

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Nocatee Utility Corporation for Original Certificates for Water & Wastewater Service in Duval and St. Johns Counties, Florida

Docket No. 990696-WS

In Re: Application for certificates to operate water & wastewater utility in Duval and St. Johns Counties by Intercoastal Utilities, Inc.

Docket No. 992040-WS

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INTERCOASTAL'S MOTION TO SUPPLEMENT THE RECORD

INTERCOASTAL UTILITIES, INC. ("Intercoastal"), by and through undersigned counsel, hereby files this Motion to Supplement the Record and in support thereof would state and allege as follows:

1. Since the close of evidence in these proceedings, certain information has developed which is relevant to and supplements the facts ascertained at the Final Hearing. The Commission did not hear this evidence at the Final Hearing as the evidence did not yet exist. As proof thereof, Intercoastal submits the newspaper article, attached hereto as Exhibit "A," which was published on June 29, 2001 in the St. Augustine Record, and respectfully requests that the Commission supplement the factual record in these proceedings with the information contained therein.

2. As a general rule, a party does not have a right to present evidence after the record is closed; however, the Commission may permit a party to reopen its evidence and supplement the evidentiary record. In Re: BellSouth BSE, Inc., PSC-98-1165-FOF-TX (stating the general rule and citing Canova v. Florida National Bank, 60 So. 2d 627 (Fla. 1952) and Wilson v. Johnson, 41 So.

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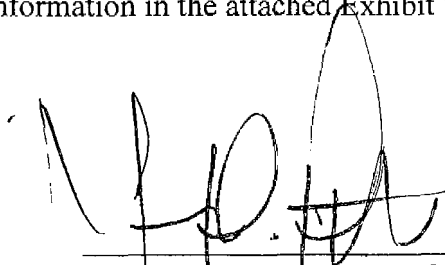
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395 (1906)). Relevancy is required for admitting such evidence into the record. *Id.* The information in the attached Exhibit "A" is relevant to these proceedings.

3. While, admittedly, the attached Exhibit "A" is probably hearsay evidence, the information in Exhibit "A" is being offered merely to supplement and explain the evidence regarding the timing of the project, and not for any other purpose. Hearsay evidence may be used in administrative proceedings for the purpose of supplementing or explaining other evidence. §120.57(1)(c) Fla. Stat. In allowing hearsay evidence in PSC proceedings, the Commission has stated that "administrative agencies are not bound by the strict rules of evidence that are enforced by the courts." The Commission has allowed hearsay evidence "for the limited purpose of supplementing or explaining non-hearsay testimony." *In re: Primary Jurisdiction Referral*, 89-5 FPSC 394. The evidence in the attached Exhibit "A" is being offered to supplement that evidence presented at the hearing which addressed the timing and need for service of the Nocatee project (see, e.g., the Rebuttal Testimony of M.L. Forrester).

WHEREFORE, and in consideration of the above, Intercoastal respectfully requests that the Commission supplement the record with the information in the attached Exhibit "A".

DATED this 31st day of July, 2001.



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CERTIFICATE OF SERVICE

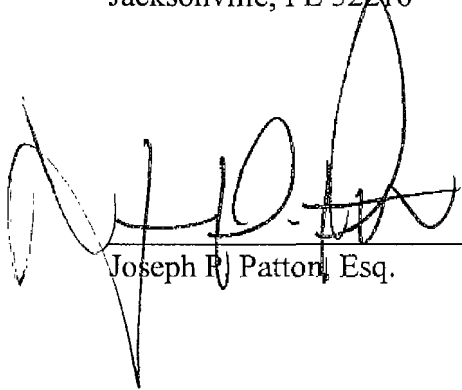
I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by facsimile and U.S. Mail to the following this 31st day of July, 2001.

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By **MARGO C. POPE**
Senior Writer

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Legal challenges to St. Johns County's approval of Nocatee could delay construction for up to two years, says Roger O'Steen, the Nocatee developer.

Challenges have been filed with the Florida Department of Community Affairs by the Sierra Club, the Florida Wildlife Federation and northwest resident Ellen Whitmer. A Circuit Court lawsuit by the Sierra Club is pending against the county.

