compelled to take. (4.1452) David Bruner, Pope Road and property owner in the Vilano area; sworn in by Sisco; Bruner is also with St. Johns Survey Company; St. Johns Survey Company preformed the Special Service Survey of the Sulik property; Bruner visited the job site on September 27, 1988, in the rain, this is the third quality control check that has been done; Bruner noted that by raising the dirt level under the home may cause some on flooding to A1A. (4.1518) John Bowden, St. Johns Survey Company; sworn in by Sisco; Bowden indicted upon receiving the purchase order from St. Johns County to measure for code violations his staff analyzed the PZA file for the type of violations present on the property; it was determined that height was in question and questioned whether the appurtenance, referred to as a clerestory, exceeded one-third of the area of which it stands making it the highest point of the building; also County Engineering needed to know the edge of pavement elevation to determine whether filling the piling area underneath the structure would cause flooding along A1A. A certified copy of the Specific Purpose Survey was filed with the Clerk as Exhibit A-1. Bowden indicated that on the Specific Purpose Survey there is a chart in the upper right hand corner showing roof area and percentage of coverage; the highest roof area is Roof Area "A" covers 36.25% of what would be the total roof area of the entire structure; the center of the dune is 20 feet distant from the closest point of the building, it is not an adjacent grade. The average ground elevation which was adjacent to the structure was at an elevation of 15.70 feet; the lowest grade since it had been cleared out is relative flat was only two-tenths lower at 15.50 feet; elevation shown are based on National Geodetic Vertical Datum-1929; the highest point on the building is the top of roof area "A" is 62.3 feet giving a relative distance of 46.6 feet between the average ground and the top of roof area "A". Bowden commented that the sketch used is not intended to be an exact drawing of the building; the specific reason for the survey is to show height and roof areas, which are shown thereon. (4.1660) Rick Joyce, Attorney for Sulik, indicated they concede it is 46 feet right now but the application only ask for 41 feet 8 inches; upon granting of the application the applicants are going to fill. (4.1689) Mel Jameson, 2509 S. Ponte Vedra Blvd.; sworn in by Sisco; fire chief at Ponte Vedra; Jameson addressed some question to Attorney Joyce regarding a telephone conversation that transpired between himself and Joyce. Jameson commented that the fire departments in St. Johns County only have ladders that reach 35 feet; Jameson commented that the dune did not grow overnight and when the house was planned the Sulik's must have known the dune would be in front of the kitchen window, so that is no excuse. (4.1809) Rick Joyce ask if Jameson was appearing here today in the capacity as citizen of the County or as a representative of the fire department of St. Johns County? Jameson replied he was here as both citizen and representative. Joyce ask if Gene Taylor authorized him to appear here today as a representative of the St. Johns County Fire Department? Jameson replied he did not ask Mr. Taylor; Jameson replied Taylor probably knew he would be here today. Joyce ask Jameson if he is a resident of St. Johns County? Jameson replied "I am". (4.1846) Marge Blocksidge, 3272 Coastal Highway; sworn in by Sisco; requested the following statement be placed in the record; "I very much resent this ploy of Mr. Joyce's which would appear to be an attempt to intimidate people who are going to speak in opposition" Blocksidge requested Joyce be sworn in as well. Blocksidge spoke in opposition to the height variance application. (4.1938) Harold Baker, 1440 Coastal Highway; sworn in by Sisco; spoke in opposition to the height variance application. (4.2223) Don Germain, Building Official for St. Johns County; sworn in by Sisco; Germain clarified that the Building Department has not at this time ever been requested to do any type of inspection on Lot 11, Block G, in South Ponte Vedra Beach, because of the nature of the construction, it is built on piling and it is wood frame from there up, so there would be nothing for the Building Department to look at until the structure got to a rough stage, other than maybe some hurricane tying; this is one the reasons why the building may have gotten away from everybody. Germain indicated he has never been in this building but from his observations the outside of the building indicate some very unusual things: 1. the building is not being built per the plans, in both relation to height and overall square footage; 2. due to the fact that the construction is not per the plans it is not in compliance with the State statutes related to the Coastal Building Code, Florida Model Energy Code; also it is not in compliance with the Standard Building Code Guidelines. If you were to take all the sections that apply to this, technically the permit would be revoked under the guidelines. Germain indicated the drawings submitted to us by the architect did not ever show the total height of the building, by doing some additional scaling we have added to the top dimension that the architect never showed of 31 feet 10 1/2 inches, to the top dimension that the architect could have shown of 42 feet 10 1/2 inches; according to the survey that

