AGENDA
FERNANDINA BEACH CITY COMMISSION
OCEAN HIGHWAY AND PORT AUTHORITY (OHPA)

MEDIATION PURSUANT TO SECTION 164.1055, FLA. STATS.

JULY 15, 2020
9:00 AM
FERNANDINA BEACH GOLF COURSE CLUBHOUSE
2800 BILL MELTON ROAD
FERNANDINA BEACH, FL 32034

Due to the ongoing COVID-19 pandemic, occupancy in the FBGC Clubhouse will be limited. Face masks or coverings are required per Resolution 2020-94.

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. INTRODUCTION OF MEDIATOR, CARLOS ALVAREZ

5. OPENING STATEMENTS ON THE ISSUES IN CONFLICT

5.1 *City Attorney, Tammi E. Bach*

5.2 *OHPA Attorney, Jeb T. Branham*

6. CITY AND OHPA SEPARATE TO CAUCUS AND DISCUSS RESOLUTION OF DISPUTE ***THE PUBLIC IS WELCOME TO OBSERVE IN EITHER OR BOTH CAUCUS ROOMS***

6.1 *The following parties will be present for the City: Mayor John A. Miller, Vice Mayor Len Kreger, Commissioners Chip Ross, Philip Chapman and Mike Lednovich, City Manager Dale L. Martin, City Attorney Tammi E. Bach and City Clerk Caroline Best. The following parties will be present for OHPA: Robert Sturgess, District 1, Danny Fullwood, District 2, Scott Hanna, District 3, Carrol Franklin, District 4, Mike Cole, District 5, Jeb Branham, Port Attorney and Barbara Amerigan, Recording Secretary.*

7. CITY AND OHPA RECONVENE JOINTLY AND DISCUSS RESOLUTION OF DISPUTE AND NEXT STEPS

8. ADJOURNMENT

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSES, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

Persons with disabilities requiring accommodations in order to participate should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired).

JEB T. BRANHAM
Attorney at Law

April 7, 2020

Carlos Alvarez, Esq.
847 East Park Avenue
Tallahassee, Florida 32301-2620

Re: *City of Fernandina Beach adv. OHPA -- OHPA Amended Mediation Statement*

Dear Mr. Alvarez:

The Ocean Highway and Port Authority looks forward to mediating the dispute between it and the City of Fernandina Beach, hopefully on June 3, 2020. This is OHPA's description of the matter, as we see it.

I. The Issue

On February 21, 1989, the City of Fernandina Beach passed Resolution 962. (Link 1.) At that time, Fernandina called this Resolution a "Development Order." (Link 2.) Section 51 of the Resolution included a section that said:

> In the absence of ad valorem taxes being due and payable by the applicant shall pay to the City an annual fee of $50,000, due and payable on July 1 of each year, beginning July 1, 1989. Such payment shall be used, $25,000 toward a capital acquisition or development for downtown parking and $25,000 for development of a community center, for each of the first five years. Said annual amount shall be renegotiated every year, but shall never be less than $50,000 per year.

(Link 3.) Fernandina contends that this statement in a resolution it adopted imposes a perpetual, never-ending legal obligation for a tax-exempt independent special district to make annual payments of at least $50,000 in lieu of paying real property taxes. OHPA contends that Fernandina has no authority to unilaterally impose any such obligation by resolution or otherwise, OHPA never agreed to any such obligation, and any payments OHPA has made in the past were purely voluntary.

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2. The Parties

The Ocean Highway and Port Authority is an independent special district created by special act of the Florida legislature. The current legislative charter is Chapter 2005-293, Laws of Florida, as amended. The legislative charter can be found on OHPA's website, under the Economic Development tab. By statute, OHPA is exempt from property taxation. Fla. Stat. § 196.199(1)(c).

The City of Fernandina Beach is a Florida municipality. All of OHPA's real property is located in the corporate limits of Fernandina. Fernandina does not have any legislative authority to tax OHPA's real property. Thus, the only way OHPA could have an obligation to make payments in lieu of real property taxes would be if it agreed to such an obligation. *City of Largo v. AHF-Bay Fund, LLC,* 215 So.3d 10, 15 (Fla. 2017) (Link 4).

3. The Factual Background of the Dispute

A port has existed in Fernandina for centuries. OHPA dates back to the 1940s as a legislatively-created entity. In 1985, OHPA issued bonds for the construction of a modern seaport.

A Development of Regional Impact or a DRI is "any [Florida] development which, because of its character, magnitude, or location, would have a substantial effect upon . . . more than one county." Fla. Stat. § 380.06(1). State law decides whether a particular development qualifies as a DRI. That law has changed frequently over the years, with substantial revisions in 2011 and 2015 regarding what qualified as a DRI and the review procedure

In 1985, the development of a modern seaport at Fernandina was expected to qualify as a Development of Regional Impact. Lawyer Mark Bentley's website contains an excellent summary of the DRI approval process. Although the exact process has changed over the years, the core principal has remained the same. If a development qualifies as a DRI, then it trips a state-level review in addition to the ordinary local-level review. Done properly, a DRI results in a development agreement between the developer, the state agency, and the local governments with jurisdiction over the land.

In February 1986, Fernandina passed Resolution no. 801 to begin the DRI review process for the port. (Link 5.) This Resolution asked the Department of Community Affairs "to approve the Preliminary Development Agreement . . . submitted by

[OHPA], subject to . . .” payment of “[e]quitable annual fees . . . negotiated to fund City services normally funded through ad valorem taxes.” Thus, from the outset, any fees OHPA was going to pay Fernandina had to be negotiated and agreed-upon. Since OHPA was tax-exempt, OHPA’s agreement was obviously necessary. Fernandina had no authority to tax OHPA, and Resolution no. 801 acknowledges that.

In April 1986, OHPA, the Department of Community Affairs, the Northeast Florida Regional Planning Council, and the Nassau County Board of County Commissioners entered into a Preliminary Development Agreement of Port Facilities Development to start the process of building the modern seaport as a DRI. The Preliminary Development Agreement did not contain any requirements for OHPA to pay Fernandina any equitable annual fees or mention Resolution no. 801 in any way. (Link 6.) [Amendment: Fernandina has correctly identified a provision of the Agreement that requires OHPA to comply with Resolution no. 801. However, as to fees, Resolution no. 801 was at most an agreement to agree upon annual fees in the future. As explained below, no such mutual agreement was ever reached.]

On January 10, 1989, Fernandina’s city council held a public hearing to consider issuing a development order for the port. (Link 7.) Most of the port had already been built by this time. No action was taken, and the hearing was continued until February 14, 1989. (Link 8.) By that time, Fernandina had already drafted Resolution 962, the document the City uses to try to impose a perpetual payment obligation on OHPA.

At this hearing, OHPA’s representative, Elton Stubbs, objected to paying any amount equivalent to ad valorem taxes. Mr. Stubbs suggested OHPA could agree to pay something and that the use would also have to be agreed-upon. (Link 9.) Mr. Stubbs worked for Florida Marine Construction Management. (Link 10.) He was not an OHPA elected official.

On February 20, 1989, Fernandina held a workshop regarding Resolution 962. At the workshop, Mr. Stubbs said OHPA would pay $60,000 towards a fire boat. (Link 11.) The minutes then go on to say that a consensus of the city council would accept “the Port’s proposal to pay an annual fee of $50,000 . . . .” (Link 12.) No mention is made of where that “proposal” came from. There is no record of the OHPA commission ever voting to agree to pay it. The next day, Fernandina passed Resolution no. 962. Other than the 1986 agreement, no development agreement regarding the development of regional impact at the port was ever entered into. The city has long-acknowledged that the resolutions are its only source for the alleged payment obligations. (Link 13.)

OHPA did not make any of the payments called for by Resolution no. 962. In 1989, OHPA leased certain real property for port operations. In December 1989, OHPA

and various entities that OHPA leased land from sued James Page, as the Nassau County tax collector, over whether the leased land was taxable.

By February 1992, Fernandina was threatening to revoke the permission it had already given OHPA to extend the build out date of the DRI unless OHPA started making the payments called for in Resolution no. 962. (Link 14.) In 1992, a Fernandina city commissioner referred Resolution no. 962 as something that "expanded the prior commitment for 'equitable annual fees' . . . ." (Link 15.) Of course, there was no prior commitment by OHPA to make PILOT payments or "equitable fees" and no such fees had ever been paid.

In November 1992, the First District Court of Appeals ruled that OHPA's leasing of land for port operations did not make that otherwise taxable land tax-exempt. *Ocean Highway and Port Authority v. Page,* 609 So.2d 84 (Fla. 1st DCA 1992) (OHPA-owned land remained tax-exempt, however) (Link 16.) Due to Corona Virus closures, the court records from that litigation are not available for review to determine whether the $50,000 figure the city proposed in Resolution no. 962 pertained to the leased, taxable property used for port operations in the early 1990s or whether that figure also pertained to OHPA-owned, tax-exempt property. OHPA no longer leases property for port operations. Regardless, the issue could only be dispositive in OHPA's favor. OHPA will update this statement when those records are available.

4. The Legal Issues

A. A city cannot change state law just by passing a resolution. Fernandina Beach contends its passage of Resolution 962 requires OHPA to pay annual $50,000 payments to the city forever. However, state law makes OHPA tax exempt. Fernandina has no authority to make OHPA pay it anything. The city's resolution does not undo OHPA's tax exemption given to it by the legislature. OHPA must affirmatively agree before any payment obligation becomes binding and enforceable.

B. OHPA never agreed to pay Fernandina Beach $50,000 a year forever. If OHPA had entered into a binding agreement with Fernandina Beach to pay $50,000 a year forever, then OHPA might be obligated to make the payments for up to 30 years, but that never happened. A governmental entity agrees by taking board-approved action. No one has been able to identify any records of the OHPA commission voting to make the payments perpetually or even for a set period of time, and no one has said that such a vote ever happened. Indeed, OHPA did not make the payments as of day one. Resolution no. 962 is not a development agreement. A development agreement is

a formal signed document approved by the parties' boards with all parties' signatures on it. A preliminary development agreement like that exists for the port, but it does not have any payment obligations in it. No other development agreements for the port were ever executed. The development agreement that exists says nothing about OHPA making any payments to Fernandina, despite the City's request for such a provision.

C. State law requires development agreements to end after 30 years. Fla. Stat. § 163.3229. Even if OHPA had agreed to make payments to Fernandina Beach in connection with developing the port, the obligation would have to stop next year because Fla. Stat. § 163.3229 limits development agreements to 30 years.

D. Any payments OHPA has made were voluntary. At various times over the last 30 years, OHPA has not made the payments referenced in Resolution no. 962. At other times it has made them.

E. The payments the city tried to impose via Resolution 962 are illegal. Section 51 of Resolution 962 says OHPA's "payment shall be used, $25,000 toward a capital acquisition or development for downtown parking and $25,000 for development of a Community civic center, for each of the first five years." Fla. Stat. § 380.06(4)(b)1 prohibits DRI development orders from containing "any requirement that a developer contribute or pay for land acquisition or construction or expansion of public facilities . . . ." In short, cities are not supposed to extort developers by withholding permission to proceed with a development unless the developer agrees to pay the city money the city would not otherwise get. On its face, Resolution no. 962 violates the statute.

5. Practical Issues

OHPA has a very tight operating budget funded entirely by fees paid by the port's operator, Worldwide Terminals Fernandina. The operator agreed in the port operating contract to make two $50,000 payments to Fernandina, with the last due in July 2020. OHPA does not have sufficient operating funds to make the payment on its own. In fact, the operator is behind on its payments due to OHPA currently. Due to world market conditions, that situation is not likely to improve anytime soon. Beginning in 2026, the operator is due to pay OHPA additional fees under the operating agreement. Until then, OHPA does not have sufficient funds to make $50,000 annual payments on its own, even if it was obligated to do so and wanted to. While OHPA wants to find an equitable resolution to this matter, any proposed resolutions must be grounded in economic reality.

6. Conclusion

This matter turns on a few basic propositions of Florida local and intergovernmental law. A city only has the taxing authority the legislature gives it. The legislature did not give Fernandina any authority to tax OHPA. Thus, the only way OHPA could be required to pay Fernandina $50,000 forever is if OHPA's commission voted to do that. That never happened, as best evidenced by the fact that OHPA refused to make the payments on day one. While OHPA does not have a binding legal obligation to may the payments referenced in Resolution no. 962, it will certainly consider equitable solutions based on the parties' economic realities.

Respectfully submitted,

Jeb T. Branham

JTB/dlw

RESOLUTION NO. 962

A RESOLUTION GRANTING APPROVAL OF DEVELOPMENT OF REGIONAL IMPACT FOR THE PORT OF FERNANDINA, PURSUANT TO CHAPTER 380, FLORIDA STATUTES, AND ESTABLISHING THE CONDITIONS OF SUCH APPROVAL.

WHEREAS, the owner or authorized agent of the owner of that certain property located in Blocks 3, 4, 5, 6, 7, 56, 57, 58, 59, 60, 64 and 65, and Water Lots 7, 8, 9, 10, 11, 12, 13 and 14, as shown in the shaded area in the attached Exhibit "A", has applied for development approval of a Development of Regional Impact (DRI) on the described property; and

WHEREAS, the Northeast Florida Regional Planning Council has considered the application and made its report and recommendations thereon; and

WHEREAS, the City of Fernandina Beach Planning Advisory Board has considered such application and made its report and recommendations thereon; and

WHEREAS, a Notice of Public Hearing on the proposed Development of Regional Impact was advertised in the Fernandina Beach Newsleader, a newspaper of general circulation in Fernandina Beach, Florida, on November 9, 1988; and

WHEREAS, a public hearing was held on such application by the City Commission of the City of Fernandina Beach, Florida, on January 10, 1989, and on February 14, 1989; and

WHEREAS, after consideration of the testimony and evidence presented on such application and at the public hearings thereon, and of the reports and recommendations of the Northeast Florida Regional Planning Council and the Planning Advisory Board, the City Commission makes the following findings:

A. That the proposed development is not in an area of critical state concern, as defined in F.S. §380.05.

B. That the proposed development does not unreasonably interfere with the achievement of the objectives of any adopted state, regional and local land development plan applicable to the area.

C. That the proposed development is consistent with the Comprehensive Plan and development regulations of the City of Fernandina Beach.

D. That the proposed development is consistent with the report and recommendations of the Northeast Regional Planning Council (NEFRPC), dated February 2, 1989.

E. That the City Commission is authorized and empowered under F.S. §380.06 to issue the Development Order approving the application for development.

F. That the approval of the application for development and issuance of the Development Order will not adversely affect the public interest of health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED by the CITY COMMISSION of the CITY of FERNANDINA BEACH, FLORIDA, at its meeting duly assembled and called, that the Application for Development Approval, submitted September 23, 1986, and Amended Application for Development Approval, submitted June 7, 1988, (ADA), by the OCEAN HIGHWAY and PORT AUTHORITY of Nassau County, Florida, Applicant, be, and the same is, hereby, approved, subject to the following conditions:

GENERAL CONDITIONS

1. The Port of Fernandina Application for Development Approval (ADA) submitted September 23, 1986, the Port of Fernandina Amended ADA submitted June 7, 1988, the Preliminary Development Agreement entered into in April, 1986, the First Amendment to the PDA entered into May 26, 1987; the Second amendment to the PDA entered into on February 29, 1988, and all commitments therein, as well as the Port of Fernandina Sufficiency Response Document submitted August 17, 1988, plus additional information submitted to the NEFRPC and the City of Fernandina Beach by the applicant/developer during the review period September 23, 1986, to February ____, 1989, are by reference incorporated herein as if fully set out herein.

2. Any subsequent owner/developer or assignee shall be subject to the provisions contained herein.

3. The City Manager is hereby designated as the person responsible for monitoring the development for compliance with this Development Order.

4. The Applicant shall commence the uncompleted physical development no later than June 1, 1989, and shall complete such development no later than June 1, 1990.

5. Until February 13, 1990, the approved development of regional impact shall not be subject to down-zoning, unit density reduction, or intensity reduction, unless the City can demonstrate the substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by City to be essential to the public health, safety or welfare.

6. An annual monitoring report shall be prepared and submitted by the applicant or subsequent developer(s) in accordance with Section 380.06, F.S., to the Northeast Florida Regional Planning Council, Department of Community Affairs, and the City of Fernandina Beach, no later than February 28 of each year until buildout, commencing February 28, 1989. The annual report shall include:

6.1 A description of any changes made in the proposed plan of development, phasing, or in the representations contained in the Application for Development Approval (ADA) since the DRI received approval, and any actions (substantial deviation or non-substantial deviation determinations) taken by local government to address these changes.

6.2 A summary comparison of development activity proposed and actually conducted during the preceding calendar year, and projected for the ensuing calendar year, to include: site improvements, gross floor area constructed by land use type, location, and phase with appropriate maps.

6.3 An identification by location, size, and buyer of any undeveloped tracts of land in the development that have been sold to a separate person, entity or developer, with map(s) which show the parcel(s) or sub-parcel(s) involved.

6.4 A description of any lands purchased or optioned within one mile of the original DRI site by the Nassau County Ocean Highway and Port Authority, any members of the Nassau County Ocean Highway and Port Authority, or any persons or corporations tied to the Nassau County Ocean Highway and Port Authority through joint members or funding mechanism subsequent to issuance of the development order. Identify such land, its

size, and intended use on a site plan and map.

6.5 A listing of any substantial local, state, and federal permits which have been obtained, applied for, or denied, during this reporting period. Specify the agency, type of permit, parcel, location(s) and activity for each.

6.6 Describe any moratorium on development imposed by a regulatory agency. Specify the type of moratorium, duration, cause and remedy.

6.7 Provide a synopsis of the operating parameters of the potable water, wastewater, and solid waste facilities serving the development area for the preceding year.

6.8 An assessment of the applicant's, any successor's, and local government's compliance with all conditions and commitments contained in the application for development approval.

6.9 Any changes to the previously reported stormwater plans, design criteria, or planting and maintenance programs shall be reported each year in the monitoring reports.

6.10 Any known incremental DRI applications for development approval or requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year.

6.11 Any change in local government jurisdiction for any portion of the development since the development order was issued.

6.12 Copies of monitoring reports completed during the previous year on the created wetlands and stormwater/wetland systems as required by permitting agencies.

6.13 A description of new and/or improved roadways, traffic control devices or other transportation facility improvements to be constructed or provided by the applicant or governmental entity to accommodate the total existing and anticipated traffic demands.

6.14 Provide a statement certifying that the Northeast Florida Regional Planning Council, Department of Community Affairs, City of Fernandina Beach, and all affected agencies have been sent copies of the annual report in conformance with Subsections 380.06(15) and (18), F.S.

SPECIFIC CONDITIONS

7. AIR QUALITY: The following fugitive dust control measures shall be undertaken during the life of the Port of Fernandina project:

7.1 All exposed/barren solids within the project boundary shall be treated with mulch, liquid resinous adhesives, moistening or other means to suppress fugitive dust.

7.2 Soil and other material deposited on paved streets by earth-moving equipment, vehicular traffic, or soil erosion as a result of port activities shall be promptly removed.

8. AIR QUALITY: Should coal be shipped into the Port of Fernandina, the applicant shall comply at a minimum with the following conditions which may be required by FDER:

8.1 The maximum allowable emission rate for each pollutant is as follows:

Pollutant	Regulation	Emission Rate lbs/hr	Emission Rate TPY
Unconfined			
Particulate matter	17-2.610(3)	(See #8.2)	

8.2 Unconfined particulate matter emissions shall be controlled by complying with the reasonable precautions listed below, but shall not be limited to those listed:

a. The wind speed shall be continuously monitored and recorded during all periods of operation with the date and time indicated on the recorder chart paper.
b. All operations shall cease when the wind speed exceeds 18 mph for any 5 minute period.
c. Coal drop heights shall not exceed

1. 2 ft. from grab bucket (clamshell)
2. 3 ft. from front-end loader
3. 5 ft. from all other drops.

8.3 All trucks and railcars shall be cleaned and the coal covered before leaving the port, including cleaning the truck tires to prevent out-tracking.

8.4 All surface areas and roadways shall be kept wet.

8.5 Fire prevention practices shall be used.

8.6 Ship unloading via self-unloading system shall:

1. unload all of the coal into the receiving hopper;
2. have dust control shield at end of boom and adjustable transfer control; and
3. use water sprays.

8.7 Ship unloading via clamshell shall:

1. unload all of the coal into the receiving hopper;
2. use clamshell bucket with tight lip and inspect the lip daily; and
3. not allow the clamshell grab to exceed 75% of the bucket capacity.

