

**MINUTES OF MEETING
BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA
MAY 23, 2000
(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
Mary Kohnke, District 4, Vice Chair
John Reardon, District 2
David Halstead, Assistant County Administrator
Rick Barfield, Assistant County Attorney
Lenora Newsome, Deputy Clerk

Also present was: Michael Givens, Chief Deputy-Finance

Pal Howell, District 1, and Marc Jacalone, District 3, were not present at the meeting today.

(05/23/2000 - 1 - 9:09 a.m.)

CALL TO ORDER

The meeting was called to order by Bryant.

(05/23/2000 - 1 - 9:09 a.m.)

The Invocation, The Lord's Prayer, was led by Bryant. The Pledge of Allegiance was led by Reardon.

(05/23/2000 - 1 - 9:10 a.m.)

ROLL CALL

The roll was called by the Deputy Clerk.

(05/23/2000 - 1 - 9:11 a.m.)

PUBLIC COMMENT

Sylvia Martin McGinnis, 69 Abbott Street, spoke on a seminar coming to St. Augustine June 4, 2000, regarding teaching ladies how to fish.

(9:16 a.m.) Louise Thrower, 288 Orange Avenue, spoke on the Nocatee DRI Comprehensive Plan Amendment and its transmittal to DCA which was approved by the Board on May 22, 2000.

(05/23/2000 - 1 - 9:25 a.m.)

ADDITIONS/DELETIONS TO THE CONSENT AGENDA

There were no additions nor deletions to the Consent Agenda.

(05/23/2000 - 1 - 9:25 a.m.)

APPROVAL OF CONSENT AGENDA

Motion by Kohnke, seconded by Reardon, carried 3/0 with Howell and Jacalone absent, to approve the Consent Agenda as submitted.

Approval of Minutes:
05/09/00 – BCC Regular
05/10/00 – BCC Special
05/16/00 – BCC Workshop

2. Approval of a motion adopting a Resolution effecting the Second Amendment to the SHIP Housing Assistance Plan (HAP), increasing Home Buyer down payment assistance, beginning FY99/00.

RESOLUTION NO. 2000-76

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, EFFECTING THE SECOND AMENDMENT TO THE STATE HOUSING INITIATIVES PARTNERSHIP (SHIP) HOUSING ASSISTANCE PLAN (HAP) COVERING STATE FISCAL YEARS 1999/2000 AND 2000/2001, AND SETTING AN EFFECTIVE DATE

3. Approval of a motion designating proposed Golf Cart Crossing on Golf Ridge Drive, Cypress Lakes, Phase III, with appropriate signs and markings.
4. Motion to approve Interlocal Agreement for the provision of lighting at certain roadway locations in northwest part of the County between JEA and St. Johns County.
5. Motion to award the contract for Bid No. 00-42, Annual Gasoline and Diesel Fuel requirements to the low bidder, B.P. Oil Company, estimated annual expenditure is \$400,000.00 (*See Exhibit A.*)
6. Approval of motion to transfer funds from the Solid Waste MSBU Reserve (407.59937) in the amount of \$167,000.

File:

- a. Proof, Notice to Bidders, Bid No. 00-27, 3 New Compact Pick-up Trucks.
- b. Proof, Notice of Special Meeting, Adoption of EAR Based Amendment, St. Johns County Comp Plan, May 10, 2000.
- c. Proof, Request for Proposals, RFP 00-47, Integrated Planning & Development Permitting System Software.
- d. Proof, Notice of Private Meeting between St. Johns County and Valinda Bennett, June 13, 2000.
- e. Proof, Notice to Bidders, Bid No. 00-49, Purchase of two (2) Compaq Servers.
- f. Proof, Notice of Public Hearing, Establishment of Ordinance/Regulations effecting the Use of Land, Ponte Vedra District Regulations, May 16, 2000 and June 6, 2000.
- g. Proof, Notice of Public Hearing, Establishment of Ordinance/Regulations effecting the Use of Land, Ordinance #99-51, Part 12.01, May 16, 2000 and June 6, 2000.
- h. Proof, Notice of Public Hearing, Adopting amendments to St. Johns County Comprehensive Plan (1999-2015), May 10, 2000.
- i. Proof, Notice of Proposed Change (NOPC) to St. Augustine Centre Development of Regional Impact (DRI), May 18, 2000.

