City of Winter Park
Lakes & Waterways
Advisory Board

MINUTES
CITY OF WINTER PARK LAKES AND WATERWAYS ADVISORY BOARD
June 15, 1994

PRESENT: James T. Barnes, Douglas S. Metcalf, James D. Saurman, Gary V. Soukup

Joseph Terranova, Commissioner; David B. Pearce, Stormwater Engineer; Pierre R. Deschenes, Chief of Lakes Division; Patricia Cash, Secretary; Lt. Ed Butler, WPPD Lakes Patrol; Stanley Shaw, Maitland L&W Advisory Board, Jack R. Beattie; Alan Macomber, Ann Cross Realty; James B. Madison

ABSENT: Leslie C. Grammer, Macauley Whiting Jr.

CALL TO ORDER: 12:05 P.M., Chairman Metcalf presiding

QUORUM: Established

MINUTES: Minutes of May 18, 1994 meeting unanimously approved.

CORRESPONDENCE AND ANNOUNCEMENTS: Chairman Metcalf welcomed Commissioner Terranova, Dr. Jack Beattie and Alan Macomber to the meeting. Mr. Terranova said that he was visiting all of the City boards to familiarize himself with their activities.

REPORTS:

CITY MANAGER - James S. Williams: Not Present

DIRECTOR OF PUBLIC WORKS - James L. Robards: Not Present

STORMWATER ENGINEER - David B. Pearce:

1. 1995 Capital Improvement Projects (CIP) - The continuing audit of the stormwater utility fees has now raised the FY95 CIP estimate to $805,000. David recommended that the additional $15,000 be added to Item No. 5 (Stormwater System Repairs and Upgrade). The Board unanimously approved that recommendation.

2. Stormwater Ordinance - The final reading was accomplished and it is now official.

3. Violations:

   a. New England Building - David will request a schedule for completion from building owner Mrs. Patrice Hobby and will report at the next meeting.

   b. Jerry D. Mikkleson - Pierre and David are meeting with Mr. Mikkleson at his property (621 Virginia Drive) on June 16th. Full report next meeting.

c. F. William Bryan - No response has been received to the certified letter sent last month. The violation at his property, 1731 Pinetree Road, has now been sent to Code Enforcement for further action.

d. Jack R. Beattie - Dr. Beattie, a lake swimmer, showed photographs of the lakefront at his 561 Via Lugano property and commented that, in his opinion, the lakes have been deteriorating over the last several years. He says that the weeds are very bad in front of his property and that snakes and rats are nesting in the bushes. He believes that the quality of the water is deteriorating and suggests that the City test the lakes every two weeks and obtain a Public Health report of the lake conditions. He further commented on the stagnant water in the Lake Maitland cove where the Isle of Sicily bridge has been blocked.

Regarding the alleged violation of spraying his lakefront weeds, he stated that the City's spraying was not working, and said that his yard man used a special mower to clear some weeds. He is not sure whether any spraying was done.

Doug Metcalf explained the spraying restrictions which are imposed on the City by the Florida Department of Environmental Protection (DEP) as well as the position of the Fish and Game Commission (FGC) regarding weeds and chemicals. This is why the City has an ordinance which regulates spraying or removing vegetation. The appropriate way to cure weed problems is to replace them with native aquatic plants which can be controlled and which beautify the shore.

Pierre summarized the successful efforts of the City to get DEP and FGC to allow 50-foot rather than 30-foot corridors to each property. He also explained that the weeds have a beneficial impact in preventing shore erosion. He further stated the concern of the Board with using yard chemicals close to the shoreline where they can poison the water and the fish.

Jim Barnes updated the Board and Dr. Beattie on the plans of the Isle of Sicily residents to rebuild the bridge and reopen the flow underneath it.

Jim Madison asserted that there had always been snakes and grove rats on the lakes, and that in all the years he had lived here, he has never heard of anyone being bitten. He further commented that the absorption of the nutrients by the lakefront plants helps to control the pondweed.

Doug Metcalf suggested that Pierre and David meet further with Dr. Beattie and discuss the water quality tests we now perform. Pierre suggested that Dr. Beattie might want to tour several lakes projects to better understand the problems and the opportunities he has for better weed control.

Doug Metcalf also mentioned the current opening which exists on the Board and suggested that Dr. Beattie might want to address his interest in the lakes to the Commissioners. Commissioner Terranova suggested a later meeting on that issue.