8.8 Hopper receiving coal from ship shall:

1. have wind walls on three sides;
2. have water sprays with protection from damage by clamshell; and
3. have adjustable dust control for transferring coal to stacker, conveyor, railcar and/or truck.

8.9 Conveyor to stacker shall:

1. be a deep-V belt;
2. have an incline angle not to exceed 15°;
3. be inverted at stacker end to prevent coal particles from falling on return; and
4. be inverted again at the hopper end.

8.10 Stacker shall:

1. have an adjustable transfer control; and
2. use water sprays.

8.11 Front-end loader from stockpile to truck or railcar shall:

1. not exceed 15 mph;
2. not exceed 75% of bucket capacity;
3. have rubber tires; and
4. keep all of travel area wet.

8.12 Front-end loader from stockpile to hopper No. 2 near stockpile shall:

1. not exceed 15 mph;
2. not exceed 75% of bucket capacity;
3. have rubber tires; and
4. keep all of travel area wet.
5. have wind walls on 3 sides of hopper; and
6. use water sprays during hopper loading.

8.13 Conveyor from hopper No. 2 to pulp mill shall not be constructed.

8.14 Loading conveyor to barge from hopper No. 2 shall:

1. use an adjustable transfer control; and
2. use water spray.

8.15. Conveyor to barge shall:

1. Be a deep-V belt;
2. Have an incline angle not to exceed 15°;
3. Be inverted at stacker end to prevent coal particles from falling on return.

8.16 Conveyor discharge into barge shall:

1. have dust control shield at end of conveyor boom;
2. use an adjustable transfer control; and
3. use water spray.

8.17 Coal stockpile shall:

1. use wind walls/screens; and
2. use water sprays.

8.18 DER Jacksonville Office and the City of Fernandina Beach shall be notified four (4) days prior to unloading the first ship.

9.1 WETLANDS: Any development within the 4.1 acres of wetlands, including but not limited to the conjunction of stormwater facilities, can only take place after determination by the Northeast Florida Regional Planning Council of adequate mitigation to the regional impacts associated with the loss of 4.1 acres of wetlands. The NEFRPC will request comments on the proposed plan from the Department of Environmental Regulation, Department of Natural Resources, Florida Game and Fresh Water Fish Commission, Army Corps of Engineers, and the U.S. Fish and Wildlife Service, as to the adequacy of the mitigation to offset the impacts associated with the filling of the wetlands.

9.2 Approval by the NEFRPC will not be unreasonably withheld if regional impacts are mitigated. If filling is approved, the acres to be filled and the subject mitigation shall be incorporated into this Development Order for the Port of Fernandina prior to any filling taking place. The NEFRPC's decision and any recommendations will be issued to Fernandina Beach. Any development or otherwise filling of any of the 4.1

acres of wetlands prior to incorporation into the Port of Fernandina Development Order shall constitute a substantial deviation for the entire project requiring further DRI review.

10.1 ESTUARIES: If the 4.1 acres of wetlands are not filled, a 25-foot vegetative buffer shall be maintained between all port development and the adjacent 4.1 acres of salt marsh at the northeast end of the project.

10.2 If filling of the wetlands is allowed, a 25-foot vegetative buffer shall be maintained between all port development and any adjacent wetlands.

10.3 Any encroachment on the 25-foot buffer area shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Chapter 380.06(19), Florida Statutes.

11. LAND RESOURCES: Resinous adhesives, mulch or other means to reduce soil erosion shall be used on barren and landscaped areas including unpaved roads and parking lots, and material stockpiles.

12. FLOODPLAIN. The developer shall meet all floodplain regulations established by the City of Fernandina Beach, and shall coordinate with the City of Fernandina Beach Building Official to ensure that all finished floor elevations and all permanent mechanical and electrical equipment are constructed at or above the 100-year flood levels.

13. VEGETATION AND WILDLIFE. As the applicant has committed, wharf bumpers shall be installed on all dock/pier/wharf bulkheads at the Port of Fernandina at the time of construction to prevent manatee crushing. These bumpers shall extend at least five feet from the dock/pier/wharf face, and shall be inspected monthly and replaced if and when necessary. Unless approved by all appropriate licensing agencies, the applicant shall ensure that all grassbeds and other manatee food sources are not impacted by this project, and shall immediately install and maintain manatee caution signs and manatee information displays on the Port of Fernandina site. If sufficient wharf bumpers are not installed on all docks/piers to protect manatees, and/or grassbeds or other food sources are impacted and/or caution signs and information displays are not installed, such action(s) shall be subject to further Development of Regional Impact review, as stipulated in Section 380.06(19), Florida Statutes.

14.1 HISTORICAL AND ARCHAEOLOGICAL SITES. The applicant shall protect the on-site bluff from erosion and shall prevent damage to the historic structures on the bluff by either immediately banking adequate soil against the bluff or immediately constructing a concrete retaining wall against the bluff. If soil is not banked against the bluff or a concrete retaining wall is not constructed along the bluff, such action shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Chapter 380.06(19), Florida Statutes.

14.2 If any historical and/or archaeological resources are discovered on the Port of Fernandina site during the development process, the applicant shall immediately notify the Division of Historical Resources and the Northeast Florida Regional Planning Council (NEFRPC). No disruption of the findings shall be permitted and no development as defined under Section 380.04, F.S., shall occur in the area of the findings until such time as the Division of Historical Resources has surveyed the findings and determined significance and appropriate protection measures. The applicant and any subsequent owner/

developer or assignee shall be subject to all conditions determined by the NEFRPC and the Florida Division of Historical Resources. Any failure to report subsequent findings, disruption of findings, and/or development in an area of findings prior to consent by the Division of Historical Resources shall constitute a substantial review, as stipulated in Section 380.06(19), Florida Statutes.

15. ECONOMY AND EMPLOYMENT. To aid the Port of Fernandina in meeting its commitment to offer jobs to Nassau County citizens on a first-priority basis, the applicant shall be required to enter into a First Source Agreement with the Northeast Florida Private Industry Council within 90 days of an executed Development Order for the project. Failure to enter into the First Source Agreement shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.06(1), Florida Statutes.

16. WASTEWATER MANAGEMENT. Development shall occur concurrent with the provision of adequate central wastewater treatment service. Septic tanks shall not be allowed to occur on the Port of Fernandina site, as the applicant has committed. The applicant shall bear the cost of utility improvements required to provide central wastewater treatment service to this project from the appropriate sewer force main.

17.1 DRAINAGE. No further development shall occur at the Port of Fernandina until all mitigation measures of all environmental permits have been fully met to the satisfaction of the appropriate agency(ies), and documentation of such mitigating measures and agency satisfaction has been provided to the City of Fernandina Beach, Nassau County Planning Department, Department of Community Affairs, and the Northeast Florida Regional Planning Council. Any development on the Port of Fernandina site prior to submittal of such mitigation report to all of the above agencies shall constitute a substantial deviation, and the project shall be subject to further Development of Regional Impact review as stipulated in Chapter 380.06(19)

17.2 The applicant shall design and construct the surface water management system to maintain the natural hydroperiod within all wetlands not permitted by the Department of Environmental Regulation for stormwater management use, and to maintain the natural functions and values of these wetlands. Any alteration of the natural hydroperiod and/or function of such wetlands shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.16(19), Florida Statutes.

17.3 Stormwater management detention ponds shall be constructed and maintained to provide a vegetated littoral zone with side slopes less steep than four foot; one foot (horizontal/ vertical) out to a depth of three feet below normal water surface, at a minimum, and shall be planted with appropriate native vegetation. The percentage of stormwater management pond area which shall be used to calculate the size and extent of littoral zones shall be determined by the Department of Environmental Regulation.

17.4 Development shall occur concurrent with a continguous, functioning stormwater management system.

18.1 WATER SUPPLY. The applicant shall immediately review the St. Johns River Water Management District records for all recorded water wells on the Port of Fernandina property and shall survey the Port property for existing water wells at the initiation of his project. All water wells discovered during this survey, and any future wells discovered during the development process, shall be reported immediately to the St.

Johns River Water Management District. All wells shall be adequately identified and protected from construction activities by such means as fencing the area of the well(s). All existing water wells shall be properly plugged and abandoned by a SJRWMD licensed water well contractor and registered driller, unless otherwise stipulated by the SJRWMD. The applicant shall be responsible for all water wells which are discovered before, during and after development of this property. Any failure to report on-site water wells to the SJRWMD and/or failure to comply with SJRWMD stipulations for such wells shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.06(19), Florida Statutes.

18.2 Water conservation measures shall be incorporated in all development at the Port of Fernandina, including but not limited to the use of water-saving plumbing devices, drought resistant native vegetation for landscaping, limited irrigation during drought conditions, and all requirements of Section 553.14, Florida Statutes.

19. INDUSTRIAL DUMP SITE. Within 45 days of issuance hereof, the applicant shall provide a report on the former industrial dump site to the Department of Environmental Regulation, City of Fernandina Beach, Nassau County Planning Department, Department of Community Affairs, and the Northeast Florida Regional Planning Council for comment and approval, prior to initiation of any development on this site, and this plan shall be incorporated into the development order for the Port of Fernandina project. The report shall include, at a minimum, a definition of the industrial dump site in terms of size, types of wastes, evidence of soils, surface water, or ground water contamination, source of the wastes, and method and location of treatment and disposal; a proposal for eliminating the dump site; and a proposal for a monitoring program to determine any environmental effects of the site. Failure to implement this recommendation shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.06(19), Florida Statutes.

20. SOLID WASTE. Within 45 days of issuance hereof, the applicant shall submit a solid waste volume reduction plan for the Port of Fernandina to the City of Fernandina Beach, and comment and to Nassau County for review and approval. The plan shall be compatible with existing and proposed Nassau County collection facilities designed to accommodate recycling, compaction, garbage separation and any other reduction programs, and shall be immediately incorporated into the development order and implemented.

21. HAZARDOUS MATERIALS. Within 45 days of issuance hereof, the applicant shall provide a hazardous materials/waste contingency plan, compatible with 33 CFR Chapter 1, Part 126, to the Department of Environmental Regulation, Department of Natural Resources, U.S. Coast Guard, City of Fernandina Beach Planning Department, City of Fernandina Beach Fire Department, Nassau County Planning Department, Department of Community Affairs, and the Northeast Florida Regional Planning Council for review and approval, and this plan shall be incorporated by reference herein. The contingency plan shall, at a minimum, outline a specific procedures which shall be implemented during the handling, use and/or storage of all hazardous materials/wastes at the Port of Fernandina, as well as all available equipment, staff, and procedures which shall be used for containment and clean-up of any future spills. Failure to implement this recommendation shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.06(19), Florida Statutes.

22. FUEL SPILLS. Within 45 days of issuance hereof, the

applicant shall provide a hazardous/fuel spill contingency plan to the Department of Environmental Regulation, the City of Fernandina Beach, the Nassau County Planning Department, the Department of Community Affairs, and the Northeast Florida Regional Planning Council for review and approval, and this plan shall be incorporated herein. The contingency plan shall, at a minimum, outline all available equipment, staff, and procedures for containment and clean-up of any future spills at the Port of Fernandina. Failure to implement this recommendation shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.06(19), Florida Statues.

23.1. PUBLIC SAFETY. The applicant shall immediately coordinate with the City of Fernandina Beach Fire Department and Public Works Department to ensure that adequate water mains are in place to supply the necessary fire flow to this project, as determined by the City Fire Department. All future, development to addition to that allowed under the Preliminary Development shall occur concurrent with adequate fire flow capacity to this project. The applicant shall install a fifth fire hydrant on the north end of the dock, and a drafting hydrant near the Intracoastal Waterway, as required by the City of Fernandina Beach Fire Department.

23.2 The developer shall provide information to the City's Fire Inspectors concerning the size and height of all structures, maximum fire flow rate of the water system, internal fire suppression and life safety mechanisms such as sprinkler systems (pursuant to Life Safety Code NFPA 101), construction/ complex standards, and plans for each building, at the time application for a building permit is made with the City.

23.3 Failure to implement Sections 23.1 or 23.2 shall constitute a substantial deviation, subject to further Development of Regional Impact review, as stipulated in Section 380.06(19), Florida Statutes.

23.4 The Applicant shall provide the necessary fire flow to this project according to the specifications agreed upon by the Fernandina Beach Fire Department, by fire pump on the dock prior to a certificate of occupancy being issued.

24.1 TRANSPORTATION. Prior to any further construction activities at the Port of Fernandina, an additional westbound left turn lane shall be put in place by additional signalization of lights and striping on Sadler Road (SR 108) at 8th Street (SR 200/US A1A).

24.2 Prior to approval of the 610-foot dock extension proposed by the applicant, an additional northbound right turn lane on 8th Street (SR 200/US A1A) at Sadler Road shall be addressed.

24.3 These improvements shall be designed and constructed according to Florida Department of Transportation (FDOT) standards. In addition, any necessary modification of signal timing and phasing as approved by FDOT shall have been implemented and in operation. The applicant shall be responsible for all improvements to Dade Street as agreed upon by the City of Fernandina Beach.

25. PDA. All commitments and conditions made in the original PDA and subsequent amendments to the PDA which have not been met shall become conditions of the Development Order for the project.

ADDITIONAL APPLICANT COMMITMENTS

The following additional applicant commitments are hereby

stated above which conflict with the following shall supersede adopted as specific conditions of this approval. Any conditions the following:

26. All exposed surfaces will be revegetated with grass, ground cover, and/or shrubs as soon as possible following construction.

27. New plantings will be irrigated to promote growth.

28. Wetting of soil will be undertaken if wind erosion should occur.

29. If water erosion should occur, temporary water management practices shall be implemented including the use of hay bales, mulch, sod or geotextiles.

30. All runoff from the site will be filtered by the stormwater system which will include final discharge through a wetland system.

31. All contractors will be required to maintain spill containment and clean up equipment on their barges.

32. No new deep wells are proposed for the site.

33. The stormwater system will eliminate all untreated runoff to the Amelia River.

34. A 20-foot wide area behind the existing dock will be planted with spartina.

35. One acre of wetland will be created in the detention area.

36. All finished floor elevations for habitable structures will be constructed at or above the appropriate flood elevation.

37. Permanent mechanical and electrical equipment will be constructed at or above the 100-year flood levels.

38. To minimize the impact of flood waters on the facilities, the site will be graded to allow for thorough drainage while following the appropriate water management criteria set forth by the St. Johns Water Management District and local agencies.

39. The Port will continue to participate in a program to document all sightings of Right whales by Port pilots.

40. Wharf bumpers which extend at least 5 feet out from the dock will be used on the new dock extension to protect manatees and other marine animals from being crushed.

41. A vegetative visual barrier will be planted to ensure that the project does not negatively impact the Historic District or adjoining residential district.

42. Site plans depicting mitigation measures will be sent to the Florida Division of Historical Resources, as they become available, for comment and review.

43. Licensed marine sanitary haulers will be contracted for sanitary sewage disposal of cargo ships at dock.

44. Site facilities have been designed to conserve fuel for mechanical handling facilities and other gasoline powered vehicles and equipment by minimizing haul distances wherever

possible for the facilities, vehicles, and equipment.

45. New buildings will be designed to conserve energy to the extent that the building code demands.

46. Mechanical and electrical equipment will be properly maintained to provide maximum efficiency.

LOCAL CONDITIONS

47. The Port of Fernandina will be subject to all Federal regulations concerning marine terminal operations and safety, i.e., Code of Federal Regulations 33 Parts 1-99, which contain current regulations of the U.S. Coast Guard and Department of Transportation governing all ports, wharves, and adjacent land activities on or about navigable waters of the United States. Particularly incorporated into the port operation procedures are the following:

a. Subchapter P, Part 160 - Ports and Waterways Safety

b. Subchapter O, Part 153 - Control of Pollution by Oil and Hazardous Substances, Discharge Removal

c. Subchapter L, Part 126 - Handling of Explosives or Other Dangerous Cargoes within or Continguous to Waterfront Facilities

d. Subchapter L, Part 125 - Identification Credentials for Persons Requiring Access to Waterfront Faciltiies or Vessels

48. HAZARDOUS MATERIALS: The Port of Fernandina will make part of this Development Order, their Fire/Hazardous Materials/Oil Spill Control Manual, dated June 4, 1987, revised December 28, 1988, and February 16, 1989. This manual outlines all available equipment, the location of said equipment, specific procedures which shall be implemented during the handling, use and/or storage of hazardous materials/wastes and procedures for containment and clean-up of any spills that might occur at the Port of Fernandina.

48.1 The City Fire Department has a hazardous materials truck. Applicant will provide equipment and materials that could be used by the Fire Department personnel. Such equipment and materials could consist of detection equipment, patching material, plugging material, and non-sparking tools. Cost of providing these additional materials/equipment shall not exceed four thousand dollars ($4,000.00).

48.2 Applicant will also have available on the dock site materials and equipment that would be used in the containment of hazardous materials such as absorbent boom and pads, gloves, boots, etc.

48.3 This equipment and materials will be kept in a container on the dock site so as to be available for emergency response.

49. Applicant shall pay for the resignalization of the traffic light located at 8th and Atlantic Avenue for a priority left turn for southbound traffic from 8th onto Atlantic.

49.1 Applicant shall, no later than June 1, 1989, 1989, provide at its expense the necessary plans and specifications.

a. For the improvements to Dade Street from Third Street through the intersection of North 8th Street with standard engineering practices for the City of Fernandina Beach to review and the appropriate City Staff to sign off on.

b. For the improvements on North 8th Street for acceleration and deceleration lanes with a stacking or holding lane for the purpose of left turns off of North 8th Street west on to Dade Street with other major improvement to the intersection. These in accord with sound engineering practices so that City Public Works can sign off on an approved drawing.

c. The applicant shall, at its expense, conduct a traffic study at the time of any substantial deviation to the DRI approval, said study to be concentrated on the port-related traffic primarily in the Dade and 8th Street areas. The applicant shall upon request provide the City with copies of its internal container movement counts by truck on a no more frequent basis than twice per year.

d. The Port's wetlands mitigation plan as approved by permitting agencies. After approval by permitting agencies, the mitigation plan will be sent to the City of Fernandina Beach City Commission for approval to become part of the Development Order.

50. LAW ENFORCEMENT PROTECTION.

50.1 Continue to provide private security for routine port operations.

50.2 Agree to supplement local law enforcement with user fees for actions of a non-routine nature when overtime is incurred to maintain order or control.

50.3 The applicant shall grant the representatives of the City access to the property and facilities providing:

a. proper identification is given by the City representative (pursuant to CFR 33, part 125, #125.09 and #125.15)

b. the City representative obtains a pass, authorized by Nassau Terminals Executive Office located at 501 North 3rd Street and,

c. the City representative is accompanied at all times by a Nassau Terminals representative.

51. In the absence of ad valorem taxes being due and payable by the applicant shall pay to the City an annual fee of $50,000, due and payable on July 1 of each year, beginning July 1, 1989. Such payment shall be used, $25,000 toward a capital acquisition or development for downtown parking and $25,000 for development of a community civic center, for each of the first five years. Said annual amount shall be renegotiated every year, but shall never be less than $50,000.00 per year.

54. Applicant shall, no later than June 1, 1989, install the culverts in Alligator Creek Basin area, in accordance with the plans included in the Applicant's Wetlands Mitigation Plan.

55. DEFAULT. Failure of the applicant to adhere to any of the above conditions shall subject the same to additional review as a substantial deviation pursuant to Section 380.06, F.S.

ADOPTED this 21st day of February, 1989.

CITY OF FERNANDINA BEACH

Ronnie S

Mayor-Commissioner

Attest:

Vicki P. Wingate

Vicki P. Wingate
City Clerk

city #6/regional.imp

(Note: Certified copies sent to the Department of Community Affairs and Northeast Florida Regional Planning Council on 3-14-89 by Victoria Robas of Nassau Terminals.)

City of Fernandina Beach

OFFICE OF
CITY MANAGER

Post Office Box 668
204 Ash Street
Fernandina Beach, FL 32034
904/261-4168

April 19, 1989

Ms. Susan Denny
Department of Community Affairs
2571 Executive Center Circle, East
Tallahassee, Florida 32399

Subject: City of Fernandina Beach
Resolution Number 962
(Port of Fernandina Development Order)

Dear Ms. Denny:

The purpose of this communication is to clarify the intent of the City regarding the use of the word "incorporated" in the Special Conditions portion of the above referenced document. I hereby certify that the intent of the City, in those instances where the word "incorporated" is utilized, was and is that those items to be so incorporated will be done by amendment to the Development Order.

Should you have any questions, or if additional information is needed, please do not hesitate to contact this office.

Sincerely,

CITY OF FERNANDINA BEACH

F. B. Jones
City Manager

FBJ/vw

cc: Wesley R. Poole, City Attorney

215 So.3d 10

CITY OF LARGO, Florida, Petitioner,
v.
AHF–BAY FUND, LLC, Respondent.