was done you will see that is not what was built; the building is in fact 46 feet 7 1/4 inches; this means there is a discrepancy between the drawings and the survey of 4 feet 4 3/4 inches overall ; obviously something has been added. If one looks closely at the survey between the first and second balcony level one will see the survey indicates 9.8 feet; if one looks on the architectural drawing it indicates 7 feet 7 1/4 inches; there is another discrepancy there, which shows that the second and third floor levels grew 2 feet 2 3/8 inches between what was drawn and what was built. The entire house does not resemble what was submitted in the drawings, a balcony has been added on the East side that runs from one end of the building to the other; a room has been added on the East side that appears to be roughly 10 feet by 18 to 20 feet; a complete change has been made in the West elevation of the roof area, a wall has been put up and windows have been added, the balcony has been extended on the West side two piling spans instead of one, as was submitted in the drawings. No part of this house has ever stayed in compliance with the drawings, just from outside observations. Basically what we have is a design that was changed in the field. The Coastal Building Code does not allow that; the Coastal Building Code says once those things are signed and sealed by an architect they have to be built that way. If they are not going to build the house that way, they needed to resubmit because of the fact that it is in a wind zone area; State statute dictates that. The energy sheet also changed when they increased the square footage and added quite an additional square footage of glass; so no longer is it in compliance with the Florida Model Energy Code. Regarding the overall height, the only attempt the Building Department made to forewarn the Sulik's about overall height was in the stamp put on the set of drawings. Germain read what is stated on the and it is as follows: **NOTICE TO ALL CONTRACTORS: REVIEW OF THESE PLANS FOR PERMIT DOES NOT CONVEY THE RIGHT TO VIOLATE ANY GOVERNING BUILDING CODES OR ZONING REGULATIONS OF ST. JOHNS COUNTY. HOMEOWNER OR CONTRACTOR SHALL CHECK ALL ZONING REGULATIONS BEFORE CONSTRUCTION.** By St. Johns County Building Department. This stamp appears on their copy and forewarns them that zoning does have some specific rules, they are very involved sometimes. The plan review man is not a zoning type person, he does not know what all their language is. Basically what we have is not only a set of drawing that were a little over the height limit to start with, but the distance that is being offered to be filled underneath is almost exactly the difference that has been gained in overall height when they built the building; it is within 2 or 3 inches. Sulik has offered to fill 4 feet 8 inches and it has already been built 4 feet 4 3/4 inches higher than the plans. The following items were presented to the Clerk as exhibits for the County and have a CS prefix for County Staff: CS-1 Specific Purpose Survey of Sulik home prepared by St. Johns Survey Company with a hand written note from the Building Department attached; CS-2 copy of page 10 of the Standard Building Code/1985 Book with highlighted information on it and a handwritten note is attached to this page; CS-3 excerpt of page 2 of the Standard Building Code/1985 with highlighted information on it and handwritten notations and a 4 page handwritten note by Don Germain attached; CS-4 an excerpt of page 377 of Standard Building Code/1985 with highlighted information and a handwritten notation by Germain; CS-5 copy of Ordinance 78-71 passed on November 14, 1978, effective on November 22, 1978; CS-6 copy of page 2068 of the 1987 Florida Statutes with Thermal Efficiency Standards highlighted and a handwritten note by Germain; CS-7 copy of the first page of Ordinance 86-16 with handwritten note by Germain on the bottom of the page; CS-8 through CS-12 exterior photo's of the Sulik home; CS-13 a set of job copy site plans submitted by the Sulik's as an exhibit at the last Planning and Zoning hearing when Planning and Zoning were dealing with the variance, these plans have the red stamps affixed, inspection check list and permits attached. (4.2905) John Sulik, one of the applicants for the height variance; sworn in by Sisco; Sulik cross-examined Germain extensively regarding statements made by Germain at this hearing; Germain responded to questions regarding telephone conversations between the Building Department and the Sulik's on different occasions; Sulik questioned Germain about the stages of the permitting process; when are the drawings sent to the engineering and zoning departments for review; Sulik was informed it was not sent to other departments, by the time the drawings are taken to the Building