4. Lakes Managers' Meeting - Representatives from the Cities of Orlando, Maitland, Altamonte Springs and Casselberry, Orange and Seminole Counties, Walt Disney World and Professional Engineering Consultants, Inc., attended the meeting. Discussions at that meeting which may influence Winter Park waters include a project by Orlando on Lake Rowena. They are finally working on the 80-inch pipe that drains Fashion Square. Orlando will soon install an automated trash barrier which directs trash into a hopper when it rains. This project will be followed next year by an alum system to tie up the nutrients. Jim Barnes suggested that Doug Metcalf write a letter in support of these projects to the project manager and Orlando Mayor Hood. David will draft the letter.

5. Florida Hospital Drainage - Plans for the Florida Hospital expansion continue. David assured Jim Barnes that drainage into the lakes is still an issue of concern which is being addressed in their planning.

6. Winter Park Hospital Drainage - WPH also plans an imminent expansion and proper drainage and stormwater control were considered. Commissioner Terranova discussed several items in WPH's master plan including the correction of the standing water problem at the corner of Lakemont and Mizell.

7. Lake Baldwin - This lake has been closed to swimming for several years because of the water quality. A discussion ensued about efforts we could undertake to reopen it. Water sampling is pointless until the (approximately 20) Muscovy ducks are removed from the swimming area, as they are one of the major sources of pollution. David will discuss the ramifications of this with Jim Williams.

8. Boat House Canal Lots - The Board and WPPD would like to have a City-owned boat house for the WPPD boats and equipment. David talked to Jeff Briggs who advised him that the City owns six lots along Alabama Drive. However, none of these lots currently has a boat house on it, and the City purchased them to keep that from happening. Further, the canal location is not ideal because of the cyclical variation in water levels. Gary Soukup mentioned that one of the boat houses near the Rollins crew storage area was available for $50-60,000, and Alan Macomber said that one was available at 100 Alabama Drive for $55,000. The Canton Avenue location still seems best, but David will continue his investigation.

9. Mead Gardens Study - David has the final draft and will send copies of the finished report to all the Board members when it is submitted. The estimated costs for the stormwater improvements to this project are much lower that we discussed last year.

CHIEF OF LAKES DIVISION - Pierre R. Deschenes:

1. Shoreline Alteration Permit Applications - Preapproved by Pierre
   a. Mrs. Carol DeMaio, 5 Isle of Sicily

   Shoreline Alteration Permit Applications - Reviewed by Board
   a. Robert Borchardt - Seawall by Larson Landscape and shoreline revegetation by Baxter Landscaping - unanimously approved subject to the provisions recommended by Pierre.

2. Pondweed - City of Maitland residents who wish to have Pondweed spraying done must submit a written request.

3. Lake Sue - The request by some Orange County lakefront residents to have Winter Park take over the weed control for the full lake was discussed. Tom Warlick of the Lake Sue Improvement Association was expected but did not attend. Any Board members who discuss lake issues with Lake Sue's Orlando and County residents should encourage them to let Winter Park control their weeds on terms similar to Maitland's. Our control of the headwaters to the Chain would benefit them and all of Winter Park's residents.

4. Canal Wall Deterioration - Photographs of current problem areas were displayed. The Board's concern with the funding source for this project, estimated to cost $400,000 for both the Fern and Venetian Canals, was recognized by Commissioner Terranova.

5. Harvesting - Aquatic Habitat Management submitted the low bid of $414/acre. Their references and insurance documents cleared and they will start as soon as the need arises.

LAKES PATROL: Lt. Ed Butler

1. Jr. Boater Licenses - There has been a significant increase in the number of young drivers requesting Jr. Boaters Permits. They are required by State law. An officer is stationed at Dinky Dock on the weekends to check permits prior to getting on the lake.

MAITLAND: Stanley Shaw

1. Maitland is again working to implement a stormwater utility fee. Their Lakes Chief, resigned in April, and a new person has been hired and will start on June 27th. The Board extended an invitation for the new Lakes Chief to attend our meetings regularly.

OLD BUSINESS: None

NEW BUSINESS:

1. Board Meeting Location and Time - The recent newspaper article concerning the Board's meetings was discussed. Doug Metcalf spoke with City Attorney Brent McCaghren and was advised that the Attorney General has previously commented on meetings in restaurants when visitors were subtly excluded from the discussions, felt compelled to order lunch, or were otherwise inhibited or "chilled" by the surroundings. After Doug explained the setup and open nature of the Board's discussions, Brent acknowledged that the current situation meets the requirements of the City Code and the Sunshine Law.

