

MINUTES OF THE SPECIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS
HELD MAY 7, 1998
(5:31 p.m. - 9:37 p.m.)

Present: Commissioner Michael T. "Mike" Bass, Chairman, District 2
Commissioner Thomas G. "Tom" Banjanin, Vice Chairman, District 4
Commissioner Willie J. Junior, District 3
Commissioner Wilson B. Robertson, District 5
Commissioner D. M. "Mike" Whitehead, District 1
Honorable Ernie Lee Magaha, Clerk of the Circuit Court
Mr. Barry R. Evans, County Administrator
Mr. David G. Tucker, County Attorney
Ms. Marilyn Gingrey, Deputy Clerk to the Board

CALL TO ORDER

Chairman Bass called the Regular Meeting of the Board of County Commissioners to order at 5:31 p.m., in Board Chambers, Third Floor, Escambia County Courthouse, 223 Palafox Place, Pensacola, Florida. He asked Commissioner Junior to lead the invocation and Commissioner Robertson to lead the pledge of allegiance to the Flag.

Chairman Bass welcomed those who were present and also those who were watching the Meeting on cablevision, and said he particularly welcomed those people who were being served by TCI Cablevision who were subscribers in the middle part of Escambia County and were new to the system and new to the availability of viewing the Commission Meetings.

PLANNING AND ZONING REPORT

Chairman Bass advised that it was necessary to pull from the agenda some items scheduled for Public Hearings tonight. He said communication from the Department of Community Affairs (DCA) made it necessary to pull from the agenda the items regarding the Evaluation and Appraisal Report (EAR), which was the 6:35 p.m. Public Hearing and

Item 5 of the Planning and Zoning Report; and also the Perdido Key Agreement which was the 6:36 and 6:37 p.m. Public Hearings and Items 6 and 7 of the Planning and Zoning Report. Chairman Bass said the Board would not be able to vote on these matters, and he requested the County Attorney to provide a more detailed explanation.

County Attorney Tucker advised that the Planning Board had not yet made a recommendation regarding the EAR amendments and a Comprehensive Plan amendment could not be voted on until the Planning Board had made a recommendation. He said until the EAR amendment came before the Board, there was no point in considering the Perdido Key amendments, and he commented briefly.

Chairman Bass asked if a date had been scheduled for the EAR Report to re-appear on the Board's agenda.

County Attorney Tucker said a date for the EAR Report to be placed on the Board's agenda would depend on how quickly the Planning Board made a decision regarding the EAR Report.

Chairman Bass said he apologized to the citizens who were present and had taken the time to attend the Meeting if they were present to discuss any of these items. (Discussion continued later in the Meeting; see Page 97.) (Proposed EAR Report and Exhibit B for Stipulated Settlement Agreement Concerning Perdido Key Amendments Attached and Shown as EXHIBIT "A")

ADOPTION OF THE AGENDA AS PREPARED AND DULY AMENDED

Chairman Bass asked the Commissioners for any items to be added to the agenda.

Commissioner Robertson said his two items to add to the agenda concerned Magnolia Oaks Estates Subdivision and Maple Oaks West Subdivision.

Commissioner Junior said he did not have any items to add to the agenda.

Commissioner Whitehead said his one item to add to the agenda concerned an Emergency Watershed Project for Eight Mile Creek Road.

Commissioner Banjanin said he did not have any items to add to the agenda.

Chairman Bass said his seven (7) items to add to the agenda pertained to an appointment to the Human Relations Commission; the annual requirement contracts for automobiles and light trucks; out-of-County travel to a Florida Association of Counties' conference; a request for vacation of land in Osceola Subdivision; an appointment to the Canvassing Board for 1998; a chiller modification to the M. C. Blanchard Judicial Center Expansion Project; and appointments to the Equity Study Commission.

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, adopting the agenda as prepared and duly amended.

APPROVAL OF MINUTES

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, approving the Minutes of the Regular Board Meeting held on April 9, 1998.

PRESENTATION OF PROCLAMATIONS TO THE EMPLOYEES OF THE MONTH

County Administrator Evans said two County Employees were honored each month by having their names placed on plaques and their photographs hung on the wall in the main entrance to the Court House.

County Administrator Evans proceeded to read the Proclamation commending Mr. Romero after he requested Mr. James Romero to approach the lectern.

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, adopting and presenting a Proclamation to Mr. James Romero, Maintenance Mechanic 1, Facilities Maintenance Division, Facilities Management Department, Community and Administrative Services, as Employee of the Month for May, 1998. (Attached and Shown as EXHIBIT "B-1")

Mr. James Romero said he thanked his supervisors and the Commissioners for this honor.

County Administrator Evans proceeded to read the Proclamation commending Mr. Rigby after he requested Mr. Terry Rigby to approach the lectern.

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, adopting and presenting a Proclamation to Mr. Terry D. Rigby, Heavy Equipment Mechanic, Solid Waste Division, Public Works Department, Public Works and Land Management Agency, as Employee of the Month for May, 1998. (Attached and Shown as EXHIBIT "B-2")

Mr. Terry Rigby said he thanked everyone for the honor.

COUNTY ADMINISTRATOR'S REPORT - County Administrator Barry R. Evans

1.A. Adoption of Proclamation for Osteoporosis Prevention Month

County Administrator Evans requested that Ms. Susan Buckley approach the lectern, and he proceeded to read a Proclamation concerning osteoporosis prevention month.

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, adopting and presenting a Proclamation to Ms. Susan Buckley, Sacred Heart Osteoporosis Center, proclaiming the month of May 1998 as "Osteoporosis Prevention Month" in Escambia County. (Attached and Shown as EXHIBIT "C")

Ms. Susan Buckley said on behalf of the Osteoporosis Center at Sacred Heart Hospital she thanked the Board for its active role in raising community awareness of osteoporosis. (Additional action taken later in the Meeting concerning other items on County Administrator's Report, Item 1; see Page 8.)

WRITTEN COMMUNICATION

Chairman Bass advised that no items had been submitted for the Written Communication portion of the Meeting.

4. Acceptance of Seven Certified Affidavits Establishing Proof of Publication

Upon inquiry from Chairman Bass, Honorable Ernie Lee Magaha, Clerk of the Circuit Court, said the Clerk's Office had received the proofs of publication for tonight's Public Hearings.

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, waiving the reading of the legal advertisements and accepting, for filing with the Board's Minutes, the certified affidavits establishing proof of publication for the following seven (7) Public Hearings on the agenda:

- A. The 5:31 p.m. Public Hearing, advertised in the Pensacola News-Journal on April 7, 1998, for consideration of adopting an Ordinance to amend the Code of Escambia County, creating the Twin Oaks Street Lighting Municipal Service Benefit Unit;
- B. The 6:30 p.m. Public Hearing, advertised in the Pensacola News-Journal on April 20, 1998, for consideration of adopting an Ordinance amending Appendix D, Article 6, of Ordinance Number 96-3, Land Development Code (LDC), as amended, to include rezoning cases **Z-97-57**, **Z-98-14** and **Z-98-19** through **Z-98-27**, which were approved by the Board on May 7, 1998;
- C. The 6:33 p.m. Public Hearing, as advertised in the Pensacola News-Journal on April 25, 1998, for consideration of adopting an Ordinance amending Ordinance Number 96-3, Land Development Code (LDC), as amended, to add Microchip Fabrication as a Permitted Use in the ID-1, Light Industrial Zoning District;
- D. The 6:34 p.m. Public Hearing, as advertised in the Pensacola News-Journal on April 25, 1998, and the amended advertisement on April 30, 1998, for consideration of adopting an Ordinance amending Ordinance Number 96-3, Land Development Code (LDC), as amended, to add Building Height Limits to Pensacola Beach;
- E. The 6:35 p.m. Public Hearing, as advertised in the Pensacola News-Journal on April 25, 1998, for consideration of adopting the Evaluation and Appraisal Report (EAR) of the 1993 Comprehensive Plan;
- F. The 6:36 p.m. Public Hearing, as advertised in the Pensacola News-Journal on April 25, 1998, for consideration of adopting the Perdido Key Compliance Agreement for Comprehensive Plan Amendments 97-1-1 (Perdido Key) and 97-1-3 (Monsanto [n/k/a Solutia] Property Future Lane Use Map designation); and

- G. The 6:37 p.m. Public Hearing, as advertised in the Pensacola News-Journal on April 30, 1998, for consideration of adopting an Ordinance for Comprehensive Plan Amendment 97-1-1 (Perdido Key Future Land Use Category), 97-1-3 (Monsanto [n/k/a Solutia] property Future Land Use Map designation) and 97-1-6 (Capital Improvement Element).

(Attached and Shown as EXHIBIT "D")

ADOPTION OF AN ORDINANCE CREATING TWIN OAKS STREET LIGHTING MSBU

Chairman Bass advised the 5:31 p.m. Public Hearing was for consideration of adopting an Ordinance creating the Twin Oaks Street Lighting Municipal Service Benefit Unit (MSBU). He said there were no speakers.

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, adopting the following Ordinance, relative to the 5:31 p.m. Public Hearing, creating the Twin Oaks Street Lighting Municipal Services Benefit Unit (MSBU) (with the estimated cost per residential lot for the first year being \$23.71):

An Ordinance of Escambia County, Florida, creating the Twin Oaks Street Lighting Municipal Service Benefit Unit for the purpose of providing street lighting within the District; defining the boundaries of said District; providing for the governing of said District by the Board of County Commissioners; providing for legislative findings, authorizing the use of a non-ad valorem special assessment to defray the costs of providing street lighting based on a fair and reasonable apportionment of the cost to specially benefited properties; providing for the use of the uniform method of collection prescribed by Section 197.3632, Florida Statutes; providing for no exemptions to the levy; identifying the duties of the Escambia County Clerk of the Circuit Court, Tax Collector, and Property Appraiser; providing for severability; providing for inclusion in the Code of Ordinances of Escambia County; and providing an effective date.

(Ordinance Number 98-14 Attached and Shown as EXHIBIT "E")

COUNTY ADMINISTRATOR'S REPORT - Continued

1B&C. Ratification of Two Proclamations

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, taking the following action concerning two (2) Proclamations:

- B. Ratifying the Proclamation dated April 24, 1998, proclaiming the week of April 26 - May 3, 1998, as "Soil and Water Stewardship Week" in Escambia County; and
- C. Ratifying the Proclamation dated April 28, 1998, commending and congratulating the Bellview Homemakers Family and Community Educators Club on its 50th Anniversary Celebration.

(Attached and Shown as EXHIBIT "F")

2. Recommendation to Cancel Purchase Order for Installation of Two Bus Lifts at ECAT Dropped from the Agenda

County Administrator Evans said the matter pertaining to the bus lifts could be dropped (action taken later in the Meeting; see Page 9.)

3. Acceptance of Petitions Requesting a Street Lighting MSBU in Mirabelle Subdivision and Scheduling a Public Hearing

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, taking the following action concerning Mirabelle Subdivision (located on the east side of Davis Highway and south of Copter Road):

- A. Accepting, for the official record, (four [4] pages of) signed petitions (from 76% of the 190 properties; 55% is required in accordance with the MSBU Guidelines and Procedures) for the establishment of a Street Lighting Municipal Service Benefit Unit (MSBU) in the Mirabelle Subdivision; and
- B. Scheduling a Public Hearing on June 4, 1998, at 5:35 p.m., to consider the adoption of an Ordinance creating the Mirabelle Street Lighting MSBU.

(Attached and Shown as EXHIBIT "G")

4. Scheduling a Public Hearing Relative to Distribution Formula of Local Option Gas Tax

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, scheduling a Public Hearing on May 26, 1998, at 9:02 a.m., to consider the adoption of an interlocal agreement for the distribution of the Local Option Gas Tax among Escambia County, the City of Pensacola, and the Town of Century (to establish the distribution formula for Fiscal Years 1998-1999 and 1999-2000).

2. Recommendation to Cancel Purchase Order for Installation of Two Bus Lifts at ECAT Dropped from the Agenda - Continued

Commissioner Junior said he understood County Administrator Evans had stated that Item 2 would be dropped and brought back at a later date.

County Administrator Evans said information is incomplete and further work is needed; therefore he recommended dropping from the agenda staff's recommendation to approve canceling Purchase Order Number 703799, dated September 3, 1997, to Auto Equipment Company, Inc., (the sole bidder) for the installation of two (2) Bus Lifts at the Escambia County Area Transit (ECAT) Maintenance Facility per Specification PD 96-97.103 for \$62,920 (approved by the Board on August 26, 1997) due to the failure of the contractor to begin work in a reasonable time (to be funded 100% through a Federal Transit Administration grant utilizing "Toll Revenue Credits" from Florida Department of Transportation).

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, dropping from the agenda, the recommendation concerning the purchase order cancellation regarding the installation of two bus lifts.

COUNTY ATTORNEY'S REPORT - County Attorney David G. Tucker

I. FOR CONSENT

1. Authorization for Injunctive Relief Against Charles B. Lurie for Violation of the Land Development Code

County Attorney Tucker said staff had recommended action be taken regarding a landowner on Highway 29 North who might be trying to sell property to the public that had not been properly subdivided and this created a risk of perpetrating fraud. He said it was certainly violating County Ordinances, and because of the danger to the public, he was asking that his Office be authorized, if necessary and if the facts were determined to support it, to go to Circuit Court for injunctive relief to stop the practice. County Attorney Tucker said normally Code Enforcement would be asked to investigate the matter; however, the Code Enforcement Hearing Officers only had the ability to levy fines, depending on what a person was doing. He said if, in fact, this person was perpetrating the law, he might consider fines for the cost of doing business, and County Attorney Tucker compared the situation to that of Microsoft Corporation and the U. S. Justice Department issuing fines.

Ms. Susan M. Miller, Assistant County Administrator, said staff believed this to be a very serious matter and it appeared there were activities in direct conflict with the Land Development Code (LDC). She said staff believed that stringent action was necessary to stop the landowner's action and a forceful message needed to be sent that the County intended to enforce the provisions of the LDC.

County Administrator Evans said there were people present tonight who might be interested in this matter and therefore he wanted to be sure everyone knew who was the perpetrator.

County Attorney Tucker said his recommendation was for an injunction against Charles B. Lurie, 3450 Highway 29 North, Pensacola, and one of the issues was that not only was he violating the LDC which could normally be handled through Code Enforcement, but the allegation also was that he was handling it in such a way that it might be perpetrating fraud on the public. He said if it was true that fraud was or might be occurring, the grounds would be sufficient to entitle an injunction.

Commissioner Robertson said this was his District and he totally concurred with the proposal, and he confirmed there were people in the audience from the area and that he had received many telephone calls regarding the matter. He asked how long it would take to stop this matter. Commissioner Robertson said he agreed that people were buying property under false pretenses and then were unable to obtain permits, and he again asked how soon the County could stop this illegal activity from happening.

County Attorney Tucker said staff could probably be in court next week; however, it was difficult, as a general rule, to get an injunction to enforce an Ordinance as opposed to a State Statute. He said the County would have to have very compelling evidence to justify why an injunction was needed as opposed to the normal process of going through Code Enforcement and referring matters to a Hearing Officer. County Attorney Tucker said documentation would be acquired from staff to make the evidentiary record. He said once

that happened and staff could determine that the threat and practice was really occurring, it would depend on how soon the case would be brought before a judge, and he commented briefly. County Attorney Tucker said the County would really be in a position to take some action within the next one to two weeks if it was possible to appear before a judge.

Commissioner Robertson said he was concerned that this kind of activity could be happening in any District in the County. He said there were other areas in his District where property had been sold illegally; however, in this case, he said he believed the person really knew of his illegal activity because there had been too many communications with him. Commissioner Robertson said the property could be developed up to a limited number of units per acre and it was necessary to go through the LDC, and he commented briefly. He asked if this kind of activity could be stopped without an injunction and in a more timely fashion than this, and if it was necessary to go before a judge with evidence to stop this illegal practice.

County Attorney Tucker said the activity probably could not be stopped without an injunction. He said even if an administrative stop order were to be issued, someone could continue to violate it. He said the only penalty which the County could impose would be minor fines for the misdemeanors, and brief discussion followed.

Upon inquiry from Commissioner Robertson, Ms. Miller said a Code Enforcement Officer had already attempted to cease the illegal sales, and his warnings were ignored, and brief discussion followed. She said the injunction represented the strongest method of getting the person's attention.

Commissioner Robertson asked if such activities could be stopped immediately until the person went to court to prove otherwise if the County's Ordinances were continually violated.

County Attorney Tucker said staff could issue an order.

Commissioner Robertson said the County should be able to stop the public when staff knew what illegalities were taking place without waiting two to three weeks. He said people were buying properties under false pretenses and would be unable to get permits.

County Attorney Tucker said even if an administrative stop order were issued, someone might decide to pay the penalty if they really wanted to perform these illegal transactions. He said because of the fraud aspect of this activity, staff would also be working with the State Attorney's Office to bring some kind of criminal action to determine if there would be consumer fraud implications which would open up the person to possible felony prosecutions, and the County did not have that authority.

Commissioner Robertson said he would request stopping this situation as quickly as possible with an injunction. He said in the future staff needed a better "cease and desist" mechanism for people who were flagrantly violating the County's laws under the LDC, and he commented briefly.

County Attorney Tucker said it was possible the situation could be handled sooner, but he did not want to give the Board any false expectations, and brief discussion followed.

Motion made by Commissioner Robertson, seconded by Commissioner Whitehead, and carried unanimously, authorizing the County Attorney's Office to seek injunctive relief against Charles B. Lurie, 3450 Highway 29 North, Pensacola, Florida 32533, pursuant to Section 2.06.01 (A) of the Land Development Code, to enjoin and restrain Charles B. Lurie

from any and all violations of the Escambia County Land Development Code, including but not limited to Article 4 concerning the requirements for a large parcel unplatted subdivision.