No. SC15–1261

Supreme Court of Florida.

[March 2, 2017]

Summaries:

Source: Justia

AHF-Bay Fund, LLC appealed a judgment awarding $695,158.23 in damages and prejudgment interest to the City of Largo for AHF's failure to make payments pursuant to an agreement for payment in lieu of taxes (PILOT agreement) between the City and AHF's predecessor in interest. On appeal, the Second District reversed, concluding that the PILOT agreement violated public policy and was therefore void. The Supreme Court quashed the decision of the Second District, holding that PILOT agreements that require payments equaling the ad valorem taxes that would otherwise be due but for a statutory tax exemption do not violate Fla. Stat. 196.1978 or Fla. Const. art. VII, 9(a).

Alan S. Zimmet and Nicole C. Nate of Bryant Miller Olive, P.A., Tampa, Florida; and Elizabeth Wilson Neiberger of Bryant Miller Olive, P.A., Miami, Florida, for Petitioner

Joseph Hagedorn Lang, Jr. and Christopher William Smart of Carlton Fields Jorden Burt, P.A., Tampa, Florida, for Respondent

QUINCE, J.

This case is before the Court for review of the decision of the Second District Court of Appeal in AHF–Bay Fund, LLC v. City of Largo , 169 So.3d 133 (Fla. 2d DCA 2015). In its decision, the district court ruled upon the following question, which the court certified to be of great public importance:

> DO PILOT AGREEMENTS THAT REQUIRE PAYMENTS EQUALING THE AD VALOREM TAXES THAT WOULD OTHERWISE BE DUE BUT

[215 So.3d 13]

> FOR A STATUTORY TAX EXEMPTION VIOLATE SECTION 196.1978, FLORIDA STATUTES (2000), AND ARTICLE VII, § 9(a) OF THE FLORIDA CONSTITUTION ?

Id. at 138. We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. For the reasons that follow, we answer the certified question in the negative and quash the decision of the Second District.

FACTS

AHF–Bay Fund, LLC (AHF) appealed a judgment awarding $695,158.23 in damages and prejudgment interest to the City of Largo, Florida (City) for AHF's failure to make payments pursuant to an agreement for payment in lieu of taxes (PILOT agreement) between the City and RHF–Brittany Bay (RHF), AHF's predecessor in interest. AHF–Bay Fund , 169 So.3d at 135. Under the agreement, AHF was required to make payments that equaled the ad valorem taxes that would have otherwise been due but for the statutory tax exemption found in section 196.1978, Florida Statutes (2000). Id. The facts that prompted the filing of suit are as follows:

> In December 2000, RHF acquired the subject property. RHF was a tax exempt 501(c)(3) organization as defined by the Internal Revenue Code. See 26 U.S.C. § 501(c)(3) (2000). RHF planned to develop the property to provide affordable housing for persons with low to moderate income pursuant to chapter 420, Florida Statutes. As set forth in section 196.1978, Florida Statutes (2000), affordable housing projects owned by a 501(c)(3) organization are exempt from ad valorem taxation.
>
> To finance the project, RHF reached an agreement with the City wherein the City would arrange for the issuance of tax-exempt bonds that carried a considerably lower interest rate than RHF could have obtained using traditional bank financing. In exchange for the issuance of the bonds, RHF entered into the PILOT agreement, thereby agreeing to make annual payments to the City "in an amount equal to the portion of ad valorem taxes to which the City would otherwise be entitled to receive for the [p]roperty as if the [p]roject were fully taxable in accordance with standard taxing procedures." The PILOT agreement provided that the amount of the payments would be determined by multiplying the property's assessed value by the millage rate established by the City each year. The PILOT agreement also provided that "the City has and will provide services to [RHF] as a result of [RHF's] status as a tax-exempt entity."
>
> The PILOT agreement specified that it was binding on any subsequent owners of the subject property as long as certain conditions were met, though it made no mention of a covenant running with the land. The PILOT agreement was not recorded in the official public records. However, simultaneously with the execution of the PILOT agreement, the parties executed a memorandum of agreement that was recorded in the public records. The memorandum indicated that the PILOT agreement was available for inspection in the city clerk's office and that it imposed certain covenants running with the land.

> RHF made the payments as required by the PILOT agreement for the years 2001 through 2005. AHF, also a nonprofit affordable housing provider, acquired the property in November 2005. AHF has continued to own and operate the property as an affordable housing community since the purchase. However, when the City did not receive the annual payment that was due on December 31, 2006, it contacted AHF. AHF denied knowledge of either the PILOT agreement

[215 So.3d 14]

> or the memorandum of agreement, asserting that neither had been shown to be an exception to coverage in its title insurance policy and that neither had been referenced in the special warranty deed by which AHF took title.
>
> Based upon AHF's refusal to make payments under the PILOT agreement, the City filed suit in 2010. The City sought a summary judgment and the trial court granted the motion in part. Ultimately, the trial court entered a final judgment in favor of the City, awarding $695,158.23 in damages and prejudgment interest.

Id. at 134–35 (alterations in original) (footnote omitted). On appeal, the Second District reversed the trial court, finding that the PILOT agreement at issue "violates the public policy of promoting the provision of affordable housing for low to moderate income families and is therefore void." Id. at 138. The court reasoned that the PILOT payments are the substantive equivalent of taxes because the payments are equal to the amount of taxes that would be due if the property were not tax-exempt. Id.

ANALYSIS

The certified question presents two issues: (1) whether the PILOT agreement violates section 196.1978, Florida Statutes (2000), and (2) whether the PILOT agreement violates article VII, section 9(a) of the Florida Constitution. Each will be addressed in turn. Because the issues before this Court on the certified question involve pure questions of law that arise from undisputed facts, they are reviewed de novo. Jackson–Shaw Co. v. Jacksonville Aviation Auth. , 8 So.3d 1076, 1084–85 (Fla. 2008).

The Second District invalidated the PILOT agreement between the City and AHF by finding that the agreement violated section 196.1978, Florida Statutes (2000), and violated the public policy of "promoting the provision of affordable housing for low to moderate income families." AHF–Bay Fund , 169 So.3d at 138. Specifically, the Second District held that " section 196.1978 expressly prohibits ad valorem taxation on properties being used for affordable housing." Id. at 136. Section 196.1978, Florida Statutes (2000), provides in relevant part:

> Property used to provide affordable housing serving eligible persons as defined by s. 159.603(7) and persons meeting income limits specified in s. 420.0004(9), (10), and (14), which property is owned entirely by a nonprofit entity which is

> qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96–32, 1996–1 C.B. 717, shall be considered property owned by an exempt entity and used for a charitable purpose, and those portions of the affordable housing property which provide housing to individuals with incomes as defined in s. 420.0004(9) and (14) shall be exempt from ad valorem taxation to the extent authorized in s. 196.196. All property identified in this section shall comply with the criteria for determination of exempt status to be applied by property appraisers on an annual basis as defined in s. 196.195.

§ 196.1978, Fla. Stat. (2000).

We find that the plain language of the statute does not expressly prohibit ad valorem taxation on nonprofit entities that provide low-income housing. Instead, the section provides an exemption to nonprofit entities. However, the statute also requires the nonprofit entity, here the owner of an affordable housing project, to take affirmative steps to take advantage of the exemption. Specifically, section 196.1978 requires the owner to "comply with the criteria for determination of exempt status to be applied

[215 So.3d 15]

by property appraisers on an annual basis as defined in s. 196.195." For example, if a nonprofit owner of a property forgets to file its annual form with the property appraiser then its tax exemption will be waived for that year. See § 196.011, Fla. Stat. (2000). From the text of the statute it is clear that the exemption is not automatic, nor is ad valorem taxation on such properties "expressly prohibited."

Numerous courts have held that tax exemptions can be waived. E.g. , Housing Auth. of Poplar Bluff v. Eastwood , 736 S.W.2d 46 (Mo. 1987) (citing Sprik v. Regents of Univ. of Michigan , 43 Mich.App. 178, 204 N.W.2d 62 (1972) (public university could waive property tax exemption); Clark v. Marian Park, Inc. , 80 Ill.App.3d 1010, 36 Ill.Dec. 241, 400 N.E.2d 661, 664–65 (1980) (nonprofit owner of affordable housing project waived tax exemption by agreeing to pay taxes in annexation agreement with the city); Christian Bus. Men's Comm. v. State , 228 Minn. 549, 38 N.W.2d 803, 811 n.7 (1949) ("Failure to use due diligence in asserting a right to tax exemption may constitute a waiver of the right."); Rutgers Chapter of Delta Upsilon Fraternity v. City of New Brunswick , 129 N.J.L. 238, 28 A.2d 759, 761 (1942) (taxpayer waived tax exemption by failing to claim exemption in manner required by statute and voluntarily paying taxes).

This case is factually similar to Eastwood , in which the Supreme Court of Missouri concluded that a PILOT agreement between a city and a tax-exempt housing authority did not violate public policy because tax exemptions are waivable. Eastwood , 736 S.W.2d at 47–48. The PILOT agreement in that case expressly acknowledged that the housing project was exempt from taxes. Nonetheless, the housing authority agreed to payments in lieu of taxes in exchange for the city providing general municipal services. In rejecting the argument that the

agreement was void as against public policy, the Missouri Supreme Court reasoned that courts throughout the country have held that tax exemptions are waivable and that the agreement showed that the housing authority made a voluntary decision to subject itself to payments notwithstanding its exempt status. Id. at 47. We agree with the decision of that court as well as other courts that have held similarly.

In the instant case, RHF made a voluntary decision to subject itself to payments equaling the ad valorem taxes notwithstanding its tax-exempt status. Therefore, while nonprofit entities are typically exempt from ad valorem taxes, this is an exemption that may be waived either due to a lack of due diligence in meeting the requirements of the statute or by voluntarily agreeing to waive the exemption as the result of a contractual agreement. Consequently, we find that the statute does not expressly prohibit the payment of ad valorem taxes or payments that equal the amount of taxes that would be due if a property owner decides to waive the exemption and enter into a contractual agreement, as was done here.

Because the statutory exemption can be waived, and there is no statutory or constitutional provision that expressly prohibits the exaction of ad valorem taxes on nonprofit entities, this Court would only find the agreement void in the event that it is "clearly injurious to the public good" or "contravene[s] some established interest of society." Fla. Windstorm Underwriting v. Gajwani , 934 So.2d 501, 507 (Fla. 3d DCA 2005) (quoting Banfield v. Louis , 589 So.2d 441, 446 (Fla. 4th DCA 1991)). Courts typically do not strike down a contract, or any portion of a contract, based on public policy grounds except in extreme circumstances:

[215 So.3d 16]

> Courts ... should be guided by the rule of extreme caution when called upon to declare transactions void as contrary to public policy and should refuse to strike down contracts involving private relationships on this ground, unless it be made clearly to appear that there has been some great prejudice to the dominant public interest sufficient to overthrow the fundamental public policy of the right to freedom of contract between parties sui juris.

Id. (quoting Banfield , 589 So.2d at 446–47 (quoting Bituminous Cas. Corp. v. Williams , 154 Fla. 191, 17 So.2d 98, 101–02 (1944))).

In its decision, the Second District recognized that there is a strong public policy of "promoting the provision of affordable housing for low to moderate income families." AHF–Bay Fund , 169 So.3d at 138. However, there is also a strong public policy favoring freedom of contract. "Freedom of contract is the general rule ...." State ex rel. Fulton v. Ives , 123 Fla. 401, 167 So. 394, 412 (1936). "[I]t is a matter of great public concern that freedom of contract be not lightly interfered with." Bituminous Cas. Corp. , 17 So.2d at 101. "[R]estraint is the exception, and when it is exercised to place limitations upon the right to contract ... it can be justified only by exceptional circumstances." Ives , 167 So. at 412. In the instant case, the City and RHF entered into a voluntary agreement, supported by valid consideration. The parties agreed on the method of calculating the consideration for their agreement and, until 2005,

performed their respective obligations. While the Second District correctly noted the public policy favoring affordable housing for low-income families, we find that this contract supported that public policy by enabling RHF to procure the funding necessary for the building of the apartment complex. But for the tax-exempt bonds that RHF received in exchange for these payments, the affordable housing complex might never have been built. Therefore, we preserve the agreement between the City and RHF, considering the long-standing policy to uphold contracts between parties and the fact that the contract here supported another public policy, that of providing affordable housing to low-income families.

The Second District also invalidated the PILOT agreement on the ground that it violated article VII, section 9(a) of the Florida Constitution. Article VII, section 9(a) of the Florida Constitution provides in relevant part:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

Art. VII, § 9(a), Fla. Const. In its decision, the district court concluded that the payments under the PILOT agreement are, in substance, disguised ad valorem taxes, and the City did not have the authority to impose taxes in circumvention of the affordable housing tax exemption. AHF–Bay Fund , 169 So.3d at 137. Thus, the court held that the PILOT agreement violated article VII, section 9(a) of the Florida Constitution, which provides that cities may only impose taxes as permitted by law. Id.

What constitutes a "tax" has been well established by Florida courts. A tax is an enforced burden imposed by a sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform. State v. City of Port Orange , 650 So.2d 1, 3 (Fla. 1994) (citing Klemm v. Davenport , 100 Fla. 627, 129 So. 904, 907 (1930) ;

[215 So.3d 17]

City of Boca Raton v. State , 595 So.2d 25 (Fla. 1992)). Thus, there are two factors that exist when taxes are imposed: (1) the government acts unilaterally by sovereign right, and (2) the government acts in order to support routine government functions.

Neither of the two factors are present here. First, the City did not act by sovereign right in entering into the agreement with RHF. Local governments operate in several different capacities, including proprietary (i.e., as a party to a contract), and governmental (i.e., by sovereign right). E.g. , Daly v. Stokell , 63 So.2d 644, 645 (Fla. 1953) ; Commercial Carrier Corp. v. Indian River Cty. , 371 So.2d 1010 (Fla. 1979). Here, the City's decision to accept RHF's offer and enter into the PILOT Agreement was a proprietary one. See Daly , 63 So.2d at 645.

> [A]ny contract ... that redounds to the public or individual advantage and welfare of the city or its people is proprietary, while a government function, as the term implies, has to do with the administration of some phase of government, that is to say, dispensing or exercising some element of sovereignty.

Id. The City did not exercise any element of sovereignty by entering into the PILOT Agreement. When a city enters into an express, written contract it waives sovereign immunity. Pan–Am Tobacco Corp. v. Dep't of Corr. , 471 So.2d 4 (Fla. 1984).

In its decision, the Second District relied on our decision in State v. City of Port Orange , 650 So.2d 1 (Fla. 1994), to conclude that the payments were ad valorem taxes disguised under another name and that the power to tax cannot be broadened by semantics. The issue in Port Orange was whether a "user fee" unilaterally imposed on all developed property for improving roads was really a "tax." Id. at 3. However, in this case, the City did not unilaterally impose any obligations, and the payments were not used for routine government functions, such as roads. The City and RHF negotiated the method to calculate the consideration for the City's authorization of the tax-exempt bonds. The City performed this non routine service specifically for RHF.

Furthermore, the obligation under the PILOT agreement was not citywide. Instead, the payments were offered to the City by RHF to induce the City to exercise its proprietary capacity to contract with the Capital Trust Agency for the sole benefit of RHF. Respondent argues that the City used the PILOT payments as general revenue. However, Respondent fails to provide any evidence in support of this argument, and instead appears to take issue with the value of the City's service compared to its perceived benefit. Nonetheless, the PILOT agreement was consideration for the City to authorize the tax-exempt bonds. That authorization facilitated the conversion of the property to affordable housing.

Therefore, because the City did not act unilaterally by sovereign right for the purpose of supporting government functions, the payments negotiated by the City and RHF are not taxes and do not implicate article VII, section 9(a). Consequently, the agreement does not violate the Florida Constitution.

CONCLUSION

Because the PILOT agreement does not violate section 196.1978, Florida Statutes (2000), or article VII, section 9(a) of the Florida Constitution, we answer the certified question in the negative and quash the decision of the Second District. We do not address Respondent's argument concerning whether the PILOT agreement at issue is a covenant with the land, as that issue is beyond the scope of the certified

[215 So.3d 18]

question. See McKenzie Check Advance of Fla., LLC. v. Betts , 112 So.3d 1176, 1178 n.4 (Fla. 2013) (declining to address issue outside the scope of certified question).

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, CANADY, and POLSTON, JJ., concur.

LAWSON, J., did not participate.constitutional right to bear

RESOLUTION NUMBER 801

CITY OF FERNANDINA BEACH, FLORIDA

WHEREAS, the Ocean, Highway and Port Authority of Nassau County, Florida, has applied to the Department of Community Affairs of the State of Florida for a Preliminary Development Agreement for the development of Site "A" of the proposed port facility (consisting of Sites "A", "B" and "C"); and

WHEREAS, the City Commission of the City of Fernandina Beach, Florida, has determined it to be in the best interests of the citizens of the said City that the Preliminary Development Agreement be approved subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE CITY OF FERNANDINA BEACH, FLORIDA, that the Department of Community Affairs is hereby requested to approve the Preliminary Development Agreement for the development of Site "A" of the proposed port facility as submitted by the Ocean, Highway and Port Authority of Nassau County, subject to the following conditions:

1) The port will not import nor export petroleum products, coal or hazardous materials without re-submitting an amended ADA/DRI.
2) Equitable annual fees will be negotiated to fund City services normally funded through ad valorem taxes. These include fire and police protection, street maintenance, administrative and recreation services.
3) There will be no exemption from fees which fund City wastewater treatment and sanitation (trash and garbage) services.
4a) Impact fees imposed by City Ordinance Number 704 and others for capital improvements will be paid at the time construction permits are issued. These fees are specifically dedicated to facilities for:
    a) Wastewater Treatment
    b) Fire Protection
    c) Police Protection
    d) Sanitation
    e) Recreation
    f) Administration
4b) If completed application(s) for construction permits are not made within two (2) years from current date, all project approvals by the City shall lapse and be of no further force or effect.
5) The operators of the port will compile a code governing the operations of vessels and vehicles using the port facilities, and this code will be submitted to the City Commission of the City of Fernandina Beach for approval and incorporation in the City code prior to the start of port operations. The code shall include all applicable international, federal and state regulations and specific rules regarding hurricane conditions, long term mooring of vessels, normal working hours, and no-wake zones.

6) The wording of the last sentence of Paragraph 2 of the current version of the Preliminary Development Agreement should be revised to read "However, the impacts of Part A shall be reviewed and combined with the overall DRI application".

ADOPTED this 20th day of February, 1986.

CITY OF FERNANDINA BEACH, FLORIDA

ATTEST: Vicki P. Wingate
VICKI P. WINGATE
City Clerk

DON ROBERTS
Mayor/Commissioner

OFFICIAL RECORDS

PRELIMINARY DEVELOPMENT AGREEMENT FOR
PORT FACILITIES DEVELOPMENT
FERNANDINA BEACH, NASSAU COUNTY, FLORIDA
SITES A, B AND C

BOOK 288 PAGE 283

M-113.00

THIS AGREEMENT is entered into by and between the OCEAN HIGHWAY AND PORT AUTHORITY, NASSAU COUNTY, FLORIDA, hereinafter referred to as "Owner", and the STATE OF FLORIDA, DEPARTMENT OF COMMUNITY AFFAIRS, hereinafter referred to as "Department", and the NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL hereinafter referred to as "Council", joined by the BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, hereinafter referred to as "County", subject to all other governmental approvals and solely at the Owner's own risk.

WHEREAS, the Department is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, which includes provisions relating to developments of regional impact (DRI); and

WHEREAS, The Department is authorized to enter into preliminary development agreements pursuant to Subsection 380.06(8), Florida Statutes (1985), and Rule 9J-2.0185, Florida Administrative Code; and

WHEREAS, the Owner is a subdivision and agency of the State of Florida and plans to develop three sites, more particularly described in the attached Exhibit "A", for a port facility in Nassau County; and

WHEREAS, the Owner proposes to develop such port facilities in Sites A, B and C, hereinafter referred to as "the Project", legal description of which is attached hereto as Exhibit "B"; and

WHEREAS, the Owner at present does not own any of said property but plans to acquire or lease same over a period of five (5) years beginning with the site for Site A (See attached Exhibit "B"). The Seaboard Systems Railroad owns part of Site A and Container Corporation of America owns part of Site A, which will be leased; ITT Rayonier, Inc., through Rayland, Inc., is the owner of Site B; and Elton Stubbs, William Kavanaugh, William Agricola and O. O. Brown are the owners of Site C, all of whom are signatories to this agreement. This agreement for each signatory shall not take effect until the land owned by that signatory is either purchased or leased by Owner; and

WHEREAS, the Owner has applied for and received all necessary permits from local and state agencies to construct the project as described in Site A of Exhibit "A" attached hereto; and

WHEREAS, the Department agrees that it is in the best interest of the State of Florida to enter into this agreement because the Owner is instituting a manatee sighting program. The study scope, methodology, duration and consultant will be coordinated and approved by DNR, with the results of the program submitted to DNR, and

WHEREAS, the Department agrees that it is further in the best interest of the State of Florida to enter into this agreement because the Owner has agreed to certain matters to benefit the region as described in paragraph 2; and

WHEREAS, the Owner believes it is able to develop Site A; however they are willing to seek a development order, through the

Development of Regional Impact process, for Sites A, B and C, and under no circumstances shall Owner not do a DRI for Site A, or if for some reason Site C is not developed, there will be a DRI on Site B, as well, if it is developed along with Site A; and

WHEREAS, the development of Site A will have no adverse regional impacts; and

WHEREAS, the Owner holds no title or interest to any property nor plans to acquire any other properties within five (5) miles of the property as described in the attached Exhibit "A".