   Commissioner Terranova's input on the Commission's concern was solicited. He advised that there was no specific directive given, and that the Commission was merely asking the Board to review their meeting and lunch payment policy. He indicated that he did not see the current situation as a problem since he had observed the public access and participation at today's meeting. Mr. Metcalf encouraged Mr. Terranova to pass along a standing invitation to the other Commissioners and thanked him for his participation in this meeting.

   The subsequent discussion clarified several points:
   a. Buying lunch for City staff has never been a requirement for being on the Board, nor would it be in the future.
   b. Notwithstanding the comments attributed to a Commissioner in the Sentinel article, as taxpayers, the Board members do not believe that the City should cater lunches for any City Board meetings other than the once-a-year "Thank You" affair.
   c. David Pearce clearly stated that the City staff members would be happy to pay for their own lunches.

   After a full discussion, Jim Saurman moved that the Board continue its current policy, time and location. Gary Soukup seconded the motion and it was unanimously approved.

NEXT MEETING: Wednesday, July 20, 1994 at Pebbles, Aloma Avenue

ADJOURNED: 1:55 P.M.

Douglas S. Metcalf
Chairman

The Orlando Sentinel
SUNDAY, June 5, 1994

Luncheon meetings subject to scrutiny

By Ines Davis Parrish
OF THE SENTINEL STAFF

WINTER PARK — Gabbing about lake-front vegetation and storm-water runoff over a plate of pasta might be a thing of the past for the city's Lakes and Waterways Advisory Board.

A board member's resignation and protest over the annual $150 to $200 costs for lunch, coupled with concerns about other residents' ability to attend such meetings prompted city commissioners to ask the board to move its monthly meetings to a more public venue.

"I don't mind donating my time, but the money ... I don't want to make that kind of financial commitment for three years," said Jim Hulbert, who resigned in May after four months on the board.

Hulbert said his resignation was prompted primarily by the lunch costs, but scheduling conflicts kept him from some of the meetings. He is a program director with the state Department of Environmental Protection and one of the few board members who does not own waterfront property.

Hulbert said he has served on one other city advisory board and did not encounter such a situation.

Commissioner Rachel Murrah said lunch is OK, but it should be catered by the city, which is a common practice for the city's other advisory boards, she said.

She also suggested the meetings be at City Hall or another city building such as the Civic Center. The advisory board is made up of appointed residents who review lake issues and make recommendations on how to spend storm-water utility fees.

Murrah has been concerned about the board's meeting habits for a couple of years, primarily be-

Please see **LUNCH, K-5**

Board to consider issue over lunch

LUNCH from K-1

cause she said the location might inhibit citizens who want to attend.

The board has met in places such as the President's Dining Room at Rollins College, the private Winter Park Racquet Club, the former La Belle Verriere restaurant on Park Avenue, the Mount Vernon Inn restaurant and most recently, Pebbles restaurant.

The board invites a few staff members to the monthly meetings. When the tab comes, board members equally divide the bill.

Board chairman Doug Metcalf said the meetings have been over lunch for years to accommodate members' busy schedules. He said they've met at City Hall and the Civic Center, but public attendance didn't increase.

Restaurants also allow those attending the meetings to have a choice of lunch entrees instead of one or two items that would be provided by the city, he said.

Metcalf, along with former chairman James Madison, said neither the meeting place nor the money spent for lunches has been an issue before.

"I can never remember anyone saying anything about this," Metcalf said.

Murrah sent Madison a letter in 1990 after a meeting to which city commissioners were invited and the media apparently was not notified, as required by the state's open government law.

"I urge you and the board to consider this question [of meeting on city property] beyond the mere letter of the law, so that the board's integrity remains above question," Murrah wrote.

Madison responded at the time that he had looked into the matter and was advised the board could meet "wherever convenient" as long as the board published the required meeting notices. He said the board members agreed meeting at a restaurant would not hinder public attendance.

Murrah also questioned why volunteers should have to spend their own money to serve the city.

"It seems to me we're saying you have to pay to be on the board," she said last week.

"I would be embarrassed to recommend another appointee" to the board until the matter is resolved, Murrah said.

Metcalf said that as a volunteer, he does what he believes is needed and doesn't think about spending his own money.

And Madison said the board saves the city money by having its members buy their own lunches.

"We're just a group of volunteers trying to get something done in the most expedient way," Metcalf said, referring to the practice of inviting and buying lunch for several staff members.

The board will discuss the issue at the next regular session at noon June 15 at Pebbles restaurant.