ITEMS ADDED TO THE AGENDA IN THE MEETING

1. Discussion Concerning Better Enforcement of County Ordinances Referred to May 14, 1998, Public Service Committee Meeting

Chairman Bass said, without objection from the Commissioners, he would suggest that the issue of "cease and desist" be addressed at the Public Service Committee. He said the issue of property being sold under false pretenses; i.e., non-disclosure of zoning restrictions, would be addressed relative to County Ordinances being enforced, and the Public Service Committee could address a more effective method of enforcement, and brief discussion followed.

2. Discussion Concerning Enforcement of Mobile Home Transactions Referred to May 14, 1998, Public Service Committee Meeting

Commissioner Junior said better regulations also needed to be developed regarding mobile homes. He said he would suggest staff create regulations to let people know certain areas were zoned to prohibit mobile homes, and he commented on many telephone calls received from people who had bought mobile homes prior to learning they could not be granted a permit for hookup on their property because of zoning regulations.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, said he and Ms. Janet Lander, Deputy County Attorney, were in the process of working on provisions to deal with mobile home sales and the concern was shared.

Chairman Bass said the legality of mobile home sales and problems created when citizens who have purchased mobile homes were unable to acquire permitting to hook up

the mobile homes would be referred to the May 14, 1998, Public Service Committee Meeting to formulate better provisions to enforce the legality of mobile home transactions.

CLERK OF THE CIRCUIT COURT'S REPORT - Clerk of the Circuit Court
Honorable Ernie Lee Magaha

1. Acceptance of the Investment Report for Month Ended March 31, 1998

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, accepting, for filing with the Board's Minutes, the Investment Report for the month ended March 31, 1998, as prepared by the Office of the Clerk of the Circuit Court. (Attached and Shown as EXHIBIT "H")

2. Acceptance of Oaths of Office for Escambia County Health Facilities Authority Members

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, accepting, for filing with the Board's Minutes, the oaths of office for Escambia County Health Facilities Authority members Vivian A. Huber and Heber Christopher Brooks, Sr., who are filling the unexpired terms of members who have resigned, approved at the March 24, 1998, Regular Board Meeting and whose terms are effective March 25, 1998, through August 21, 2000, and March 25, 1998, through August 21, 2001, respectively. (Attached and Shown as EXHIBIT "I")

3. Approval of Nine Requests for Disposition of Property

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, approving nine (9) Requests for Disposition of Property (other than real estate). (Attached and Shown as EXHIBIT "J")

4. Acceptance of Operational Audits Prepared by State of Florida Auditor General

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, accepting, for filing with the Board's Minutes, the following two (2) Operational Audits as prepared by the State of Florida Auditor General, and as presented by the Office of the Clerk of the Circuit Court:

- A. Operational Audit of the District Board of Trustees, Pensacola Junior College, for the period July 1, 1996, through June 30, 1997, Report No. 13187, dated April 6, 1998; and
- B. Operational Audit of the Office of the Public Defender First Judicial Circuit, for the period January 1, 1997, through December 31, 1997, Report No. 13193, dated April 9, 1998.

(Attached and Shown as EXHIBIT "K")

5. Acceptance of Payroll Expenditures Report as of Payday May 1, 1998

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, accepting, for filing with the Board's Minutes, the Payroll Expenditures Report as of Payday May 1, 1998, in the amount of \$816,683.38, as prepared by the Office of the Clerk of the Circuit Court. (Attached and Shown as EXHIBIT "L")

6. Approval of Correction to February 24, 1998, Regular Board Meeting Minutes

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, approving, at the request of the Clerk of the Board's Office, correcting the Minutes of the February 24, 1998, Regular Board Meeting, Public Service Committee, Consent Agenda, Item I-1, which were approved by the Board on March 24, 1998, to reflect the term for the reappointment of Ms. Rita Riffel as an "At-Large" Member to the Escambia County Board of Adjustment beginning February 27, 1998, through February 26, 2002 (rather than February 26, 2000).

ANNOUNCEMENTS

1. Discussion Concerning Placement on Agenda of Planning and Zoning Report

Chairman Bass said, after brief discussion, that the Planning and Zoning Report would be held later in the Meeting, based on the Board's decision at the April 9, 1998, Board Meeting to not hold Planning and Zoning items until 6:30 p.m., on a permanent basis. (Action taken later in the Meeting; see Page 37.)

ITEMS ADDED TO THE AGENDA - COMMISSIONER WILSON B. ROBERTSON

1. Approval of Final Plat of Magnolia Lake Estates Phase III Subdivision

Motion made by Commissioner Robertson, seconded by Commissioner Junior, and carried unanimously, taking the following action regarding the final plat of Magnolia Lake Estates Phase III (a seventeen-lot development located north of Kingsfield Road; developer: U.I.L. Family Limited Partnership):

- A. Approving the final plat of Magnolia Lake Estates Phase III for recording, subject to final sign-off by the Engineering Department;
 - B. Approving the street name of Youngwood Lane, subject to final sign-off by the County Addressing Office; and
 - C. Accepting the road paving and drainage improvements for permanent County maintenance, subject to final sign-off by the Engineering Department.
2. Discussion Concerning Maple Oaks West Subdivision Referred to May 14, 1998, Public Service Committee Meeting

Commissioner Robertson said residents of the Maple Oaks West Subdivision were not yet present and he requested the matter be held until later in the Meeting concerning Maple Oaks West Subdivision; Developer: Henry Company Homes, Inc. (Action taken later in the Meeting; see Page 33.)

ITEMS ADDED TO THE AGENDA - COMMISSIONER D. M. "MIKE" WHITEHEAD

1. Approval of Project Documents for Eight Mile Creek Drainage Repairs

Motion made by Commissioner Junior, seconded by Commissioner Robertson, and carried unanimously, authorizing the Chairman to sign the "Assurances Relating to Real Property Acquisition" document and any other related documents, for the Eight Mile Creek Drainage Repairs project (with 75% of the cost of the construction, plus design work and contract administration being provided by the Natural Resources Conservation Service), subject to legal sign off. (Attached and Shown as EXHIBIT "M")

ITEMS ADDED TO THE AGENDA - COMMISSIONER MICHAEL T. "MIKE" BASS

1. Confirmation of the Term of Appointment of Mr. James E. Myatt to the Escambia-Pensacola Human Relations Commission

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, taking the following action regarding the appointment of Mr. James E. Myatt to the Escambia-Pensacola Human Relations Commission:

- A. Amending Board action of April 28, 1998, approving the appointment of Mr. Myatt to begin April 29, 1998, through October 31, 1998, instead of August 29, 1998, through October 31, 1998, filling the unexpired term of Ms. Jean Barnett, who resigned; and
- B. Confirming the appointment of Mr. Myatt to a full three-year term effective November 1, 1998, through October 31, 2001.

2. Award of Term Contracts to Four Vendors for Automobiles and Light Trucks

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, awarding term contracts to the following four (4) vendors based on quotations received in accordance with PD 97-98.47, Annual Requirement for Automobiles and Light Trucks, with the Office of Purchasing to issue purchase orders as the instruments of payment for the following twelve (12) vehicles:

- A. Large Mid-Size Vehicle, 4-DR,SDN (FWD) - Orville-Beckford Ford/Mercury;
- B. Large 4-DR, Sedan (RWD) - Orville Beckford Ford/Mercury;
- C. 1/2 Ton Pickup Truck, 4x2 - Hill-Kelly Dodge, Inc., and Key Ford, Inc.;
- D. 1/2 Ton Pickup Truck, 4x4 - Hill-Kelly Dodge, Inc., and Key Ford, Inc.;
- E. 1/2 Ton Pickup Truck, Extended Cab, 4x4 - Orville-Beckford Ford/Mercury;
- F. 3/4 Ton Pickup Truck, 4x2 - Hill-Kelly Dodge, Inc., and Orville-Beckford Ford/Mercury;
- G. One Ton Pickup Truck - Key Ford, Inc.;

- H. Chassis Cab, Single Axle, 15,000 lb., 4x2 - Key Ford, Inc.;
- I. Van, Window, 15-Passenger - Hill-Kelly Dodge, Inc.;
- J. Cargo Van, Type C - Hill-Kelly Dodge, Inc., and Key Ford, Inc.;
- K. Economy Utility Vehicle, 4x2 - Don Dawson Jeep Eagle and Orville-Beckford Ford/Mercury; and
- L. Economy Utility Vehicle, 4x4 - Don Dawson Jeep Eagle and Orville-Beckford Ford/Mercury.

(Attached and Shown as EXHIBIT "N")

3. Approval of Out-of-County Travel for the June 17-19, 1998, Marco Island Association of Counties' 69th Annual Conference & Education Exposition

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, approving out-of-County travel for the County Administrator, County Attorney, and any member of the Commission wishing to attend the Florida Association of Counties' 69th Annual Conference & Education Exposition scheduled for June 17-19, 1998, in Marco Island, Florida.

4. Scheduling of a Public Hearing for Consideration of Vacations of Two Community Playgrounds in the Osceola Subdivision

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, scheduling a Public Hearing for June 23, 1998, at 9:01 a.m. to consider the vacation of two (2) Community Playgrounds located in the Osceola Subdivision (which were not developed because of their limited ingress/egress access routes by road), on the Board's own motion, and described as follows:

- A. Minnehaha Park located north of Cherokee Trail and west of Talladega Trail and east of Block 4; and
- B. A community playground located in Block 9 Plat Bk 1 P 18 Section 14/15 T2S R30W Osceola Country Club Estates.

5. Approval of Appointment of Commissioner Willie J. Junior to Canvassing Board for 1998

Motion made by Commissioner Whitehead, seconded by Commissioner Banjanin, and carried unanimously, approving the appointment of Commissioner Willie J. Junior to the Canvassing Board for 1998 (as Commissioner Bass will be running for reelection in November and has requested Commissioner Junior assume this responsibility for the 1998 Primary and General elections in November as a Commission Appointee).

6. Approval of Change Order to Brown & Root Building Company Contract for M. C. Blanchard Judicial Center Expansion and Renovation

Chairman Bass advised staff's recommendation was that the Board approve the chiller substitution from screw-type to centrifugal (two centrifugal chillers with a higher efficiency than specified in the original request) from Gulfside Mechanical, Inc., for a total cost of \$58,071 plus \$500 for larger equipment pads, and approve issuing Change Order Number 2 to Purchase Order Number 801114, Brown & Root Building Company, (A Division of Brown & Root, Inc., a Delaware Corporation licensed to do business in the State of Florida, in association with DelGallo-Morette, to provide Construction Manager At Risk Services for the Design and Construction Phases for an Addition and Renovation to the M. C. Blanchard Judicial Center, PD 95-96.113) Project Number 97JD003, thus increasing the Guaranteed Maximum Price (GMP) by \$58,571; from \$25,035,153 to \$25,093,724.

Commissioner Robertson advised he would abstain from voting as his company had contracts on this project. He said he would submit the appropriate Memorandum of Voting Conflict form to the Clerk's Office. (Attached and Shown as EXHIBIT "O-1")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried 4-0, approving the recommendation, with Commissioner Robertson abstaining from voting. (Attached and Shown as EXHIBIT "O-2")

7. Approval of Five Appointments to the Equity Study Commission

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, approving the following five (5) appointments to the Equity Study Commission established by the Board on April 28, 1998, (Honorable Matt Langley Bell, III, Tax Collector, requested the Board standardize the system for issuance of business licenses) in accordance with Florida Statutes, Chapter 205.0535 (2), to consider amending the County's Occupational License Taxation Ordinance Number 95-14, as amended by Number 96-15 (Jean Kassab, Director, Administrative Services, has been designated as the staff person to serve on the Commission):

<u>Appointee</u>	<u>Representing</u>
Bill Tibbits 14110 Perdido Key Drive Pensacola, Florida 32507	Commissioner D. M. "Mike" Whitehead
Larry E. Fordham, Sr. 5933 Schofield Drive Pensacola, Florida 32506	Commissioner Michael T. "Mike" Bass
Michael Richardson 10395 McArthur Pensacola, Florida 32534	Commissioner Willie J. Junior
Patrick L. Jackson 9138 Stillbridge Lane Pensacola, Florida 32514	Commissioner Thomas G. Banjanin
Don Barber Commissioner Wilson B. Robertson 5499 Pensacola Boulevard Pensacola, Florida 32505	

PUBLIC FORUM

1. Discussion Concerning Health Insurance Premium Increase and Merit Increases Referred to May 12, 1998, Finance Committee Meeting

Mr. Felton Petty, Highway 297A, Pensacola, said he was a Road Correctional Officer who had been asked to speak on behalf of some employees of the Escambia County Board of County Commissioners to express some concerns.

6:09 A.M. - CHAIRMAN BASS RELINQUISHED THE CHAIR TO VICE CHAIRMAN BANJANIN AND LEFT THE MEETING TEMPORARILY.

Mr. Petty said the employees had received with their paychecks an article concerning insurance premiums, which was FAXed to his Department at 13:26 hours (1:26 p.m.) on the 30th day of April, and the premium change went into effect at midnight that night. Mr. Petty said the insurance premium for family coverage went up \$23.02 per month.

County Administrator Evans said the correct figure was \$11.31 per month rather than the figure Mr. Petty quoted.

Upon inquiry from Mr. Petty, County Administrator Evans said the increased co-pay on prescriptions was accurate.

Mr. Petty said the increase on both generic and name brand prescriptions was over 40%. He said his was not a normal case and he and his wife had thirteen (13) monthly prescriptions to fill, eight of which were brand name prescriptions as generic brands were unavailable. Mr. Petty said approximately \$63 per month for his necessary medications plus the \$11.31, equaled an approximate \$75 increase in his monthly expenses, and he commented briefly about the additional expense. He said he would need at least a 3% increase in pay this year to break even. After additional comments, Mr. Petty said this

increase would be very difficult for some of his fellow employees who were much lower pay grades than he was. He said he had appeared before the Board approximately four or five years ago on the same subject and Commissioner Robertson responded by trying to help the employees, and the employees appreciated that. Mr. Petty requested that the Board try to help the employees at this time.

6:13 P.M. - COMMISSIONER BASS RETURNED TO THE MEETING AND VICE CHAIRMAN BANJANIN RELINQUISHED THE CHAIR TO COMMISSIONER BASS.

Mr. Petty said, concerning another situation, pay raises were given in the form of a merit increase and Cost-of-Living Adjustment (COLA) raises were never given. He said when an employee's merit evaluation was over thirty (30) days late, the employee was told he was not entitled to a retroactive increase, and he commented on the difficulty in being evaluated within the thirty-day time frame. Mr. Petty said that his evaluation, which was due in June, was not received until the middle of July and he lost six weeks of pay to which he had been legally entitled. He said he had filed a grievance and he still did not get a retroactive increase, even though some of his co-workers received an adjustment because their merit increases were late, and he proceeded to display copies of the related documentation. Mr. Petty said some of his co-workers received raises of 5% and it was difficult for him to get a .6% increase, and he commented briefly. He said the employees considered this a serious problem and they did not know what to do about it. Mr. Petty said he understood that, legally, the Board was not supposed to be involved in personnel problems; however, all the legal channels and all the chain of command had been exhausted. He said the employees were asking for the Board's consideration and help.

County Administrator Evans said Mr. Petty had not approached the County Administrator's Office and, basically, had not completed the chain of command. He said he did not know why individual merit increases were or were not given because he did not review every one of them. County Administrator Evans said he was agreeable to discussing the matter with Mr. Petty if he would come to the County Administrator's Office.

Commissioner Whitehead said he had seen some of Mr. Petty's documentation earlier today and had indicated to Mr. Petty that he could not get involved personally in the decision but he would talk about it at this level. He said Mr. Petty raised some points that concerned him; one being the policy regarding the County's supposed inability to retroactively pay to a merit date. Commissioner Whitehead said he had requested the Attorney's Office to pull the applicable Statutes and he said it was his opinion that the County was misinterpreting. He said perhaps the County Attorney would agree that one could pay retroactive to a merit date. Commissioner Whitehead said it was difficult to accept that if, in fact, there was a Florida Statute that regulated merit increases, that an organization with less than 1,000 employees could not perform the employee evaluations on a timely basis. He said that was an indictment of the process and if a merit increase was not processed through payroll in thirty days, there was a problem, and he commented briefly about larger organizations having more efficient procedures. Commissioner Whitehead said the issue should be addressed.

County Administrator Evans said staff had addressed that issue and had taken corrective action. He said the problem, in the past, was that some of the supervisors did not submit the evaluations within the time period and were advised, as he recalled, by the Clerk's Office that one could not go back more than thirty days to pay someone.

Commissioner Whitehead said he believed the Clerk was in error and, again, the opinion from the Attorney's Office today would uphold Mr. Petty's claim, and he had a copy of the Florida Statute which addressed retroactive pay, and he commented briefly about retroactive situations. He said it was incumbent to produce a system that gave the employees their raises within thirty days. Commissioner Whitehead said pay raises should not be overlooked.

County Administrator Evans said some of the salaries were adjusted, as Mr. Petty had indicated, because of the fact that it was not the employees' fault.

Commissioner Whitehead said he had viewed some of the documentation that showed merits ranging from 4.5% to over 5% and there was no indication that they were one-time raises. He said it was not a merit bonus but an increase in the annual rate. Commissioner Whitehead said if the attempt was to pay back \$100, \$200, or even \$500, the solution was not a .5% increase that went on forever. Commissioner Whitehead said that meant paying an employee \$10,000 to \$12,000 to compensate for a \$500 mistake, and that was also not an appropriate response.

Commissioner Whitehead said not only was this a serious problem, but it was also a morale issue. He said it was very difficult to justify this situation to the public when an employee stated on a televised meeting that the County was three to four months late in processing a merit increase. He said that type of leniency was not offered to the public and if tax bills were not paid on time, a penalty was charged the taxpayers, and he commented briefly regarding the misgivings of the process and the seriousness of the situation.