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, it is hereby understood and agreed as follows: (A): The recitals set forth hereinabove are by reference incorporated herein and made a part hereof.

1. The Owner asserts and warrants that all the representations and statements concerning the Project made to the Department and contained in this agreement are true, accurate and correct. Based upon said representations and statements, the Department concludes that this Agreement is in the best interest of the State, is necessary and beneficial to the Department in its role as the state agency with the responsibility for the administration and enforcement of Chapter 380, Florida Statutes, and reasonably applies and effectuates the provisions and intent of Chapter 380, Florida Statutes. The Owner will hold a Pre-application Conference with the Northeast Florida Regional Planning Council for the development described in Sites A, B and C of Exhibit "A" within one (1) month from the execution of this Agreement. Further, Owner will file an Application for Development Approval (ADA) for the project as described in Exhibit "A" by July 1, 1986, and will not withdraw the ADA. The impacts in Site A shall be reviewed as part of the overall DRI application.

2. The Owner further agrees to the following as consideration for the issuance of the pre-development agreement attached hereto:

(a) Owner agrees to comply in all ways with Resolution No. 801 passed by the City Commission of Fernandina Beach on February 20, 1986, attached hereto as Exhibit "C".

(b) Owner agrees to participate in an island wide traffic study being prepared by Barton Aschman Associates, Inc., and to pay their proportionate share thereof. The Owner's said participation shall include the study of that portion of Amelia Island not included in the original study design for the island wide transportation study.

(c) Owner agrees to participate in the Regional Private Industry Council employment programs to the maximum extent possible. The Owner will report to the NEFRPC monthly as to the extent of this participation.

(d) Owner agrees to fund and cause to be developed through the DRI process an island wide data base map using CADD/CAM process.

(e) Owner agrees to offer those jobs which become available through this project to qualified Nassau County citizens on a first priority basis. Owner further agrees to monitor these hiring practices quarterly and provide the Northeast Florida Regional Planning Council with such a report.

3. Prior to the Development Order, Owner anticipates handling general and containerized cargo. Examples (without limitation) include (i) lumber, (ii) liner board, (iii) waste paper, (iv) wood pulp, (v) rip rap, (vi) ocean containers, and (vii) steel. They will handle no petroleum products or hazardous/toxic materials.

4. Owner will be anchoring a 40' x 200' barge with platform to shore along with (4) temporary dolphins for mooring capabilities. The barge and dolphins will be located in the footprint of the permanent pier as permitted and within the submerged land lease area of the Department of Natural Resources. The barge will be used for the loading and unloading of construction material while the permanent pier is being built. The barge will also be used as a temporary dock facility for barges and other small vessels. It is estimated that the barge will remain in place for approximately one year, at which time the construction progress will cover the area requiring their removal. The Corps of Engineers has permitted this temporary measure.

5. Time is of the essence. Failure to timely attend the Pre-application Conference or to timely file the ADA or to otherwise fail to diligently proceed in good faith to obtain a final development order shall constitute a breach of this Agreement. In the event of such a breach, the Owner shall immediately cease all development of the Project, including the preliminary development authorized by this Agreement.

6. There are no archaeological sites located on Site A. See letter attached hereto as Exhibit "D".

7. Prior to the issuance of a final development order, Owner may commence to develop Site A of Exhibit "A" to the extent as described in the Engineering Study for the Port of Fernandina, Florida, by Harbor Engineering Company. The remaining Sites B and C of Exhibit "A" shall remain undeveloped until the issuance of a final DRI development order.

8. So long as the Department determines that the Owner is in compliance with this Agreement, the Department shall not initiate enforcement action, including any proceeding to enjoin any development within that described in Site A of Exhibit "A".

9. In the event that the Owner fails to comply with any of the terms or conditions stipulated in this Agreement, or if there is any other development beyond that specifically authorized herein, or if this Agreement is based upon materially inaccurate information, the Department may terminate this Agreement or file suit to enforce this Agreement as provided in Sections 380.06 and 380.11, Florida Statutes, including a suit to enjoin all development activities of Owner on those real properties described in Sites A, B and C of Exhibit "A", including the development allowed in paragraph 4 above. This Agreement may be introduced as evidence by either party in any proceeding brought to enforce the terms of this Agreement to establish the intent of the parties and their respective rights and obligations with respect to the development described herein.

10. The Owner shall not claim vested rights, or assert equitable estoppel, arising from this Agreement or any expenditures or actions taken in reliance on this Agreement to continue with the total proposed development beyond the preliminary development. This Agreement shall not entitle the Owner to a final development order approving the total proposed development nor to particular conditions in a final development order.

11. Nothing in this Agreement shall constitute a waiver by any party of the right to appeal any development order pursuant to Section 380.07, Florida Statutes.

12. The restrictions and conditions of the final development order issued pursuant to Chapter 380, Florida Statutes, shall supersede the restrictions and conditions upon development of this Agreement.

13. The Owner and Department agree that if the Ocean Highway and Port Authority does not undertake the development of Sites B

and C of the port development, the Ocean Highway and Port Authority will still submit an ADA for the development allowed on Site A.

14. This Agreement affects the rights and obligations of the parties under Chapter 380, Florida Statutes. It is not intended to determine or influence the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals which might be required by state law or local ordinance for any development authorized by this Agreement. This Agreement shall not prohibit the Northeast Florida Regional Planning Council from reviewing or commenting on any regional issue that the regional planning council determines should be included in the regional planning council's report on the ADA.

15. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. The Owner shall ensure and provide that any successor in interest in and to any lands or parcels affected by this Agreement is bound by the terms of this Agreement. The Owner shall record this Agreement in the Official Records of Nassau County, Florida, and shall provide the Department with a copy of the recorded Agreement including Book and Page number within two (2) weeks of the date of this Agreement.

16. The date of execution of this Agreement shall be the date that the last party signs and acknowledges this Agreement.

Signed, sealed and delivered in the presence of:

_____

_____

As to Ocean Highway and Port Authority

(S E A L)

OCEAN HIGHWAY AND PORT AUTHORITY, NASSAU COUNTY, FLORIDA

By: _____
E. E. LASSERRE, Chairman

ATTEST:

By: _____
BARBARA A. THORNTON, Secretary

"Owner"

STATE OF FLORIDA, DEPARTMENT OF COMMUNITY AFFAIRS

By: _____

_____

As to State of Florida, Department of Community Affairs

(S E A L)

"Department"

Approved as to form and legal sufficiency:

_____
General Counsel, Department of Community Affairs

OFFICIAL RECORDS BOOK 388 PAGE 287

NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL

By: _____

ATTEST:

By: _____

As to Northeast Florida Regional Planning Council

BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY

Margie J. Armstrong
Dorothy J. Beauregard
As to Board of County Commissioners

By: _____
JAMES TESTONE, Chairman

ATTEST:

By: _____
T. J. GREESON, Clerk

SEABOARD SYSTEM RAILROAD, INC.

Betty D. Jones
Paul A. Hoffman
As to Seaboard System Railroad, Inc.

By: _____
Vice President

ATTEST:

By: _____
ASSISTANT SECRETARY

CONTAINER CORPORATION OF AMERICA

M. M. Valley
Richard B. Tefft
As to Container Corporation of America

By: _____

ATTEST:

By: _____

RAYLAND COMPANY, INC.

Carolyn Barclay
Ruth A. Brewer
As to Rayland Company, Inc.

By: _____
Vice President

ATTEST:

By: _____
Assistant Secretary

ELTON STUBBS

As to Elton Stubbs

O. O. BROWN

As to O. O. Brown

WILLIAM KAVANAUGH

As to William Kavanaugh

WILLIAM AGRICOLA

As to William Agricola

STATE OF FLORIDA)

COUNTY OF NASSAU)

The foregoing instrument was acknowledged before me this 25th day of April, 1986, by E. E. LASSERRE and BARBARA A. THORNTON as Chairman and Secretary, respectively, of the OCEAN HIGHWAY AND PORT AUTHORITY, NASSAU COUNTY, FLORIDA, on behalf of said authority.

Notary Public, State of Florida at Large

My Commission Expires:

Notary Public, State of Florida
My Commission Expires Sept. 13, 1986
Bonded Thru Troy Fain - Insurance, Inc.

STATE OF FLORIDA)

COUNTY OF LEON)

The foregoing instrument was acknowledged before me this 11th day of April, 1986, by James Murley who is the Division Director of the STATE OF FLORIDA, DEPARTMENT OF COMMUNITY AFFAIRS, on behalf of said Department.

Notary Public, State of Florida at Large

My Commission Expires:

OFFICIAL RECORDS

BK 383 PG 289

STATE OF FLORIDA)

COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this 25th day of April, 1986, by James S Catlett and _____, who ~~are~~ is the Executive Director and _____, repsectively, of NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL, on behalf of said Council.

Kathi F. Vaughan
Notary Public, State of Florida at Large

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires May 13, 1988

STATE OF FLORIDA)

COUNTY OF NASSAU)

The foregoing instrument was acknowledged before me this 22nd day of April, 1986, by JAMES TESTONE and T. J. GREESON, who are the Chairman and Clerk, respectively, of the BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, on behalf of said Board.

Margie J. Armstrong
Notary Public, State of Florida at Large

My Commission Expires:
NOTARY PUBLIC, STATE OF FLORIDA
My commission expires Nov. 2, 1987

STATE OF FLORIDA)

COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this 25th day of April, 1986, by H. L. Snyder and A. D. Congdon who are the Vice President and Assistant Secretary, respectively, of SEABOARD SYSTEM RAILROAD, INC., on behalf of said corporation.

Angelia C. Goodell
Notary Public, State of Florida at Large

My Commission Expires:
NOTARY PUBLIC, STATE OF FLORIDA
My commission expires Sept. 19, 1987
Bonded Thru Patterson-Becht Agency

STATE OF FLORIDA)

COUNTY OF NASSAU)

The foregoing instrument was acknowledged before me this 23rd day of April, 1986, by Paul Magnell and Herbert Heinemann, who are the General Manager and Sr. V.P.-Timber, respectively, of CONTAINER CORPORATION OF AMERICA, on behalf of said corporation.

Patsy Elaine Woodle
Notary Public, State of Florida at Large
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. SEPT 6,1989
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)

COUNTY OF NASSAU)

OFFICIAL RECORDS

BOOK 388 PAGE 290

The foregoing instrument was acknowledged before me this 24th day of April, 1986, by Armond R. Tomassetti and James L. Shroads, who are the Vice-President and Assistant Secretary, respectively, of RAYLAND COMPANY, INC., on behalf of said corporation.

Eileen B. Moore

Notary Public, State of Florida at Large

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
My commission expires Sept. 18, 1987

STATE OF FLORIDA)

COUNTY OF NASSAU)

The foregoing instrument was acknowledged before me this 24th day of April, 1986, by ELTON STUBBS, O. O. BROWN, WILLIAM KAVANAUGH and WILLIAM AGRICOLA, individually.

Notary Public, State of Florida at Large

My Commission Expires:

Notary Public, State of Florida
My Commission Expires Oct. 12, 1988
Bonded Thru Troy Fain Insurance, Inc.

OFFICIAL RECORDS

PG 288 291

HARBOR ENGINEERING STUDY

(Forwarded to Department of Community Affairs)

EXHIBIT "A"

OFFICIAL RECORDS

EXHIBIT " "

BOOK 483 PAGE 292

All that certain lot, piece or parcel of land situate, lying and being in the City of Fernandina Beach, County of Nassau and State of Florida and being further described as follows:

All those certain pieces or parcels of land situate, lying and being in the City of Fernandina Beach, (formerly named Fernandina), County of Nassau and State of Florida and described on the official plat of said City (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901) as:

All of Block Four (4), EXCEPT for that strip of land along the Westerly side of said Block Four (4) given as railroad right of way and more particularly described as follows:

Commencing at the Southeast corner of said Block Four (4) as the POINT OF BEGINNING; thence North Eighty (80) degrees West, Two Hundred Nineteen and Sixty-seven Hundredths (219.67) feet along the right of way of Calhoun Street; thence North Ten (10) degrees, Eight (08) minutes East, Two Hundred Fifty-nine and Thirty-one Hundredths (259.31) feet along railroad right of way; thence North Fifteen (15) degrees, Forty (40) minutes East, One Hundred Forty-one and Thirty-eight Hundredths (141.38) feet along railroad right of way; thence South Eighty (80) degrees, East, Two Hundred Five and Eleven Hundredths (205.11) feet along the right of way of Dade Street; thence South Ten (10) degrees West, Four Hundred (400.0) feet along the right of way of Second Street to the POINT OF BEGINNING.

EXHIBIT "B"

SITE A

OFFICIAL RECORDS BOOK 283 PAGE 293

All of Water Lots 7, 9, and 10 and that portion of Water Lot 8, which runs south from the northeast corner of Water Lot 8, a distance of 150 feet; thence northwest approximately 160 feet; thence east approximately 50 feet to the point of beginning; as recorded in the Current Records of Nassau County, Florida; see attached Addendum A for diagram.

All of Water Lots 11 and 12 as recorded in the Current Public Records of Nassau County, Florida; see attached Addendum A for diagram.

"B-2"

SITE A

OFFICIAL RECORDS

BK 438 PG 294

SUBMERGED LAND LEASE DESCRIPTION

A parcel of submerged land in the Amelia River, lying adjacent to Water Lots 9, 10, 11 and 12, Fernandina Beach, Nassau County, Florida, as shown on the Official Plat of said city (as Lithographed and Issued by the Florida Railroad Company in 1857, and Enlarged, Revised and Re-issued by the Florida Town Improvement Company in 1887 and 1901).

Commence for a Point of Reference at the Southeast corner of said Lot 9; thence North 82 degrees 15 minutes 03 seconds West along the South line of said Lot 9, 110.5 feet; thence North 18 degrees 08 minutes 40 seconds East, 41.35 feet to the POINT OF BEGINNING; thence North 11 degrees 23 minutes 16 seconds East, 126.88 feet; thence North 27 degrees 08 minutes 33 seconds East, 100.01 feet; thence North 19 degrees 11 minutes 05 seconds East, 101.12 feet; thence North 37 degrees 32 minutes 57 seconds East, 106.57 feet; thence North 27 degrees 08 minutes 33 seconds East, 120.01 feet; thence North 65 degrees 25 minutes 53 seconds East, 94.81 feet; thence North 38 degrees 23 minutes 40 seconds East, 178.08 feet; thence North 33 degrees 02 minutes 52 seconds East, 175.62 feet; thence North 53 degrees 39 minutes 29 seconds West, 189.22 feet; thence North 62 degrees 17 minutes 03 seconds West, 96.99 feet; thence South 27 degrees 42 minutes 57 seconds West, 1000.00 feet; thence South 62 degrees 17 minutes 03 seconds East, 211.42 feet to the POINT OF BEGINNING.

Containing 209,882.33 Square Feet or 4.82 Acres, more or less.

A. Darrell Brown, Jr., R.L.S. No. 2207
Not Valid Unless Embossed with
Surveyor's Seal

SPECIFIC PURPOSE SURVEY FOR SUBMERGED
LAND LEASE IN THE AMELIA RIVER
FERNANDINA BEACH, FLORIDA
APPLICATION BY FERNANDINA MARINE TERMINAL, INC.

PREPARED BY -
HARBOR ENGINEERING COMPANY
1615 BUFFINGHAM LANE
JACKSONVILLE, FLORIDA 32216

DATE 03/12/85

SHEET 3 OF 3

Exhibit "B-3"

SITE A

OFFICIAL RECORDS BOOK 183 PAGE 295

PARCEL ONE (1):

Lots One (1), Thirty-three (33), Thirty-four (34), Two (2), Three (3), Four (4), Five (5), Six (6), and Nine (9), Block Six (6), Fernandina, according to the Official Plat of said City (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901), together with the East One-half (E½) of the part of North Second Street, lying Westerly of said lots, as now closed by Ordinance No: 373.

PARCEL TWO (2):

Lots Seven (7) and Eight (8), Block Six (6), Fernandina, according to the Official Plat of said City, (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901), together with the East One-half (E½) of the part of North Second Street lying Westerly of said lots, as now closed by Ordinance No. 373.

PARCEL THREE (3):

Lots Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), Block Six (6), Fernandina, according to the Official Plat of said City (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901), together with the South One-half (S½) of that part of Escambia Street, lying North of said lots, as now closed by Ordinance No. 374.

EXHIBIT "B"4

SITE A

PARCEL FOUR (4):

Lots One (1) thru Fourteen (14) inclusive, Lots Fifteen (15) thru Twenty-two (22) and Thirty-one (31) thru Thirty-four (34) inclusive, Block Fifty-seven (57), Fernandina, according to the Official Plat of said City (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901), together with part of North Second Street lying and being in said Block Fifty-seven (57), as now closed by Ordinance No. 372 and together with the East One-half (E½) of that part of North Second Street lying Westerly of said Block Fifty-seven (57) as now closed by Ordinance No. 373 and together with the North One-half (N½) of that part of Escambia Street lying South of said Block Fifty-seven (57), as now closed by Ordinance No. 374.

BK 488 PG 296

PARCEL FIVE (5):

All that certain piece or parcel of land situate, lying and being in the City of Fernandina Beach (formerly named Fernandina), County of Nassau and State of Florida, and known and described on the Official Plat of said City (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901) as ALL lots Twenty-six (26) through Thirty-four (34), inclusive in Block Five (5) and that part of Lots One (1) through Eight (8), inclusive, in Block Five (5) that exist Twenty-five (25) feet Easterly of the center line between the main tracks of Seaboard Air Line Railroad Company, being further described as follows:

Commencing at the Southwest corner of said Lot One (1), (being also the Southwest corner of Block Five (5))and go South Eighty-two (82) degrees, Twenty-eight (28) minutes East along the South line of Lot One (1) and Block Five (5) and the North right of way of Dade Street, (has Sixty (60.0) foot right of way) for Sixteen (16.0) feet to the point of beginning; thence continue South Eighty-Two (82) degrees, Twenty-eight (28) minutes East along the South line of Lot One (1) and North right of way of Dade Street for eighty-four (84) feet to the Southeast corner of Lot One (1); thence go North Seven (07) degrees, Thirty-two (32) minutes East along the East line of Lots One (1), Two (2), Three (3), and Four (4), One Hundred (100.0) feet to the Northeast corner of Lot Four (4); thence go South Eighty-two (82) degrees, Twenty-eight (28) minutes East along the South line of Lot Five (5) and North line of Lot Thirty-four (34) for Twenty-five (25.0) feet to the Southeast corner of Lot Five (5); thence go North Seven (07) degrees Thirty-two (32) minutes East along the East line of Lots Five (5) Six (6), Seven (7) and Eight (8) for One Hundred (100.0) feet to the Northeast corner of Lot Eight (8); thence go North Eighty-two (82) degrees, Twenty-eight (28) minutes West along the North line of Lot Eight (8) for One Hundred Five and Forty-two Hundredths (105.42) feet to the Easterly right of way of the Seaboard Air Line Railroad Company; thence follow the arc of the curve to the left of Easterly right of way of Seaboard Air Line Railroad Company on a chord bearing of South Eight (08) degrees, Thirty-three (33) minutes, Thirty (30) seconds West for Two Hundred and Three Hundredths (200.03) feet to the point of beginning.

PARCEL SIX (6):

The West One-half (W½) of that part of North Second Street

"B-5"

SITE M

lying East of said Twenty-four (24) to Alley (20), inclusive, Block Five (5), Fernandina, as now closed by Ordinance No. 373.