(05/23/2000 - 2 - 9:25 a.m.)

ADDITIONS/DELETIONS TO REGULAR AGENDA

Halstead requested to add the issue on Citizen Task Force Block Grant as item #4a. Barfield requested to add the issue on Ravenswood-Full Set Up and Clean Up Agreement as item #5a.

(05/23/2000 - 3 - 9:26 a.m.)

APPROVAL OF REGULAR MEETING AGENDA

Motion by Reardon, seconded by Bryant, carried 3/0 with Howell and Jacalone absent, to approve the Regular Agenda as amended.

(05/23/2000 - 3 - 9:27 a.m.)

1. PUBLIC HEARING – TIME WARNER CABLE TV FRANCHISE TRANSFER – CONSENT TO CHANGE CONTROL OF THE FRANCHISE. AT ITS REGULAR MEETING OF MAY 9, 2000, THE BOARD OF COUNTY COMMISSIONERS (BCC) INITIALLY ADDRESSED THE REQUEST OF TIME WARNER INC. (TWI) TO CONSENT TO THE TRANSFER OF CONTROL THAT WOULD RESULT FROM ITS MERGER WITH AMERICA ONLINE (AOL). THE BCC HEARD COMMENT FROM SEVERAL MEMBERS OF THE PUBLIC AND DIRECTED STAFF TO QUERY TWI ON THE ISSUE OF “OPEN ACCESS” AND TO RETURN BEFORE THE BCC AT THEIR MEETING OF MAY 23, 2000. STAFFED HAS PRESENTED TWI WITH QUESTIONS ON THIS ISSUE AND IS PREPARED TO ADDRESS THE QUESTIONS OF THE BCC.

Proof of publication of notice of public hearing on Change in control of the franchisee in connection with the merger of Time Warner and America Online, was received having been published in The St. Augustine Record on May 18, 2000.

Kohnke disclosed having ex-parte communication with Mr. Hotchkin, Mr. Pennington, and Time Warner on the access issue. Bryant disclosed having ex-parte communication with Mr. Pennington on some news off of the internet related to court rules, and US Cable Laws. Reardon disclosed having ex-parte communication with Mr. Pennington and Mr. Hotchkin about the concerns of open access. Joe Vonasek, Budget Officer, reviewed this item speaking on a letter received from Time Warner, dated May 22, 2000. He stated that there were three questions that were directed to Time Warner in Adam’s letter of May 10, 2000: whether any counties or cities have imposed any conditions on Time Warner in connection with the proposed merger that would require open access be provided for ISPs and if so which governmental entities, the nature of those conditions and whether Time Warner agreed to them; whether or not Time Warner would voluntarily offer any open access commitment to ISPs for internet access; and if St. Johns County imposes conditions with the transfer of control requiring open access, would Time Warner agree to it and if not, what would the legal basis of their objection be and further what response would they take. He read the response from Mr. Nesbit, Vice President, General Manager of Time Warner, to Adam’s three questions: Nesbit stipulates that while several local franchisee authorities had expressed an interest in open access, no local franchisee authority has imposed such a requirement; they believe that those local franchisee authorities that have explored this issue have ultimately concluded that an open access requirement is unnecessary in light of Time Warner’s commitment as embodied in the Memorandum of Understanding to provide consumers a choice of an internet service provider on our cable television system; the Memorandum of Understanding they refer to is a position that Time Warner/AOL has taken on their merger; Nesbit replied that it is their intention to negotiate commercial agreements with ISPs that are interested in offering services on our cable television systems, will work to have such agreements in place in order to bring consumers a choice of ISPs as soon as possible; and Nesbit responded that while AOL and Time Warner have had different views in the past on the legal authority of local franchisee authorities to enact open access conditions, the companies firmly believe that given the announcement of the Memorandum of Understanding, given the personal commitments made by Steve Case

and Jerry Levin on this subject, and given the dramatic movement in the market place to enact open access, placing such a condition on their merger at this time is unnecessary since they are committed to providing consumer choice in the provision of broad band internet service through their franchise areas. He reviewed the internet letter dated May 19, 2000, submitted by Pennington regarding Court Rules U.S. Cable Law is constitutional. He stated that they were submitting a resolution that addresses the open access issue, Staff recommended that the issue of open access and control of the franchisee be separated and to revisit the issue of open access at a later date, if it is the desire of the Board.