Department they have been to all the other departments; Sulik wanted to know what the procedures of the other departments are; Germain indicated he is not privileged to be standing there watching everything they do; the other departments review generally the request as far as whether or not the structure has any problems regarding environmentally sensitive lands and compliance with all the zoning regulations. Sulik inquired if the plans had not complied with all the building code and coastal code specifications; Germain responded if they had not complied a permit for building would not have been issued. Sulik questioned Germain regarding the requirements of the engineering and zoning departments; Germain responded he could not comment on those two departments because he does not work in them. Germain comment that a clearance sheet is given by

engineering and zoning with certain information on it; Sulik inquired if the Building Dept. has no responsibility as to zoning or engineering compliance; Germain responded that there is a responsibility regarding engineering compliance in the sense of environmental problems, driveway or things of that nature. Sulik questioned who decides between the Building Dept. and the Zoning Dept. as to a conflict in the standards of building construction or the way of determining height; Germain responded there are no rules about whether or not zoning and the building codes relate as far as height because zoning has a strict guideline for establishing the height of a building and the building department guideline has no relation to that. Sulik ask whose job it is to see whether or not there is a height limitation violation, the zoning or building department? Germain responded that if the Building Department sees something they are not happy with the Building Dept. notifies the Zoning Dept. Sulik ask Germain if it was May 4, 1988, when zoning was notified that there might be an extrusion of the height limitation in this particular case? Germain responded he did no remember if that was the date or not. Sulik questioned if there was ever a stop order issued in regard to the construction of this building? Germain responded that to his knowledge no one from the Building Dept. has been on the property to issue any kind of document. Lengthy questioning of Germain continued by Sulik. (4.3743) Sisco, County Attorney, indicated the County is willing to stipulate to the fact that the zoning code regulations that apply to the Sulik property apply to the unincorporated areas of the County, throughout the County, except the Ponte Vedra Zoning District, the Town of Hastings, the Town of St. Augustine, the Town of St. Augustine Beach, National and State Parks. Sisco also stipulated that the Ponte Vedra Zoning District is not an unincorporated area of St. Johns County. (5.0001) Sulik continued questioning Germain about building codes. (5.0045) Sisco ask Rick Joyce, Attorney for the applicant, if this is not an appeal of a request of a variance dealing solely with height. Joyce responded it is an Appeal de Nova, height variances. Joyce indicated his clients are seeking to get the variance; if they do not get the variance then essentially what the dispute is that his clients feel they were issued a building permit; a zoning clearance was issued; some time around May 4, 1988, they were told by Larry Davenport of the Building Dept. that the house was higher than allowed; Davenport suggested they get a variance; this is where they are at this point. This portion of it is sort of the estopple portion, saying okay if you are not inclined to grant the variance as modified to four (4) feet eight (8) inches, then we need to establish for the record is that the County can not now tell them to tear their house down. Joyce commented this is what they are trying to establish. (5.0079) Sisco, County Attorney, stated he would like to stay with the construction and zoning code as they relate to height because that is the issue here. (5.0123) Commissioner Waldron inquired of staff how they are measuring height, from what to what; Waldron ask staff if we made the mistake and not do things right or did the Sulik's make the mistake and not build it right? (5.0141) Jerry Napier, Planning and Zoning Coordinator, sworn in by Sisco; responded to Waldron's inquiries; the height of the building by zoning code is measured from the lowest point around the established perimeter of the building grade to the highest point on the roof; as to the other question of who made a mistake, Napier responded he does not know what we are getting at there, the request is for a variance. (5.0155) Lydon ask Napier if a clearance was given the Sulik's from zoning, would that clearance imply that the plans were within the 35 feet limit, this seems to be the hinge on this. If you go to zoning with a set of plans and zoning gives me a clearance to go ahead and then you continue to the other departments with a clearance from zoning. The other departments looked at the plans and the plans were within the 35 feet height limit or they do not tell you differently. Napier responded the zoning department does not see