Commissioner Whitehead said concerning the increase in the employee insurance rate relative to married couples, both working for the County, with family coverage, their

premium increased from approximately \$60 per month to \$170 per month, with no notice, and it had been verified that apparently the County erred. He said he never would have supported a change in policy that would deduct another \$170 from an employee's paycheck. Commissioner Whitehead said the Board should seriously examine this situation, as there were approximately nine families affected by the policy. He said he did not have a problem with married couples paying the full amount, just as all other County employees did; however, a drastic change of that nature should be structured by tiering and phasing it out, and brief discussion followed.

Motion made by Commissioner Junior to send the matter to Finance Committee.

Motion seconded by Commissioner Whitehead.

Commissioner Banjanin suggested the motion include the increased cost for prescription medications.

Commissioner Robertson said a few years ago the County went to the merit system rather than providing a COLA raise. He said this was inequitable because sometimes a new employee would be hired at the same salary as someone who had been employed by the County for ten to fifteen years. He said the Board needed to address merit raises versus COLA increases.

Ms. Jean A. Kassab, Director, Administrative Services, said new employees hiring in at the same pay grade and salary as long-time employees was a Civil Service Board problem and was not under the control of the Board. She said the problem was caused by the way in which the pay changes had been made for different grades and classes when the Wage and Classification Study by Slavin Management Consultants, Inc. (formerly Slavin, Nevins & Associates, Inc.), was performed in 1995, and she gave examples of the

decisions made by the Civil Service Board. Ms. Kassab said the pay change had occurred in 1996.

Commissioner Robertson said there should be an equitable solution regarding this Civil Service Board action and a committee should address the situation, and he commented briefly. He said it was unfair to have a new employee make as much money as someone who had worked for the County for fifteen years because there was not an incentive, then, for employees to stay.

Ms. Kassab said the problem at the time was the cost of approximately \$1.8 million to implement the pay plan as it was. She said adjusting all the incumbents' pay grades and classifications would have been astronomical and the Board could not afford that kind of a cost impact, nor could the other entities involved in Civil Service pay scales have afforded the cost.

Commissioner Whitehead said the County spent approximately six months working with employee groups who studied the issue, and it was extremely expensive. He said Ms. Kassab was correct that the adjustment cost was almost \$2 million. He said it would have been equivalent to a tax increase to do what Commissioner Robertson was suggesting and there was no support on the Board for that, nor did he believe there would be such support at this time, and he commented briefly, comparing the minor difference in the pay scale for Commissioner Robertson to hire a new painter in his business as opposed to a painter that had been with his company for many years and had experience. Commissioner Whitehead said there was a basic set of requirements for a newly-hired employee and for the employee of many years standing, and the Civil Service Board

essentially compressed the County's pay scale to the point of causing this problem, and he continued to comment briefly.

Commissioner Robertson said he did not operate his business that way and could not keep good employees if he hired a new employee at the same pay scale as a long-time employee. He said he would certainly reward someone who had been employed with his company for fifteen years. Commissioner Robertson said there must be a way for longevity to have meaning.

County Administrator Evans said a long-time employee would have been receiving a longevity increase even though the base pay would be the same.

Chairman Bass said the easiest and cheapest move for the Board of County Commissioners at that time would have been to do nothing, and then incoming employees at the base level would receive lower than wage rates in the Escambia County area. He said the Board was attempting to meet competitive, incoming wage rates.

Commissioner Whitehead said he concurred, and discussion followed.

Commissioner Banjanin said he had heard the same concerns and it was his opinion the Board should address the merit situation because certain people get raises and others do not. He said this caused disgruntled employees and he would suggest that a COLA increase be given alternately, on an annual basis, with merit increases. Commissioner Banjanin said it was important for employees to be able to handle the increase in the cost of living, and he commented on other related situations concerning employees.

Commissioner Robertson said he would suggest that Finance Committee address this issue also.

Commissioner Robertson said merit raises were usually subjective and could sometimes be granted through the “good ole buddy” system. He said some people performed just as well as others but were perhaps not intimate enough in their relationships with fellow employees or their supervisors to allow someone to know them and give them an accurate evaluation. Commissioner Robertson said he wanted fairness and he wanted the employees to be able to keep up with the cost of living.

Chairman Bass said, without objection, this would be addressed at budget time.

Commissioner Whitehead said budget and Finance Committee were intertwined and that would be agreeable to him.

Ms. Kassab said a letter had been sent to the married couples regarding the premium increase for health insurance. She said it might not have been adequate time to make an adjustment; however, a letter was sent to notify them of the increase.

Ms. Kassab said regarding the co-pay increase on prescription drugs, one of the reasons the County was able to keep the increase at the 8.3% level that had already been negotiated with Blue Cross, including a signed contract, was because of the increase in the co-pays for prescription drugs. She said the only way to re-address the co-pays for prescription drugs would be to request Blue Cross to re-open the negotiations, and it was her opinion that would not be advisable.

Ms. Kassab said staff would encourage employees to utilize the three-month, mail-in prescription plan because there was a savings of nearly one month’s worth of co-pays. She said extensive negotiations had taken place this year to find parity between departments, to determine how evaluations were performed, and to maintain consistency in how merits were awarded. Ms. Kassab said part of the money set aside this year for

merits had been identified for the incentive bonuses, and those bonuses had been coming through the evaluation process and were being awarded. She said there was a proposal in next year's budget to return the merit to 3% and have the bonus/incentive program in addition to that.

Chairman Bass said all of the items would be placed on the Finance Committee Meeting agenda for Tuesday, May 12, 1998.

After comments from Mr. Petty, Chairman Bass suggested that Mr. Petty share his documented information with Commissioner Whitehead's Office.

2. Discussion Concerning Perdido Key Settlement Agreement and the EAR Report

Mr. Frank Montenes said he was representing the Escambia County Citizens Coalition (ECCC). He said the ECCC was fully aware of the time relationship between the Evaluation and Appraisal Report (EAR) Amendment (the 6:35 p.m. Public Hearing) and the Perdido Key Settlement Agreement (the 6:36 p.m. Public Hearing). Mr. Montenes said the Board had been in the process of gathering additional data on April 9th (April 9, 1998, Regular Board Meeting) and in the thirty days since that time much progress had been made, and most of the Commissioners had the data package with the letter from the Department of Community Affairs (DCA) dated May 5, 1998. He said there were about thirteen (13) issues that would reconcile the Settlement Agreement on the Perdido Key plan and it was his opinion most of the thirteen items were consistent with the County's basic policies, goals and objectives. Mr. Montenes said progress had been made and his suggestion, on behalf of the intervenors, was that both the Commissioners and the County Attorney meet with the intervenors to resolve the DCA issues regarding the Perdido Key Agreement.

Upon inquiry from Commissioner Whitehead, Mr. Montenes said he was, in fact, representing the Escambia County Citizens Coalition (ECCC).

Commissioner Whitehead asked if citizens were not permitted to join.

Mr. Montenes said certain citizens were more qualified than other citizens to join the ECCC.

Commissioner Whitehead said the ECCC did not seem to be open to the “good old” taxpaying citizen of Escambia County, and the organization had a selection process to screen out certain individuals.

Mr. Montenes said there had been a similar request from the Home Builders Association of West Florida, Inc., and the ECCC believed there would have been a compatibility problem in terms of some of the goals and issues for which the Home Builders were striving, and he commented briefly.

Commissioner Whitehead said the ECCC, then, represented only a portion of the citizens and not all of the citizens, and it seemed that the citizens who had similar interests to Mr. Montenes’ interests were eligible for membership.

Mr. Montenes said the ECCC had gladly offered a group membership to the Commissioners as a whole; however, there would be a matter of compatibility for the individual Commissioners.

Commissioner Whitehead said the ECCC would not allow him to become a member because his interests were not the same as the ECCC’s interests; however, it was called a “citizens’ committee” and he assumed he was a citizen, and brief discussion followed.

ITEMS ADDED TO THE AGENDA - COMMISSIONER ROBERTSON - Continued

2. Discussion Concerning Maple Oaks West Subdivision Referred to May 14, 1998, Public Service Committee Meeting - Continued

Commissioner Robertson said there had been discussion at an on-site meeting regarding the existing and proposed traffic congestion in the already-existing Maple Oaks Subdivision and the future Maple Oaks West Subdivision; developer, Henry Company Homes, Inc., with the developer agreeing to place \$22,000 in escrow towards the construction of improvements to address the traffic concerns. He said some of the representatives were now present and he would recommend that the matter be referred to the Public Service Committee meeting on May 14, 1998.

Commissioner Robertson said some of the concerns were drainage, the traffic, one ingress/egress route and the fact that the new Maple Oaks West Subdivision would be 300 to 400 units and backed up and bordered the CSX railroad, with no railroad crossing, other than the one on Ten Mile Road. He said he could not answer all of the questions and he requested some of the representatives who were present to speak. Commissioner Robertson said he was confident that the drainage issue could be handled, and an Escambia District School Board member had attended the meeting and stated the school concurrency element had to be in compliance, and he wanted that situation addressed also at the Public Service Committee Meeting.

Commissioner Junior said that until all the problems could be resolved, a moratorium would be an excellent idea.

Mr. Carl Whitson, III, Tara Dawn Circle, said the homeowners had met yesterday and Commissioner Robertson was also present at the meeting, as well as the County's Traffic Engineer, Mike Orr, who answered many questions. He said a lot of concerns were aired.

and the main issue was the traffic. Mr. Whitson said there was not a problem with the developer, but a problem with the planning and there were key issues that had not been addressed. He said, for instance, the residents would like the County to propose a crossing over the CSX Railroad tracks, and Mr. Orr explained that it was a difficult process. Mr. Whitson said, nevertheless, the residents would like an attempt made and if it was not possible, perhaps the traffic could flow to East Roberts Road, and he commented regarding property that was for sale and would accommodate the situation although it was not that feasible of a solution.

Mr. Whitson said it was determined at yesterday's meeting that there were no traffic standards for the neighborhoods and that needed to change. He said he did not know if Ten Mile Road could handle another 1,400 trips, and he commented briefly. Mr. Whitson said of the 329-lot proposed subdivision, thirteen of the lots would have four-unit townhouses.

Mr. Whitson said that Betmark Road had been acknowledged as another road; however, it was never intended to be an entrance nor an exit to the Maple Oaks neighborhood, as it existed. He said Commissioner Whitehead had pointed out at the last Board of County Commissioners Meeting on April 28, 1998, that Betmark Road was a small lane located behind Ashton Brosnahan Park and was not really a road.

Mr. Whitson said there were also concerns that County regulations were not being followed. He said permits had been issued without regard to the impact that had already been incurred. Mr. Whitson said there did not seem to be a plan in place that was either adequate or realistic, and he commented briefly. He said there was a four-way stop sign

at the corner of Palafox, where it became Highway 95A, and there was a short distance to Highway 29 where traffic already backed up at the traffic light.

Chairman Bass said the Board was referring this matter, as requested by Commissioner Robertson, to next Thursday's Public Service Committee Meeting at 9:00 a.m. He said perhaps some progress on these substantive issues could be made at that time.

Motion made by Commissioner Robertson to send the matter to Public Service Committee. He said he would request all parties be present at that Meeting.

Ms. Cindy Anderson, County Engineer, said she had already talked to the developer and the engineer and they would both be present at the Public Service Committee. She said both of them were already working with the County and it appeared there was resolution, at least in concept.

Commissioner Robertson asked if someone from the District School Board could be present also. He said the School Board representative from District 5 had stated that schooling was a part of concurrency. Commissioner Robertson said if schooling was not part of concurrency, the County could not hold the developer to it.

Motion seconded by Commissioner Whitehead, and carried unanimously, referring to the Public Service Committee Meeting on May 14, 1998, at 9:00 a.m. the discussion concerning the proposed 300 to 400-unit Maple Oaks West Subdivision; developer, Henry Company Homes, Inc., to resolve some of the substantive issues concerning the anticipated increase in traffic because of one ingress/egress road and compliance with the school concurrency element. (Discussed held earlier in the Meeting; see Page 18.)

PLANNING AND ZONING REPORT - Stephen H. Pitkin, Chief,
Planning and Zoning Division

1. Actions Taken Concerning Rezoning Case **Z-97-57**, **Z-98-14**, and **Z-98-19** Through **Z-98-27** and **Z-98-30**

Chairman Bass said the first item was Case **Z-97-57**, heard by the Rezoning Hearing Examiner on March 11, 1998, and was a request to change from a R-2, Single Family District (Low Medium Density) zoning to C-2, General Commercial District zoning. He said the Rezoning Hearing Examiner recommended denial of the request, and he called upon the speakers.

Mr. Edd H. Mayo, Klinger Street, said he lived in the Ferry Pass area of Escambia County and was present on behalf of Mr. and Mrs. Bernard Chavers regarding the rezoning request. He said even though the property was zoned as residential, several of the property owners had larger parcels, and some businesses grandfathered in were located on the east, west and north sides of the Chavers' property. Mr. Mayo said his acreage was surrounded by the Escambia County Fire Department and by West Florida Hospital, and he did not believe it was fair that the property owners with large parcels should be surrounded by businesses because the property owners with larger parcels paid higher taxes than other people in the neighborhood with smaller lots. He said the landowners with the larger acreages could only use the land for residential use and it was difficult to get buyers. Mr. Mayo said he requested the Chavers' property be rezoned, as requested.

Chairman Bass said he would remind the speakers that the Board of County Commissioners operated under a Florida Supreme Court decision in which the Commissioners must discuss only the record that was heard by the Rezoning Hearing

Examiner, and each Commissioner had a transcript of that record. He said the Commissioners must adhere to the evidence presented at the Hearing and new evidence should not be considered.

Ms. Lillie Merle Chavers said she lived on Quail Hollow Court.

Mr. Bernard Chavers said he also lived at the same address.

Ms. Chavers said she and her husband did not realize all the uses allowed in a C-2 designation when they first came before the Commission to request C-2, General Commercial District zoning. She said they had then asked the Board of County Commissioners to remand the case to the Planning Board and it had been remanded. Ms. Chavers said she and her husband then requested C-1, Retail Commercial District.

Ms. Chavers said the property was located approximately 1,000 feet east of Davis Highway and 1,000 feet south of Johnson Avenue and the property to the east was zoned R-5, Urban Residential/Limited Office District, High Density, and approximately 200 feet from the front of their property was C-1, Retail Commercial District zoning, which was the West Florida Regional Hospital parking lot. She said there was a vacant office building located directly across the street and numerous mobile homes, set in among single-family residences and located up and down the street were mostly being occupied as rental property. Ms. Chavers said the Future Land Use Map had designated this area as MU-1 which allowed multiple uses. She said, therefore, their rezoning request to C-1 was consistent with the Future Land Use Map portion of the Comprehensive Plan of Escambia County, and commercial activity within this area was allowed. Ms. Chavers said there was not a conflict with the Land Development Code of Escambia County and a rezoning to C-1 would prevent urban sprawl by allowing commercial activity to be contained

within the urban core of Escambia County. She said C-1 zoning would enhance the Comprehensive Plan and the Future Land Use Map by reducing the number of average daily trips if commercial activities were confined within a commercial area, and she commented briefly, referencing other pertinent facts concerning other commercial activity within the area.

Mr. Chavers said he agreed with Ms. Chavers' request for C-1 zoning because the property consisted of one and one-half acres, and he commented briefly.

Mr. Ernest Schwind, East Burgess Road, said he owned rental properties on Binkley Street which consisted of six mobile homes and two rental houses. He said he also managed two properties on Binkley Street which consisted of five mobile homes and one rental house. Mr. Schwind said he was in favor of the zoning change which would allow more flexibility with his investments. He said under the current R-2, Single Family District, Low Medium Density, zoning, he could not add additional units, and he commented briefly.

Commissioner Robertson said it seemed the speakers were under the impression that the whole area was being rezoned; whereas, only the Chavers had requested a rezoning change.

Mr. Schwind said he bordered the Chavers' property and if that rezoned the whole street, he was in favor of it.

Commissioner Robertson said there was one parcel for which the zoning change had been requested which was located in the middle of the other properties mentioned. He said there was no guarantee that any other property would have its zoning changed.

Mr. Schwind said it was his understanding that the whole street might be rezoned.

Commissioner Robertson said that was not the manner in which rezoning was accomplished, and if C-1 zoning was granted for this parcel, some very extensive development was acceptable under a C-1 zoning. He asked how the people present would react if loud music and loud commercial activity were to take place on the Chavers' parcel when the other parcels would still be residentially zoned. Commissioner Robertson said, again, there was no guarantee other property owners could be granted a zoning change.

Mr. Schwind said it was his understanding the whole street would be rezoned.

Commissioner Robertson said C-1 zoning was very intense; whereas, R-6, Residential Neighborhood Commercial District, High Density, zoning was a combination of residential/small impact commercial which provided services for neighborhood-type businesses; however, a C-1 zoning could include a whole shopping center or a bar or a lounge.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, said bars or lounges would have to have conditional approval, and discussion followed.

Chairman Bass asked Mr. Pitkin to review why the Rezoning Hearing Examiner recommended against the petition.

Mr. Pitkin said the ruling by the Rezoning Hearing Examiner was against the petition because the land was completely surrounded by residential zoning except for the vacant non-conforming office building across the street from the subject property. He said staff recommended R-6, Residential Neighborhood Commercial District, High Density, zoning and the applicant did not express interest in R-6 zoning and wanted to pursue C-1 zoning.

Chairman Bass called on Mr. Bobby Pardue to speak.

Ms. Chavers said Mr. Pardue had not spoken at the last meeting and was therefore not eligible to speak tonight.

Mr. Pardue disagreed and said he had spoken at the last meeting.

Chairman Bass requested Mr. Pardue to give his name and address for the record.