(9:41 a.m.) David Conn, Attorney for the County, relayed the federal government issue on open access and stated that it was very interesting that AOL has chosen to enter into this Memorandum of Understanding basically with itself. He stated that this is basically a question of national regulations, federal regulations, vs local jurisdiction regulation. He relayed information on two federal court cases from Virginia and Oregon regarding AT&T proposed AOL/Time Warner because of the time sequence. Conn spoke on the provisions of the law: telecommunications service requirements, common carrier regulations, contents provision, the first amendment-freedom of speech, impairment of contracts, and the Memorandum of Understanding. The FCC has taken a position that local governments should not regulate it, it should be handled on a national basis. Conn spoke on attorney fees; an indemnity agreement and recommended St. Johns County avoid being a test case, call Broward County and check out their status on the open access issue. He advised the County to follow Broward County's lead, if the County feels like it is a good idea to require mandatory open access, make it a condition and if not satisfied with the voluntary commitment, wait until the litigation proceeds through the Federal District Court and the law is established. He advised strongly not to go ahead today and impose it as a condition to the transfer. Discussion followed on local control, existing franchise provisions, Memorandum of Understanding, and the national level of concern about a monopoly.

(10:07 a.m.) Buz Nesbit, 2200 Ponce de Leon Blvd. North, Time Warner Cable, introduced himself. Reardon requested clarification from Nesbit why he thinks the County shouldn't have to regulate on a local level. Nesbit spoke on emerging technology and the direction in the letter that this was not an issue that necessarily has to be addressed on a County or City basis. Discussion followed on competitive contracts, small businesses providing more personal business, and the phone company providing the open access over their phone lines. Givens left the meeting.

(10:19 a.m.) James Pennington, 5 Cordova Street, President of Auglink Communications, spoke on Time Warner and AOL changing names. He stated that the decision that needs to be made today must be in the best interest of the community.

(10:25 a.m.) Charlie Hotchkin, 190 Nix Boatyard Road, Channel 22 signal, reviewed the Franchise Agreement Ordinance No. 84-31 when cable first came to St. Johns County in 1984. In 1994 he presented an amendment to Ordinance No. 84-31, being Ordinance No. 94-27. He spoke on Nesbit's letter and presented a letter dated March 20, 2000 to him refusing to carry his signal for Channel 22. Reardon requested to schedule a workshop to hear Hotchkin since this is a separate issue from the one being presented today. Barfield suggested waiting until Hotchkin receives a response from Time Warner Cable on the letter that he sent to them regarding the Channel 22 signal, before scheduling a workshop. Discussion followed on the bearing the two court cases from other parts of the Country would have on St. Johns County. Conn addressed the legal issue, his final recommendation was not to impose the open access requirement, and the Board not expose themselves to the immediate legal fees that will most likely incur in the federal litigation. Bryant directed the clerk to take down Nesbit's statement verbatim. *Nesbit stated certainly as the time goes on along this process, we'll be more than happy to provide you with where we are in the process of negotiations both locally and nationally. I would think that once this process starts that we don't want to burden you with a lot of reports but I would think that maybe once every six*

months we will be more than happy to tell you where we are, who we have negotiated with, that type of thing. Bryant questioned how about quarterly. Nesbit mentioned that he just hesitate on... Bryant just a simple letter of memo. Nesbit stated we'll do that. (10:44 a.m.) **Motion by Kohnke, seconded by Bryant, carried 2/1 with Reardon dissenting, Howell and Jacalone absent, to adopt Resolution No. 2000-77, consenting to a change in control of the franchisee in connection with the merger of Time Warner and America Online.**

RESOLUTION NO. 2000-77

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, CONSENTING TO A CHANGE OF CONTROL OF THE CABLE TV FRANCHISEE CABLEVISION INDUSTRIES LIMITED PARTNERSHIP, A SUBSIDIARY OF TIME WARNER INC. IN CONNECTION WITH A MERGER WITH AMERICA ONLINE INC. INTO AOL TIME WARNER INC.