the plans on a single family home; they go to the Building and Engineering Departments with a clearance sheet; they come to the zoning department with a clearance sheet to see if the use being proposed is permitted in the zoning district; the engineering department looks at the flood zones, etc., they will sign off, they look at access, easements, things like that; the zoning department looks at if it property zoned, properly platted, the legal description of the property, they generally specify what the zoning district it is in, what the set backs are, the zoning department does not see the plans; the plans go to the building department. Lydon ask who is responsible for the plans to say whether or not they are within the zoning code for a height limitation on any of our buildings? Lydon commented that there seems to be no one responsible for checking plans to see if they are within the zoning code limitations for height. (5.0211) Bailey indicated that is what she is hearing, but she also heard that there is something stamped on everything that says that the builders are responsible for knowing the rules and regulations. Hartley commented when you get a clearance for zoning it doesn't gives you the right to build a house at any height; the architect should know the regulations of the County, such as height. Germain commented you can come to the Administration Building and go to the appropriate agencies and walk out of here with a clearance sheet and not have plan one, other

than maybe a plot plan for engineering and zoning; this is a sheet of paper that establishes what there they are going to be able to build. In a lot of cases they have not built anything or not even drafted the drawings yet. They have to go to the Health Department and verify in the outlying areas whether or not they can get a septic tank. The Health Dept. mandates this clearance sheet come from our office at the Administration Building; many clearance sheets go out before the fact. This is what happened in this case. (5.0322) Napier commented that the Sulik's plan to put in four feet of fill and the finished grade would be 39 feet 8 inches. Napier submitted the following exhibits to the Clerk: CS-14 Application for zoning change, variance, exception or other, V-88-023, dated 6-20-88; CS-15 Staff Report with attached exhibits that went to the Planning and Zoning Agency for applicant V-88-023; CS-16 Minutes of the Planning and Zoning Agency meeting of July 21, 1988; CS-17 letter dated July 25, 1988, to the Board of County Commissioners from Mel Kutzer, Chairman, PZA; CS-18 copy of Board of Commissioners Minutes dated August 23, 1988; A copy of the Notice To All Contractors stamp was presented by Germain as CS-19. (5.0422) Rick Joyce submitted Exhibit S-12 Specific Purpose Survey with Alternate Variance Proposal marked on it, this shows after filling the height request would be 39 feet 8 inches. (5.0453) John Sulik questioned Napier extensively regarding data contained on the zoning clearance sheet; Sulik ask Napier if the data sheet contained anything regarding height limitations. Napier commented that at the time there was no specification for maximum height listed on the form; the form does identify the district that has other regulations other than those listed; the zoning clearance sheet form has been revised and it does now include height. Sulik continued to extensively question Napier and Germain regarding zoning codes. (5.0800) Lydon commented that we assume the architect has to be familiar with the zoning codes and design the building in compliance with them. Germain commented the architect would almost have to make contact before drawing anything because there are so many rules that the architect would not be aware of if he did not make that call. (5.0813) Rick Joyce commented that there is a point here that has gotten lost in all the legal morass that is very important, suppose for the time being it is not the responsibility of the zoning department or the zoning staff to fully look at each and every minute detail of the zoning code when looking at building plans; one thing we need to show here is on September 17, 1987, when these plans were approved and the zoning clearance sheet was signed there was nothing there referring to height limitations. Joyce indicated this is something worth thinking about; the current zoning clearance sheet that is used in issuing a building permit now has reference to height limitations; the zoning department and staff does now look at height limitations. Joyce thinks this is a very important thing to remember that at least that portion of it is considered to be part and parcel the job of zoning staff; this point seems to have been lost; perhaps this is the major crux of this entire issue. Lengthy discussion followed between staff members and Sulik. (See below 09/27/88 14 5.1100)

(09/27/88 14 5.0932)

Due to the lateness of the hour a motion was made by Waldron, seconded by Brubaker, carried 5/0, continuing the hearing of an appeal by Broudy Brothers, Inc. of exception E-86-056/Jax Liquors and St. Johns Trading Company to Tuesday, October 11, 1988, at 3:00 pm.