Mr. Bobby Pardue said he represented the Grissets who lived on Lawton Street and he had been present to represent them at the last meeting. He said he was not well prepared tonight because he and others were unaware of this meeting and had expected to receive a letter when the Chavers' request was to be addressed again. Mr. Pardue said he understood the request had been sent back to the Planning Board and a notice by letter was not required. He said he and some seven or eight other property owners happened to see the Hearing advertised in the local newspaper and therefore they were present.

Mr. Pardue said it was a few months ago that the Commissioners decided this property should not be zoned commercial, and he commented briefly. He said the property was located deep inside a neighborhood and was not located on a main thoroughfare nor was it located on a road that serviced other businesses but it was in a neighborhood where children played and people lived. Mr. Pardue said the roads in the neighborhood were narrow and unsafe for any type of commercial traffic, and there were drainage problems in the area and yards as well as streets flooded.

County Attorney Tucker said he did not find Mr. Pardue's remarks in the transcript before the Board and although Mr. Pardue had a right to argue for the correctness or incorrectness of the Rezoning Hearing Examiner's decision to the extent Mr. Pardue was testifying, this evidence was not in the transcript and was therefore not admissible.

Mr. Pardue said he discussed this at the original hearing.

County Attorney Tucker said the Rezoning Hearing Examiner's decision from the original hearing had been remanded and subsequently the Rezoning Hearing Examiner conducted a new hearing and this hearing tonight was a new and different hearing.

Mr. Pardue said the surrounding residents were unaware of the second hearing, and brief discussion followed regarding the fact that the Commissioners had ruled on the original hearing and remanded it for a new evidentiary hearing and more evidence had been taken.

County Attorney Tucker said the proper people were, in fact, given notice and anyone who testified at the first hearing was not required to be given notice of the second hearing, and he commented briefly. He said one was not required to get notice just to testify and that was why public notice was provided, and only people who lived within a certain radius of the requested zoning change were entitled to get notice.

Commissioner Junior said the notices would only be sent to the affected parties, and Mr. Pardue was not an affected party but representing someone, and brief discussion followed in which it was stated the Grissets owned the property directly behind the Chavers.

County Attorney Tucker said that was his understanding also, and the Grissets should have received notice.

Mr. Pardue said the Grissets had not received notice nor had several other adjacent property owners who were present tonight.

Mr. Paul Miller, Planner I, said the procedure on remanded cases dictated that the actual applicants were the only ones required to receive notice and the other advertising action of the hearing was the newspaper article in the local newspaper and the sign posted

on the property. He said the 500-foot arc letters were not re-issued as in the first action, and discussion followed regarding the faults of the system and that it needed change.

County Attorney Tucker said, from a legal standpoint, the Board could adopt whatever notice provisions it believed necessary; however, it was the same as when the Board continued Public Hearings to another meeting in that there was a question of what notice was sufficient. He said the Ordinance provided that the property of the affected party be posted, and posting the property had been considered sufficient notice for code enforcement violations. County Attorney Tucker said, again, that was a policy decision of the Board.

Commissioner Banjanin said a policy was needed if cases were remanded to the Rezoning Hearing Examiner for another hearing, and the people originally involved should be notified out of fairness, and he commented briefly.

Chairman Bass said a point had been raised that needed refining and it would be referred to Public Service Committee.

Commissioner Robertson said it appeared that even if the residents who were opposed were not notified, the Rezoning Hearing Examiner ruled against the requested change and therefore must have heard enough evidence, and he commented briefly. He asked if the petitioners had been offered R-6 zoning and did not accept that.

Mr. Pitkin said staff had recommended R-6 zoning.

Commissioner Robertson said R-6 would be more suitable and he asked if evidence regarding R-6 had been presented and could be used and considered at this point, if the petitioners and neighbors were acceptable to that.

County Attorney Tucker said he believed that R-6 zoning could be considered.

Commissioner Robertson said R-6 would be more appropriate for the neighborhood.

Chairman Bass said he did not see any reference to R-6 zoning in the record.

Commissioner Robertson said in the very beginning of the record (transcript) it referred to the Board of County Commissioners upholding the Rezoning Hearing Examiner's recommendation and that the case was remanded for consideration of rezoning to C-1, Retail Commercial District or R-6, Residential Neighborhood Commercial District, High Density, and therefore he assumed that was considered at the hearing.

After brief discussion, Commissioner Robertson said it clearly stated R-6 and it was at that point he became confused because it appeared to him consideration had been given to "either/or" which was not the typical method for consideration. He asked against what the Rezoning Hearing Examiner had ruled.

County Attorney Tucker said the Rezoning Hearing Examiner denied the request for C-1 zoning and that was based on a report that the applicant had rejected consideration of an R-6 zoning.

Chairman Bass said Commissioner Robertson was correct because on Page 15 of the testimony Mr. Pitkin discussed R-6 zoning as a zoning that staff could support and that it was consistent with the Comprehensive Plan.

Commissioner Robertson asked Mr. Pitkin if he would agree with Ms. Chavers' earlier statement that C-1 zoning was consistent with the County's Comprehensive Plan.

Mr. Pitkin said C-1 zoning was inconsistent with the character of that neighborhood. He said R-6 zoning would be consistent but C-1 zoning was incompatible with the character of the neighborhood.

Chairman Bass said that Mr. Pitkin clearly had stated in the record, on Page 16, that C-1 zoning was inconsistent with the neighborhood.

Upon inquiry from Mr. Pardue regarding whether or not he could speak, County Attorney Tucker said Mr. Pardue could certainly argue to the correctness or incorrectness of the Rezoning Hearing Examiner's recommendation.

Mr. Pardue said he would request the C-1 zoning be denied as it would destroy the neighborhood.

Mr. Jon N. Williams, Lawton Road, said he also lived in the subject neighborhood and had witnessed the drainage problems as well as other problems. He said a rezoning to C-1 would add to the existing problems and would ruin the real estate values in the neighborhood and he requested the rezoning be denied. He said a C-1 zoning would help the Chavers only and no one else would benefit.

Chairman Bass said Mr. and Mrs. Chavers would make the closing statement.

Ms. Chavers asked if the Board said an R-6 was acceptable zoning.

After Chairman Bass said that County Attorney Tucker had answered in the affirmative that an R-6 would be acceptable, Mr. Pitkin concurred and said R-6 zoning would make sense from a land use standpoint.

Chairman Bass said that statement was in the record (transcript).

Ms. Chavers said if the Board would give her R-6, she would take R-6.

After brief discussion, Commissioner Banjanin said the point that the Chavers would accept R-6 zoning was a new factor and he asked if the Board could call upon the people who were opposed to C-1 zoning to determine if they would be agreeable to an R-6 zoning.

Ms. Chavers said the property behind her property was zoned R-5, and after brief discussion, Ms. Chavers said some of the neighbors behind her property had not seen the notice that had been posted because it had been posted on Binkley Street and the people who were present tonight lived on Lawton Street.

County Attorney Tucker said the Case could be remanded to the Rezoning Hearing Examiner with the request for R-6 zoning. He said if C-1 zoning were to be denied and the applicant appealed the denial, it could be resolved and could come back for an R-6 zoning. County Attorney Tucker said the Board could listen to the people present who wished to address an R-6 zoning or the Board could remand the Case to the Planning Board.

Motion made by Commissioner Whitehead that the Board uphold the Rezoning Hearing Examiner's decision to deny the request for C-1 zoning. He said the appropriate forum for this type of conversation would be at the Planning Board level and not at this Board. Commissioner Whitehead said if the Chavers wished to reapply, the opportunity had been offered to the Chavers to go with R-6 zoning and they had rejected that opportunity at the time it was made, and therefore it was incumbent upon the Commissioners to uphold the Rezoning Hearing Examiner's findings.

Motion seconded by Commissioner Junior.

Ms. Chavers said this Board had just told her that she could have R-6 zoning and she asked why was it being remanded to the Planning Board.

Commissioner Whitehead said the Chavers were being denied C-1 zoning. He said he assumed the R-6 zoning could be negotiated at this point; however, he was unwilling to turn the Rezoning Hearing Examiner's hearing into a farce and conduct negotiations for an R-6 zoning at this time because that would be inappropriate and that is why the County

had a Planning Board. Commissioner Whitehead said the Chavers should have taken the R-6 zoning when it was offered and the only recourse now was to go back through the process.

Mr. Chavers said when she had come to the Planning Board previously for the C-1 zoning, no one had objected to it.

Commissioner Whitehead said he would have objected to C-1 zoning and the Rezoning Hearing Examiner also objected to it. He said he did not believe C-1 zoning was appropriate for that subdivision and that, along with the neighbors objecting, was the issue. Commissioner Whitehead said it would be poor planning.

Ms. Chavers said the hospital parking lot was C-1 zoning within 200 feet of her property.

Commissioner Whitehead said that was almost a full city block from her property, and he had driven through the neighborhood and was aware of the layout.

Ms. Chavers said the next door neighbors and the neighbors across the street all agreed to C-1 zoning.

Commissioner Whitehead said, again, it would not be good planning and if the Chavers wished to come back and apply for R-6 zoning, that was fine.

Upon inquiry from Ms. Chavers regarding when they could re-apply, Chairman Bass said the Chavers could re-apply for R-6 zoning tomorrow.

There being no further discussion, Chairman Bass called for the question, and the motion carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and denying Case **Z-97-57**, as follows:

Case Number: **Z-97-57**

Location: Section 17, Township 1 South, Range 30 West
Parcel Number: 2100-000-000 (8348 Binkley Street)
From: R-2, Single Family District (Low Medium Density)
To: C-2, General Commercial District (Note: The case was remanded from the Board of County Commissioners at its January 8, 1998, Meeting, at the request of the owner, for consideration of rezoning to C-1, Retail Commercial District or R-6, Residential Neighborhood Commercial District (High Density), and the Rezoning Hearing Examiner subsequently denied both of those zonings at the March 11, 1998.)

Requested by: Tim H. Booker, Agent for Bernard S. and Lillie Merle Chavers, Owners

(Order Attached and Shown as EXHIBIT "P")

Mr. Pardue asked if the neighbors would receive notices this time.

County Attorney Tucker said since this would be the original application, anyone within the radius described in the applicable Ordinance would receive notification.

ITEMS ADDED TO THE AGENDA IN THE MEETING - Continued

3. Discussion Referred to Public Service Committee Concerning Appropriate Notification of Adjacent Landowners Concerning Rezoning Hearings

Chairman Bass said the discussion concerning proper notification to adjacent landowners regarding cases that have been remanded and brought back to the Board of County Commissioners would be referred to the Public Service Committee Meeting to address the policy concerning notification. He said at the present time, adjacent landowners only were notified for the original Hearing and the 250-foot arc notification was not applicable for any additional hearings.

PLANNING AND ZONING REPORT - Continued

1. Actions Taken Concerning Rezoning Cases **Z-97-57**, **Z-98-14**, and **Z-98-19** through **Z-98-27** and **Z-98-30** - Continued

Chairman Bass said the Rezoning Hearing Examiner's recommendation concerning Case **Z-98-14** was denial of a rezoning to a V-2, Villages Single Family (Residential - Medium Density) District, and approval of rezoning a portion of the property currently zoned VR-1, Villages Rural District, to V-1, Village Single Family District. He said there were several speakers and he called upon Mr. Fleming. Chairman Bass asked Mr. Fleming to follow the record and the testimony that had been given during the March 18, 1998, Rezoning Hearing Examiner hearing.

7:16 P.M. - CHAIRMAN BASS LEFT THE MEETING TEMPORARILY AND RELINQUISHED THE CHAIR TO VICE CHAIRMAN BANJANIN.

Mr. Ed Fleming said he represented Don C. and Louise P. Morris, the applicants. He said the subject property is a forty-acre parcel located north of the intersection of (State Road) Highway 297A and (County Road) Highway 97 and one mile west of the Milestone

Development on Nine Mile Road. Mr. Fleming said the Commissioners had the documentation and were probably familiar with the area.

Mr. Fleming said the parcel was essentially landlocked and was surrounded on three sides by parcels ranging from three-quarter acre parcels to two-acre parcels and was across the street from property zoned R-3, One and Two Family District, Medium Density, which was a much higher density than the density being requested and that fully developed subdivision had one-quarter and one-third acre lots. He said this subdivision was within the radius of the area addressed for purposes of determining whether or not the property was compatible with the existing uses. Mr. Fleming said all factors required to be examined in the process of changing a zoning were favorable for a zoning change, with the exception of staff stating that the one factor that mitigated against changing the zoning was compatibility with existing uses. He said, unlike the former parcel before the Board, his clients were not asking to place a commercial establishment in a residential area but were asking to change a requirement from one-acre lots to half-acre lots, for purposes of developing a landlocked parcel into a subdivision. Mr. Fleming said the property presently was zoned for residential use; it would continue to be used for residential use; and the only change would be from one-acre lots to half-acre lots.

7:18 P.M. - COMMISSIONER BASS RETURNED TO THE MEETING AND VICE CHAIRMAN BANJANIN RELINQUISHED THE CHAIR TO COMMISSIONER BASS.

Mr. Fleming said, after brief comments, it had been said that zoning was made for purposes of protecting and enhancing the use of property and not destroying the value of the property. He said approximately \$700,000 worth of private capital infrastructure would be needed to develop this landlocked parcel into a subdivision. Mr. Fleming said by

keeping the parcels as one-acre lots, which was a rather large size lot for a subdivision, the cost per lot would effectively double, as the evidence showed before the hearing officer, which was unrebutted by any other testimony, and it would be economically unfeasible to retain one-acre lots. He said allowing this development would not overburden the existing infrastructure as was shown without rebuttal in not only one but also in another hearing and was also demonstrated by the engineer for the project, Mr. David Lamar who was present, which established without questioning from the County's staff that all the existing roads, sewer, and water were more than able to handle any change in density from a one-acre lot size to a half-acre lot size. Mr. Fleming said the Escambia County Utilities Authority (ECUA) had stated it was ready and able to accommodate a higher density.

Mr. Fleming said \$.75 million would be added to County infrastructure by allowing this zoning change and by allowing it to be used to house people in an excellent subdivision with half-acre lots would also greatly enhance the tax value of the property, and he commented briefly. He said the whole concept in America was to use one's land as one wished, as long as it was not something that was destructive or harmful to one's neighbors. Mr. Fleming said two public hearings were held before the Rezoning Hearing Examiner and not one neighbor spoke against the change in zoning, and he commented briefly. He said the only speaker at either of the two public hearings was Barbara Reynolds, a neighbor, who was also signed up to speak tonight. Mr. Fleming said that Ms. Reynolds had stated that the zoning change would not detract from the value of the surrounding properties.

Mr. Fleming said the subject property was immediately to the north of where zoning originally stopped and the new zoning resumed with the "Villages" designations. He said one side of the street was R-3 zoning and VR-1 and V-1 existed on the other side of the

street. Mr. Fleming said both County staff and the Rezoning Hearing Examiner agreed that the zoning should be at least V-1 and his client was asking for V-2, which was not an unreasonable transition, from an R-3 to a V-2, and it was not like a transition from an R-1 to a C-1. He said it was residential to residential with a density of half-acre lots to quarter-acre lots across the street and it was not incompatible with existing uses.

Mr. Fleming said he and the engineer had spoken with the Planners who did the original zoning and who had zoned it as a V-1 designation, and the zoning consultant, Ms. Gay Hamilton Smith, with Hamilton Smith & Associates, Inc., had stated the data used and developed before Milestone's existence was two years old, and he commented briefly about Milestone being a township in and of itself which had become a magnet for other development in the area. He said the proposed zoning was located one mile west of the Milestone area, and there was a substantial change in the area since the Villages zoning had been approved and the substantial change included Milestone and the surrounding area and that should have been factored into the situation.

Mr. Fleming said that if zoning were to be static, then there would be no need for this process, and he commented briefly. He said the goal should be to enhance and promote the best and highest use of the land for all concerned, and this zoning change would be consistent with that philosophy and he asked that the Board give it favorable consideration.

Commissioner Robertson asked if Bristol Park subdivision was the quarter-acre lot subdivision directly across the street from the subject project.

Mr. Fleming said, after brief discussion, that Bristol Woods, not Bristol Park, was the subdivision directly across the road. He said there were three-quarter and two-acre lots bordering the subject property.

Commissioner Robertson said it appeared, then, that the Bristol Wood's lots were larger than quarter-acre lots, and he commented briefly. He asked if the storm water situation had been addressed for development of this intensity because there had been serious problems with storm water in this general area, and he discussed the ditches eroding on Highway 97A and Highway 297A as it flowed into Eleven Mile Creek, and brief discussion followed.

Mr. Fleming said the proposed development would improve the situation of storm water drainage and it was designed, as the preliminary plat plan showed, to have two retention ponds and all drainage would flow into these two ponds and would slow down and allow time for the water to percolate. He said the engineer could better discuss the matter. Mr. Fleming said the drainage had to be approved in the next stage of development and approving the zoning change did not approve the subdivision plat.

Commissioner Robertson said approving the zoning change doubled the number of possible units and that impacted the drainage which could be a problem.

Chairman Bass said the Board of County Commissioners was sitting as a court of appeals on a case that was heard earlier by the Rezoning Hearing Examiner and the speakers were required to follow the record. He said he would call on the next speaker.

Ms. Barbara Reynolds said she lived on Highway 97 South and her property bordered the subject property on two sides, and she explained the geographical setting and that she had owned and lived on the property for over twenty years. Ms. Reynolds said she was well acquainted with the subject property and if this property was left at its current zoning with one-acre lots and one house per acre, no one would want to pay what the property would be worth, and she commented briefly. She said her home, built over twenty years

ago, had been well maintained as had the other homes and properties in the surrounding area, and the neighbors were aware of this requested zoning change and agreed with the zoning change, and she commented briefly regarding the consistency of having half-acre lots as opposed to full-acre lots. Ms. Reynolds said the area did not have utility services from the County; however, the Bristol Park, Bristol Woods and Bristol Creek subdivisions had full services from the County, and the zoning change would offer her a greater option in the future. She said as far as drainage, she would be grateful for half-acre lots because her land sloped dramatically and she commented about the drainage problems on her property, as well as that of her neighbors. Ms. Reynolds said the drainage difficulties would be alleviated by a better drainage system, to which Mr. Fleming referred.