"We're resigned to being delayed," said O'Steen. "We believe Nocatee's plan has merit. Our work product has been complimented by other groups, including 1000 Friends of Florida."

1000 Friends of Florida is a public interest group supporting growth that complements the environment.

O'Steen, chairman of The PARC Group, said the likely delay will put Nocatee behind beginning with its first project, the four-laning of a part of County Road 210 east.

Nocatee is a 15,000-acre development that will straddle St. Johns and Duval counties. County Road 210 will run through the middle of the St. Johns section, and that renovation is part of \$100 million worth of road improvements Nocatee has promised.



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Nocatee will add 36,000 residents to the county over a 25-year period.

O'Steen said the delay will mean that C.R. 210's two-lane status will continue for a longer time. "It delays the safer route overall and a safer route for hurricane evacuation," he said.

Nocatee, says O'Steen, had planned to have the C.R. 210 expansion work under way in 2002. The first houses in the development were to follow in three to five years.

The county's land use plan was revised by the Board of County Commissioners earlier this year to include the New Town zoning category. It is for developments of more than 2,500 housing units. Nocatee's plan is to have 14,000 units.

Sonya Doerr, the planning division's chief planner, said the Nocatee team told the county staff recently it will request one planned unit development designation for the entire project. "They discussed with the staff that one PUD will establish all of its land development plan for Nocatee's villages and other (commercial) development areas," Doerr said.

The pre-application process is continuing between the county and the developer, she said.

The challengers to Nocatee are asking the state to reject the "New Town" land use category of the county's Land Development Code and the approval of the development order by the county and the state. A state hearing on those challenges is set in late September.

Jim Loftus, spokesman for the Florida Department of Community Affairs, said the timetable to resolving each challenge is different. He said a challenge at the state level could probably take up to two years, depending on the case.

After the state hearing officer acts, the appeal is to the First District Court of Appeal. "That includes getting on the dockets," he said.

The Circuit Court lawsuit, by Sierra Club, says the County Commission acted improperly without regard to its comprehensive land use plan in approving the Nocatee development order. It also said the New Town land use is inappropriate because the proposed development area is rural in nature. No date for a hearing has been set in that case.

"Our counsel has told us that if it goes to Circuit Court, it's probably the fall of 2002 before it gets there," O'Steen said. "Then if there is an appeal, that is another nine to 10 months afterward. So, you are looking 2004."

Without the legal issues, O'Steen said the road project would have begun in 2002.

But he said the delay will also give the development team more

time to refine its plan. "We feel we are on very solid ground on all the issues," O'Steen said.

The possibility of a delay does not surprise County Commission Chairman Marc Jacalone. "There's no reaction from me," he said Thursday, explaining that the legal process has delayed other developments' timetables. He said the applications for consumptive use permits for water will also take additional time.

He is concerned about the C.R. 210 expansion because of it being a hurricane evacuation route. "It's unfortunate all the parties can't come to an agreement," he said.

Whitmer said she is raising her challenge because she believes Nocatee is urban sprawl. "They don't have the existing infrastructure to support this," she said.

Whitmer said Nocatee is a major test for the county. "This is a monumental test of state law and the county comprehensive land use plan," she said. "If this goes through, there won't be any legal status to deny anyone anything else because once this is done, the precedent is established."

Whitmer is not against the development of the land that is owned by the Davis family, founder of the Winn-Dixie Stores. She said she believes it should be limited to the planned rural development size which is, in her opinion, appropriate for the area. That development size is 2,600 units.

Commissioner Mary Kohnke, who has also been the leading supporter of Nocatee, said the process allows people to file challenges and lawsuits.

"It's a shame for one major reason: the longer they delay the construction, the greater the potential for a major hurricane evacuation," she said. "Maybe it is not important to others, but it is to Ponte Vedra and Palm Valley because hurricanes are going to happen no matter what and we need that evacuation route."

County Commissioner Nicholas Meiszer, in whose district most of Nocatee is located, said he was surprised in a way. "But they knew there would be challenges and delays," he said. "Is their course of action going to be to settle or negotiate. ... I wonder what the next step will be."

Meiszer said one of the reasons he voted against Nocatee was because of the New Town amendment. He said he is convinced the developer could proceed without the New Town classification through a series of planned rural developments. "In the long run, it may be a good thing," he said.

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