(09/27/88 14 5.1100)

Continued, Sulik, V-88-023; Sulik apologized to the staff and Waldron, he did not mean to personalize anything, he was trying to get into the fact of the procedures that allowed this to happen. Sulik continued to extensively cross examine Jerry Napier, Planning and Zoning Coordinator, regarding the following: when Napier became aware of the height problem; the measures that were taken; zoning codes and clearance sheets. (5.1472) Sisco clarified for the record that on the clearance sheet it has stamped horizontally on the right hand side Engineering Complete and Planning and Zoning Complete, both are initialed and one dated 9-17-87; then in the normal vertical position it has a place for release and place for inspection; both are initialed and dated; Sisco stated and ask for clarification if incorrect "the reason those two places are up there is because somehow when this thing evolved they got put on there, staff doesn't know why there are two different places for them, but they traditionally signed both places." Germain replied that this was created because you go to engineering and zoning; the engineering department can not sign for the clearance sheet to go to the Health Dept. completely because they do not know if a raised drain field is required; if there is a raised drain field this causes drainage problems; this is signed off after they have been to the Health Dept. and it has been determined whether it is a normal installation or a raised drain field; if it is a raised drain field engineering must have additional documentation of what the fill is going to do to the neighbor as far as water. Until that has been satisfied they will not sign the engineering part of it, even though the zoning was signed so they could go to the Health Dept. (5.1553) Sulik questioned Napier about who designed the zoning clearance form. Napier replied the form

was collectively worked on by all the departments involved; Sisco replied that this issue is repetitious, the zoning clearance form has input from all County staff from day one; as a problem comes up the form is revised; the form could be revised three times in a month and it may not be revised again for two years. Sulik ask Napier if he attached any significance to the fact that there is no height mentioned at any place on any of the sheets that zoning, engineering or the building department puts out after the plans are permitted. Napier responded "No". Sisco ask if the zoning clearance sheet is for the benefit of the applicant, landowner or the benefit of internal staff. Napier responded "it is for both actually; when an applicant comes up to the counter and they want to place a mobile home somewhere, they have to verify that the parcel is large enough, it meets zoning requirements, it is capable of being serviced by a septic tank; any number of things but they have to go through the clearance process to know what zoning and engineering requirements are before they ever go to the building department". Germain commented that we have tried to develop something that would help the public when they go to all the areas; we know that we do not have all the things on there, but we try to put the most important things on there that we have problems with; we rarely had a problem with the height of a building. This is the reason we decided to put the height notice on the clearance sheets because we are starting to have a problem with height after all these seventeen or eighteen years of going through this process; it would be hard to put everything on that one sheet of paper for each and every category. Sisco requested clarification on the procedure; Germain indicated the clearance sheet originates in the engineering department; then it is taken it to the zoning department; Germain commented since the stamp was on there it is a good possibility that since she is on a septic tank that they did not sign the slanted sheet for engineering, it was just signed for zoning; she then proceeded to go to the Health Dept. for her approval; once she got that approval she returned to engineering and got that cleared up. This is the second zoning clearance sheet on the same project because there were so many drastic changes between the time frames that she picked up the first one and the second one. The clearance sheets that are attached to Exhibit CS-13 are the last clearance sheets; the clearance sheets were attached to the plans with all the other pertinent application information; Mrs. Sulik took the plans and documents to the building department; this is then attached to the building permit application and give her a copy back on her plans; this is what you are seeing, a copy on her