Upon inquiry from Chairman Bass, Ms. Reynolds said her statements were consistent with her testimony at the previous hearing.

Mr. David S. Lamar said he was the project engineer for the proposed project and he would offer answers to any questions anyone might have.

Commissioner Robertson said he was confused and even though the request was consistent with the development in the area, he was concerned that people had not testified that this rezoning would be incompatible with their adjoining one-acre lots. He said, apparently, there was not opposition and the neighbors had been educated; however, he could cite subdivisions in the area and on Kingsfield Road, etc., that bordered older, existing homes and serious problems had been created. Commissioner Robertson said he wanted to be sure that the storm water was addressed and additional problems would not be added to any of the existing problems in the surrounding neighbors. He said he did

not understand the basis for the Rezoning Hearing Examiner to rule an inconsistency if there was not any opposition, and he commented briefly.

Commissioner Robertson said he represented the area and his experience had been that if one could afford to buy a one-acre parcel in a subdivision one would be more likely to build an attractive, larger home on that one-acre parcel, and he commented briefly. He said this Board had to find a basis to overrule the Rezoning Hearing Examiner.

Chairman Bass said some portions of the application were recommended for approval and certain portions were recommended for denial, and he asked Mr. Pitkin to review that.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, said the Rezoning Hearing Examiner stated that V-1 throughout the whole area was acceptable, which was one-acre lots. He said the V-2 was unacceptable, which would be half-acre lots. Mr. Pitkin said that decision was probably based, to a large extent, on the directly abutting lots which ranged in size from three-quarter acres up to two and one-half acres. He said half-acre lots did not directly abut these larger acreages and that was the basis for denial.

Upon inquiry from County Administrator Evans, Mr. Pitkin said there were lots in excess of 100,000 square feet, particularly to the north.

Commissioner Whitehead said he was surprised when studying the background material that there was an obvious gap in that there was significant development all up and down that particular area. He said there were several developments to the north that were one acre lots, or less, and Milestone Development was very close in proximity. Commissioner Whitehead said this reminded him of a discussion regarding zoning and the debate concerning the cost of developing. He said he was in favor of the Board allowing higher densities where the developers would provide the infrastructure, and this Board had

not approved that in the past. Commissioner Whitehead said this was a classic case of spending \$.5 million for infrastructure for half-acre lots. He said the cost of the lot increased so significantly that no one would build a \$300,000 house on a \$70,000 lot, and that was the issue, and he commented briefly. Commissioner Whitehead said it was not the one-acre lot but the high cost of infrastructure to support the one-acre lot that was the issue, and this should be re-addressed.

Commissioner Whitehead said he would move that the Board find fault with the Rezoning Hearing Examiner's decision in that the development across the street and in the area supported half-acre lots. He said, however, the issue concerning a developer providing sanitary sewer and other services to give higher densities needed to be re-addressed to allow reasonable construction. Commissioner Whitehead said this was a matter of developing lots on which an average homeowner could not build, and he commented briefly regarding more densities needed in the north end of the County in order to allow for development because that was where growth was occurring.

Motion made by Commissioner Whitehead to overturn the Rezoning Hearing Examiner based on the finding of fact that there was disregard for the development across the road. He said the 500 feet (the arc) encompassed an easement but the Hearing Examiner did not look at the 505-foot mark that had a very compact subdivision, and it would also be orderly and logical development, and he so moved.

Commissioner Robertson said he did not have a problem with seconding the motion and he asked if everyone had spoken from the public.

Chairman Bass said there were more speakers.

Commissioner Robertson said he was not prepared, then, to second the motion.

Commissioner Whitehead said he would withhold his motion.

Mr. John Rasmussen said he lived on Hawk Lane and agreed with Commissioner Whitehead that building a development was cost prohibitive. He said being in the real estate business made him aware that not many people would pay \$85,000 to \$90,000 for a lot unless it was adjacent to a golf course or on the water, and he commented briefly.

After being cautioned by Chairman Bass to not stray from the facts on the record, Mr. Rasmussen said splitting the acreage into half-acre lots would allow a developable project. He said storm water runoff had been addressed and the engineer had designed the drainage to alleviate much of the present runoff. Mr. Rasmussen said the neighbors had been informed of all the facts, and he said he would appreciate the Board's positive vote.

Ms. Shea Morris said she did not want to speak at this time.

Ms. Sherry Camp said she lived on Meander Circle which was on Highway 297A. She said the people who built substantial homes in the area did so in good faith that those who wished to also build in the area would do the same thing. Ms. Camp said that eighty (80) additional homes would have a direct impact on the already high traffic problem in the area, especially at the intersection of Highway 97 and Highway 297A.

Upon inquiry from Chairman Bass, Ms. Camp said she had not testified at the hearing.

Chairman Bass said the Board could not consider new testimony; however, Ms. Camp could comment on the testimony that was in the first hearing.

Ms. Camp said, as president of the homeowners' association for Meander Farms, she would ask that the Board deny the petitioner's request.

Motion made by Commissioner Whitehead that the Board grant the request for V-2 designation for this particular development, based on the finding of fact that adjacent development in the area was not given appropriate weight.

Commissioner Robertson said he was aware of the location of Meander Farms and that it was a one-acre lot subdivision and it was also not bordering the applicant's land.

Motion seconded by Commissioner Robertson, for discussion.

Commissioner Robertson asked Ms. Reynolds, for the record, if she stated she bordered the right-of-way that went into this proposed subdivision and that she had been in that location for twenty years, knew all her neighbors, and the people surrounding this property had no objection to this development.

Ms. Reynolds said there were some neighbors she did not know because a few of the homes had sold in the last year or so and she had not met the new owners. She said, however, all the neighbors had been notified by letter and several signs had been posted, and there had been neighborhood discussions. Ms. Reynolds said the neighbors on the other side of her road right-of-way were not able to be present tonight; however, they were in agreement with her and favored the proposed development.

Commissioner Robertson said his concern was with the surrounding neighbors which from where his complaints and calls would originate. He said if none of the neighbors objected, he would remain with his second to the motion.

Commissioner Whitehead said he would amend his motion to state that there was not competent substantial evidence for the Rezoning Hearing Examiner to find as he had, and that the evidence was, in fact, consistent based on the development that had occurred and it was not inconsistent with the Comprehensive Plan.

County Attorney Tucker said what Commissioner Whitehead had meant to say was that the Rezoning Hearing Examiner had erred as a matter of law; the rezoning request was consistent with the Comprehensive Plan; there was no evidence presented to show that it was inconsistent with the Comprehensive Plan; and there was no competent substantial evidence inconsistent with surrounding development, which was again an error of law by the Rezoning Hearing Examiner. He said the record would suggest flaws in the Rezoning Hearing Examiner's decision.

Commissioner Junior said Commissioner Whitehead had stated that across the street there were half-acre lots and the backup stated that the average density for residential development throughout the MU-6 zoning was one residence per 1.9 acres. He said the zoning in one area was somewhat different from the zoning across the street.

Commissioner Whitehead said the MU-6 designation occurred after the subdivision across the street was built and this was an area where the subdivision was not taken into account when the land use designation was put into place.

Commissioner Junior said he did not have a problem with changing the zoning; however, there would have to be a reason to justify this. He asked Ms. Reynolds if most of the surrounding area was one house per acre or two houses per acre.

Ms. Reynolds said properties in her neighborhood contained one house per acre. She said some properties that backed up to the subject property on Highway 297A had more than an acre and those houses had been there for twenty-five to thirty years.

Commissioner Junior said there would be inconsistency if the subject land became half-acre lots, and he asked why the Board was not upholding the recommendation.

County Attorney Tucker said staff's recommendation stated a zoning change would be consistent as did all the testimony. He said there was no evidence of inconsistency. He said the Rezoning Hearing Examiner made a conclusion of law that the rezoning did not appear to be consistent with the MU-6 designation; however, staff in its testimony said it was consistent with MU-6 designation, and brief discussion followed.

Chairman Bass called for the question, and the motion carried 4-1, with Commissioner Junior voting "no," overturning the March 18, 1998, recommendation of the Rezoning Hearing Examiner and approving V-2, Villages Single Family (Residential-Medium Density) District zoning, based on the Rezoning Hearing Examiner having erred as a matter of law and not having presented evidence that V-2 zoning was inconsistent with the Comprehensive Plan; and, secondly, that there is no competent substantial evidence inconsistent with surrounding development, relative to Case **Z-98-14**, as follows:

Case Number:	Z-98-14
Location:	Section 36, Township 1 North, Range 31 West
Parcel Number:	4201-000-004 (3314 Highway 97 South)
From:	V-1, Villages Single Family (Low Density) and VR-1, Villages Rural Residential Districts
To:	V-2, Villages Single Family (Residential - Medium Density) District
Requested by:	John R. Rasmussen, Agent for Don C. and Louise P. Morris, Owners

(Order Attached and Shown as EXHIBIT "Q")

Chairman Bass said the Rezoning Hearing Examiner's denied Case **Z-98-19**, to rezone from C-1, Retail Commercial District to C-2, General Commercial District zoning.

Motion made by Commissioner Whitehead, seconded by Commissioner Banjanin, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and denying Case **Z-98-19**, as follows:

Case Number: **Z-98-19**
Location: Section 50, Township 2 South, Range 30 West
Parcel Number: 1000-003-001 (801 South Old Corry Field Road)
From: C-1, Retail Commercial District
To: C-2, General Commercial District
Requested by: John R. Williams, President, American Mini-Storage, Inc., Owner

(Order Attached and Shown as EXHIBIT "R")

Chairman Bass said the Rezoning Hearing Examiner denied Case **Z-98-20**, to rezone from R-1, Single Family District, Low Density, to R-R, Rural Residential District.

Mr. Jack C. Belder said he lived on Eight Mile Creek Road; however, he was temporarily living in North Carolina and he was requesting denial of this request. He said there had been problems in the past and he commented briefly regarding the fact there was never an existing road but only a "pig" trail where his property abutted the subject property and he had placed a fence on his property line. Mr. Belder said the property was mainly used for Gulf Power Company utility vehicles, and he continued to comment regarding a proposed twenty-foot easement on both sides of the path.

Chairman Bass said he understood Mr. Belder was speaking to uphold the denial.

Mr. Belder concurred.

Mr. Danny Speranzo said he lived on Cedar Ridge Drive and had just purchased property on Eight Mile Creek Road. He said he was a builder/developer and his business was Classic Home Builders. Mr. Speranzo said he had very carefully chosen a piece of property that the County had already zoned when he made his decision to buy seven and one-half acres on Eight Mile Creek Road on which he was currently building a 6,600 square foot home for himself. He said he would support the Rezoning Hearing Examiner's denial of the rezoning.

Ms. DeAnna C. Kirksey said she was the applicant whose property was located on Eight Mile Creek Road and she disputed the proposed easement to which Mr. Belder had referred. She said she owned an easement and it was shown on the map which was included in the packet, and it was a 275-foot, ten-foot wide easement and was connected to her property.

After brief discussion it was determined that the easement was not an issue in this request.

Ms. Kirksey said she and her husband did not wish to build a mobile home park and merely wanted to be able to have their son place a double-wide mobile home on the property where the original homestead of her parents had been located on this twelve-acre parcel. She said the Planning Department recommended that it would be best to ask for all twelve acres to be rezoned even though she only wished to add this one mobile home.

Chairman Bass asked Mr. Pitkin to review the Rezoning Hearing Examiner's recommendation and the foundation for the decision.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, said the concern was that Rural Residential zoning authorized mobile homes and a parcel of this size would authorize a potential twenty-lot mobile home subdivision, not a mobile home park. He said the character of the area from this point south was not mobile homes but was suburban, stick-built houses. Mr. Pitkin said there were mobile homes located west along Interstate 10; however, the predominant pattern to the south was not mobile homes and therefore the idea was to preserve R-1, Single Family District, Low Density, zoning and the character of a neighborhood of houses.

Commissioner Whitehead said he represented the area and he would support a request to rezone one of the ten acres to allow one mobile home. He said, however, it was the long term possibilities that must be addressed and if the Kirksey's should decide to sell the property at some point in the future and the future purchaser would be able to develop a twenty-lot mobile home subdivision. Commissioner Whitehead said that would be inappropriate for that area in terms of what Mr. Speranzo and other neighbors were developing in that area, and he commented briefly about many larger homes being constructed in the area and this request would be inappropriate.

Motion made by Commissioner Whitehead that the Board uphold the denial.

Motion seconded by Commissioner Banjanin.

Ms. Kirksey said she had been advised by Mr. John Tucker of the Planning and Zoning Division to rezone the whole ten acres, and she commented briefly. She said it seemed that her son was being denied the right to live on the family property. Ms. Kirksey said this property had not changed hands since 1948 and had been left in a life estate to her two sons. She said she would be willing to set aside one acre to be rezoned so that her son would be able to live on this land.

Upon inquiry from Chairman Bass, Mr. Pitkin said carving one acre out of a larger parcel, for rezoning, was unusual. He said he was unsure if there would be a legal concern with such action.

Commissioner Whitehead said the area from the curve (in the road) and parallel to the interstate was characterized by mobile homes, but mobile homes would be inappropriate in the area south of the curve although there might be one or two mobile

homes along that stretch. He said he would agree to carve out one acre if there was a way to accomplish that, but he would not support the rezoning of ten acres.

Chairman Bass asked what was the process for Ms. Kirksey to get from this denial of rezoning ten acres to applying for one acre to be rezoned.

Ms. Kirksey say there was a mobile home directly across the street from the acre which could be carved out, and there were eleven mobile homes in that area.

Mr. Pitkin said staff would have to determine which acre to carve out and he suggested continuing this request for a month to attempt to resolve the issue of carving out a specific acre.

County Attorney Tucker said that would be acceptable.

Commissioner Whitehead said the only manner in which he would support the carving out of one acre was with the caveat that the acre must be in an area that was contiguous with the other mobile homes and not fronting areas beside stick-built homes.

Commissioner Whitehead said he would withdraw his motion and move that the Board continue the matter for thirty days to allow staff to resolve the situation.

Motion seconded by Commissioner Junior.

Upon inquiry from Chairman Bass, Mr. Belder advised he would not be able to be in Pensacola next month. He said he did not have a problem with the placement of one mobile home but he was concerned with the three and one-half acres behind his property. Mr. Belder said he had experienced people attempting to place a road through the area, causing damage to his property, and he did not want that happening. He said he approved the Kirksey's son removing the old homestead and placing one mobile home in that area.

There being no further discussion, Chairman Bass called for the question, and the motion carried unanimously, denying Case **Z-98-20**, and approving to continue the matter for thirty (30) days, for staff to negotiate with the petitioners for an alternate plan which would allow one acre of the ten-acre parcel to be carved out that is contiguous with other mobile homes in the area, to allow placement of one mobile home, as follows:

Case Number: **Case Z-98-20**
Location: Section 11, Township 1 South, Range 31 West
Parcel Number: 3101-000-015 (8637 Eight Mile Creek Road)
From: R-1, Single Family District (Low Density)
To: R-R, Rural Residential District (for one specific acre)
Requested by: Adrian E. and DeAnna C. Kirksey, Owners

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 18, 1998, recommendation of the Rezoning Hearing Examiner and denying Case **Z-98-21**, as follows:

Case Number: **Case Z-98-21**
Location: Section 34, Township 2 South, Range 30 West
Parcel Number: 0220-002-022 (5000 West Lillian Highway)
From: R-6, Residential Neighborhood Commercial District (High Density)
To: C-2, General Commercial District
Requested by: Wiley C. "Buddy" Page, Agent for Whitney National Bank

(Order Attached and Shown as EXHIBIT "S")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and approving Case **Z-98-22**, as follows:

Case Number: **Z-98-22**
Location: Section 31, Township 2 South, Range 30 West
Parcel Numbers: 2000-004-004, 2000-005-004, 2000-006-004, 2000-001-005, 2000-003-005, 2000-008-005 and 2000-010-005 (2602 West Lee Street, 2600 Block of West Blount Street, 1415 North "T" Street,

1412 North "T" Street, 1416 North "T" Street, 2500 Block of West Lee Street and 2526 West Lee Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)
Requested by: Escambia County Office of Planning and Zoning (and prescribed by the Brownsville Neighborhood Re-development Plan to encourage re-investment in the area)

(Order Attached and Shown as EXHIBIT "T")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and approving Case **Z-98-23**, as follows:

Case Number: **Z-98-23**
Location: Section 31, Township 2 South, Range 30 West
Parcel Numbers: 2000-002-006, 2000-003-006, 2000-009-006, 2000-005-007, 2000-006-007 and 2000-007-007 (1304 North "T" Street, 2523 West Lee Street, 2504 West Lloyd Street, 1317 North "T" Street, 1319 North "T" Street and 2600 West Lloyd Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)
Requested by: Escambia County Office of Planning and Zoning (and prescribed by the Brownsville Neighborhood Re-development Plan to encourage re-investment in the area)

(Order Attached and Shown as EXHIBIT "U")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and approving Case **Z-98-24**, as follows:

Case Number: **Z-98-24**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-001-200, 9060-004-200, 9060-005-200, 9060-007-200, 9060-010-201 and 9060-011-201 (2520 West Brainerd Street, 1208 North "T" Street, 1210 North "T" Street, 2509 West Lloyd Street, 1201 North "T" Street and 2603 West Lloyd Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)

Requested by: Escambia County Office of Planning and Zoning (and prescribed by the Brownsville Neighborhood Re-development Plan to encourage re-investment in the area)

(Order Attached and Shown as EXHIBIT "V")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and approving Case **Z-98-25**, as follows:

Case Number: **Z-98-25**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-001-199, 9060-003-199, 9060-005-199, 9060-007-199, 9060-013-202, 9060-017-202, 9060-019-202 and 9060-021-202 (1100 North "T" Street, 1106 North "T" Street, 1110 North "T" Street, 1116 North "T" Street, 1119 North "T" Street, 1111 North "T" Street, 1103 North "T" Street and 1101 North "T" Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District, High Density
Requested by: Escambia County Office of Planning and Zoning (and prescribed by the Brownsville Neighborhood Re-development Plan to encourage re-investment in the area)

(Order Attached and Shown as EXHIBIT "W")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and approving Case **Z-98-26**, as follows:

Case Number: **Z-98-26**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-001-198, 9060-006-198, 9060-013-203, 9060-016-203 and 9060-018-203 (1014 North "T" Street, 1000 Block of North "T" Street, 2601 West Gonzalez Street, 1015 North "T" Street and 2600 West DeSoto Street)
From: R-2, Single Family District (Low Medium Density)
To: C-2, General Commercial District
Requested by: Escambia County Office of Planning and Zoning

(Order Attached and Shown as EXHIBIT "X")

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, upholding the March 11, 1998, recommendation of the Rezoning Hearing Examiner and approving Case **Z-98-27**, as follows:

Case Number: **Z-98-27**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-060-197 and 9060-062-197 (2519 West DeSoto Street and 900 Block of North "T" Street)
From: R-2, Single Family District (Low Medium Density)
To: C-2, General Commercial District
Requested by: Escambia County Office of Planning and Zoning

(Order Attached and Shown as EXHIBIT "Y")

Chairman Bass advised Case **Z-98-30** was a request to change the zoning from R-R, Rural Residential District to R-1, Single Family District, Low Density. and the Rezoning Hearing Examiner's recommendation from his April 8, 1998, hearing was for approval. He said there was a speaker.