(05/23/2000 - 5 - 10:47 a.m.)

2. REQUEST FOR A LETTER OF SUPPORT FOR AN APPLICATION PACKAGE TO FLORIDA COMMUNITIES TRUST FROM THE TOWN OF MARINELAND TO PURCHASE TWO COUNTY OWNED SPOIL ISLANDS.

Jim Netherton, Mayor/Commissioner, Town of Marineland, reviewed this item requesting a letter of support from the Board to the Florida Communities Trust on getting a grant to purchase two County owned spoil islands adjacent to the Town boundaries. (10:50 a.m.) **Motion by Reardon, seconded by Kohnke, carried 3/0 with Howell and Jacalone absent, that this Board of County Commissioners of St. Johns County write a letter of support for the Town of Marineland for the FCT Grant to purchase two spoil islands adjacent to the Town boundaries.**

The meeting recessed at 10:47 a.m. and reconvened at 11:02 a.m.

Barfield left the meeting and Daniel Bosanko, Deputy County Attorney, entered the meeting.

Bryant requested to move next to item #4a. (11:02 a.m.) ***It was the consensus of the Board to move to item #4a.***

(05/23/2000 - 5 - 11:08 a.m.)

3. DISCUSSION OF RUES LANDING ROAD.

Joe Stephenson, Director of Public Works, gave an overview of the Rues Landing Road issue, using visual display, stating the three issues being discussed today; Growth Management and Development Review or permitting issue by Scott Clem, legal issue about easements and the rights thereunder by Bosanko, and the Public Works issue on how roads get paved and what the options are to get this one paved. He stated that all adjoining property owners must agree to pave or deed the road to St. Johns County. Staff is against the option of deeding the road to St. Johns County because they don't have the budget to maintain it.

(11:14 a.m.) Bosanko reviewed the legal aspect of the easement issue using visual display. He stated that Rues Landing Road would be paved by the developer through some private agreement between the developer and citizens in that area. He spoke on the gated access on Pacetti Road, recommended the County not approve blockage of Rues Landing Road, and stated it was a private dispute between two groups of private easement owners.

Citizens on both sides of Rues Landing Road had news of this meeting and letters were sent to all the tax record property owners on Wednesday or Thursday of last week informing them.

(11:22 a.m.) Clem reviewed the final part of this issue on the construction and development activity that has had some impact on this area. He spoke on construction traffic being taken care of, and the gate across the private part of the road. Discussion followed on where the construction was going on.

(11:28 a.m.) Richard D'Amour, 4275 Rues Landing, spoke on the condition of Rues Landing Road, the County giving the developer permission to use the road, and suggested Davidson Construction pay for part of the road since they used it. Clem relayed that some County official had given permission to the developer to use the road. D'Amour stated that the County had a law that after 10 houses are built on a dirt road, before any more houses could go on that road, it had to be paved. Betty Sue Stepp, Development Review Manager, responded.

(11:37 a.m.) Tammy Werninck, 3670 Rues Landing Road, mentioned her house was the last house on the road. She explained the history of the road and stated that she wanted to keep their road private. Discussion followed on how many homes were on the road, how much land the developer owns of the road, and paving the road.

(11:46 a.m.) Clifford Bedwell, 4375 Rues Landing Road, stated that he was on the paved portion of Rues Landing Road and was concerned about traffic increasing if they paved the remaining part of the road.

(11:47 a.m.) Dale Bryant, 4219 Rues Landing Road, stated that he lived in the second house in from the gate, and that he wanted to discuss a personal and public issue. The personal issue was being surrounded by developers and the public issue was that they are closed out from receiving road improvements.

(11:52 a.m.) Linda Arnett, 3910 Rues Landing Road, stated that she has interest on both sides of the road and explained the agreement between them and the developers.

(11:57 a.m.) James Mitchell, 4215 Rues Landing Road, presented Rues Landing Road with a video/visual display. He was asking for help on improving the road and taking down the gate at the north end of the private road. Reardon mentioned taking a copy of the video tape, taken by Mitchell, to the developer and show them the road improvements that are needed for the developer's two years of usage of the road. Kohnke stated that she would call Davidson.