plans that she walks out the door with and an identical copy on the drawings in the building department; for clarification this is the two page engineering, building department and septic tank clearance sheet. When those are put on the drawings and were handed back to her, the building department had also stamped on the plans a Notice To All Contractors. (5.1900) Crystal Sulik, applicant, sworn in by Sisco; Mrs. Sulik indicated she remembers getting the clearance sheets twice; the first time was when they purchased the property to see where the coastal setback lines were; the second time she does remember getting the clearance sheet, it did not have the horizontal stamp on it that said engineering approved, zoning approved. She did take it back to the engineering department to show that she had the septic tank permit, they did sign the sheet at that time; she never saw and was never in the presence of anybody from zoning that signed off on zoning complete. This came back to her when she went back to pick up the permit after she had delivered all of the documentation to the building department, which indicated to her that zoning had looked at the plans and they were in compliance based on the issuance of the permit. She did not see how a permit could be issued without having complied with all the requirements of the different departments. Mrs. Sulik gave a synopsis of her dealings with the building, engineering and zoning departments regarding this matter. Mrs. Sulik indicated there are 48 homes, not including those that are presently under construction, that are three stories or more in zoning district B on A1A; we are not out of character or context with the surrounding area. Mrs. Sulik submitted as evidence Exhibit S-13 obsolete copy of Sulik Residence Piling and Framing Plans - marked Office Copy. Mrs. Sulik commented that the procedures that were in place at the time and the requirements you had us to meet that we really did our best to comply; there is nothing we left out, we even re-drew plans. If there had been an alternative presented to us before a point where it puts us in a financial situation that would bankrupt most of us to have to tear things down and redo them. (5.2728) David Bruner, St. Johns Survey Company, spoke in regard to the zoning clearance sheet and the knowledge he has about it; Bruner commented you can stand on the porch of the Sulik home and see out to the ocean just as it is built now, which has nothing to do with the roof system that is about twenty feet higher. (5.2836) John Sulik ask Bruner if he is appearing here on behalf of the zoning department, building department or as a individual citizen. Bruner indicated he is speaking as a member of the community of Vilano Beach. Sulik questioned Bruner on his specific knowledge of the clearance sheets and building codes. Bruner responded. (5.2937) Mel Jameson, Fire Chief Ponte Vedra; spoke in reference to the letters that were read from neighbors of the Sulik's, two of the

letters read are not permanent residences but are renters and two live south of Jameson, he lives four miles south of the Sulik property. Jameson commented that the fire ladders only reach a height of 36 feet. (5.3063) Crystal Sulik submitted to the Clerk Exhibit S-15 a quarter inch scale model of their home without added additions; she explained same. Mrs. Sulik commented that the plans were submitted as required by Standard Building Code, which were drawn to scale; it does not say anywhere in the code or anyplace else site you have to put the tippy-top of the roof. Mrs. Sulik said she has seen on other architectural plans that have been permitted by the Building Department makes reference to rafter barings. Considerable discussion followed regarding this issue. (5.3254) Rick Joyce in summarizing commented they feel the variance is warranted; the variance requested is for four (4) feet eight (8) inches over and above the 35 feet level; it is warranted due to the unusual topography of the land; he feels the application was properly prepared and submitted; since all the clearance sheets were signed off they assumed they had done everything necessary to build their home as an owner/builder; it is significant that the entire zoning ordinance does not need to be on the clearance sheets, it is significant that now height is something that is considered to be one of the important things to be looked at. It was reasonable for them to assume that at least that portion of the zoning code was okay, and they proceeded as if it was okay. Joyce feels the County should allow them to build their home as requested. (5.3370) Germain stated "he wanted to make it real clear that the four (4) feet eight (8) inches that he is offering to fill is already what the building was built higher than the original plans, it is built in height error in addition of what they submitted of right at four (4) feet five (5)." Joyce clarified the point for Germain that what they are asking under the zoning code, assuming the zoning correctly defines what grade is for purposes of measuring from the lowest point on the perimeter to the top, we are suggesting the lowest point on the perimeter to the top of the building will be 39 feet 8 inches; enough fill will be included underneath that building to see to it that is indeed what is done; subject of course to engineering's clearance for fill. (5.3467) Sisco stated there are several issues for consideration and we may to have a separate vote on them; the first question: plan (a) is do we think that, forgetting what was put on the zoning clearance sheets and what the plans said, based on the proper zoning principles, the topography of this land, lot size and hardship that the variance should be granted; the second question: plan (b) is because of the various facts that have been heard about the stamp on the plans, they have testified that the clearance sheet handled it all, there is testimony of confusion there, because of that although the variance should not be granted, the County should be prevented from enforcing the zoning code height restriction; a third question: plan (c) is granting the variance because of the estoppel and set the exact restrictions that will be on it. A motion was made by Waldron, seconded by Bailey, carried 5/0, to deny plan (a) which is granting the variance strictly on topography, lot size and hardship. (6.001) A motion was made by Waldron, seconded by Lydon, to grant the variance to a height of 39 feet 8 inches based upon fundamental fairness and the County's position that this is a unique circumstance that arose in which the County is estopped to deny the variance because of this particular and no other confusion that arise somewhere else but this particular confusion that arose in the process of obtaining the permit and constructing the building with the condition that any fill put in must meet requirements that conform to County Engineering Department in regards to fill containment, before the vote was taken Jim Sisco, the County Attorney, wanted the Sulik's to be aware that this variance speaks solely to height and fill requirements but does not speak to any requirements that might be in the structure of the building or any other problems that may arise elsewhere, discussion followed, motion carried 3/2 with Hartley and Bailey dissenting. Carl "Bud" Markel, Clerk of the Courts, spoke in regards to lack of space to store some of the Exhibits. Sisco stated that the Exhibits that were presented as evidence can be returned to the parties concerned 30 days after the minutes are approved and signed by the Chairman, provided this case is not appealed, in that event the Exhibits must be kept on file by the Clerk's office for the courts.

(09/27/88 16 6.0312)

Discussion to consider placing on ballot County purchase of 5 acres of land located at Solana Road and A1A. (6.0335) Hoke Sisk, 14 LaVista Drive, Ponte Vedra, gave a synopsis of a study done regarding the Proposed Purchase Of Five Acres, Located In The Southwest Quadrant Of A1A and Solana Road, By St. Johns County For Government And Public Use. Sisk stated this property is owned by March Investments, Inc.; the owner has proposed a site development plan dated April 6, 1988, which divides the 5 acre property into four functional parcels; Parcel A would be a banking/financial facility, 1.67 acres; Parcel B would be for the North East St. Johns County Branch Library, 1.2 acres; Parcel C would be an office building, 1.47 acres and Parcel D would be for Ponte Vedra Fire Station .066 acres. The terms of the March Investments proposal would require the present zoning be changed from R-1-C (residential) to R-3 (commercial) for parcels A and C which if properly