Mr. W. R. Ward, Reese Seales Road, representing Mr. C. R. Campbell, said he would withdraw his request to speak.

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, that the Board approve the recommendation.

Mr. Paul Miller, Planner I, said the Board could not proceed on this Case tonight because there was an administrative error on his behalf and the request had not been properly advertised. He said, also, the Rezoning Hearing Examiner's transcript had not been received in time for the Commissioners to review it; therefore, he requested the Case be continued until next month.

After discussion and apologies extended to Mr. Ward for the confusion, Chairman Bass asked Mr. Ward to approach the lectern.

Commissioner Robertson asked if this was the Case for which expediency had been requested.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, said staff had attempted to “jump start” this Case and it did not work.

Mr. W. R. Ward said his client, Mr. C. R. Campbell, was unaware of this error.

Upon inquiry from Commissioner Robertson, Mr. Miller said he discovered the error two (2) days ago, and he had not notified anyone.

Mr. Ward said Mr. Campbell was out of town; otherwise, he would have been present.

Chairman Bass requested that Mr. Ward extend to Mr. Campbell the Board’s apologies.

Upon inquiry from Commissioner Robertson, Mr. Miller said the Case would come before the Board on June 4, 1998.

Mr. Ward asked if he could have something in writing from the County regarding this delay.

County Administrator Evans said that would be possible.

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, approving to continue until the June 4, 1998, Regular Board Meeting the April 8, 1998, recommendation of the Rezoning Hearing Examiner to approve Case

Z- 98-30, as follows:

Case Number:	Z-98-30
Location:	Section 08, Township 1 South, Range 30 West
Parcel Number:	1003-000-018 (241 East Ten Mile Road)
From:	R-R, Rural Residential District
To:	R-1, Single Family District (Low Density)
Requested by:	C. R. Campbell, Owner

Commissioner Robertson asked if staff could prevent any further delay with this Case.

Mr. Pitkin said it was his understanding that the Case cleared the Development Review Committee and that it was important to accelerate the subdivision procedure and get approval. He said the Board could actually approve the rezoning tonight but the rezoning could not be included in the map amendment package, and discussion followed.

Commissioner Robertson said if the zoning change could be approved, as the administrative error would not prevent the approval, then the map amendment action could be handled next month.

Commissioner Junior said the Board was required to advertise these zoning changes and it had not been advertised; therefore, it seemed to be illegal in his opinion, and discussion followed concerning the fact that the Case had not been advertised.

(Action taken later in the Meeting; see Page 102.)

2. Adoption of an Ordinance Amending the Land Development Code

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, taking the following action concerning the 6:30 p.m. Public Hearing for consideration of adopting a Land Development Code (LDC) Zoning Map Amendment:

- A. Adopting an Ordinance amending Appendix D, Article 6, of the Escambia County Code of Ordinances (Ordinance Number 96-3) the Land Development Code of Escambia County, Florida, as amended; providing for amendment to the Official Zoning Map; providing for severability; providing for inclusion in code; and providing for an effective date; and as adopted by reference in Section 6.02.00, to include those rezoning Cases Number Z-97-57, Z-98-14 and Z-98-19 through Z-98-27 which were approved by the Board of County Commissioners on May 7, 1998, as follows:

- (1) Case Number: **Z-98-14**
Location: Section 36, Township 1 North, Range 31 West

Parcel Number: 4201-000-004 (3314 Highway 97 South)
From: V-1, Villages Single Family (Low Density) and VR-1, Villages Rural Residential Districts
To: V-2, Villages Single Family (Residential - Medium Density) District

- (2) Case Number: **Z-98-22**
Location: Section 31, Township 2 South, Range 30 West
Parcel Numbers: 2000-004-004, 2000-005-004, 2000-006-004, 2000-001-005, 2000-003-005, 2000-008-005 and 2000-010-005 (2602 West Lee Street, 2600 Block of West Blount Street, 1415 North "T" Street, 1412 North "T" Street, 1416 North "T" Street, 2500 Block of West Lee Street and 2526 West Lee Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)
- (3) Case Number: **Z-98-23**
Location: Section 31, Township 2 South, Range 30 West
Parcel Numbers: 2000-002-006, 2000-003-006, 2000-009-006, 2000-005-007, 2000-006-007 and 2000-007-007 (1304 North "T" Street, 2523 West Lee Street, 2504 West Lloyd Street, 1317 North "T" Street, 1319 North "T" Street and 2600 West Lloyd Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)
- (4) Case Number: **Z-98-24**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-001-200, 9060-004-200, 9060-005-200, 9060-007-200, 9060-010-201 and 9060-011-201 (2520 West Brainerd Street, 1208 North "T" Street, 1210 North "T" Street, 2509 West Lloyd Street, 1201 North "T" Street and 2603 West Lloyd Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)

- (5) Case Number: **Z-98-25**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-001-199, 9060-003-199, 9060-005-199, 9060-007-199, 9060-013-202, 9060-017-202, 9060-019-202 and 9060-021-202 (1100 North "T" Street, 1106 North "T" Street, 1110 North "T" Street, 1116 North "T" Street, 1119 North "T" Street, 1111 North "T" Street, 1103 North "T" Street and 1101 North "T" Street)
From: R-2, Single Family District (Low Medium Density)
To: R-6, Residential Neighborhood Commercial District (High Density)
- (6) Case Number: **Z-98-26**
Location: Section 00, Township 0 South, Range 00 West
Parcel Numbers: 9060-001-198, 9060-006-198, 9060-013-203, 9060-016-203 and 9060-018-203 (1014 North "T" Street, 1000 Block of North "T" Street, 2601 West Gonzalez Street, 1015 North "T" Street and 2600 West DeSoto Street)
From: R-2, Single Family District (Low Medium Density)
To: C-2, General Commercial District
- (7) Case Number: **Z-98-27**
Location: Section 00, Township South, Range 00 West
Parcel Numbers: 9060-060-197 and 9060-062-197 (2519 West DeSoto Street and 900 Block of North "T" Street)
From: R-2, Single Family District (Low Medium Density)
To: C-2, General Commercial District

B. Approving submittal of the adopted Amendment to the Department of State;
and

C. Authorizing the Chairman to sign the document.

(Ordinance Number 98-15 Attached and Shown as EXHIBIT "Z")

3. Ordinance to Add Microchip Fabrication as a Permitted Use in ID-1 District Tabled until November 5, 1998

Motion made by Commissioner Whitehead, seconded by Commissioner Junior, and carried unanimously, conducting the 6:33 p.m. second Public Hearing for consideration of adopting an Ordinance amending the Land Development Code (LDC) to add Microchip Fabrication as a Permitted Use in the Light Industrial (ID-1) Zoning District, and approving to table the item until November 5, 1998, to allow the Citizen Environmental Committee sufficient time (approximately six months) to study the issue and develop an appropriate recommended course of action (the first Public Hearing was held on February 12, 1998; the second Public Hearing was held on April 9, 1998, and continued to the May 7, 1998, Meeting), relative to the following proposed Ordinance:

An Ordinance of Escambia County, Florida amending Appendix D of the Escambia County Code of Ordinances (Ordinance No.96-3) the Land Development Code of Escambia County, Florida, as amended; amending Article 6, Zoning Districts, Section 6.05.16.B.2, ID-1 Light Industrial District, to add "Semi-conductor or microchip fabrication" as a permitted use; providing for severability; providing for inclusion in Code; and providing for an effective date.

4. Scheduling a Second Public Hearing for Consideration of an Ordinance Adding Building Height Restrictions to the SRIA Development Regulations

Chairman Bass said the 6:34 p.m. Public Hearing was the first of two Public Hearings for consideration of amending the Land Development Code, Article XIII, on proposed building height limits on Pensacola Beach.

Mr. Paul Miller, Planner I, said this was the only Public Hearing and was not the first of two Public Hearings concerning this issue.

Chairman Bass said he stood corrected, and called on the speakers.

Ms. Gail Fournier, Pensacola, said this was not an issue of her concern and she declined to speak.

Ms. Jane Kates, Maldonado Drive, Pensacola Beach, said she had attended a number of the Height Committee meetings and listened to them discuss a number of concerns, which she would like to review for the Board, briefly. She said the first meetings discussed “incentivizing” as it referred to the building parking and, in fact, it was the belief that a taller building would give you a smaller building and therefore a better view of the water. Ms. Kates said she did not believe that was really the case and that she had taken a variety of photographs of the Island (Pensacola Beach) and presented a slide presentation to the Santa Rosa Island Authority (SRIA) Board at a meeting. Ms. Kates said the bottom line was there were a number of tall buildings that had been constructed which did not do what they were supposed to do. She said there was discussion of what smaller footprints were supposed to do and also discussion concerning the Bert J. Harris, Jr., Private Property Protection Act, which essentially was used by developers to imply that the government could not do certain things to them or they would sue, or by a property owner who believed that action by a governmental entity had unreasonably or unfairly burdened the use of his/her real property.

Ms. Kates said the residents of Pensacola Beach were not property owners but were lessees; however, assuming the lessees had the right, the Harris Act stated that if a citizen were to go to court, factors to be included were the economic impact of the regulation on the property owner; the extent to which the regulation interfered with the property owner’s investment expectations; whether or not the regulation conferred a public benefit; whether

or not it prevented public harm, whether or not it was arbitrarily and capriciously applied; and the history of the property, its development, and zoning and regulations.

Ms. Kates said height regulations qualified for a number of the categories she had just mentioned, and would be well within the right and the duty of the County to apply them; however, if a developer disagreed and chose to take the matter to court, the Harris Act stated that a property owner must exhaust all administrative remedies before taking the claim for judicial review, and then all the steps required before a law suit would be allowed were cited, which essentially allowed a number of “outs” for the SRIA or Board of County Commissioners, and agreement probably would be reached before a law suit was filed. She said nothing in the Harris Act applied to a lessee; the lessee did not own the land; it was technical but it was important to many on the Board that the Beach residents did not own the land and therefore other things did not apply to them.

Ms. Kate said, in addition, there was discussion that twenty stories was acceptable; however, fourteen stories including parking was sufficiently high, in her opinion, and she commented briefly, referring to an article in a Miami newspaper and the heights of buildings being forty-five stories and 500 feet tall; what was feasible for a barrier island, etc. She said the new Santa Rosa Towers (located on Fort Pickens Road in front of the Santa Rosa Dunes) advertised that the sunsets were free. Ms. Kates said the sunsets were free to the high rise viewers but they were infringing upon the sunsets for other residents of the Beach. She said, in addition, the high rises also infringed upon the view of others and that view was part of what Beach residents bought when they moved to the Beach.

Commissioner Whitehead asked if it would be appropriate to make a motion at this point of the Board’s position on this issue. He said he would not support a forty-five story

building and he had said in the past that a height restriction was needed on Pensacola Beach. Commissioner Whitehead said with a motion on the floor, the audience could address the specific motion and that might save some time, and he commented regarding his concurrence in not supporting a fifty-story building.

Motion made by Commissioner Whitehead that the Board approve height restrictions on Pensacola Beach for the commercial core area of eighteen stories plus two parking floors with a maximum height of 250 feet, and anything over that would require special approval, and he did not know by whom. He said the balance of the area, the recommendation of twelve stories plus two and 35 feet for residential, was acceptable. Commissioner Whitehead said the small area comprised of the commercial core made this a reasonable way to move, and he commented briefly about attracting a convention center in the core area and having the same restrictions on Perdido Key.

Motion seconded by Commissioner Robertson, with the amendment that anything over 250 feet would need Board of County Commissioner approval.

Commissioner Whitehead said he would accept that amendment if it was legal, and brief discussion followed until County Attorney Tucker re-entered the Board Chambers and was requested to verify the legality of the Board approving a height of more than 250 feet.

Commissioner Whitehead said his motion was to cap heights at 250 feet with other criteria in the commercial core area of eighteen stories plus two stories for parking. He said Commissioner Robertson's question was that in the event someone was seeking to exceed the 250 feet, could the issue be brought to this Board as opposed to the Board of Adjustment.

County Attorney Tucker said if one amended the Land Development Code, it had to go through the Planning Board first. He said the Board could basically legislate that action and could set up its own variance process for the height restriction, if it desired. He said at this point, the Board was only limited by the Comprehensive Plan.

Commissioner Whitehead said his preference was that the SRIA would hear the case first and this Board would have the authority to rule on the SRIA's decision as an appellate process.

County Attorney Tucker said it could be set up that way and it could also be reviewed differently from what had been regulated in the Special Act. He said since the Board was delegating certain authority to the SRIA, it also had the power to control how the SRIA used that authority.

Commissioner Robertson said he would agree to that, and he commented briefly.

Commissioner Whitehead said he would modify that slightly. He said currently the Board made the decision regarding whether or not it would hear an appeal of the SRIA Board, and in this case the Board of County Commissioners would be the Board of appeal and that would give the Pensacola Beach residents a slightly better measure of protection, and he commented briefly.

County Attorney Tucker said that could be done because the Board delegated the functions of the SRIA. He said in terms of whether or not to hear an appeal, that was a decision of this Board because of the manner in which the Legislature had written the Special Act. County Attorney Tucker said this Board had the authority to give the SRIA certain power, and this Board also had the authority of how to hear a variance.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, asked if these matters should be variances or Conditional Uses. He said a variance would have to prove hardship and a Conditional Use would set up a series of standards.

Commissioner Whitehead said he wanted it to be a hardship. He said he derived the 250-foot height based on twenty stories at ten feet per floor, which was becoming more prevalent. He said the key issue was the number of floors and the cap was eighteen stories plus the two; however, the height addressed the construction of the individual floors.

County Attorney Tucker asked if the Board wished to make the amendment tonight or would it be more advisable for legal staff to prepare the language that would more fully accomplish the regulations.

Upon inquiry from Commissioner Whitehead, Chairman Bass said this was the only Public Hearing and there would not be a second Public Hearing.

Commissioner Whitehead said he would like to vote on height restrictions tonight.

Ms. Kates said the local newspaper stated there were two Public Hearings concerning this issue, and she commented briefly. She said there was also an Envision Escarosa meeting which many people had chosen to attend instead of this Board meeting tonight, thinking there would be a second Public Hearing regarding this matter.

Commissioner Whitehead asked if it could be determined if this was advertised as the first of two Public Hearings.

Chairman Bass said there was a motion on the floor.

Ms. Kates said the recommendation from the SRIA was not the recommendation from the Height Committee which had met for almost a year to discuss heights. She said the Committee's recommendation was fourteen total stores, including parking, in the core

area, and as a compromise she recommended eighteen total as opposed to eighteen plus two stories. Ms. Kates said the Height Committee had favored the proposal of the Pensacola Beach residents which was a limit of nine stories. She said the residents were attempting to be amenable; however, the tall buildings tended to go straight up, were very flat and had a canyon effect, and she commented briefly about the appearance of the tall buildings and the smaller percentage of income to be derived from a shorter building. Ms. Kates said, in addition, she disagreed with fourteen stories outside of the core area, and it had to do with sunsets and the quality of life, and she commented briefly. She said she would suggest eighteen total stories in the core area and ten stories outside of the core area.

Commissioner Whitehead said he would amend his motion based on the original advertisement in the Pensacola News-Journal which stated this Hearing was to be the first of two Public Hearings and he would suggest a second Public Hearing be scheduled for next month.

Chairman Bass said Deputy Clerk Gingrey informed him that when the Public Hearing was set by this Board, it was set as the first of two Public Hearings (at the March 12, 1998, Regular Board Meeting).

Commissioner Whitehead said if the public was misled in any fashion, it was incumbent upon the Board to hold two Public Hearings.

Chairman Bass agreed and said the Board had voted in the past to conduct two Public Hearings regarding this issue.

Mr. Don Ayres, representing the 650-member Pensacola Beach Residents and Leaseholders Association, said he had been a member of the Ad Hoc Committee which

addressed building heights and it took approximately ten months to conduct the review of building heights. He said there were approximately fifteen committee meetings and numerous sub-committee meetings and public input was collected at each meeting from many people. Mr. Ayres said the Committee also received petitions containing 3,300 signatures from residents throughout Escambia County, all appealing for the building heights to be set at the heights suggested by the Committee.