M E M O R A N D U M

CITY OF WINTER PARK

TO: Mayor Gary A. Brewer and Members of the City Commission

FROM: C. Brent McCaghren, City Attorney

DATE: June 8, 1994

SUBJECT: Government in the Sunshine Law

Attached is a copy of the recent decision, Rhea v. School Board of Alachua County, 19 FLW D1115 (Fla. 1st DCA 1994).

In this case, the Alachua County School Board held a workshop in Orlando, Florida, which was outside the geographical boundaries of the Board's district, and more than 100 miles from its headquarters.

The meeting was scheduled in Orlando to take advantage of the fact that all school board members would be in Orlando to attend the semi-annual convention of the Florida School Boards Association. The meeting was noticed and open to the public. The board met, as planned, at the Twin Towers Hotel in Orlando.

The court held that for a meeting to be public within the meaning of the Sunshine Law, not only must it be held in a public room, but it is also essential that the public be given advanced notice and a reasonable opportunity to attend.

The court held that a "balancing of interest test" is the most appropriate method by which to determine whether Alachua County residents had a reasonable opportunity to attend the meeting. Applying this test, the court concluded that the workshop held at a hotel in Orlando, Florida did not afford the citizens of Alachua County a reasonable opportunity to attend. The advantage to the school board in eliminating travel time and expense ordinarily incurred by board members and staff in making the usual trip from home or office to the regular meeting sight in Gainesville on an alternate date was held to be an insignificant advantage when compared to the disadvantages visited upon the public in terms of additional time and expense of travel.

CBM/aw
Enclosure
cc: Jim Williams, City Manager

turing Co., Canterbury House Apartments and Professional Properties, Inc. Canterbury and Professional demanded coverage under an insurance policy issued by Merchants and Businessmen's Mutual Insurance Co. Merchants denied coverage based upon a pollution exclusion endorsement. The insureds filed a third-party complaint against Merchants for a declaratory judgment as to coverage. The insurer moved to sever, relying upon the non-joinder statute, section 627.4136, Florida Statutes (1993). Denial of severance resulted in the instant petition.

Nonfinal orders for which no appeal is provided under rule 9.130, Florida Rules of Appellate Procedure, such as the challenged order in the instant case, are reviewable by certiorari only in very limited circumstances. *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097 (Fla. 1987). To qualify for intervention by an appellate court, it must be shown that the order departs from the essential requirements of law, causing material harm to the petitioner throughout the remainder of the proceedings below, leaving the petitioner with no adequate remedy on appeal. *Id.*

Petitioner initially relies upon the "non-joinder" statute and *State Farm Fire and Casualty Co. v. Nail*, 516 So. 2d 1022 (Fla. 5th DCA 1987), as grounds for entitlement to certiorari relief, and alternatively argues that the ruling is an abuse of discretion.

Section 627.4136, Florida Statutes (1993), provides in pertinent part:

> (1) It shall be a condition precedent to the accrual or maintenance of a cause of action against a liability insurer by a person *not an insured under the terms of the liability insurance contract* that such person shall first obtain a settlement or verdict against a person who is an insured under the terms of such policy for a cause of action which is covered by such policy.

(Emphasis added.) This section precludes persons not insured under the terms of a liability insurance contract from bringing a declaratory judgment action against a liability insurer until a judgment against an insured is obtained.

Public policy against disclosure of insurance coverage to the jury underlies the non-joinder statute. This policy was the basis for the fifth district's holding in *Nail* that it is a departure from the essential requirements of law to consolidate a liability action with a coverage action. *Nail* held that consolidation of an insurer's declaratory judgment action against an insured with the underlying negligence action was violative of the non-joinder statute. The court noted that without consolidation there was a possibility of inconsistent verdicts. However, in granting certiorari relief and quashing the order of consolidation, the court relied upon the legislative intent underlying the non-joinder statute that insurance coverage should have no bearing on juror determination of the issues of liability and damages.

The *Nail* court reasoned that the legislature, in enacting the non-joinder statute, found that the concerns of inconsistent verdicts do not overcome the danger that jurors may be influenced if they know the defendant has liability insurance coverage. The court stated:

> [R]espondents are attempting to avoid the application of the non-joinder statute by their motion for consolidation, and, by allowing them to do so, the trial judge has departed from the clear legislative mandate that insurers shall not be parties to negligence actions, nor shall the injured be entitled to discovery against the insurer, until such time as the injured person has obtained a judgment against the insured. If consolidation orders such as that entered below were upheld, then declaratory judgment actions clarifying the rights of the respective parties would be strongly discouraged. Moreover, the argument that State Farm should extend a defense under a reservation of rights, instead of resolving the coverage issue in a separate declaratory judgment action in advance, ignores the fact that providing a defense where there is no legal obligation to do so constitutes an irreparable injury in and of itself.