OFFICIAL RECORDS BK 283 PG 237

PARCEL SEVEN (7):

That certain piece or parcel of land situate, lying and being in the City of Fernandina Beach, (formerly named Fernandina), County of Nassau and State of Florida, and known and described on the Official Plat of said City (as lithographed and issued by the Florida Railroad Company in 1857 and enlarged, revised and reissued by the Florida Town Improvement Company in 1887 and 1901) as:

Part of the North One-half (N½) of Block Five (5) and Part of Block Fifty-eight (58) of said City; the West One-half (W½) of North Second Street lying Easterly of said Blocks; All of Escambia Street lying between said fractional Blocks Five (5) and Fifty-eight (58), (Escambia Street and North Second Street within the bounds of this description have been officially closed by the City of Fernandina Beach) and being further described by metes and bounds as follows:

For a point of reference start at the Southwest corner of the North One-half (N½) of Block Five (5): thence go South Eighty-two (82) degrees, Twenty-eight (28) minutes East along the South line of the North One-half (N½) of Block Five (5) for Sixteen (16.0) feet to the point of beginning at a point Twenty-five (25.0) feet Easterly of the center of the tracks of the most Easterly tracks of the Seaboard Coastline Railroad: thence continue South Eighty-two (82) degrees, Twenty-eight (28) minutes East for Two Hundred Nine (209.0) feet to the Southeast corner of the North One-half (N½) of Block Five (5); thence continue the same for Thirty (30.0) feet to the center of the closed Sixty (60.0) foot right of way of North Second Street; thence go at right angles North Seven (07) degrees, Thirty-two (32) minutes East along the center of said former North Second Street for Five Hundred Ninety-five (595.0) feet to a point which is Twenty-five (25.0) feet Southeasterly, measured radiall of the center of the most easterly tracks of said Seaboard Coastline Railroad; thence go along the arc of the curve to the left along the Easterly right of way of said Railroad on a chord bearing of South Forty-three (43) degrees, Twenty-one (21) minutes West for Forty-five and Sixty-two Hundredths (45.62) feet to a point which is on the Westerly right of way of said former North Second Street and Two (2.0) feet Southerly of the Northeast corner ofBlock Fifty-eight (58); thence continue along the arc of the curve to the left of said railroad right of way a chord bearing of South Thirty-four (34) degrees, Fifteen (15) minutes West for Three Hundred Thirty-Three and Sixty-two Hundredths (333.62) feet to the former Northerly right of way of Escambia Street; thence continue across the closed Sixty (60.0)foot right of way of said Street along the arc of the curve to the left, (from a point which is on the South line of Block Fifty-eight (58) and One Hundred Fifty (150.0) feet, more or less,from the Southeast corner of Block Fifty-eight on a chord bearing of South Twenty-five (25) degrees Forty-eight (48) minutes West for Sixty-three and Eighteen Hundredths (63.18) feet to a point on the North line of Block Five (5) which is Westerly One Hundred Seventy (170.0) feet, more or less, from the Northeast corner of Block Five (5); thence continue along the arc of the curve to the left along the easterly right of way of said Railroad on a chord bearing of South Seventeen (17) degrees, Thirty-Four (34) minutes, Thirty (30) seconds West for Two Hundred Three and Eleven Hundredths (203.11) feet to the point of beginning.

"B-6"

SITE A

OFFICIAL RECORDS

BOOK 360 PAGE 86

SUBJECT TO the interest of Seaboard Air Line Railway under Deed Book "B2", page 500, public records of Nassau County, Florida, as to part of Lot 10, Block 57, and part of North 2nd Street as lies within the bounds of spur track.

SUBJECT ALSO TO all taxes accruing after December 31, 1981, and to all covenants, restrictions, and easements of record.

"B-7"

SITE A

SITE A

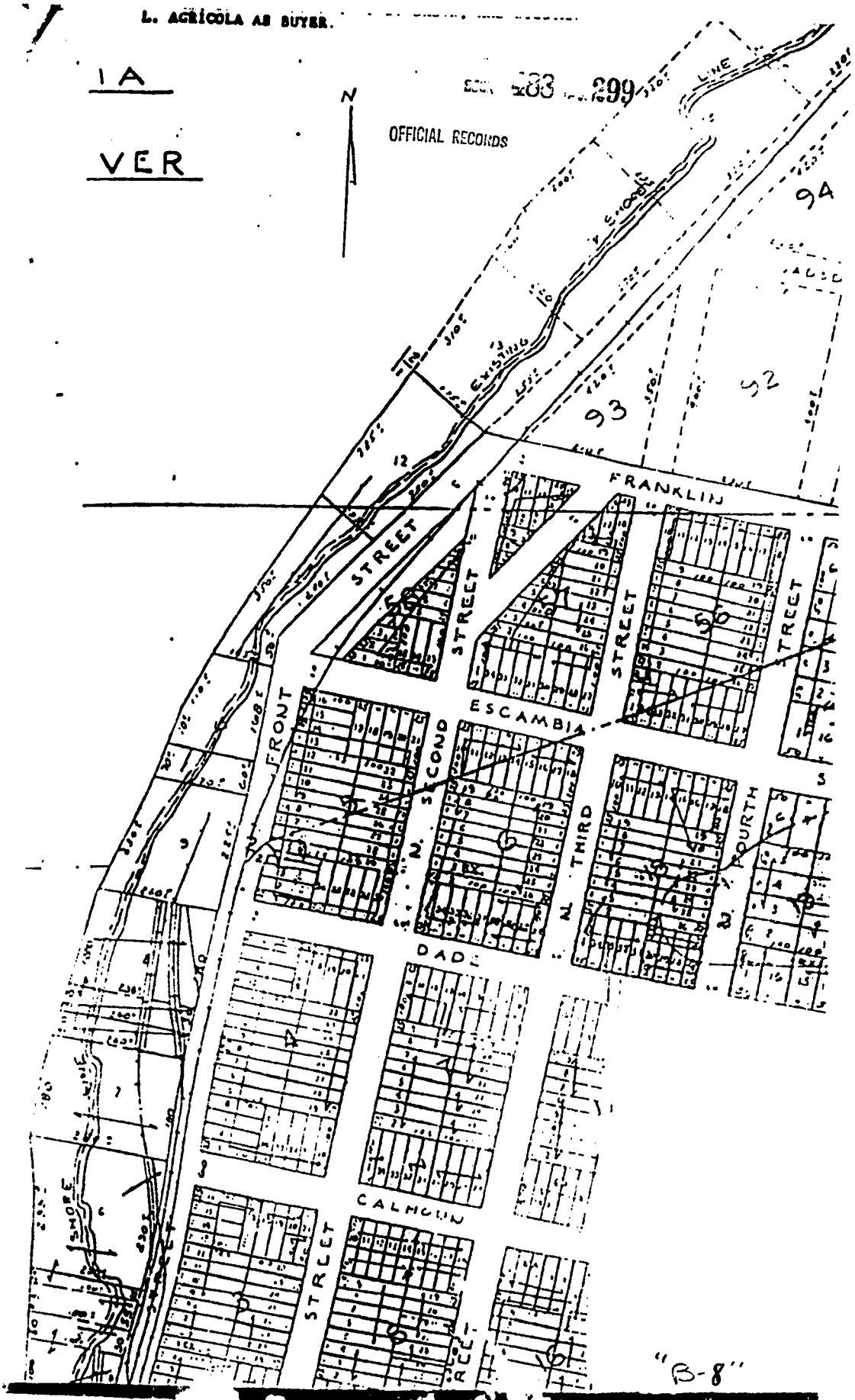
L. AGRICOLA AS BUYER.

1A

VER

283 299

OFFICIAL RECORDS



SITE A

Deed Bk 182 pg 264 288 SCO

DEED B[illegible]

THIS INDENTURE Made, executed and delivered this 21st day of May, A. D. 1951, by and between FERNANDINA PHOSPHATE CORPORATION (Formerly Fernandina Terminal Corporation and formerly Florida Terminal Company), a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at Ocala, Marion County, Florida, and having a permit to transact business in the State of Florida, party of the first part; and RAYONIER INCORPORATED, a corporation organized and existing under the laws of the State of Delaware and having its principal place of business and post office address at 122 East 42nd Street, New York, New York [illegible] Florida, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and remised, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part and its successors and assigns [illegible] more

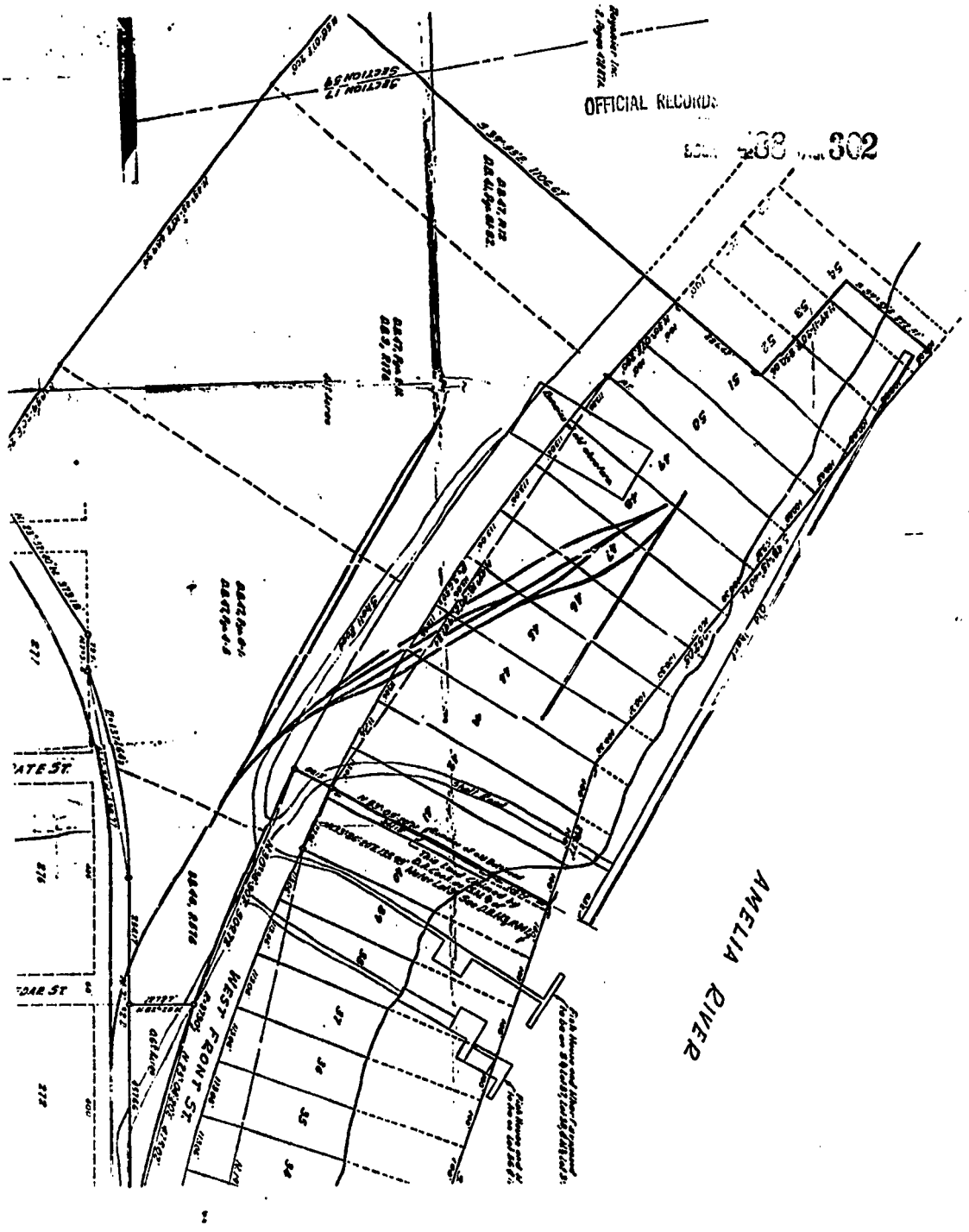
"B-9"

SITE B

DEED

along an old bulkhead, a distance of four hundred seventy-five and eighty-seven hundredths (475.87) feet to the Westerly line of water Lot forty-one (41); run thence South twenty-six degrees, thirty-two minutes West (S-26°-32'-W) along the Westerly lines of Water Lots forty-one (41), forty-two (42) and forty-three (43) a distance of two hundred ninety-six and seventy-seven hundredths (296.77) feet to the Southwesterly corner of said Water Lot forty-three (43); run thence South forty-eight degrees, fifteen minutes, forty seconds West (S-48°-15'-40"-W) a distance of one thousand fifty-two and five hundredths (1052.05) feet to a line separating the Northeasterly half of Water Lot 54 from the Southwesterly half of said lot as shown on a map entitled, "MILL SITE TRACT OF RAYONIER, INC." RECORDED IN THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA, IN PLAT BOOK 2, PAGES 47 & 47A; run thence South thirty-nine degrees, fifty-three minutes East (S-39°-53'-E) along the boundary of said mill site tract as shown on said recorded plat a distance of two hundred twenty-two and fifty-one hundredths (222.51) feet to an iron pipe in said mill site boundary and continue thence along said mill site boundary, first course: North forty-nine degrees, eleven minutes, twenty seconds East (N-49°-11'-20"-E) a distance of two hundred fifty and six hundredths (250.06) feet; second course: South thirty-nine degrees, fifty-three minutes East (S-39°-53'-E) a distance of one thousand one hundred six and sixty-seven hundredths (1106.67) feet; third course: North fifty degrees, seven minutes, East (N-50°-07'-E) a distance of two hundred (200) feet; fourth course: North forty-five degrees, forty-five minutes, ten seconds East (N-45°-45'-10"-E) a distance of six hundred eighty-nine and thirty-nine hundredths (689.39) feet; fifth course: North forty-one degrees, fifty-nine minutes, twenty seconds East (N-41°-59'-20"-E) a distance of two hundred sixty-seven and fifty-seven hundredths (267.57) feet to a concrete monument in the Southwesterly boundary of the right of way of Seaboard Air Line Railway; run thence along said railway right of way boundary North twenty-three degrees, fifty-two minutes, forty seconds West (N-23°-52'-40"-W) a distance of three hundred seventy-three and eighteen hundredths (373.18) feet to a concrete monument set at a point where said boundary is intersected by the Southerly prolongation of the Easterly boundary of the right of way of Front Street, as shown on the aforesaid official map of Fernandina; run thence North seven degrees, thirty-two minutes East (N-7°-32'-E) along the Southerly prolongation of the Easterly boundary of the right of way of Front Street a distance of seventy-two and five tenths (72.5) feet to the right-of-way of

"B-10"

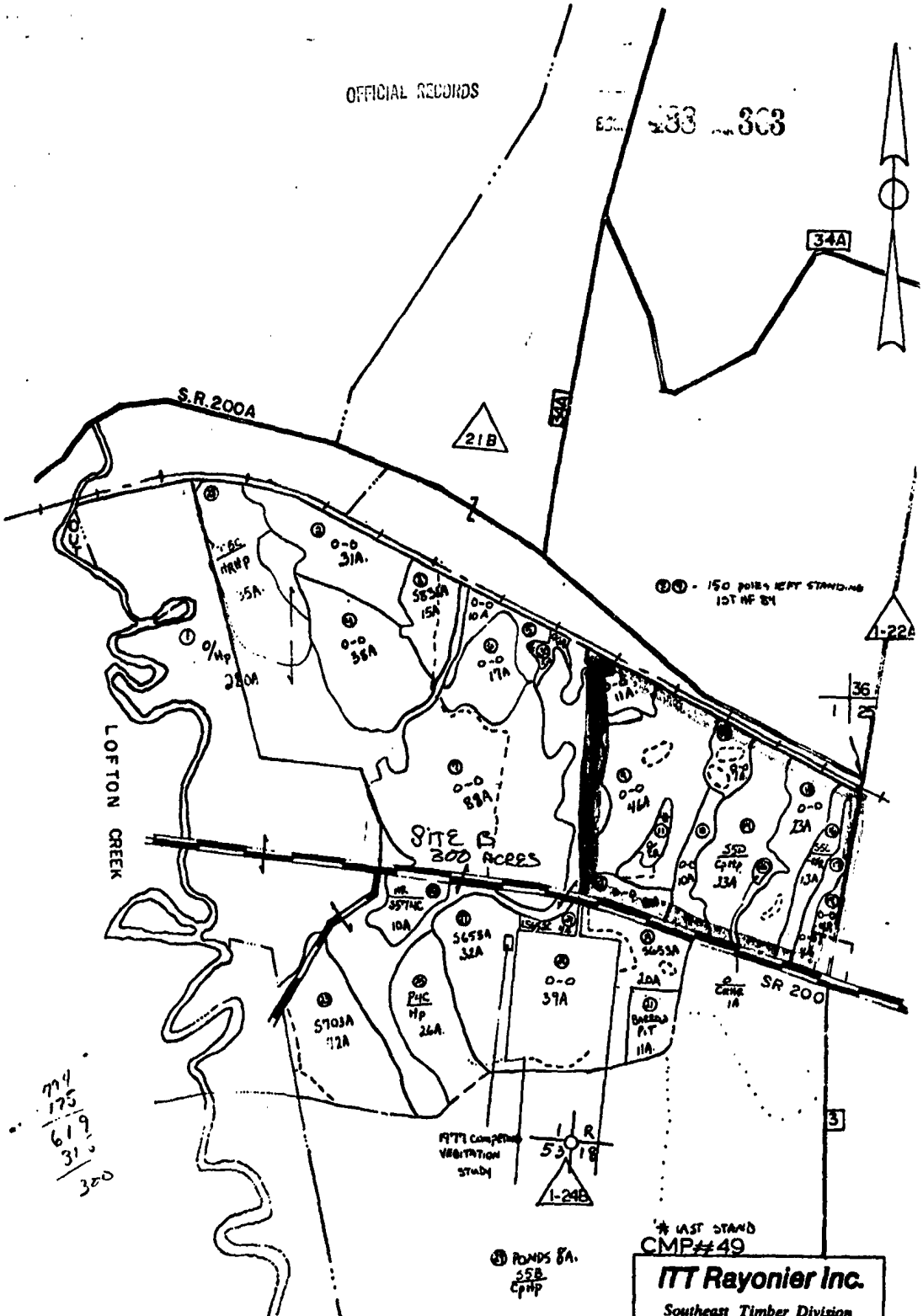


"B-11"

SITE B

OFFICIAL RECORDS

BK 333 PG 303



794
175
619
31
300

CUTTING RECOMMENDATIONS

CORDS

- REPRODUCE
- THIN
- REMOVE OVERSTORY
- FIELD CHECK
- LONG LOGS AVAILABLE
- TOTAL

TOTAL TYPED ACRES 794

MILES OF LANDLINE 0.1

MILES OF ROAD:

ITT RAYONIER
- INTERIOR 0
- EXTERIOR 0

OTHER
- INTERIOR 0
- EXTERIOR 0

ITT Rayonier Inc.

Southeast Timber Division

MANAGEMENT BLOCK MAP

NASSAU FOREST

BLOCK # I-24A

SCALE – 1" = 20 CH.

DATE 7-25-85 TB

REVISIONS

1ST MF 86 AMD 6	

P3-12

PARCEL "A":

OFFICIAL RECORDS BOOK 288 PAGE 304

All of that certain tract or parcel of land situate, lying and being in the County of Nassau and State of Florida, described as follows, viz:

A portion of the Fort Clinch Military Reservation situated on the Northerly end of Amelia Island, Nassau County, State of Florida, and more particularly described as follows:

Beginning at a point, said point being now or formerly marked by a live oak post on the Eastern bank of Amelia River, and being located approximately Twenty-four Hundred Fifty-seven and Two Tenths (2457.2) feet North and Fifty-one Hundred Sixty-one and One Tenth (5161.1) feet West of a stone monument marked, "U.S.M.R.", (as the Southeast corner of Number One (1) of fractional Section Fourteen (14), Township Three (3) North, Range Twenty-eight (28) East of the Tallahassee Principal Meridian); thence North Fourteen (14) degrees No (00) minutes West along the bank of Amelia River, a distance of One Thousand (1000.0) feet to a point; thence North Seventy-nine (79) degrees, No (00) minutes East for a distance of One Thousand (1000.0) feet to a point; thence South Fourteen (14) degrees, No (00) minutes East, a distance of One Thousand (1000.0) feet to a point on the traverse of the Mouth of Egan's Creek, also called Beach Creek, thence a distance of One Thousand (1000.0) feet to the point of beginning.

RESERVING, NEVERTHELESS, unto the United States of America, and its assigns, a perpetual right of way over and along the Military Road as now exists over and across the land hereinabove described.

EXCEPTING FROM THE ABOVE PARCEL "A" those certain lands as conveyed in Official Records Book 213, Page 404, public records of Nassau County, Florida.