Mr. Ayres said the two parts of the proposed Ordinance to which the Height Committee was opposed were unlimited building heights in the core area and the grandfathering of anyone outside the core area. Mr. Ayres said the Ad Hoc Committee of seven (7) members, whom he proceeded to identify, had been appointed by the SRIA. He said the Committee reached a compromise on heights which was for the entire Island and was a maximum of fourteen floors with twelve habitable and two for storm protection and parking. Mr. Ayres said motions for eleven floors had been defeated as were motions for seventeen or more floors. He said Allen Levin, one of the Committee members, also voted for a specific height restriction for the entire Island. Mr. Ayres said the Pensacola News-Journal conducted a poll and the results revealed that Escambia County wanted lower building heights on Pensacola Beach, and Mrs. Ayres distributed an article from the Pensacola News-Journal regarding this situation. He said the 3,300 petitioners, mentioned earlier, begged the Committee to set lower building heights, and he commented briefly.

Mr. Ayres said County staff had asked the SRIA for an analysis of the proposal which it had presented to the Board, and it was not the proposal from the Ad Hoc Committee. He said the only statement which related to building heights within the core area was a vague statement, signed by Mr. Monte E. Blews, General Manager, Santa Rosa

Island Authority (SRIA), which stated that it seemed appropriate to have taller buildings in the core area. Mr. Ayres said there had been a lot of precedents set in the State of Florida in an attempt to preserve the natural beauty of coastal areas and he indicated that Gulf Breeze had a thirty-five foot building height limitation; St. Augustine had a fifty-foot limitation; all of Gulf County had a seventy-five foot limitation; Key West had a forty-foot limitation; St. Petersburg Beach had a fifty-foot limitation; and he said he could list many more coastal communities which had set building heights which were lower than had been proposed by the SRIA.

Mr. Ayres said he understood the County staff's original position was for no grandfathering outside of the core area because it was inappropriate for this kind of Ordinance; however, he was then informed that there would be grandfathering included in the proposed Ordinance. Mr. Ayres said a letter written by Mr. Wilmer Mitchell on behalf of Gulfview Partnership was instrumental in changing the mind of County staff, and the letter had been sent to the County Attorney's Office and to the Planning and Zoning Department. He said it would be difficult to rebut Mr. Mitchell's letter because the Commissioners had probably not seen nor read the letter; however, he would attempt to do so. Mr. Ayres said Mr. Mitchell's letter contained distortions and assertions which did not match the facts nor the testimony of Mr. Joe Endry in District Court on February 26, 1996, when he had been sued by the Santa Rosa Dunes Association regarding the Santa Rosa Towers (located on Fort Pickens Road and in front of Santa Rosa Dunes). He said Mr. Mitchell's letter stated that the property which he bought from the original Santa Rosa Dunes project, and the property which he now wanted grandfathered outside of the core area, was originally planned for two high rises (the Santa Rosa Towers property).

Mr. Ayres said this was misleading because he had in his possession the plans for the project, and the buildings planned were for eight-story buildings, and characterizing eight stories as a high rise was a distortion. He said the letter also stated that Mr. Mitchell had invested in the property with the expectation of building two high rises; and at this point in time one high rise of sixteen habitable floors was nearing completion. Mr. Ayres said there was not a market for high rise condominiums during 1984 to 1986 and that was when Mr. Mitchell and his partners purchased the property. After comments regarding the dunes preservation area on the Gulf side of Fort Pickens Road, where there would be no construction or other obstruction of the view of the Santa Rosa Towers tract of land, which was located immediately across the street from the dunes preservation area, Mr. Ayres said there were two residential lots in between the dune preservation areas, immediately across the street from Santa Rosa Towers which Gulfview Partnership was trying to sell, and Mrs. Ayres distributed to the Commissioners some documentation regarding same. He said under the heights proposed by the SRIA, two fifty-five foot single-family residences could be constructed on this land.

After Mr. Ayres commented at length concerning the statements in Mr. Mitchell's letter regarding Mr. Mitchell and his partners buying the entire tract of three parcels from the Santa Rosa Dunes developers for \$650,000, Mr. Ayres said the first parcel had been sold to the Santa Rosa Towers developer for \$690,000, and the two parcels remaining were priced at \$900,000. He said the third tract across the street, for the two single-family residences, and which the County was proposing to buy along with the SRIA, was for sale for \$400,000, for a total of almost \$2 million. Mr. Ayres said this would refute the assertion that Mr. Mitchell and his group were heavily invested in the single tract they wished the

County to grandfather, and he continued to comment on other statements made in Mr. Mitchell's letter, and Mrs. Ayres distributed photographs of the Fort Pickens Road property to the Commissioners.

Mr. Ayres said Ms. Kates had referred earlier in the Meeting to the Harris Act. He said it had been written by the County Attorney that the Harris Act probably did not apply to leased property and the only person who could bring a case would be the property owner, and the Beach residents were not property owners.

Mr. Robert Crongeyer said he was the general counsel for the Santa Rosa Island Authority (SRIA) and was speaking on behalf of the SRIA Board because SRIA Board member Doctor Andrew Gygi had already left the meeting. He said the SRIA Board and its staff had worked diligently to devise a building height proposal that would be fair to everyone on the Beach and to accommodate the needs of the citizens; to provide for reasonable development on the Beach; and for contemplation of a convention center and hotel interests. Mr. Crongeyer said the proposal was set forth in full and submitted to the Board of County Commissioners, with a request for clarification. He said, therefore, on February 9, 1998, Mr. Blews sent a further letter of clarification to Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, and the County staff as well as the County Attorney's Office had reviewed the issues, and the submission which originated from the SRIA essentially had been confirmed and its validity had been confirmed by the very intense review of County staff, both in Planning and Zoning and the County Attorney's Office. Mr. Crongeyer said initially the SRIA recommended five (5) properties be considered for vesting and the Board required that any of these property interests meet with the County Attorney's Office and make a presentation to his satisfaction that the entity

had legal vesting and standing to be granted vesting status. He said the recommendation before the Board recognized three of the five properties which had met with the satisfaction of the County's legal staff.

Mr. Crongeyer said there had been discussion tonight about the Harris Act and its applicability to leasehold interests, and it was his opinion that leaseholders had the same property rights as people who owned property, and the United States recognized the rights of people who had leasehold interests just as the rights of property owners were recognized. He said property rights had been defended, and he would suggest that a ninety-nine year lease on Pensacola Beach was tantamount to ownership of the property and in the case involving Santa Rosa Dunes, the attorney representing the plaintiffs argued that quasi-judicial hearings should be required because leaseholds were the same as ownership when they were ninety-nine year leases. Mr. Crongeyer said the leasehold contracts were the same as zoning, and Escambia County Circuit Court Judge T. Michael Jones had ruled that ninety-nine year leases were the same as ownership of the property. He said it was his opinion that the judge would probably rule that way again, and he commented at length regarding compensation for fewer stories. Mr. Crongeyer said that Escambia County Circuit Court Judge Terry D. Terrell had ruled that the developer of the Gulfview Partnership property had a right to build up to seventeen stories, and he commented regarding the rights of vestment for certain properties on the Beach and that the County staff had made sound recommendations.

Mr. Crongeyer said the motion on the floor for eighteen stories plus two would not adversely affect the very important projects that were presently before the SRIA, one of

which was the possibility of a 15,000 square foot convention center. He said he concurred with Commissioner Whitehead's motion.

Mr. Crongeyer said the language that any structure over 250 feet in height should require Board of Adjustment approval was unnecessary. He said the Federal Aviation Administration (FAA) required a letter of approval from the FAA be obtained for any building that would be more than 200 feet in height, and he commented briefly concerning the motion made by Commissioner Whitehead being appropriate for development of the core area of Pensacola Beach.

Mr. Wilmer Mitchell said he had been a residential leaseholder on Pensacola Beach and was an investment leaseholder representing Gulfview Partnership and was here to speak in favor of the Ordinance before the Commissioners. He said he invested with his partners Downing Gray, Joe Endry, and David Lee in the Gulfview Partnership property in 1986, which was proposed to be vested for seventeen stories, sixteen residential and one parking, and that was the point he was addressing, and he commented at length, giving the history behind the purchase of the Gulfview Partnership property. Mr. Mitchell said he and his partners bought the property for the purpose of developing and more probably for a joint partnership in a business venture to build high rises on the property, and he commented regarding the substantial mortgage he had undertaken and the lack of a market since 1986 for additional condominiums on Pensacola Beach. He said the only flaw in the dune preserve on the Gulf side of Fort Pickens Road was the 100 feet he and his partners owned, part of the Gulfview Partnership property, which the County and the SRIA had decided to acquire at a price that was \$40,000 less than the appraisal, and he commented regarding his financial difficulties.

Mr. Mitchell said he would request the Commissioners to respect the fact that the SRIA had appointed the Ad Hoc Height Committee and that Committee had held numerous Public Hearings for public input and never considered the legal ramifications of these onslaughts on Gulfview Partnership. He said he would remind the Commissioners of the Harris Acts, as mentioned earlier, that protected citizens and the leaseholders, and he commented briefly. Mr. Mitchell said he would ask the Commissioners to approve the Ordinance, and he commented briefly.

Commissioner Whitehead said his motion was addressing the Ordinance as written and he was only modifying the height provisions as stated in the motion.

Mr. Kerry Culligan said he was representing the Citizens Planning Responsibly and in addition had been working with Escambia County Citizens Coalition (ECCC) and the County on Land Development Code (LDC) issues, density issues, concurrency issues, and some coastal high hazard issues. He said he had also talked with the Department of Community Affairs (DCA) on a number of these issues.

Mr. Culligan said that the Planning and Zoning Department's response to some of the density issues and zoning issues was that a neighborhood plan was being formulated and that these issues would be seriously addressed. He said the first neighborhood plan was for Perdido Key and he was not sure that it had been resolved completely after several modifications. Mr. Culligan said the Perdido Key Neighborhood Plan was presently in hearings with the DCA.

Mr. Culligan said tonight it was stated that the neighborhood plan for Pensacola Beach recommended fourteen stories, and if the County was going to keep its word to the citizens who had spent untold hours to formulate the plans and who had represented the

will of the citizens in that particular area, then the Board of County Commissioners needed to listen to the citizens. He said the committee as well as the citizens recommended fourteen stories and that was what the people wanted, and also the DCA was very much in favor of following the neighborhood plans.

Mr. Culligan said he would suggest the County not only count proposed infrastructure improvements but also proposed developments, and the Florida Statutes agreed that future development must be developed. He said there were a number of developments on Pensacola Beach with certain stages of permitting in process, and he referenced several of them. Mr. Culligan said when these new developments were added to the concurrency mix, there might be a different set of rules to follow. He said the DCA had somewhat agreed with the fact that proposed developments should be addressed. He said it was not a fair playing field if proposed improvements were included but proposed developments over the same amount of time were not included.

Mr. Culligan said, thirdly, the definition of coastal high hazard had been changed to include hurricane evacuation and that included both barrier islands and all land south of Gulf Beach Highway, Innerarity Point, and all of the land on Perdido Bay including north of the bridge across the Bay to Lillian, Alabama. He said 9% of Escambia County's population was in the coastal high hazard area, and he commented briefly. Mr. Culligan said the DCA's pronouncement would be forthcoming as far as what the DCA required in the coastal high hazard areas. He said if proposed development was included, the figure would be approximately 13% to 15% of the population inhabiting the coastal high hazard. Mr. Culligan said there already was a serious problem with hurricane evacuation in the area and he described the situation when Hurricane Opal (October, 1995) impacted Escambia

County. He said all the factors gave credence to the meaning of a neighborhood plan, and he commented briefly regarding the neighborhood plans on the west side of Escambia County and Perdido Key. Mr. Culligan said the SRIA had disregarded the neighborhood plan for Pensacola Beach as meaningless and this was not a good track record and community support was needed. Mr. Culligan said the Planning and Zoning Department was in favor of community support.

Mr. Frank Montenes, representing the Escambia County Citizens Coalition (ECCC), said the Board would not want variances in height restrictions to go to the Division of Administrative Hearings. He said he had heard the Board was considering delegating this to the SRIA and he would respectfully request the Board reconsider that because it was not required in the Special Act.

Mr. Montenes said a great deal of the mainland residents had expressed concerns regarding what had been happening on Pensacola Beach and had conveyed their uncomfortableness with the SRIA. He said it appeared, however, that the citizens of the mainland were not being heard.

Mr. Montenes said the Coalition (ECCC) would recommend that any variances come back to the Board of County Commissioners, and the citizens wanted more active participation on the part of the Commissioners who were the elected officials. He said this had been mentioned at other meetings and was consistent with Board action.

Mr. Montenes said the SRIA had performed well for fifty years; however, the County was entering a new phase where greater integration of communities was necessary, which was the purpose of Envision Escarosa. He said Pensacola Beach should not be so isolated and should be a part of Escambia County. Mr. Montenes said any organization

needed a check and balance, and this Board had taken action in September of 1995 and directed staff to take action and address the SRIA because of this Board's concerns regarding improvements. He said it had been decided a study should be performed and a report issued back to this Board. Mr. Montenes said he did not believe such a report had been released and he would formally request that such a report be made public and his Coalition membership wanted to see that report. He said he would again request the Board not delegate its authority on the height issue and have all requests for height variations be brought to this Board.

Ms. Jean Kutina said she lived on Fort Pickens Roads on Pensacola Beach and she had a copy of a letter written by County Attorney Tucker to Mr. Monte E. Blews, General Manager, Santa Rosa Island Authority (SRIA), relative to Mr. Blews' question of Mr. Tucker concerning the imposition of height restrictions on Pensacola Beach possibly resulting in lawsuits with reasonable possibility of monetary loss to the SRIA and Escambia County under the Harris Act or other legal theories. She said the answer from County Attorney Tucker was that the Special Act defined a property owner as the person who held legal title to the real property at issue. Ms. Kutina said that would not be the residents of Pensacola Beach, and the letter continued to state that lessors, mortgagors and contract purchasers did not appear to have a cause of action under the Harris Act, and that this standing issue had not been adjudicated by a court of competent jurisdiction.

Ms. Pat Ayres said she was a resident of Pensacola Beach. After her comments concerning people who invested in gold expecting the price to stay the same as the price when it was purchased, or the farmer who planted grain who did not know what the price would be at harvest season, or the stock market not having any guarantees that one's

stock would go up and not down and that sometimes one must sell one's stock while it was at the bottom, Mrs. Ayres said she had been a commodity broker at one time and she knew that from day to day there were never any guarantees that she would make money on her investments. She said real estate was similar and one could not expect a larger return on one's investment, which was a risky investment, like anything else.

Chairman Bass said there was a motion on the floor and he asked for questions or comments.

Commissioner Banjanin asked if there would be a second Public Hearing scheduled.

Commissioner Whitehead said he would include the scheduling of a second Public Hearing in the main motion.

Commissioner Banjanin said the main motion was to adopt the Ordinance and include a height restriction for the core area of eighteen plus two stories and a 250-foot limitation plus a second Public Hearing. He asked if it was appropriate to vote tonight or at the second Public Hearing.

County Attorney Tucker said he understood the Board would be voting tonight on bringing the amendment back and if the Board voted tonight to bring it back at the next Public Hearing, there was no obligation to vote for the amendment at the next Public Hearing. He said, as an alternative, a motion could be made to have the second Public Hearing and consider the issue separately, which would amend the main motion.

Commissioner Banjanin asked Commissioner Whitehead if it would be appropriate to take a vote at the second Public Hearing.

Commissioner Whitehead said he would like closure on the issue at this Meeting and if there were three votes to move forward, the County Attorney's Office would have a month

to finalize any loopholes in the proposed Ordinance and resolve the process with the SRIA and also the appeal process with the Board of County Commissioners. He said a vote tonight would save a lot of time, and he commented briefly.

Commissioner Banjanin said he had always advocated the recommendation from the Height Committee; however, if the Board was voting tonight, at this point he would state that he was a realist. He said his concern had been about the core area and no height limitation, and there was a fourteen-story provision for the rest of the Island, and he commented briefly. Commissioner Banjanin said it was quite properly pointed out that the possibility of forty-five or fifty-story buildings was not out of line and at this point it was better to have a limitation on the whole Island, including the core area. He said the limit might not be as low as some people would like it to be; however, it certainly protected the core area and the Island from tremendously high structures. Commissioner Banjanin said this was the best recommendation regarding heights on the Island, and he commented briefly. He said under the circumstances he would vote for the motion on the floor.

Commissioner Junior asked what was the possibility of fourteen stories in the core area and up to four additional stories if it was based on a hardship that was established. He asked if the Board could vote on the height issue separately.

Chairman Bass said there was already a motion on the floor.

Commissioner Whitehead said the issues could be separated, and brief discussion followed. He said it was difficult to separate, however, because he was recommending that 250 feet be incorporated into the recommendation, as well.

After discussion, Commissioner Whitehead said he would amend his motion accordingly, removing the portion dealing with height restriction, and adding that the second Public Hearing was scheduled for 6:31 p.m. on June 4, 1998.

After brief discussion concerning what motion was presently on the floor, Commissioner Whitehead said he was amending his original motion to delete the reference to height and that would be considered under a separate motion. He said the motion on the floor would be scheduling the next Public Hearing and also incorporating the proposed project in its entirety, with all the detail and vesting incorporated, and only the heights were not being addressed.

Motion seconded by Commissioner Junior, and carried unanimously, taking the following action relative to the 6:34 p.m. Public Hearing for consideration of adopting an Ordinance amending Section 2 of Ordinance 97-51 amending Article 13 of the Land Development Code, entitled "Santa Rosa Island Authority Development Regulations," amending Sections 13.05.01, 13.05.02 and 13.05.04 to correct the referenced Section for Building Heights; adding Section 13.05.07, "Building Height Restriction"; providing for severability; providing for inclusion in Code; and providing for an effective date, as follows:

- A. Scheduling a second Public Hearing at 6:31 p.m. on June 4, 1998; and
- B. Approving to incorporate the project in its entirety, with all the detail and all the vesting incorporated (with height restrictions to be addressed in a separate motion).