(05/23/2000 - 6 - 12:11 p.m.)

4. FOLLOW-UP ON TRAFFIC CONDITIONS FOR CR 13 IN RIVERDALE

Stephenson reviewed this item stating that there was ongoing discussion about traffic conditions on CR 13. Stan Kamys, 1315 CR 13 South, stated that everything was worked out to his satisfaction.

The meeting moved to item #5.

(05/23/2000 - 6 - 11:03 a.m.)

4a. ESTABLISHMENT OF CITIZEN'S ADVISORY TASK FORCE (CATF) FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

Kohnke questioned how the people were chosen for the Citizen's Advisory Task Force. Foxworth answered that these people were chosen by the Commission last year. (11:05

a.m.) **Motion by Reardon, seconded by Kohnke, carried 3/0 with Howell and Jacalone absent, to approve establishment of the CATF committee for the CDBG grant application and to appoint members, Resolution No. 2000-78.**

RESOLUTION NO 2000-78

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, TO APPOINT A CITIZEN'S ADVISORY TASK FORCE FOR THE 2000 COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION TO THE STATE OF FLORIDA AND FOR SUBSEQUENT CDBG APPLICATIONS

The meeting moved to item #5a.

(05/23/2000 - 7 - 12:14 p.m.)

5. OTHER BUSINESS.

There was none.

The meeting moved to Commissioner's Reports.

(05/23/2000 - 7 - 11:06 a.m.)

5a. APPROVAL OF A FULL CLEAN UP SETTLEMENT AGREEMENT ON THE RAVENSWOOD ENCROACHMENT

Bosanko commented on the only change he is aware of from last week, it does include provision for payment of the attorneys fees for the attorney for the other side of the matter on Exhibit D in the amount of \$7,500. It is set up for the Chairman's signature. He stated that he will be making one addition with the Board's consent; where its says additional charges of Richard Hathaway, he will say, *that is subject to approval of the BCC*. He stated that the Board's motion should be, if they choose, to approve this agreement, which is a Full Clean Up and Settlement Agreement for Ravenswood Landfill and to authorize the County Administrator to execute the same in substantially the form attached. (11:07 a.m.) **Motion by Reardon, seconded by Kohnke, carried 3/0 with Howell and Jacalone absent, to approve this agreement, which is a Full Clean Up and Settlement Agreement for Ravenswood Landfill and to authorize the County Administrator to execute the same in substantially the form attached.**

The meeting returned to item #3.

(12:14 p.m.) **Motion by Reardon, seconded by Bryant, carried 3/0 with Howell and Jacalone absent , to adjourn the meeting.**

(12:14 p.m.) **Motion by Reardon, seconded by Bryant, carried 3/0 with Howell and Jacalone absent, to reopen the meeting to accept handing out the budget books.**

(05/23/2000 - 7 - 12:14 p.m.)

COMMISSIONER'S REPORTS

No reports.

(05/23/2000 - 7 - 12:14 p.m.)

COUNTY ADMINISTRATOR'S REPORT

No report.

(05/23/2000 - 8 - 12:14 p.m.)
COUNTY ATTORNEY'S REPORT

No report.

(05/23/2000 - 8 - 12:14 p.m.)
CLERK OF COURT'S REPORT

No report.

Motion by Kohnke, seconded by Bryant, carried 3/0 with Howell and Jacalone absent, to adjourn the meeting. The meeting thereupon adjourned at 12:15 p.m.

CORRESPONDENCE:

1. Letter dated May 17, 2000, to Misty Pearson, Department of State, Bureau of Administrative Code, filing a certified copy of Exhibits A through G that needed to be added to Ordinance No. 2000-15.
2. Letter dated May 18, 2000, to Liz Cloud, Department of State, Bureau of Administrative Code, filing a certified copy of St. Johns County Ordinance No. 2000-34.

REPORTS:

1. St. Johns County Board Database Check Register-Disbursement Fund Check No. 289329 through 289563 dated 05/19/2000.

Approved _____ June 6, 2000

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: _____
James E. Bryant, Chair

ATTEST: CHERYL STRICKLAND, CLERK

By: _____
Deputy Clerk