PARCEL "B":

All that certain tract or parcel of land situate, lying and being on Amelia Island in the County of Nassau and State of Florida, and more particularly described in that certain deed heretofore made by the United States of America, by and through F.H. Payne, Acting Secretary, to Charles M. Hilliard, bearing date the 16th day of January 1931 and recorded in Deed Book No. 85, on pages 396-397 of the public records of said County of Nassau, Florida, as follows:

That certain tract or parcel of land in Section Ten (10), Township Three (3) North, Range Twenty-eight (28) East, Tallahassee Meridian, together with the improvements thereon known as the Quarantine Station, forming a portion of the Fort Clinch Military Reservation, situate, lying and being in Nassau County, State of Florida. Said tract or parcel of land more particularly described as follows:

Commencing at the center of the Quarantine Station Wharf gangway at the mean high water mark, running thence due North a distance of Five Hundred (500.0) feet to a point; thence due East a distance of One Thousand (1000.0) feet to a point; thence due South a distance of One Thousand (1000.0) feet to a point; thence due West a distance of One Thousand (1000.0) feet to a point; thence due North a distance of Five Hundred (500.0) feet to the place of beginning. ALSO any portion or portions of the said Fort Clinch Military Reservation lying between the mean high water mark and the Western boundary of the Quarantine Station as described, from the line of the Southern boundary of said Quarantine Station to the line of Northern boundary thereof.

The above described tract or parcel of land being a portion of the land conveyed to the United States of America by George R. Fairbanks, Commissioner, by deed dated July 9, 1859, said deed being recorded in Deed Book "D", page 162 to 174, in the Clerk's Office, Nassau County, State of Florida. The tract or parcel of land hereinabove described and hereby conveyed being the same or identical tract or parcel of land shown or designated on the map of the U.S. Military Reservation, recorded in the Office of the Clerk of the Circuit Court in and for said County of Nassau, Florida, in Plat Book "O", page 39, of the public records of the County of Nassau, as U.S. Quarantine Station.

"B-13"

SITE C

...assau and State of Florida, and being in and a part of Section Ten (10), in Township (3) North, Range Twenty-eight (28) East, and which tract or parcel of land, hereby ... more particularly described as follows:

OFFICIAL RECORDS BK. 283 PG. 805

Beginning at a point on the East bank of Amelia River at an Iron Hub, and which point is designated by the letter "N" on that certain plat of the Former U.S. Military Reservation ... Section Ten (10), Township Three (3) North, Range Twenty-eight (28) East, and which is recorded in the office of the Clerk of the Circuit Court of Nassau County, Florida, ... Book "O", at page 39 of said records, being the Northwest corner of Parcel Two (2) ... plat and which point is North Thirteen (13) degrees, Fifty-three (53) minutes ... Thousand (1000.0) feet from the Southwest corner of said Section Ten (10); ... North Seventy-nine (79) degrees, and Seven (07) minutes East along the North ... said Parcel Two (2) for a distance of One Thousand (1000.0) feet to the Northeast ... said Parcel Two (2) and designated on said Plat by the letter "O"; thence ... degrees and Twenty-five (25) minutes West for a distance of Two Hundred and ... (200.6) feet; thence West for a distance of One Hundred Ninety-nine and Eight ... to the Southeast corner of that parcel of land designated on said Plat as U.S. ... said point being designated on said plat by the letter "K"; thence West along ... of that parcel of land designated as U.S. Quarantine Station for approximately ... Nine Hundred Twenty-eight (928.0) feet to the Channel of Amelia River; thence ... the Eastern edge of the Channel of the Amelia River to a point on said Eastern edge ... of Amelia River, which would be the intersection of said Eastern edge of the ... River and an extension Westward of the Northern boundary of Parcel Two (2); ... Seventy-nine (79) degrees, and Seven (07) minutes East for approximately ... Hundred Thirty-two (132.0) feet to the place of beginning.

PARCEL "D":

All of that certain tract, piece or parcel of salt marsh land situate, lying and being on ... Island, in the County of Nassau and State of Florida, and described as follows, ...

All of the salt marsh portion of Section Fourteen (14) in Township Three (3) North, ... Twenty-eight (28) East, as lies North of that portion of the City of Fernandina known ... "Old Town", and as lies on both sides of Egan's Creek and West of the dam and ... (which dam and causeway run from said "old Town" northerly across said marsh ... numbered Fourteen (14)); EXCEPTING, however, all of that certain parcel of land ... upon and according to the official plat of said city of Fernandina as marsh lot number ... Thirteen (13), now owned by the Seaboard Air Line Railway Company, together with ... rights to the lands, hereinabove described and hereby conveyed, belonging or in ... appertaining.

ALSO EXCEPTING THEREFROM those portions of parcel "D" described as follows:

... Lying Northwesterly of and within Eighty (80.0) feet of the Construction Centerline ... ...th Street, Section 74), said Construction Centerline being described as follows:

... ce on the Easterly extension of the South ... of Block Fourteen (14), Old Town ... Amelia Beach, at a point Fifty and Ninety-six Hundredths (50.96) feet East ... Northeast corner of said Block Fourteen (14); run thence North Thirty-six (36) ... Five (05) minutes West, Two Hundred Forty-two and Forty-eight Hundredths (242.48) ... to the point of beginning of said Construction Centerline and the beginning of a curve ... to the Easterly having a radius of Five Hundred Seventy-two and Ninety-six Hundredths ... feet; run thence Northwesterly, North and Northeasterly along said curve through an ... angle of Seventy (70) degrees, Fifty-four (54) minutes a distance of Seven Hundred ... feet to the end of said curve and the end of said Construction Centerline, thence for ... reference run North Thirty-four (34) degrees, Forty-five (45) minutes East, Four ... Fifty-seven and Ninety-nine Hundredths (457.99) feet to the beginning of a curve ... the Westerly having radius of Five Hundred Seventy-two and Ninety-six Hundredths ... feet; run thence Northeasterly along said curve through an angle of Thirty (30) ... (15) minutes, Fifty (50) seconds a distance of Three Hundred Two and Sixty-four ...

... Township Three (3) North, Range Twenty-eight (28) East at a point One Hundred Fifty and Twelve Hundredths (150.12) feet North... from a corner marked "R".

OFFICIAL RECORDS Book 488 Page 306

b. Lying Northwesterly of and within Eighty (80.0) feet of the survey line of State Road 14th Street, Section 7400, said survey line being described as follows:

Begin on the Easterly extension of the South line of Block Fourteen (14), Old Town, Fern Beach, Nassau County, Florida, at a point Fifty and Ninety-six Hundredths (50.96) feet from the Southeast corner of said Block Fourteen (14); run thence North Thirty-six (36) degrees, Zero (00) minutes West, Three Hundred Fifty-nine and Three Hundredths (359.0... to the beginning of a curve concave to the Easterly having a radius of Four Hundred Nin... Twenty-six Hundredths (409.26) feet; run thence Northwesterly, North and Northeaster... said curve through a total central angle of Seventy and Fifty-four Hundredths (70.54) fe... distance of Five Hundred Six and Forty-three Hundredths (506.43) feet to the end of sai... run thence North Thirty-four (34) degrees, Forty-five (45) minutes East, Five Hundred Seventy-four and Fifty-four Hundredths (574.54) feet to the beginning of a curve concav... Westerly having a radius of Five Hundred Seventy-two and Ninety-six Hundredths (572... feet; run thence Northeasterly, along said curve through an angle of Thirty (30) degree... Fifteen (15) minutes, Fifty (50) seconds a distance of Three Hundred Two and Sixty-fou... redths (302.64) feet to the South line of Section Ten (10), Township Three (3) North, R... Twenty-eight (28) East at a point One Hundred Fifty and Twelve Hundredths (150.12) fe... Northwesterly from a point designated as "R"; thence from a tangent bearing of North N... degrees, Twenty-five (25) minutes, Ten (10) seconds East continue thence Northeasterl... and Northwesterly along said curve through an angle of Nine (09) degrees, Twenty-five minutes, Ten (10) seconds a distance of Ninety-four and Nineteen Hundredths (94.19) fe... end of said curve and the end of said survey line.

[illegible]

8402706

FILED AND RECORDED IN OFFICE

MAR 14 AM 9:23

NASSAU COUNTY, FLA.
CLERK CIRCUIT COURT
T.J. GREESON - CLERK

"B-15"

SITE 2

OFFICIAL RECORDS

City of Fernandina Beach

Florida

32034

BK 303 PG 307

CERTIFICATE

I, VICKI P. WINGATE, City Clerk of the City of Fernandina Beach, Florida, DO HEREBY CERTIFY, that the attached Resolution Number 801 was duly adopted by the City Commission of the City of Fernandina Beach, Florida, on the 20th day of February, 1986, A.D. and that said Resolution has been compared by me with the original thereof recorded in the official Resolution Book of the City Commission of the City of Fernandina Beach, Florida, and that it is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of the said City of Fernandina Beach, Florida, this 24th day of February, 1986, A.D.

(SEAL)

Vicki P. Wingate

VICKI P. WINGATE
City Clerk
City of Fernandina Beach, Florida

EXHIBIT "C"

RESOLUTION NUMBER 801

CITY OF FERNANDINA BEACH, FLORIDA

WHEREAS, the Ocean, Highway and Port Authority of Nassau County, Florida, has applied to the Department of Community Affairs of the State of Florida for a Preliminary Development Agreement for the development of Site "A" of the proposed port facility (consisting of Sites "A", "B" and "C"); and

WHEREAS, the City Commission of the City of Fernandina Beach, Florida, has determined it to be in the best interests of the citizens of the said City that the Preliminary Development Agreement be approved subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE CITY OF FERNANDINA BEACH, FLORIDA, that the Department of Community Affairs is hereby requested to approve the Preliminary Development Agreement for the development of Site "A" of the proposed port facility as submitted by the Ocean, Highway and Port Authority of Nassau County, subject to the following conditions:

1) The port will not import nor export petroleum products, coal or hazardous materials without re-submitting an amended ADA/DRI.
2) Equitable annual fees will be negotiated to fund City services normally funded through ad valorem taxes. These include fire and police protection, street maintenance, administrative and recreation services.
3) There will be no exemption from fees which fund City wastewater treatment and sanitation (trash and garbage) services.
4a) Impact fees imposed by City Ordinance Number 704 and others for capital improvements will be paid at the time construction permits are issued. These fees are specifically dedicated to facilities for:
   a) Wastewater Treatment
   b) Fire Protection
   c) Police Protection
   d) Sanitation
   e) Recreation
   f) Administration
4b) If completed application(s) for construction permits are not made within two (2) years from current date, all project approvals by the City shall lapse and be of no further force or effect.
5) The operators of the port will compile a code governing the operations of vessels and vehicles using the port facilities, and this code will be submitted to the City Commission of the City of Fernandina Beach for approval and incorporation in the City code prior to the start of port operations. The code shall include all applicable international, federal and state regulations and specific rules regarding hurricane conditions, long term mooring of vessels, normal working hours, and no-wake zones.

"C-2"

6) The wording of the last sentence of Paragraph 2 of the current version of the Preliminary Development Agreement should be revised to read "However, the impacts of Part A shall be reviewed and combined with the overall DRI application".

ADOPTED this 20th day of February, 1986.

CITY OF FERNANDINA BEACH, FLORIDA

ATTEST: Vicki P. Wingate
VICKI P. WINGATE
City Clerk

DON ROBERTS
Mayor/Commissioner

"C-3"

Memorandum FLORIDA DEPARTMENT of STATE

TO: John Stubbs APR 2 8 1986

FROM: Louis D. Tesar

DATE: February 27, 1986

BOOK 688 PAGE 310

OFFICIAL RECORDS

SUBJECT: Forrest Products Terminal Site "A"
Fernandia Beach, Nassau County, Florida

After reviewing with Charles G. Potter on February 27, 1986 photos, maps and plans of the Forrest Products Terminal site "A" in Fenandina Beach, Florida, it is the opinion of this agency that there is little or no evidence to support the assertion that a significant prehistoric shell midden or mound was disturbed by the recent extensive site preparation of the project area. Rather, the documentation provided by Mr. Potter indicates that the cultural resources disturbed by the land clearing and site preparation were restricted almost entirely to historic backyard garbageassociated with the nearby structure on the bluff. These site remains would not have been considered regionally significant had they been evaluated prior to their disturbance, and certainly cannot now be considered significant. The detailed photographic evidence of the soil spread across the project area shows no significant site remains or evidence that any such remains were present. We will formally convey this information to the DCA when we receive their formal project review request.

However, please also be advised that, as we advised Mr. Potter, when the two other project areas come up for review we will be recommending that preliminary site evaluation work be performed and that we be involved in reviewing project design to the extent necessary to evaluate visual impacts to the Fernandina Beach Historic District and the Fort Clinch properties respectively. In the southern property, we are not concerned with the tidal flats, but rather with the edge of the bluff and the area near the district -- there may be archaeological resources in these areas and the scale and massing and vegetative screening with regard to the visual impact to the district need to be considered. In the Fort Clinch area, it has long been known that ballast and related remains associated with Fernandina Beach's significant maritime heritage are to be found in this area. Archaeological testing, and possible archaeological salvage work will be recommended, unless it is concluded that the site remains in this area will be protected/sealed as a result of project activities.

860338

FILED AND RECORDED IN OFFICIAL RECORDS

1986 APR 25 PM 4:21

NASSAU COUNTY, FLA.
CLERK CIRCUIT COURT

(DS-16)
0S01004

EXHIBIT "D"

The City Commission of the City of Fernandina Beach, Florida, held a public hearing in the City Commission meeting chambers, its regular meeting place in said City, at 7:30 p.m., on Tuesday, January 10, 1989. Present were Mayor Ronnie Sapp, presiding; Vice Mayor Milt Shirley; Commissioners Charles L. Albert, Dale Dees and Don "Beano" Roberts. Also present were City Manager Ferris B. Jones, City Attorney Wesley R. Poole and City Clerk Vicki P. Wingate.

Mayor Sapp called the meeting to order and stated that the purpose of the meeting was to hold a public hearing on the Port of Fernandina Application for Development Approval (ADA) for the Development of Regional Impact (DRI) review process.

City Attorney Poole advised that the meeting was an advertised public hearing to receive comments from the public concerning the Port of Fernandina ADA. He stated that the Northeast Florida Regional Planning Council (NEFRPC) had not completed its review of the ADA, the DRI committee of the NEFRPC had concluded its review and drafted a recommended development order for the NEFRPC to consider. He advised that the next meeting of the NEFRPC was scheduled for January 17, 1989 and the report would be forwarded to the City by the end of January. He recommended that the City Commission open the public hearing, invite public comment on the Port ADA and that the public hearing be adjourned to a date certain, preferably in mid-February to allow time for the final report and recommendations from the Planning Advisory Board (PAB) and City Staff.

A motion was made by Commissioner Roberts, seconded by Commissioner Albert, to open the public hearing. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.

Ms. Marty Katona came before the Commission and inquired as to the direction of the port development. City Attorney Poole advised that the City Commission had received notice from the NEFRPC that the Application for the Port development had been deemed completed and sufficient and that all additional responses had been made by the agencies that had an interest in the matter. He stated that at that point the Commission was by law required to schedule a public hearing on the port application. He stated that the purpose of the public hearing was to consider the question of issuing a development order for the port development. He reminded that the NEFRPC had not completed its review and recommendation in time for the scheduled public hearing of the City Commission. He went on to say that the plan was to receive the full report of the NEFRPC, to have the City's PAB review same and make its recommendation, and then the City Commission to review the information and make a decision on the development order for the port development to occur. He concluded that a large portion of the port development had already occurred, but there was some development/expansion that was sought in the application that had not yet been approved. He advised that there was a 68 or so page draft report from the NEFRPC that contained conditions that the NEFRPC recommended be imposed on the port development as it had already been permitted to be built and any additional expansions.

Ms. Katona expressed concern and opposition to any port truck traffic in the downtown area.

Ms. Anna Williams came before the Commission and expressed concern over the methods by which the property was being purchased in the area for port development and the proximity of the port to residential property.

Mayor Sapp stated that it was unfortunate that there were no representatives from the Port Authority or the port management companies to discuss the matter.

City Manager Jones advised that the draft Assessment Report and ADA, along with other information on the matter, was available at City Hall for review.

There was then discussion regarding the boundary of the port development as outlined in the ADA and the possibility of expansion which would require rezoning, and the need for a buffer zone.

Mr. Andre Ferreira came before the Commission and expressed his concerns regarding the possibility of expansion of the port development and the truck traffic associated with same in the historic district and downtown area. Mayor Sapp stated that the City was trying to find a way to minimize truck traffic in the downtown/historic district. Ms. Katona mentioned that a lot of cities that were involved in restoration of brick buildings prohibited large trucks in the area as it was detrimental to the buildings.

After more discussion regarding concerns regarding truck traffic associated with the port development, a **motion** was made by Commissioner Roberts, seconded by Vice Mayor Shirley, **to adjourn the public hearing until February 14, 1989 at 7:30 p.m. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.**

City Attorney Poole advised that approximately 2-3 weeks prior to February 14, 1989 the City Manager's office would have the information from the NEFRPC and the PAB.

There being no further business to come before the Commission, it was moved and seconded to adjourn the meeting.

Vicki P. Wingate
VICKI P. WINGATE
CITY CLERK

Ronnie Sapp
RONNIE SAPP
MAYOR-COMMISSIONER

mitigation plan. She stated that they were committed to the "Alligator Basin" next to the Port area. She then discussed the matter in detail. She stated that they would be using 36 inch culverts. After more discussion and after an inquiry from the City Manager, she stated that the engineering report prepared by Lake Ray was still on.

After more discussion, Ms. Robas stated that the pier would be extended by 610 feet to the north.

City Attorney Poole stated that the NEFRPC report referred to the filling in of 4.1 acres and the permit application to the Corps of Engineers referred to 5.7 acres. She stated that the 4.1 acres was a part of the 5.7 acres and the additional acreage was for the dock extension and was a part of the substantial deviation process.

Mr. Ron West expressed concerns regarding the creation of wetlands to replace those wetlands that were to be filled in. There was then some discussion regarding the mitigation plan and the possibility of creating wetlands on Airport property. City Attorney Poole advised that the mitigation plan had to be approved by the State.

After more discussion, City Attorney Poole stated that the current Development Order did not include the dock extension which would be a part of the substantial deviation review process.

Mr. West inquired as to how the wetlands would be filled. Mr. Elton Stubbs advised that they would be hiring an engineer to engineer the filling of the wetlands. There was then more discussion concerning the drainage of the creek.

Mr. Stubbs explained the history of the DRI and Sites A, B and C and the elimination of Sites B and C.

Mayor Sapp inquired if the Port would be handling hazardous materials. Mr. Stubbs advised that they would be handling hazardous materials, such as diesel fuel, etc. and had to obtain permitting from the Coast Guard.

After more discussion, Ms. Susan Brown came before the Commission and expressed concerns over the impacts on manatees and requested that signage be provided to advise shippers of the presence of manatees before the get to the Port area. She stated that the required signage at the Port was not up at the present time. Mr. Stubbs stated that same had been ordered. Ms. Robas stated that the Department of Natural Resources had been notified of the status of the signage.

Ms. Brown also expressed concerns over the lack, in her opinion, of a vegetation buffer between the Port and the Historic District. Mr. Stubbs advised that 100% of all plantings had been done. There was more discussion regarding vegetative buffers.

After still more discussion, Mayor Sapp stated that in return for police, fire, traffic, etc. he felt that an annual fee needed to be negotiated in an amount equivalent to the amount of ad valorem taxes that would be normally be paid on the property. Mr. Stubbs stated that they would not be willing to pay an amount equivalent to ad valorem taxes but would be willing to pay some form of fees and that said money be used for something that they agreed upon. There was further discussion regarding taxes and the negotiation of annual fees, and the organization of ports over the United States.

After more discussion, Mr. McLauchlan discussed the impact of traffic and stated that he would submit that the traffic would be over 1000 trips per day and urged the Commission to recognize the impact on traffic as far as taxation was concerned and also the affects on 8th Street, the downtown area, etc. He suggested that a fee be assessed per trip, such as $.50 per trip per day. Mr. Stubbs stated that that would be addressed in the substantial deviation in regards to the extension of the dock.

Ms. Vera West came before the Commission and questioned as to whether or not any other ports were located on a barrier island, and were operated by private groups. Mr. Stubbs stated that the port was owned by the Port Authority and operated by stevedores, which was common.

Ms. Coralee McKain came before the Commission and inquired as to what the time frame was in filling the wetlands and creating the other wetlands as part of the mitigation plan. Mr. Stubbs advised that it must be done simultaneously.