Id. at 1023.

Respondents/defendants respond that the non-joinder statute and *Nail* are inapplicable because the non-joinder statute does not specifically preclude an *insured's* third party action against its insurer. *Tindall v. Travelers Indemnity Co.*, 613 So. 2d 1369 (Fla. 2d DCA 1993), is relevant on this point. In that case the second district reversed the *dismissal* of an insured's third party impleader action against his insurer. The court analogized to third party practice in federal courts, where impleader of an insurance company which denied coverage is permissible. The court reasoned that *Nail* and the non-joinder statute were inapplicable and did not justify dismissal, because the insured and not the injured party impleaded the insurer as a third-party defendant. However, the court pointed out that if the insurer was prejudiced by the effect knowledge of insurance coverage has on liability and damages, the trial court could sever the third party action for trial. *Id.* at 1370.

Although the trial court has discretion with regard to severance under rule 1.270(b), Florida Rules of Civil Procedure, we find here that the trial court departed from the essential requirements of law in denying severance in this case because the declaratory relief actions address coverage claims. On the other hand, these claims, one a tort action against the insured, and the other an insurance policy coverage action, are essentially unrelated and constitute separate and distinct legal actions. There is no reason for them to be tried together. Trying the coverage issues with the liability and damages claims defeats the purpose and policy of the non-joinder statute. As a result of the denial of severance, the plaintiff will benefit from the inclusion of the insurance issues thereby evading the clear language and intent of the non-joinder statute. The ruling is as much a departure from the essential requirements of law as was consolidation of the liability and coverage actions in *Nail*. As in *Nail*, irreparable harm is evidenced by the insurer having to provide a defense where there is no legal obligation to do so.

We grant the petition for writ of certiorari, quash the order under review, and remand with instructions to sever the actions. (ANSTEAD and HERSEY, JJ., concur. STONE, J., dissents with opinion.)

(STONE, J., dissenting.) In my judgment, Petitioner has an adequate remedy on appeal. I would therefore deny the petition. *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097 (Fla. 1987); *Hartford Acc. & Indem. Co. v. U.S.C.P. Co.*, 515 So. 2d 998 (Fla. 4th DCA 1987).

* * *

YOUNG v. STATE. 4th District. #93-1471. May 18, 1994. Appeal from the Circuit Court for Broward County. Affirmed. *See Decile v. State*, 516 So. 2d 1139 (Fla. 4th DCA 1987); *Tompkins v. State*, 502 So. 2d 415, 419 (Fla. 1986), *cert. denied*, 483 U.S. 1033, 107 S. Ct. 3277, 97 L. Ed. 2d 781 (1987).

* * *

Government in the Sunshine Law—In determining whether meeting held by county school board more than 100 miles from its headquarters was sufficiently open to the public, a balancing of interests test was appropriate method by which to determine which interest predominated—Fact that convention hotel meeting site met board's interest in eliminating travel time and expense ordinarily incurred by members and staff in making usual trip to regular meeting site was insignificant advantage when compared to disadvantages visited upon public—Summary judgment finding that board's meeting did not violate Government in the Sunshine law reversed and remanded

DARNELL RHEA, Appellant, v. SCHOOL BOARD OF ALACHUA COUNTY, Appellee. 1st District. Case No. 93-1414. Opinion filed May 18, 1994. An appeal from the circuit court for Alachua County. Stan Morris, Judge. Jo W. Little, Gainesville, for Appellant. Thomas L. Wittmer, Gainesville, Appellee.

(LAWRENCE, J.) Darnell Rhea (Rhea) appeals a summary judgment entered in favor of the Alachua County School Board (Board). The trial court found that the Board's workshop held in Orlando, Florida, on December 3, 1991, did not violate section

286.011, Florida Statutes (1991), commonly known as the "Government in the Sunshine Law."[1] We reverse and remand for further proceedings.

The Board announced, during its regular November meeting, th intended to conduct a workshop[2] for Board members in Orlando on December 3, 1991, to take advantage of the fact that all the members already would be in Orlando to attend the semi-annual convention of the Florida School Boards Association. The Board also advertised the meeting by placing a detailed notice in the *Gainesville Sun* newspaper on November 26, 1991, stating that the meeting was "a public workshop to which all persons are invited." The Board met on the evening of December 3, 1991, as planned, at the Twin Towers Hotel in Orlando.