approved the owners will donate Parcels B and D to the County free of charge to be used as described above. The Ponte Vedra Zoning Board has not approved the rezoning request on this 5 acre tract. Sisk commented that a petition has been signed by about 500 residents in the immediate areas surrounding this site requesting the Board of County Commissioners vote to initiate County negotiations with March Investments, Inc. in order to purchase all 15 acres of land located in the subject southwest quadrant for present and future public use. These petitions were filed with the Clerk at County Commissioners Meetings held during July and August, 1988. Sisk commented that the users of the government and public services which would be provided by the facilities planned for the subject 5 acre site will be largely the residents in Precincts 7, 8 and 9. Sisk concluded with the following recommendations: the Board of Commissioners as a matter of priority take appropriate legal steps to place a referendum on the ballot for the general election of November 8, 1988, which will seek approval by the property owners and voters in Precincts 7, 8 & 9 to accept a special tax assessment of about 0.61 mil for one year to raise \$500,000 to be used to purchase for government and public use the 5 acre parcel of land; should the referendum be approved by the voters, that the Board of Commissioners take the appropriate action to: a. establish a special tax district composed of Precincts 7, 8 & 9; b. direct the Property Appraiser and Tax Collector to implement the special tax collection process; and c. commence negotiations, when feasible, with March Investments, to acquire the subject property. Sisk commented this is just an option that deals not with the issue of whether we should or should not buy the land, it deals with whether the people should have the right to decide whether they want to put up the money to buy the land. There are two other options available: the developers proposal; and there are about 500 residents that have signed the petition requesting the County buy the entire 15 acres and access the County to pay it back. (6.0745) Mary Kohnke, 29 S. Roscoe Blvd., representing the Palm Valley Community Assoc.; read a letter into the record from Rennie C. Funtham, for Sawgrass Players Club Property Owners Assoc. and submitted same to be filed with the Clerk; spoke in opposition to putting this referendum on the ballot on November 8, 1988. (6.0960) Sheila O'Neil, 326 Ponte Vedra Blvd., spoke in opposition to putting this referendum on the ballot on November 8, 1988; submitted two letter to be filed with the Clerk. (6.1029) Hoke Sisk commented that the voting booth in November will give us the evidence as to how the majority of the people feel. (6.1067) John Creel, 551 Lake Road, Ponte Vedra, spoke in favor of putting this referendum on the ballot. (6.1078) Gary Christian, 158 Bermuda, also the attorney for March Investments, spoke in opposition to putting the referendum on the ballot in November and explained same; (6.1340) John Sisson, President of Sawgrass County Club Property Owners Assoc., 17 Lake Julia Dr. N., requested the Board to consider all the problems carefully in regards to this issue. (6.1400) Jim Northern, President of the Site Selection Committee for the Branch Library for NW St. Johns County, spoke of the need for a branch library, ask the Board to carefully consider this issue; feels as a tax payer that he does want to pay for something that can be gotten for free. (6.1496) Patty Johnson, 46 Turtle Back Trail, spoke in opposition to the referendum. (6.1535) Weldon Johnson, Ponte Vedra, spoke in favor of putting the referendum on the ballot in November. (6.1617) Carl "Bud" Markel, Clerk of Courts, commented in regard to the time frame on this proposal; if the referendum were to be put on the ballot and passed we may run into some financial problems in the future. (6.1670) Weldon Johnson commented that the County has approximately \$540,000 on hand just to build the library. (6.1694) Bill Nelson, 120 N. Roscoe Blvd., Palm Valley, spoke in opposition to the referendum; submitted three letter to be filed with the Clerk from people in opposition to the referendum. (6.1917) Hoke Sisk commented that no petitions were required to present this proposal for referendum; Sisk spoke in regard to the purchase of 5 acres as opposed to 1.8 acres as a gift. There being no further citizen comments the meeting returned to the Board. (6.1989) Commissioner Waldron submitted a letter to be filed with the Clerk from Carol J. Reiser, President of The Fountains Assoc., in opposition to the referendum being on the November ballot. Considerable discussion ensued regarding this referendum being placed on the November ballot; there are 11 constitutional amendments on the ballot, a single member district issue and the jail issue are also going to be on the November 8, 1988 ballot. The issue of rezoning this property will be in October. No action was taken by the Board in regard to placing this referendum on the November 8, 1988, ballot; this could be put on the ballot in the spring of the year depending upon the rezoning outcome.

REPORTS:

- 1) Docket No. 870980-WS, Order No. 20017, issued 9/16/88 regarding application of St. Augustine Shores Utilities for an increase in water and sewer rates in St. Johns County, Florida.