There being no further comment from the audience, a motion was made by Commissioner Roberts, seconded by Commissioner Dees, to close the public hearing. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.

Mayor Sapp advised that the item would be on the agenda for the regular meeting of February 21, 1989.

There being no further business to come before the Commission, it was moved and seconded to adjourn the meeting.

Vicki P. Wingate
VICKI P. WINGATE
CITY CLERK

Ronnie Sapp
RONNIE SAPP
MAYOR-COMMISSIONER

The City Commission of the City of Fernandina Beach, Florida, met in special session in the City Commission meeting chambers, its regular meeting place in said City, at 5:30 p.m., Monday, July 13, 1987. Present were Mayor Charles L. Albert, Jr., presiding; Vice Mayor Ronnie Sapp; Commissioners Lewis "Red" Bean, Dale Dees and Don "Beano" Roberts. Also present were City Manager Ferris B. Jones, City Attorney Wesley R. Poole and City Clerk Vicki P. Wingate.

Mayor Albert called the meeting to order and dispensed with the normal formalities. He stated that the purpose of the meeting was to discuss the closing of North Second Street between Dade and Calhoun (see Minutes of regular meeting of July 21, 1987).

Vice Mayor Sapp stated that at the last regular Commission meeting, the Commission had acted on a request to close the street within the confines of the port with the assumption that it would not impact other businesses. He stated that subsequent to the action taken he had been contacted by several people in that area stating that the re-routing of trucks through residential (due to the closing of said street) was unsafe. He stated that he felt the Commission needed to reconsider the matter.

Commissioner Roberts agreed with Vice Mayor Sapp and recommended that the Commission consider opening the street back up to commercial traffic only.

Commissioner Dees stated that he felt it was a safety hazard and that the street should be opened for commercial traffic only.

Commissioner Roberts stated that the City did not create the security and traffic problems as the street was there when the port was constructed.

Mr. Bill Kavanaugh of Fernandina Marine Construction Management (FMCM) stated that he had met with businesses in the area and tried to work out a compromise. He stated that they were proposing to install gates that would be opened in the day and closed at night, and would have a night guard who would open the gates for the commercial traffic.

After some discussion, Ms. Chris Bryan, of Island Seafood, suggested that Calhoun Street be opened to traffic.

Mr. Richard Higginbotham, of Florida Petroleum, stated that he preferred to stay out of residential areas with his commercial trucks.

Vice Mayor Sapp stated that the City needed to devise a traffic plan for the whole City.

After more discussion, City Manager Jone stated that Dade Street was a truck route and FMCM was working with the City to open Calhoun and Alachua Streets.

Ms. Bryan stated that they did not want to see Dade Street closed.

Mayor Albert suggested that a committee be formed to make recommendations to the City Commission on the matter.

Mr. Elton Stubbs, of FMCM, stated that the port was having serious problems with security and safety due to children on skateboards, bicycles, etc. coming on port property. Mr. Kavanaugh stated that it was a temporary closing and suggested

that the street remain closed for the time period granted and if it created problems open the street back up.

After considerable discussion, a motion was made by Vice Mayor Sapp, seconded by Commissioner Roberts, to close said street to everything but commercial vehicles which would be defined adequately, that no fence be put across the street, and that if the port wanted a fence to put it on their own property. City Manager Jones suggested that the Commission vote to rescind the previous motion granting the request to close the street. Vice Mayor Sapp's motion was withdrawn at that time.

After considerable discussion, a motion was made by Commissioner Roberts, seconded by Vice Mayor Sapp, to rescind the previous motion granting the request of FMCM to close the street. Vote upon passage of the motion was taken by ayes and nays and was as follows:

Commissioner Dees:	Nay
Commissioner Bean:	Aye
Commissioner Roberts:	Aye
Vice Mayor Sapp:	Aye
Mayor Albert:	Aye

A motion was then made by Vice Mayor Sapp, seconded by Commissioner Roberts, to close the portion of said street to all but commercial traffic and that "commercial traffic" be defined adequately to include pick-up trucks, etc. needed to conduct business, and that no fence be placed across the street and if they were concerned about security they should fence their own property. Mr. Kavanaugh stated that FMCM would like to withdraw the request to close the street at that time. Mr. Elton Stubbs stated that he would like for it to be on record that there was a safety problem. Vice Mayor Sapp then withdrew his motion as the request had been withdrawn.

Mayor Albert stated that the City needed to take precautions regarding safety and needed an overall traffic plan for the City.

City Manager Jones stated that the City would make a request to the railroad company for a crossing at Calhoun and Alachua which would ducktail with the Front Street, Dade Street and other truck routes in that area. After some discussion, he stated that he had a sketch of the proposed truck route on his desk and was awaiting word from the Florida Department of Transportation regarding a truck route on 10th Street and would be getting with the Commission on same in the near future. Vice Mayor Sapp requested that a workshop meeting be scheduled on the proposed truck route.

Vice Mayor Sapp stated that the problem arose when the port was constructed prior to the Development of Regional Impact (DRI) being completed.

Mayor Albert appointed a Committee consisting of the following persons to meet with the City Manager on the matter: David Hardee, Jake Flowers, Richard Higginbotham, Bill Kavanaugh, John Hurd and Bill Bryant.

There was considerable discussion regarding the possibility of a ninety day trial for the installation of a gate as requested by FMCM.

After more discussion, a motion was made by Commissioner Roberts, seconded by Vice Mayor Sapp, to instruct the City Manager to install "truck traffic only" signs on North Second Street between Dade and Calhoun Streets and the responsibility

for security be left to the developer. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.

It was the consensus of the Commission that the Committee appointed would meet to discuss possible solutions to the problem and bring same before the Commission at the next regular meeting.

City Manager Jones stated that he would be scheduling a workshop meeting on the traffic study soon.

There being no further business to come before the Commission, it was moved and seconded to adjourn the meeting.

CITY OF FERNANDINA BEACH

Charles L. Albert, JR.

CHARLES L. ALBERT, JR.
Mayor - Commissioner

ATTEST:

Vicki P. Wingate

VICKI P. WINGATE
City Clerk

MINUTES
Workshop Meeting
February 20, 1989
Page One

The City Commission of the City of Fernandina Beach, Florida, met in workshop session in the City Commisison meeting chambers, its regular metting place in said City, at 3:45 p.m. on Monday, February 20, 1989. Present were Mayor Ronnie Sapp, presiding; Vice Mayor Milt Shirley; Commissioners Chalres L. Albert, Jr., Dale Dees and Don "Beano" Roberts. Also present were City Manager Ferris B. Jones, City Attorney Wesley R. Poole and City Clerk Vicki P. Wingate.

Mayor Sapp called the meeting to order and dispensed with the normal formalities. He stated that the purpose of the meeting was to discuss the proposed Development Order for the Port of Fernandina as outlined in Resolution No. 962 and to discuss a complaint received by Ms. Melanie Beasley.

****

The first item on the agenda was discussion regarding the proposed Development Order for the Port of Fernandina. Mr. Bill Kavanaugh, representing the Port, came before the Commission and discussed the benefits of the Port. He stated that the consent order had been signed with the County for solid waste. He stated that he had met with the Fire Chief and had given him a copy of the Hazardous Materials/Oil Spill Plan and that Ms. Victoria Robas, of the Port, would be working with the Fire Chief to update same and incorporate other needed items. He further stated that the location of the water mains and fire hydrants would have to be approved by the Fire Chief.

Mayor Sapp stated that the Fire Chief had indicated to him that there was not an adequate water going to the Port that would permit the Fire Department to fight a fire. He inquired as to whether or not the Port would be relying on a fire boat in lieu of improvements to the water system. Mr. Kavanaugh stated that they had a 10 inch fire main throughout the terminal which would handle 680 gallons per minutes flow and plans for the new expansion would include a new dry system with a drafting pipe on the dock and hopefully they would be able to secure a fire boat. He stated that the fire boat would be able to serve the Port and other areas. After an inquiry from Mayor Sapp, Fire Chief Kenneth Gaines advised that the optimum situation would be to have water flow at the Port, but that they had designed a back-up system if the fire boat was secured. Commissioner Dees stated that in his opinion a pump on the dock would be more appropriate than a fire boat. Mr. Elton Stubbs advised that the Port was committed to contributing $60,000 towards a fire boat, and would help raise additional money for same. There was then considerable discussion regarding the need for a fire boat versus the need for a pump or adequate water supply at the Port. It was the consensus of the Commission that a drafting hydrant be installed on the dock.

Mayor Sapp inquired as to whether or not the Port had supplied a list of hazardous materials handled at the Port to the Fernandina Beach Fire Department. Mr. Kavanaugh stated that when the Northeast Florida Regional Planning Council (NEFRPC) had reviewed the hazardous materials situation it was determined that by incorporating the CFR 33, Chapter 1, Part 126, a complete list of rules and regulations that was federal law and they would purchase a copy of same for the City to handle same.

City Attorney Poole then highlighted the changes that had been made to the earlier draft of the proposed Development Order (Resolution No. 962).

After considerable discussion regarding the method of payment to the City, it was the consensus of the Commission to accept the Port's proposal to pay an annual fee of $50,000 to the City. Mayor Sapp opposed the proposal.

Mayor Sapp inquired if there was anything in the Development Order which limited the size of the Port or movement to the south. City Attorney Poole stated that there was a provision in the Development Order under the regional approval that expansion of the port in any direction would constitute substantial deviation for review and approval. Mr. Arthur "Buddy" Jacobs, attorney for the Port Authority, stated that there were no plans or thoughts for expansion of the Port south of Calhoun Street, and if plans were developed they would have to go before the City Commission.

Mayor Sapp stated that the Planning Advisory Board had not made a recommendation and suggested that the item be tabled until such time as a recommendation had been made. Mr. Jim Bartelt, a member of the PAB, stated that the PAB had not had time to make a recommendation and therefore had referred the draft development order to the Commission without recommendation. He stated that one of the concerns of the PAB was that a list of hazardous materials that would not be handled at the Port be submitted to the City. Mr. Jacobs stated that the Port would not be handling Class A hazardous materials. City Manager Jones stated that there was a listing which was included in the local conditions. There was then some discussion regarding the mitigation plan for the filling of wetlands. City Manager Jones stated that the culvert under 8th Street would need to be enlarged. He stated that he and the Public Works Director felt that the drainage plan submitted was a good plan and same would require enlargement of most of the culverts in the wetland area. City Attorney Poole inquired as to whether there were any other concerns expressed by the PAB that were not addressed in the proposed Development Order. Mr. Bartelt stated that he could not remember any other items.

Mr. Jacobs stated that the culverts were a part of the mitigation plan and that the City would be involved in the approval process of same. After some discussion regarding the possibility of creating marshlands at the Airport as a part of the mitigation plan, Mr. Kavanaugh proposed $20,000 for Airport property without taking title to same. City Attorney Poole stated that the City would have to have approval from the Federal Aviation Administration for same before the City could accept the proposal.

****

The next item on the agenda was discussion regarding the complaint filed by Ms. Melanie Beasley. Mayor Sapp stated that the two items of complaint were: 1) the findings of the City Manager regarding her complaint against Public Works Director Jim Higginbotham; and 2) the manner and timeframe in which it took the City Manager to respond to the complaint. He stated that Section 136 of the Charter gave the Commission the authority to investigate whatever it chooses to investigate. He stated that Ms. Beasley was requesting that the Commission act on her complaint.

Commissioner Roberts stated that although the Commission might not agree with the prudency in the time that it took the City Manager to respond to the complaint, there was really nothing the Commission could do legally about the decision that

he arrived at. He concluded that he felt that if Ms. Beasley was not happy with the verdict that she should pursue the matter further.

Mayor Sapp stated that the procedure by which staff handled the complaint should be looked into by possibly a committee.

After some discussion, Vice Mayor Shirley questioned the length of time it took Ms. Beasley to file the complaint against the Public Works Director.

After some discussion, City Attorney Poole stated that stated that Section 136 of the Charter did provide that the Commission could investigate any matters it deemed appropriate, but that Section 10 of the Charter provided that the City Manager was responsible for the administration of personnel and the Commission was forbidden from intervening in same. He stated that the Commission could not take action on the disposition of Ms. Beasley's complaint, but could investigate and take action on the manner by which the complaint was handled.

After still more discussion, it was the consensus of the Commission to consider the appointment of a committee to look into the possible procedures that might bring about decisions in a more prudent fashion for the purpose of handling any future complaints.

There being no further business to come before the Commission, it was moved and seconded to adjourn the meeting.

Vicki P. Wingate
VICKI P. WINGATE
CITY CLERK

Ronnie Sapp
RONNIE SAPP
MAYOR-COMMISSIONER

Mayor Sapp requested that the Commission set a workshop meeting date to discuss the **Employment Contract with the Golf Pro. It was the consensus of the Commission to add the item to the Workshop Meeting of Wednesday, February 26, 1992.**

****

Commissioner Coleman reminded the public of the Special Olympics on Friday, February 28, 1992, the parade at 9:00 a.m., and thanked the Commissioners and the Recreation Department for their support.

****

Commissioner Glenn read the following proposed letter to the **Port Authority**, addressed to Honorable Curtis "Topsy" Smith, Chairman, in re: Annual Fees:

"As you know the City of Fernandina Beach, passed Resolution 91-25 in August of last year. This Resolution was passed at the request of the Port Authority and such occurred after discussion and assurance that the Port Authority would address and redress the failure to pay the City for annual fees in lieu of ad valorem tax revenue. The history of our agreement is: (1) In February 1986 the City passed Resolution 801 which conditioned approval of the preliminary development agreement on the payment of "equitable annual fees" separate from waste water treatment and sanitation. (2) In February 1989, about three years later, the City passed Resolution 962. This Resolution incorporated by reference the prior commitments and agreements of the parties and expanded the prior commitment for "equitable annual fees" by paragraph 51. This paragraph placed the fee at no less than $50,000 per year. (3) The Port Authority has not paid any money although the first payment was due in 1989.

If the Port Authority does not abide by its obligation under the two above Resolutions, then the City should seriously consider rescinding Resolution 91-25 which extended your build out date. Sincerely, John Glenn".

A motion was made by Commissioner Coleman, seconded by Commissioner Smith, to approve the letter. After some discussion, **vote upon passage of the motion was taken by ayes and nays and was as follows:**

Vice Mayor Albert:	**Aye**
Commissioner Coleman:	**Aye**
Commissioner Glenn:	**Aye**
Commissioner Smith:	**Aye**
Mayor Sapp:	**Nay**

****

Commissioner Glenn asked the status of **Ordinance No. 91-21**, repealing the Parks and Recreation Advisory Commission and creating the Recreation and Parks Advisory Board. After some discussion of the status of the Ordinance, **it was the consensus of the Commission to revise Ordinance 91-21 to repeal the Parks and Recreation Commission and advertise for public hearing.**

City of Fernandina Beach

Post Office Box 668
204 Ash Street
Fernandina Beach, FL 32034
904/277-7305

JOHN GLENN
City Commissioner
214 N. 17th. St.
Fernandina Beach, FL 32034
904-261-9468

February 20, 1992

The Honorable Curtis Smith
Chairman, Ocean Highway & Port Authority
11 N. 14th. Street
Fernandina Bch., FL 32034

In Re: Annual Fees

Dear Chairman Smith;

As you know, the City of Fernandina Beach passed Resolution 91-25 in August of last year. This resolution was adopted upon the request of the Port Authority, and followed much discussion and assurances that the Port Authority would address and redress the failure to pay the City annual fees in lieu of certain ad valorem tax revenue.

A brief history of our agreement is:

1) In February of 1986, the City passed Resolution # 801, which conditioned approval of the Preliminary Development Agreement (PDA) upon the payment of "equitable annual fees" separate from wastewater treatment and sanitation.

2) In February of 1989, the City passed Resolution # 962, a Development of Regional Impact (DRI). This Resolution incorporated by reference the prior commitments and agreements of the parties. It <u>expanded</u> the prior commitment for equitable annual fees by paragraph 51. This paragraph pegs the annual fee at no less than $ 50,000.00 per year.

3) The OHPA has not paid the City any money in lieu of taxes, although the first payment was due in 1989.

If the Port Authority does not abide by its obligations under the two (2) above resolutions, then the City should seriously consider rescinding Resolution # 91-25 which extended your build-out date.

Sincerely,

John Glenn
Commissioner, Group 5

City of Fernandina Beach

Post Office Box 668
204 Ash Street
Fernandina Beach, FL 32034
904/277-7305

MEMORANDUM

To: **City Commissioners, City Clerk, City Manager & City Attorney**

From: **John Glenn, Commissioner, Grp. 5**

Subject: **Enforcement of the OHPA's financial obligation to the City**

March 9, 1992

In view of the Port Authority's refusal to comply with its obligation to pay "equitable annual fees" to the City in accordance with 2) of the P.D.A., Resolution # 801, and expanded upon by Sections 25 and 51 of the D.R.I., Resolution # 962, I feel that the City Commission has the absolute obligation to its taxpayers to expend every effort to bring the OHPA into compliance.

To this end, I MOVE that Resolution # 91-25, extending the buildout date on the DRI be repealed, and that the appropriate authorities be notified.

It may be recalled that we passed this Resolution as an emergency at the request of a representative of the Port Authority, at which time we were given to expect some positive demonstration of the Port's intent to fulfill its obligation to the taxpayers of Fernandina Beach.

In the continued absence of a good faith plan to pay its fair share of the costs of City services, we would be at least derelict in our responsibilities as elected representatives to do any less.

City of Fernandina Beach

OFFICE OF
CITY ATTORNEY

13 North 4th Street
Fernandina Beach, FL 32034
904/261-2848

RESOLUTION 92-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, RESCINDING RESOLUTION 91-25 AND PROVIDING AN EFFECTIVE DATE

WHEREAS, The City of Fernandina Beach, Florida, passed Resolution Number 91-25 in August, 1991; and

WHEREAS, The predicate for said resolution was compliance by the Ocean, Highway, and Port Authority with all of the prerequisites contained in prior resolutions, including the payment of equitable annual fees as required by paragraph 51 of Resolution 962; and

WHEREAS, the said Ocean, Highway, and Port Authority has refused to abide by its obligations under the prior resolutions of this Commission and pay the required annual fees when due;

NOW, THEREFORE BE IT RESOLVED by the City Commission of the City of Fernandina Beach, Florida, that Resolution 91-25 is hereby rescinded this date.

ADOPTED, this _____ day of _____, 1992.

CITY OF FERNANDINA BEACH, FLORIDA

by: _____
RONNIE SAPP, Mayor/Commissioner

ATTEST;_____
VICKI P. WINGATE, City Clerk

Page 84

609 So.2d 84
17 Fla. L. Week. D2658
OCEAN HIGHWAY AND PORT AUTHORITY, Fernandina Industrial Corporation, Fernandina Marine Construction Management, and Container Corporation of America, Appellants,
v.
James PAGE, as Nassau County Property Appraiser, Appellee.
No. 91-4079.
District Court of Appeal of Florida,
First District.
Nov. 24, 1992.

Page 85

Arthur I. Jacobs, Fernandina Beach, for appellants.

Granville C. Burgess, Fernandina Beach, Larry E. Levy, Tallahassee, for appellee.

ERVIN, Judge.

Appellant, Ocean Highway and Port Authority (Port Authority), seeks review of a final judgment upholding an ad valorem property tax assessment made by appellee, Nassau County Property Appraiser James Page (Property Appraiser), on improvements constructed by appellant on land it leased from three private corporations. We affirm. Although appellant has raised several points on appeal, we need only address its contention that the trial court erred by determining the improvements were not tax exempt under the circumstances.

The Port Authority is a "body politic" created by the legislature in 1947 for the purpose of benefiting the public by operating a port or harbor in Nassau County. Ch. 21418, Secs. 4, 5 & 12, Sp.Acts (1941); Ch. 24733, Secs. 4 & 5, Sp.Acts (1947); Ch. 26048, Sec. 1, Sp.Acts (1949); Ch. 67-1739, Sec. 1, Sp.Acts (1967); Ch. 69-1328, Sec. 1, Sp.Acts (1969). The legislature, by special act, exempted all property, real or personal, owned by the Port Authority, and the revenues and income derived from its services and facilities from all taxation by the state. Ch. 26048, Sec. 3, Sp.Acts (1949).

During 1986, the Port Authority entered into leases with Fernandina Industrial Corporation, Fernandina Marine Construction Management, and Container Corporation of America to lease lands owned by the corporations for the purpose of operating the port. The Port Authority, after entering into the leases, constructed improvements on the land, which were used in its operation of the port. Thereafter, the Property Appraiser assessed the land and the improvements for ad valorem tax purposes.