Rhea filed a complaint on May 29, 1992, seeking injunctive and declaratory relief against the Board, alleging that the Board violated section 286.011 in holding a Board meeting in a place located outside the geographical boundaries of the Board's district, that is, Alachua County, and more than 100 miles from Gainesville, the Board's headquarters.

Both parties moved for summary judgment. Rhea's affidavit stated that he would have attended the meeting but for the fact it was held outside Alachua County, over 100 miles from him. The Board attached a copy of the minutes of the workshop and two affidavits in support of its motion. One affidavit was from a Board member, who stated that the Orlando workshop was open to the public at all times, that is, the meeting was held in a public meeting room, the room had sufficient space for those in attendance, and the meeting was properly noticed. The second affidavit was from the Board's attorney, who stated that the workshop occurred in a hotel public meeting room, the door to which was left open throughout the session. Moreover, the hotel's staff was advised to direct anyone who inquired about the meeting to the appropriate location.

The Board properly concedes that the school board workshop h in Orlando was a "public meeting" for purposes of the Sunshine Law. *Canney v. Board of Pub. Instruction*, 278 So. 2d 260 (Fla. 1973). The Board, however, denies that any violation of that law took place. Section 286.011(1) provides in relevant part:

> All meetings of any board . . . at which official acts are to be taken are declared public meetings *open to the public* at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

(Emphasis added.) The mere fact that a meeting is held in a public room does not make it public within the meaning of the Sunshine Law. *Bigelow v. Howze*, 291 So. 2d 645, 647-48 (Fla. 2d DCA 1974).[3] For a meeting to be "public," it is essential that the public be given advance notice and a reasonable opportunity to attend. *Id.*

The Board argues that it complied with the mandates of the Sunshine Law by publicly advertising the meeting in advance, and providing a reasonable opportunity for the public to attend by holding the meeting in an open and public meeting room at a hotel convention facility. Rhea does not challenge the sufficiency of notice given by the Board, nor does he claim the meeting was conducted in secrecy. Thus, adequacy of notice is not an issue in this case. Rhea challenges instead the scope of the word "public," as contemplated by the Sunshine Law. Rhea contends "public" refers to the constituency of the public entity that is convening. The "public" for the Alachua County School Board, therefore, would be members of Alachua County, as opposed to members of Orange County or the Florida public at large. Rhea argues that by meeting outside Alachua County, at a hotel more 100 miles from its headquarters, the Board denied reasonable access to its public.

Section 286.011 does not define the word "public." In construing a statute, words that are undefined by the statute should be given their plain and ordinary meaning. *State, Dep't of Health & Rehab. Servs. v. McTigue*, 387 So. 2d 454 (Fla. 1st DCA 1980). Included among the various dictionary definitions of "public" are the following: "of, relating to, or affecting the people as an organized community; a place accessible or visible to all members of the community; an organized body of people: community, nation; a group of people distinguished by common interests or characteristics." *Webster's 3d New International Dictionary* 1836 (1981). Applying the plain and ordinary meaning of the word to the instant case, the relevant "public," the community that would be affected by the Board's official actions, is Alachua County. Review of sections 230.01 and 230.11, Florida Statutes (1991),[4] which provide that the school board represents the entire county, and section 230.17, Florida Statutes (1991), which requires the Board to publish advance notice of the workshop in a newspaper circulated in that county, confirms the fact that the relevant community is Alachua County. Thus, whether the Orlando Board workshop was sufficiently "open to the public" depends on whether Alachua County residents had a "reasonable opportunity" to attend the meeting. *See Bigelow v. Howze*.

Rhea urges this court to fashion an absolute rule which would prohibit any Board workshop from being held under any circumstances at a site more than 100 miles from the usual meeting place. We can envision circumstances which would warrant the conduct of a workshop beyond the county boundaries and perhaps even more than 100 miles from the usual meeting place. Thus, we decline to adopt a bright line test which would resolve every dispute on this issue. Rather, we hold that a balancing of interests test is the most appropriate method by which to determine which interest predominates in a given case. The interests of the public in having a reasonable opportunity to attend a Board workshop must be balanced against the Board's need to conduct a workshop at a site beyond the county boundaries. A significant and obvious factor to be considered in the weighing process is the extent of the distance from the usual meeting place to the out-of-county workshop, an issue which both parties to this cause addressed extensively. We conclude that the greater the distance, the heavier the burden is upon the Board to demonstrate a need for the alternate site. It follows that the shorter the distance, the lighter the burden is upon the Board to justify the out-of-county site.