Motion made by Commissioner Junior that the Board approve setting the height restrictions in the core area of Pensacola Beach at fourteen (14) stories with four (4) additional stories based on hardship.

Motion seconded by Commissioner Banjanin.

Substitute motion made by Commissioner Whitehead that the Board approve incorporating his original description of eighteen (18) stories plus two (2) stories with a maximum height of 250 feet, approved by the SRIA with an appeal directly to this Board.

Motion seconded by Commissioner Robertson.

After brief discussion concerning heights, Commissioner Whitehead said the Board needed a development rule that allowed a person to know with what one was dealing, and by incorporating hardships and variances meant it was at the whim of whatever body before which the person came, and that was inappropriate. He said the County had tried to standardize its development code across the community and this would accomplish that.

Commissioner Banjanin said he would suggest deferring the issue to the second Public Hearing.

Commissioner Whitehead requested the Chair to call for the question on the substitute motion, and the motion carried 3-2, with Commissioner Banjanin and Commission Junior voting "no", approving the substitute motion to amend the proposed Ordinance (amending Section 2 of Ordinance 97-51 concerning Santa Rosa Island Authority Development Regulations) to include in the core area of Pensacola Beach a maximum height restriction of eighteen (18) stories plus two (2) parking (or storage) stories with a maximum height restriction of 250 feet, with any variances, based on hardship, to be heard by the SRIA and forwarded to the Board of County Commissioners as the appellate body.

County Attorney Tucker said the substitute motion now became the main motion. He asked if the Board wished this to be a Conditional Use with the SRIA to approve it, or what criteria the Board desired.

Commissioner Whitehead said a hardship must be proved if someone wanted to build in excess of 250 feet, and he would be reluctant to support a height in excess of 250 feet. Commissioner Whitehead said a process was needed, and a Conditional Use would mean the use would only apply to the existing structure and it would not be grandfathered or passed on.

Mr. Pitkin concurred.

County Attorney Tucker said it would unnecessary to require a hardship to obtain a Conditional Use.

Commissioner Robertson said if there was a twenty-story height limitation and a 250-foot limitation, he could not imagine a request ever coming to the Board to exceed that limitation.

Commissioner Whitehead concurred. He said an appeal process was needed, however, and brief discussion followed.

Commissioner Banjanin said he would have to vote for the motion because Pensacola Beach had to have height restrictions in order to save the future and this was the best that could be done.

Commissioner Junior said it was not an extraordinary issue and the motion would be approved if Commissioner Banjanin voted against it.

There being no further discussion, Chairman Bass called for the question, and the motion carried 4-1, with Commissioner Junior voting "no," approving the substitute motion as the main motion.

Motion made by Commissioner Junior, seconded by Commissioner Whitehead, and carried unanimously, accepting, for filing with the Board's Minutes, the following three (3) documents, as submitted by Ms. Pat Ayres:

- A. A copy of a one-page editorial of the Pensacola News-Journal staff published in a recent edition of the Pensacola News-Journal concerning building heights on Pensacola Beach;
- B. Copies of four (4) photographs on two (2) pages depicting Gulfview Partnership's parcel and the Santa Rosa Towers Condominiums on Pensacola Beach; and
- C. A copy of a five-page letter dated May 7, 1998, from Mr. John C. Barrett, Pensacola Beach, to Mr. Don Ayres, President of the Pensacola Beach Residents and Leaseholders Association, concerning proposed building height limits on Pensacola Beach.

(Attached and Shown as EXHIBIT "AA")

5. Discussion Concerning Withdrawal of the EAR Report from this Meeting

Chairman Bass advised that he had announced at the beginning of this Meeting (see Page 1) that staff's recommendation had been withdrawn from the agenda at this time, at the request of the Department of Community Affairs (DCA), to take the following action relative to the 6:35 p.m. Public Hearing for consideration of adopting the Evaluation and Appraisal Report (EAR) of the 1993 Escambia County Comprehensive Plan:

- A. Adopt the EAR Report;
 - B. Approve transmittal of the EAR Report to the Department of Community Affairs (DCA) and other agencies identified in the Florida Statutes; and
 - C. Authorize the Chairman to sign the documents.
6. Discussion Concerning Withdrawal of the Perdido Key and Monsanto Property Compliance Agreement from this Meeting

Chairman Bass advised that he had announced at the beginning of this Meeting (see Page 1) that staff's recommendation had been withdrawn from the agenda at this time, at the request of the Department of Community Affairs (DCA), to take the following action relative to the 6:36 p.m. Public Hearing for consideration of adopting the Perdido Key and Monsanto (n/k/a Solutia) Property Compliance Agreement:

- A. Adopt the Perdido Key Compliance Agreement for Comprehensive Plan Amendments 97-1-1 (Perdido Key) and 97-1-3 (Monsanto [n/k/a Solutia] Property Future Land Use Map designation);
- B. Approve transmittal of the Perdido Key and Monsanto Property Compliance Agreement to the Department of Community Affairs (DCA) for its signature; and
- C. Authorize the Chairman to sign the Agreement.

9:24 P.M. - COMMISSIONER JUNIOR LEFT THE MEETING TEMPORARILY.

7. Discussion Concerning Withdrawal of the Comprehensive Plan Amendments 97-1-1, 97-1-3, and 97-1-6 Concerning Perdido Key Future Land Use Category and Monsanto Property Future land Use Map Designation from this Meeting

Chairman Bass advised that staff's recommendation had been withdrawn from the agenda at this time, to take the following action relative to the 6:37 p.m. Public Hearing for consideration of adopting an Ordinance for Comprehensive Plan Amendments 97-1-1, 97-1-3 and 97-1-6:

- A. Adopt an Ordinance relative to the Comprehensive Plan Amendments 97-1-1 (Perdido Key Future Land Use Category), 97-1-3 (Monsanto [n/k/a Solutia] Property Future Land Use Map designation) and 97-1-6 (Capital Improvement Element), as follows:

An Ordinance of Escambia County, Florida, amending Ordinance 93-20, the Adopted Comprehensive Plan of Escambia County, Florida, as amended, providing for amendments to the Future Land Use Element; providing for amendment to the Capital Improvement Element; providing for Ordinance to be filed; providing for severability; and providing for an effective date;

- B. Approve submittal of the adopted Amendments to the Department of State, Department of Community Affairs (DCA) and other agencies identified in the Florida Statutes; and

- C. Authorize the Chairman to sign the documents.

8. Scheduling a Public Hearing for Consideration of Preliminary Development Plan for Island Resorts Condominiums on Pensacola Beach

Motion made by Commissioner Whitehead, seconded by Commissioner Robertson, and carried, scheduling a Public Hearing for June 4, 1998, at 6:32 p.m. to review and consider for approval the Preliminary Development Plan for the Island Resorts Condominiums (Portofino, a project consisting of five [5] twenty-one [21] story condominium buildings on 28.23 acres (east of Calle Marbella), with 150 residential units in each building for a total of 750 residential units, to be developed in five phases, with each phase including the construction of one 150-unit condominium building; a/k/a/ Pensacola Beach Land Trust Property; a/k/a/ the Gary Work Land Trust property; a/k/a the Allen Levin property) Planned Unit Development (PUD), to be located on Parcel Number 1000-000-000, 2200 Via DeLuna Drive (County Road 399), on the eastern end of Pensacola Beach, Section 28, Township 2 South, Range 26 West, Escambia County, Florida, under the Land Development Code, Ordinance Number 96-3, as requested by Carlan Killam Consulting Group, Agent for Allen Levin, Owner.

9. Scheduling a Public Hearing for Consideration of Adoption of an Ordinance Amending the Land Development Code

Motion made by Commissioner Whitehead, seconded by Commissioner Robertson, and carried, scheduling a Public Hearing for June 4, 1998, at 6:30 p.m., for consideration of adopting an Ordinance amending Appendix D, Article 6, of the Escambia County Code of Ordinances (Ordinance Number 96-3) the adopted Land Development Code of Escambia County, Florida, as amended, the Official Zoning Map, as adopted by reference in Section 6.02.00, to include those rezoning cases numbered **Z-97-64**, **Z-98-28**, **Z-98-29** and **Z-98-31** through **Z-98-35** which were heard by the Rezoning Hearing Examiner on April 8, 1998, and will be presented for consideration for approval by the Board of County Commissioners on June 4, 1998, as follows:

- A. Case Number: **Z-97-64**
Location: Section 08, Township 1 South, Range 30 West
Parcel Numbers: 2300-002-002 and 2300-001-002 (9950 North Palafox Street and 9970 North Palafox Street)
From: R-4, Multiple Family District, Medium High Density,
To: C-2, General Commercial District (for 500 feet of frontage on North Palafox Street only, leaving the railroad frontage R-4 zoning)
Requested by: Escambia County Office of Planning and Zoning
Note: Case was remanded to the Rezoning Hearing Examiner at the February 12, 1998, Board Meeting to consider the area fronting Palafox Street for C-2 zoning and the area behind it for R-4 zoning.

- B. Case Number: **Z-98-28**
Location: Section 30, Township 1 North, Range 31 West
Parcel Number: 1102-000-000 (Highway 97 South - approximately 980 feet south of the Kingsfield Road and Highway 97 intersection)
From: VAG-2, Villages Agriculture District
To: V-4, Villages Multi-Family Residential District
Requested by: Doug Mason, Property Manager, Florida Baptist Family Ministries, Agent for Ella K. Allen, Owner
- C. Case Number: **Z-98-29**
Location: Section 23, Township 1 North, Range 30 West
Parcel Number: 3204-000-000 (10740 Chemstrand Road - Malibu Garden Subdivision)
From: VR-2, Villages Rural Residential District
To: V-4, Villages Multi-Family District
Requested by: Rick Higdon, Agent for Edward D., Jr., and Peggy H. Matthews, Jr., Owners
- D. Case Number: **Z-98-31**
Location: Section 12, Township 1 South, Range 31 West
Parcel Number: 3203-000-002 (8490 Sharon Lane)
From: R-2, Single Family District, Low Medium Density,
To: C-2, General Commercial District
Requested by: Michael J. Gay, Agent for Vernon T. Horn, Owner
- E. Case Number: **Z-98-32**
Location: Section 17, Township 1 South, Range 30 West
Parcel Number: 2101-000-112 (East Olive Road - approximately 315 feet east of the Kipling Street and Olive Road intersection)
From: R-4, Multiple Family District, Medium High Density,
To: R-6, Residential Neighborhood Commercial District, High Density,)
Requested by: Bryan Baars, Agent for First Union National Bank, Trustee for the Victor Wozniak Trust
- F. Case Number: **Z-98-33**
Location: Section 41, Township 1 South, Range 30 West
Parcel Number: 3000-001-005 (2483 Longleaf Drive)
From: R-R, Rural Residential District
To: C-2, General Commercial District
Requested by: Reagan L. McDaniel, Agent for Curtis J. and Shirley J. Grant, Owners
- G. Case Number: **Z-98-34**

Location: Section 09, Township 2 South, Range 30 West
Parcel Numbers: 0901-006-004, 0901-005-004 and 0901-004-004
(4416 North "W" Street - Bell Acres Subdivision)
From: R-6, Residential Neighborhood Commercial District, High
Density,
To: C-2, General Commercial District
Requested by: Howard L. and Jennifer Linn Sindylek, Owners

H. Case Number: **Z-98-35**
Location: Section 21, Township 1 South, Range 30 West
Parcel Numbers: 1101-010-038, 1101-008-038, 1101-006-038, 1101-002-039
and 1101-007-038 (50 East Hope Drive, 7728 North Palafox
Street, 7724 North Palafox Street, 7706 North Palafox Street
and 7722 North Palafox Street)
From: R-5, Urban Residential/Limited Office District, High Density,
To: C-2, General Commercial District
Requested by: Escambia County Office of Planning and Zoning

Mr. Paul Miller, Planner I, advised that because of a typographical error, Case **Z-98-28**
was incorrectly shown as Case **Z-97-28**.

9:32 P.M. - COMMISSIONER JUNIOR RETURNED TO THE MEETING.

1. Actions Taken Concerning Rezoning Case Z-97-57, Z-98-14, Z-98-19 through Z-98-27
and Z-98-30 - Continued

Chairman Bass said that Commissioner Robertson had requested Case **Z-98-30**,
concerning a request to rezone from R-R, Rural Residential District to R-1, Single Family
District, Low Density, be re-visited.

Commissioner Robertson said he wanted to be sure that the Board had not properly
advertised the request and would it be legal to approve the rezoning because there was
a development with banking loans pending. He said it was the Board's mistake if the Public

Hearing had not been properly advertised, and Mr. Pitkin had stated that even though one part could not be held, the part that is most important could be held, and he wanted to know on whom he could rely.

Mr. Stephen H. Pitkin, AICP, Chief, Planning and Zoning Division, said the rezoning, showing the Board's intent, could be approved tonight; however, the Ordinance to amend the Future Land Use Map could not be approved tonight.

Commissioner Robertson said that would satisfy the bank and the developer.

Mr. W. R. Ward, representing Mr. C. R. Campbell, said that would satisfy the bank. He said this action on the part of the Commissioners would be greatly appreciated and it would allow the contractor to start construction. Mr. Ward said the contractor had been waiting for three months to begin work, and the bank would not release funds without this action by the Board of County Commissioners, and he commented briefly.

Motion made by Commissioner Robertson that the Board reconsider to get it back on the floor.

Motion seconded by Commissioner Banjanin.

Commissioner Whitehead said he would not vote for a zoning change without a Public Hearing. He said he would come to a Special Meeting any night next week because taking action tonight would look bad to the public even though it might be legal, and he commented briefly.

Commissioner Robertson said the Rezoning Hearing Examiner had recommended approval.

Commissioner Whitehead said the Board had admitted that it had not followed the correct procedure, and this Meeting had been broadcast on television and was being recorded.

He said he would not vote for it and it could not be changed now. Commissioner Whitehead said it would appear that the Board was playing favorites, and this was not the first time the Board had erred, and brief discussion followed.

Chairman Bass said there was a motion on the floor to reconsider and he asked for other comments.

Commissioner Banjanin asked County Attorney Tucker what would be the Board's legal.

County Attorney Tucker said he was researching that matter.

Commissioner Junior said the Planning and Zoning Department had failed to properly advertise for the Public Hearing, which was a legal requirement. He asked why the Board would not follow the law.

Mr. Paul Miller, Planner I, said, according to the LDC, the Board had the responsibility to review the Case and approve it, and the legal advertisement was for the map amendment to place the decision into effect, and brief discussion followed concerning the two issues of rezoning and amending the Ordinance.

Mr. Pitkin said the Board could handle both issues at the May 26, 1998, Regular Board Meeting at 9:00 a.m.

Chairman Bass said that although he agreed with Commissioner Whitehead, this would be a unique situation in the three and one-half year he had been on the Board of County Commissioners. He said handling the issue at two separate meetings might be technically legal; however, it would be unique and not in good practice.

Commissioner Banjanin said he would withdraw his second to the motion on the floor that the Board reconsider the previous action and get the rezoning back on the floor.

After brief discussion concerning the legal advertisement, Mr. Miller said the legal advertisement must appear in the local newspaper at least ten (10) days prior to the meeting for which it would be scheduled.

Commissioner Junior said it was a matter of being legal, and he suggested the Board advertize the rezoning for a Special Meeting, based on an opinion from the County Attorney regarding the legality, and he so moved.

Motion seconded by Commissioner Robertson, to schedule a Special Meeting as quickly as possible, and discussion followed regarding whether or not a Special Meeting was necessary.

Chairman Bass said there was a motion on the floor to properly advertise and schedule a Public Hearing, and discussion followed.

Mr. Pitkin said scheduling a Special Meeting in ten days would be approximately the same time as the May 26, 1998, 9:00 a.m. Regular Board Meeting, and discussion followed.

County Administrator Evans said he understood that a matter of Planning and Zoning was to be held after 5:30 p.m.

Commissioner Junior said the Public Hearing would be held at 5:31 p.m. on that day, and brief discussion followed.

Chairman Bass said there would be a meeting at 5:31 p.m. on May 26, 1998.

There being no further discussion, Chairman Bass called for the question, and the motion carried unanimously, taking the following action concerning Case **Z-98-30**:

- A. Approving to schedule a Special Board Meeting at 5:31 p.m. on May 26, 1998, regarding the April 8, 1998, recommendation of the Rezoning Hearing Examiner to approve Case **Z-98-30**; and

- B. Approving to schedule a Public Hearing at 5:31 p.m. on May 26, 1998, for consideration of adopting an Ordinance amending Appendix D, Article 6, of the Escambia County Code of Ordinances (Ordinance Number 96-3) the adopted Land Development Code of Escambia County, Florida, as amended, the Official Zoning Map, as adopted by reference in Section 6.02.00, to include the rezoning Case heard by the Rezoning Hearing Examiner on April 8, 1998, and recommended for approval, as follows:

Case Number: **Z-98-30**
Location: Section 08, Township 1 South, Range 30 West
Parcel Number: 1003-000-018 (241 East Ten Mile Road)
From: R-R, Rural Residential District
To: R-1, Single Family District (Low Density)
Requested by: C. R. Campbell, Owner

(Previous action taken earlier in the Meeting; see Page 69.)

ADJOURNMENT

There being no further business to come before the Board, Chairman Bass declared the Regular Meeting of the Board of County Commissioners adjourned at 9:37 p.m.

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

By: _____

Mike Bass, Chairman

ATTEST:

ERNIE LEE MAGAHA
CLERK OF THE CIRCUIT COURT

Deputy Clerk

Approved: June 4, 1998

pmcotton

The fully-executed Minutes may be viewed by clicking the mouse on the icon in the