Each of the three corporations filed suit in circuit court challenging the tax assessment. The actions were consolidated and an amended complaint stating all three claims was filed. Each claim contained an allegation that the individual corporation, which was not tax exempt, owned the property leased to the Port Authority, but that the corporation did not own the works or undertakings (improvements) constructed on the property by the tax-exempt Port Authority. All three plaintiffs asserted that the property appraiser had arbitrarily overvalued the property by including in the assessment the value of improvements constructed by the tax-exempt Port Authority.

The matter proceeded to nonjury trial, after which the trial court entered a final judgment upholding the property appraiser's assessments. In so doing, the court noted that there was no statutory authority

Page 86

to separate the various interests in a single parcel of property for tax purposes and that no exemption exists for governmentally used, but privately owned land.

Although the Port Authority was tax exempt by virtue of legislative special act in chapter 26048 when it was created, the legislature repealed that exemption when it enacted Chapter 71-133, Section 14, Laws of Florida. [1] Consequently, the Port Authority cannot claim a tax exemption under chapter 26048. See Straughn v. Camp, 293 So.2d 689 (Fla.) (chapter 71-133 repealed exemption afforded taxpayer under special act), appeal dismissed, 419 U.S. 891, 95 S.Ct. 168, 42 L.Ed.2d 135 (1974). Accord Williams v. Jones, 326 So.2d 425 (Fla.1975), appeal dismissed, 429 U.S. 803, 97 S.Ct. 34, 50 L.Ed.2d 63 (1976). Therefore, before the Port Authority can claim an exemption, it must show that it meets the requirements of some other exemption in Chapter 196, Florida Statutes. [2]

The Port Authority claims an exemption for the improvements under Section 196.192, Florida Statutes (1989), which provides as follows:

Subject to the provisions of this chapter:

(1) All property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

(2) All property owned by an exempt entity and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

The Port Authority argues that it is a tax-exempt entity and that it owns the improvements constructed on the leased premises. Moreover, it is using the improvements exclusively for exempt purposes, that is, operating the port, which was declared a public purpose under chapter 21418. Thus, the Port Authority claims that its "property," the improvements, should be declared tax exempt.

We cannot agree. While section 196.192, as it existed when the Port Authority entered into the leases in 1986, allowed for a tax exemption for "[a]ll property used exclusively for exempt purposes," [3] section 196.192 was amended in 1988 to require that the property be "owned by an exempt entity and used exclusively for exempt purposes" before an ad valorem tax exemption would be allowed. See Ch. 88-102, Sec. 2, Laws of Fla.; Sec. 196.192, Fla.Stat. (Supp.1988). Thus, under the plain language of section 196.192, an ad valorem tax exemption is only permitted when the property in question is both owned and used by the tax-exempt entity. See Mastroianni v. Memorial Medical Ctr. of Jacksonville, Inc., 606 So.2d 759 (Fla. 1st DCA 1992) (nonprofit hospital corporation was not entitled to ad valorem tax exemption on property it sold to for-profit corporations but then leased back for hospital use, because it did not have legal title to property). It is undisputed in the instant case that the Port Authority does not own the real property; therefore, it is not entitled to a tax exemption under section 196.192.

In so holding, we note that Section 192.001(12), Florida Statutes (1989), which is part of the general provisions for taxation, defines "real property" as "land, buildings, fixtures, and all other improvements to land." Property appraisers are required to consider all interests in the land, including leases, and to assess its value as one in fee simple when determining taxable value. See Schultz v. TM Fla.-

Page 87

Ohio Realty Ltd. Partnership, 577 So.2d 573 (Fla.1991); Valencia Ctr., Inc. v. Bystrom, 543 So.2d 214 (Fla.1989); Homer v. Dadeland Shopping Ctr., Inc., 229 So.2d 834 (Fla.1969). Moreover, while chapter 196 affords exemptions for certain leasehold interests in governmentally owned land, [4] the chapter provides no similar exemption for privately owned property leased to a governmental entity.

Because the Port Authority failed to show that it was entitled to an ad valorem tax exemption as to the improvements it constructed on the privately owned land it leased, we conclude that the trial court did not err in upholding the tax assessment. The order is therefore

AFFIRMED.

ZEHMER and BARFIELD, JJ., concur.

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1 Chapter 71-133, section 14 provides:

All special and local acts or general acts of local application granting specific exemption from property taxation are hereby repealed to the extent that such exemption is granted....

2 See Section 196.001, Florida Statutes (1989), which provides:

Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

(1) All real and personal property in this state and all personal property belonging to persons residing in this state; and

(2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

3 Sec. 196.192, Fla.Stat. (1985).

4 See Sec. 196.199, Fla.Stat. (1989). And see Page v. Fernandina Harbor Joint Venture, 608 So.2d 520 (Fla. 1st DCA 1992) (upholding final judgment declaring ad valorem tax assessment on improvements made by private corporation to leasehold of governmentally owned property used for public purpose void under section 196.99).

City of Fernandina Beach

City of Fernandina Beach **Tammi E. Bach**

Office of the City Attorney tbach@fbfl.org

April 3, 2020

FOR MEDIATION PURPOSES ONLY

This writing was prepared by legal counsel for the City and reflects mental impressions, conclusions, litigation strategies and legal theories developed and prepared in connection with pending or in anticipation of imminent civil litigation or adversarial administrative hearings and is intended to be exempt from inspection or examination as a public record until conclusion of such litigation or adversarial administrative proceeding pursuant to Section 119.071(1)(d)1., Florida Statutes

VIA PDF EMAIL ONLY TO:

Carlos Alvarez
847 East Park Avenue
Tallahassee, Florida 32301
ca.alvarez@embarqmail.com

RE: Mediation Statement of City of Fernandina Beach (the City) for upcoming mediation between the City and Ocean Highway & Port Authority (the Port Authority) pursuant to chapter 164, Florida Statutes

Dear Mr. Alvarez:

Thank you for serving as mediator for this matter. Please accept this brief summary of the City's position in the upcoming mediation scheduled for June 3, 2020 beginning at 9:00am. The at following individuals will be present on behalf of the City: Mayor John Miller, Vice Mayor Len Kreger, Commissioner Phillip Chapman, Commissioner Mike Lednovich, Commissioner Chip Ross, City Manager Dale Martin (City's Representative, if needed), City Clerk Caroline Best and City Attorney, Tammi Bach. The June 3, 2020 "public" mediation between the parties will be conducted between the City Commission Chambers at City Hall and a conference room on the 2nd floor of City Hall. The mediation will be noticed as a public meeting under Section 286.011, Fla. Stats., the public will have reasonable access and minutes will be taken by the City Clerk and another City staff person. To the extent Fla. R. Civ. P. 1.720(d) is applicable, the City's

Representative has authority to negotiate on behalf of the City and to recommend settlement to the City Commission.

Summary of Relevant Background

This is a dispute resolution proceeding initiated in accordance with chapter 164, Florida Statutes, between the City and the Port Authority, regarding payments owed to the City from the Port Authority pursuant to their agreement for payment in lieu of taxes (PILOT) as part of the Port Authority's development of its port facilities.

Following the Port Authority's application for development of a port facility within the City, the City adopted Resolution No. 801, granting approval of a Preliminary Development Agreement for the development of the port facilities between the City, the Port Authority, the State of Florida Department of Community Affairs, the Northeast Florida Regional Planning Council, and the Nassau County Board of County Commissioners. (A copy of Resolution No. 801 is attached as **Exhibit A**.) In important part, the Resolution No. 801 provided that:

> 2) Equitable annual fees will be negotiated to fund City services normally funded through ad valorem taxes. These include fire and police protection, street maintenance, administrative and recreation services.

Payments of this nature –where an otherwise tax exempt entity agrees to make payments to a taxing authority toward general public services – are colloquially called agreements to make "payments in lieu of taxes" or "PILOT" agreements.

The Preliminary Development Agreement specifically included that the Port Authority agreed to comply in all ways with the provisions of Resolution No. 801, including the PILOT agreement. The Preliminary Development Agreement was executed by the Port Authority and all other parties. (A copy of the Preliminary Development Agreement is attached as **Exhibit B**.)

The parties continued to perform under the Preliminary Development Agreement, and eventually the City adopted Resolution No. 962, approving the Port Authority's project as a Development of Regional Impact (often referred to as a "DRI") under section 380.06, Florida Statutes. (A copy of Resolution No. 962 is attached hereto as **Exhibit C**.)

Resolution No. 962 sets forth 55 provisions. One of which, again, memorializes the PILOT agreement and the result of the parties' negotiations for the amount of the PILOT:

> 51. In the absence of ad valorem taxes being due and payable by the applicant shall pay to the City an annual fee of $50,000, due and payable on July 1 of each year, beginning July 1, 1989. Such payment shall be used, $25,000 toward a capital acquisition or development for downtown parking and $25,000 for development of a community civic center, for each of the first five years. Said annual amount shall be renegotiated every year, but shall never be less than $50,000.00 per year.

CITY OF FERNANDINA BEACH RESOLUTION NO. 962 ¶51.

Throughout all of the documents establishing, acknowledging, and referencing the PILOT agreement, not a single document provided for a 30 year term, nor that the PILOT agreement would expire at any point.

The construction of the Port Authority project was delayed due to several amendments to Resolution No. 962 (none of which repealed or replaced the PILOT agreement), as well as delays in obtaining permits from state and federal agencies. However, the City's records show, and the Port Authority admits, that the Port Authority made payments pursuant to the PILOT agreement every year since 1993. (A copy of the City's receipts for the Port Authority's payments pursuant to the PILOT agreement is attached hereto as **Exhibit D.**)

However, now, for the first time the Port Authority argues that the PILOT obligation is invalid and unenforceable. Alternatively, the Port Authority argues that the PILOT obligation expires after 30 years. The City disagrees with both positions.

Summary of the City's Position

The PILOT agreement is valid and enforceable, and is not limited to a 30-year term. There is nothing in the PILOT agreement papers or documents indicating that it was for a 30 year term or that it would expire after 30 years. This is an argument the Port Authority has concocted to try to get out of continuing to make the PILOT payments. The Port Authority should uphold their agreement and continue making the PILOT payments. To resolve this matter, the Port Authority should be prepared to make the City whole for any breach.

I. The PILOT Agreement is Valid and Enforceable

There should be no question as to the validity of the parties' PILOT agreement. The Port Authority has admitted its validity on numerous occasions. First, when the PILOT agreement was established and memorialized in Resolution No. 801, the Preliminary Development Agreement,

and Resolution No. 962. Then, when it proceeded to build and construct the Port project pursuant to Resolution No. 962. Further, as it continued to make payments pursuant to the PILOT agreement ever since the Port was constructed in 1993. And, most recently, its 2018 agreement with its port operator.

In its 2018 operating agreement, the Port Authority acknowledged the validity of the PILOT agreement with the City. In passing two years of its PILOT payment obligation through to its port operator, Nassau Terminals LLC (referred to in the agreement as OPERATOR), the Port Authority acknowledged and agreed that the PILOT payments were due annually from the Port Authority to the City pursuant to the resolutions and agreements associated with their DRI:

> Section 6.2 In addition to the foregoing, OPERATOR agrees to contribute to the PORT AUTHORITY the amounts of $50,000.00 in 2019 and $50,000.00 in 2020 toward the annual DRI (Development of Regional Impact) payments due from the PORT AUTHORITY to the City of Fernandina Beach. Such contributions shall be paid by OPERATOR to the PORT AUTHORITY no later than July 31 of 2019 and 2020, respectively.

The operating agreement is a signed admission by the Port Authority that the PILOT obligation is valid. The operating agreement was duly approved by the Port Authority's governing body at a public meeting and executed by the Chairman of the Port Authority. At a minimum, this constitutes a waiver of any argument that the PILOT obligation is invalid and unenforceable as a whole. (A copy of the operating agreement is attached as **Exhibit E.**)

Despite this admission, the Port Authority tries to argue for the first time in this proceeding that the parties' PILOT agreement is "just a resolution." To make such argument not only ignores the 2018 signed admission by the Port Authority that such payments are "due" from the Port Authority to the City, but it also grossly mischaracterizes the plain language of the resolutions and Preliminary Development Agreement, ignores the course and conduct of the parties, and understates the acceptance of the Port Authority in proceeding with the development of the Port.

In the face of such admission, the Port Authority tries to argue that the PILOT agreement is invalid based on section 380.06(4)(b)(1), Florida Statutes, or is otherwise somehow limited to a 30 year term. Both arguments are red herrings.

A. **Section 380.06(4)(b)(1) cannot invalidate the parties' PILOT agreement because it does not apply**

Section 380.06(4)(b)(1), Florida Statutes, was enacted July 1, 1986, to prohibit local governments from conditioning development orders for a DRI on requiring a contribution or payments for land acquisition or construction or expansion of public facilities. 1986 Fla. Laws ch. 86-191. Setting aside the numerous distinctions between this prohibition and the party's PILOT agreement, this statute did not exist at the time the PILOT agreement was established and, therefore, does not apply.

It is well-settled in Florida that the law in effect at the time of an event governs that event. *Meek v. Layne-Western Co.*, 624 So.2d 345 (Fla. 1st DCA 1993); *WFTL Broadcasting v. Rowen*, 480 So.2d 233, 234 (Fla. 1st DCA 1985); *Sullivan v. Mayo*, 121 So.2d 424 (Fla. 1960). Here, the Port Authority entered into a preliminary development agreement – not only with the City but also with the State of Florida's Department of Community Affairs, the state department that governs over DRIs in Florida – specifically governing the DRI project and applying the DRI statute as of April 25, 1986. The development agreement acknowledged and agreed to all conditions in Resolution 801, including the PILOT payments and that the amounts would be negotiated annually. Thus, at the time the DRI statute was applied to the Port project, section 380.06(4)(b)(1) did not exist. Section 380.06(4)(b)(1) was not enacted or effective until July 1, 1986. There is no statement in the statute indicating the Legislature intended the change in law to apply retroactively. Moreover, the inclusion of an effective date in a bill amending a statute conclusively determines the Legislature intended a law to operate only prospectively. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499, *cert. denied*, 540 U.S. 1049 (2003).

The Port Authority, for the first time in the 34 years since the parties first established the PILOT, now claims that it violates section 380.06(4)(b)(1) because the City described what it planned to do with the PILOT agreement funds for the first 5 years in Resolution No. 962. Resolution No. 962 is the resolution which memorialized the PILOT agreement and the result of the parties' negotiations for the amount of the PILOT as set forth in Resolution 801 and the Preliminary Development Agreement. It further prescribed what the City would do with those funds:

> In the absence of ad valorem taxes being due and payable by the applicant shall pay to the City an annual fee of $50,000 due and payable on July 1 of each year, beginning July 1, 1989. Such payment shall be used, $25,000 toward a capital acquisition or development for downtown parking and

> $25,000 for development of a community civic center, for each of the first five years. Said annual amount shall be renegotiated every year, but shall never be less than $50,000 per year.

Setting forth how the City will use the funds from the PILOT for the first 5 years did not impose any new condition on the Port Authority that was not already present, contemplated, and agreed upon as set forth in Resolution 801 and the Preliminary Development Agreement in February and April of 1986. Additionally, memorializing the parties' agreed upon amount, and how the City restricted itself in the use of those funds is wholly outside of the substantive provisions of section 380.06(4)(b)(1).

B. The Port Authority's PILOT payments are not limited to 30 year term

With little support for the argument that the PILOT agreement is invalid, the Port Authority reverts to an alternative argument – that the term is somehow limited to a 30 year term. However, there is no authority supporting the Port Authority's position on this point.

i. There is no 30 year term in the plain language establishing the PILOT agreement

It is well established that when construing PILOT obligations, we must first examine the plain language used by the parties. *See e.g. See City of Largo v. AHF-Bay Fund, LLC,* 215 So. 3d 10 (Fla. 2017). Here, there are at least three writings memorializing the PILOT agreement between the parties: Resolution No. 801, which was incorporated into the Preliminary Development Agreement, and eventually formed the approval for the continuing and existing DRI for the Port Authority as memorialized in Resolution No. 962. There is no term of years for the PILOT agreement in any of the documents establishing the PILOT.

To the contrary, the language in each provides that the PILOT payment is an annual payment and contemplates that it is perpetual as it is being made in lieu of ad valorem taxes, which are due every year, with no such term limitation. Therefore, based on the plain language alone, this argument should fail.

ii. *There is no statutory limitation on the PILOT agreement*

Without plain language to rely on, the Port Authority tries to argue that the statutes governing DRIs and development agreements impose a 30 year limitation. However, there is no such time limitation in the relevant statutes.

First, the statute governing DRIs does not provide any term limitation. *See* §380.06, Fla. Stat.

Second, while the statute governing development agreements includes a 30 year maximum (*see* section 163.3229, Florida Statutes), the effective date of such legislation is July 1, 1986. 1986 Fla. Laws ch. 86-191. The Preliminary Development Agreement is effective April 25, 1986. As discussed *supra*, the law in effect at the time of an event governs that event. *Meek*, 624 So.2d at 345; *WFTL Broadcasting*, 480 So.2d at 234; *Mayo*, 121 So.2d at 424. In short, this statute does not apply to the Preliminary Development Agreement at issue. Moreover, unless certain conditions are met, the 30 year limitation on development agreements does not apply to DRIs with continuing vested rights. *See* §163.3167(5), Fla. Stat.

Finally, each of the Port Authority's arguments ignores the lengthy course of dealings between the parties over more than 30 years.

iii. The parties course of dealings over more than 34 years do not demonstrate any intent to limit the PILOT agreement to a 30 year term

The City and the Port Authority agreed to the PILOT in 1986. Construction of the port was delayed beyond the anticipated start date for the PILOT agreement (July 1, 1989). However, the Port Authority eventually developed the port, and has tendered the PILOT payments every year since 1993.

While in certain circumstances, parties' course of dealings may modify a written contract, here there is no inconsistency between the express written words of the PILOT agreement and the Port Authority's actions. *See Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092 (Fla. 1st DCA 1999). The agreement requires payment without any term end date and the Port Authority has made every payment without any indication to any end term. Even the 2018 operating agreement with the port operator makes no mention of a 30 year term. *See* Section 6.2 *supra.*[1]

[1] The Port Authority may try to argue that the 30 year term is inferred in the operating agreement because it only requires two years of PILOT payments from the operator (2019 and 2020). This self-serving position should be rejected. The Port Authority cannot establish intent as to its PILOT agreement with the City by an agreement with a third party. The City is not a party to the operator agreement, nor is there any relevance in how those parties arrived at the benefit of their bargain that the operator would only pay the amount of the PILOT for two years. If anything, that is a negotiated term between those two parties that has no bearing in the City. Moreover, the dates in the operating agreement do no match up with a 30 year term of the PILOT agreement. The operator agreement requires the operator to pay the PILOT on July 1, 2019 and July 1, 2020. Under

It was not until July or August 2019 when the Port Authority, in the midst of financial trouble, claimed that the PILOT agreement is subject to a 30 year term and payments would end in 2020. In fact, the Port Authority put a condition precedent on making the 2019 PILOT payment by conditioning the payment on a written agreement from the City that 2019 and 2020 would be the final PILOT payments ever made by the Port Authority to the City. The 30-year term argument, as well as the Port Authority's argument that the PILOT agreement is invalid, are not supportable.

Therefore, if the Port Authority wishes to get out of its obligation, it should be prepared to offer to make the City whole. Alternatively, if they wish to renegotiate the PILOT payment amounts, or otherwise negotiate new terms for the PILOT agreement, they should do so in good faith and without trying to bootstrap their position to tenuous legal arguments not supported by authority or the course of dealings between the parties.

Settlement Discussions to Date

The parties have tried to resolve this issue informally. However, those attempts have not been successful. Therefore, the parties initiated the dispute resolution proceedings under chapter 164, Florida Statutes.

Pursuant to chapter 164, a joint public meeting was held on January 27, 2020. The parties did not reach an agreement at the joint public meeting

We look forward to working with you. If you should have any questions, please do not hesitate to contact my office.

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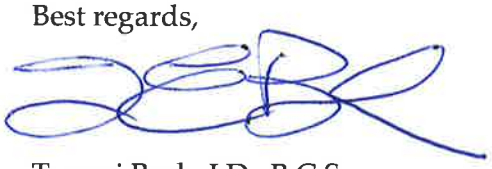
the PILOT, the first payment was due July 1, 1989. If subject to a 30 year term, that would mean the last payment would be 2019. Even going by the date of the first payment which was delayed because development was delayed, that was July 1, 1993. If subject to a 30 year term, that would mean the last payment would be 2023. In short, the fact that the Port Authority has separately agreed and negotiated for its operator to pay two years of its PILOT obligation does not somehow support any 30 year limitation on the PILOT.

Best regards,



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cc: Dale L. Martin, City Manager