Another factor to be considered is any good faith action by the Board to minimize the expense and inconvenience of the public in attending an out-of-county workshop. For example, an offer by the Board to provide transportation for the public at the Board's expense, would serve to mitigate the disadvantage to the public, thus enhancing the weight of the Board's position in the matter.

We would ordinarily expect a Board workshop to be held within the county boundaries for reasons of sound logic and common sense. However, when a perceived need to do otherwise arises, the Board must apply the balancing of interests test.

The foregoing factors are not intended to be all-inclusive. Any consideration of the balancing process must focus upon the issue of whether the Board's need for a workshop at a particular geographical site is outweighed by the resulting barriers which tend to prevent public attendance. Thus, any factor or circumstance which impacts thereon must be considered on a case-by-case basis.

When applying this balancing test to the circumstances of the instant case, we conclude that the Board's workshop held at a hotel in Orlando, Florida, on December 3, 1991, did not afford the citizens of Alachua County a reasonable opportunity to attend. There was nothing peculiar about the Orlando site, that is, there was nothing physically located there, nor any activity taking place, which necessitated the Board's observation or discussion at that particular location. The only reason for holding the workshop in Orlando was because the Board members were already assembled at the same hotel for a semi-annual meeting of the Florida School Boards Association. The only advantage to the Board was the elimination of travel time and expense ordinarily

incurred by Board members and staff in making the usual trip from home or office to the regular meeting site in Gainesville on an alternate date. We consider this to be an insignificant advantage. When compared to the disadvantages visited upon the public in terms of additional time and expense of travel, we conclude that the balancing process weighs heavily in favor of a finding that the public was denied a reasonable opportunity to attend the workshop. While the failure of the Board to mitigate any of the barriers would ordinarily be significant, the need for the workshop in Orlando was such that we do not believe that even significant mitigation could have overcome the minimal need for the workshop at that site.

We accordingly REVERSE and REMAND for consistent proceedings.

It is so ordered. (BOOTH and MICKLE, JJ., CONCUR.)

---

[1]Rhea also alleged that the Board meeting violated section 230.17, Florida Statutes (1991), an issue we find unnecessary to address here.

[2]No official action may be taken at a workshop by the sponsoring agency.

[3]The facts in *Bigelow v. Howze* involved two Charlotte County commissioners, who were engaged in a fact-finding mission in Tennessee. While there, they discussed the recommendation they would make to the county commission on their return to Florida; the court found that this conduct violated the Sunshine Law. The commissioners further violated the Sunshine Law when they met at a Holiday Inn in Charlotte County, Florida, to assure themselves they had come to the right recommendation. The court found that the latter meeting was no more "public" for purposes of the Sunshine Law than the earlier "meeting" in Tennessee. *Id.* at 647. The court held that "*[t]he mere fact that the discussion took place in a public room cannot make it a public meeting* for purposes of the Sunshine Law, *because the requisite advance notice and the reasonable opportunity to attend did not exist.*" *Id.* at 648 (emphasis added).

[4]Section 230.01, Florida Statutes (1991), provides in relevant part: "Each county shall constitute a school district." Section 230.11, Florida Statutes (1991), provides: "The school board of each district shall represent the entire district. Each member of the school board shall serve as the representative of the entire district, rather than as the representative of a school board member residence area."

* * *

Workers' compensation—Denial of claim for medical care and treatment of neck condition allegedly arising from industrial accident in which claimant fractured leg reversed and remanded for JCC to offer explanation for apparent rejection of unrefuted medical testimony indicating causal connection between cervical condition and the accident

ELNA PATTON, Appellant, v. METAL INDUSTRIES and COMMERCIAL RISK MANAGEMENT, Appellees. 1st District. Case No. 93-353. Opinion filed May 18, 1994. An appeal from an Order of the Judge of Compensation Claims. John J. Lazzara, Judge. Bill McCabe, of Shepherd, McCabe & Cooley, Longwood; J.W. Chalkey III, Ocala, for Appellant. Nancy L. Cavey, St. Petersburg, for Appellees.

(MICKLE, J.) Claimant, Elna Patton, appeals from an order of the judge of compensation claims (JCC) denying and dismissing her claim for medical care and treatment of her neck condition. We reverse and remand for the JCC to offer a reasonable explanation for his apparent rejection of unrefuted medical testimony indicating a causal connection between Claimant's cervical condition and her industrial accident. *Calleyro v. Mt. Sinai Hospital*, 504 So. 2d 1336 (Fla. 1st DCA), *rev. den.*, 513 So. 2d 1062 (Fla. 1987); *Younkman v. Waste Collection Services*, 576 So. 2d 801, 803 (Fla. 1st DCA 1991).

Workers' compensation law requires a claimant to prove "the existence of a causal connection between the employment and injury for which benefits are sought." "[T]he existence of causation must be based upon reasonable medical probability." *Thomas v. Salvation Army*, 562 So. 2d 746, 749 (Fla. 1st DCA 1990). The issue of causation of Claimant's non-observable injuries is "essentially a medical question." *Turner v. G. Pierce Wood Memorial Hospital*, 600 So. 2d 1153 (Fla. 1st DCA 1992); *Lindsay v. TVS Trucking Co.*, 565 So. 2d 864 (Fla. 1st DCA 1990). The JCC found that "Claimant's present neck condition was not caused nor aggravated by her industrial accident of June 8, 1982 when she fractured her right leg[,] because the symptoms of that [neck] condition are too remote in time from the date of the accident."

Neurosurgeon Dr. Kaplan, who treated Claimant's neck problems beginning in January 1992, stated in a deposition that Claimant's "osteophyte neck symptoms" and pain are causally related to her industrial accident. The JCC expressly rejected Dr. Kaplan's opinions as to causation, finding that the doctor's conclusions were based partly on the misperception that Claimant had "wrenched her neck" at the time of the work incident. We do not disturb the JCC's findings as to Dr. Kaplan's medical testimony. *Mallon v. Florida Rock Industries, Inc.*, 568 So. 2d 503 (Fla. 1st DCA 1990) (JCC may reject physician's opinion as to causation where opinion is unsupported by facts in the record); *Northwest Orient Airlines v. Gonzalez*, 500 So. 2d 699, 701 (Fla. 1st DCA 1987).

However, as we noted in *Computer Products, Inc. v. Williams*, 530 So. 2d 1006, 1007 (Fla. 1st DCA 1988), even a single medical opinion is sufficient to establish a causal relationship between a claimant's physical condition and the employment. *Thomas*, 562 So. 2d at 749. Dr. Hubbard, an orthopedic surgeon who treated Claimant from November 1987 through May 1991 for injuries not specifically related to her neck, reported that she had "global complaints" of pain. Hubbard agreed with Dr. Kaplan that Claimant's neck condition at C5-6 (moderately severe cervical spondylosis, or arthritic changes, with osteophytes) is related, within reasonable medical probability, to her work accident. Hubbard opined that the level of her condition is "abnormal" for someone in Claimant's age group. He was not surprised to see advanced changes in the C5-6 area a number of years after the 1982 accident, as he agreed with Dr. Kaplan that it would take at least three years and perhaps longer for an osteophyte to reach that size. Additionally, he stated that the formation of a bone spur like Claimant's would not necessarily have been painful, as the record indicates that she was given anti-inflammatory medication that could have masked even significant signs of pain.

Other than the bare acknowledgment in the order that Dr. Hubbard's deposition is included as an exhibit in the record, the JCC did not mention Hubbard, nor did the JCC address Hubbard's unrefuted testimony finding a causal relationship. Our holding should not be construed as an indication one way or another as to how the JCC should treat Hubbard's medical testimony. *Bray v. Electronic Door-Lift, Inc.*, 558 So. 2d 43, 46 (Fla. 1st DCA 1989) (questions regarding credibility of witnesses are solely within JCC's province). Nevertheless, because it appears to us that the JCC may have overlooked or ignored Dr. Hubbard's testimony or, alternatively, because the reasons for the apparent rejection of Hubbard's testimony are not apparent from the record, we must reverse the order and remand for the JCC to make proper findings. *Younkman*, 576 So. 2d at 803; *ATE Fixture Fab v. Wagner*, 559 So. 2d 635 (Fla. 1st DCA 1990); *Severini v. Pan American Beauty School, Inc.*, 557 So. 2d 896 (Fla. 1st DCA 1990) (JCC cannot reject uncontroverted medical testimony as to causation without providing a reasonable explanation for doing so); *Philpot v. City of Miami*, 541 So. 2d 680 (Fla. 1st DCA 1989).

REVERSED and REMANDED, with directions. (MINER AND DAVIS, JJ., CONCUR.)

* * *

Contracts—Rescission—No error in conclusion that plaintiffs' failure to give notice of intent to rescind construction take-over agreement until 21 months after plaintiffs became aware of defects in defendants' work constituted waiver of right to rescind—In contractor's claim on promissory note executed by construction client, trial court's finding regarding client's right to set-off for payments to vendors was not supported by competent substantial evidence

LARRY K. HENSON and CHERYL D. HENSON, Appellants, v. JAMES M.