

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
MARCH 11, 2008**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Gary Huttman**, at 9:00 a.m. in the County Council Meeting Room of the Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Florida. On roll call, the following members answered present, to-wit:

GARY HUTTMANN, Chairman ABSENT
DARLA LIPKE, Vice-Chairman
TAVER CORNETT, Secretary
STONY SIXMA – Arrived 9:04
JIM RUSSELL
FRANK SEVERINO
JAY YOUNG

STAFF PRESENT

MICHAEL DYER, Assistant County Attorney
MARY ROBINSON, Building and Zoning Director
SCOTT ASHLEY, Planning Manager
DAVID ZECHNOWITZ, Planner III
JOHN H. STOCKHAM, Planner III
CHRISTIAN NAGLE, Planner II
YOLANDA SOMERS, Zoning Secretary
MARCY CHAFFIN, Recording Secretary

APPROVAL OF MINUTES

Approval of February 12, 2008 Minutes

Member Cornett **MOVED** for **APPROVAL** of the Minutes. Member Russell **SECONDED** the motion . The motion **CARRIED** unanimously. Chairman Huttman was not present.

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

Chairman Huttman explained the procedure for forwarding the Commission's decisions to the County Council and invited the public to speak for or against any of the cases being heard.

Michael Dyer, Assistant County Attorney, explained that decisions by this body on special exception cases and cases which rezone real property from one classification to another pursuant to the Zoning Ordinance are recommendations only to the County Council and do not constitute a final hearing. New evidence may be introduced at the County Council public hearing. Decisions on variances made by this body constitute final action, subject to an appeal to the County Council. What this means is that no new evidence may be presented at the time of the County Council public hearing on appeal. An aggrieved party that appeals such a decision is confined to the record made before this body. Hearings by this body on rezonings, special exceptions and variances are quasi-judicial in nature meaning that this body is acting more like a court and must take into account all oral, written or demonstrative evidence presented. Their decisions on these cases must be based on competent, substantial evidence in the record. Competent, substantial evidence has been defined, as that evidence a reasonable mind would accept to support a conclusion.

Mr. Dyer asked for disclosure of ex parte communications. He recommended that any Member who has had communications with a member of the public or the applicant on any agenda item, state so at this time with a brief comment.

- Member Cornett:
- Chairman Huttman:
- Member Severino:
- Member Lipke:
- Member Russell:
- Member Young:
- Member Sixma:

CONSENT AGENDA

NONE

CONTINUED ITEMS

Z-07-076 – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, Hinrough LLC, Owner**, requesting a **Rezoning** from the A-2W (Rural Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification to the A-3W (Transitional Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification. The property is located on the east side of South US Highway 1 at its intersection with Kennedy Parkway, south of the City of Oak Hill; ±9.36 acres (Ashley)

Member Severino **MOVED** to continue case **Z-07-076** for 30 days. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-146 – Application of **James V. Alies, Agent for Owner, City of DeLand, Owner**, requesting a **Special Exception** for a Public Utility on A-2 (Rural Agriculture) zoned property. The subject property is located on the east side of Tomoka Drive North at its intersection with Loblolly Pine Drive, in the Tomoka Woods subdivision; ± 5.2 acres (Nagle) 6037-04-00-0010 **30-day continuance requested**

Member Sixma **MOVED** to continue case **S-07-146** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-08-010 – Application of **Santiago Meliams, Agent for Owners, Florida Power & Light, Company, Owners**, requesting a **Special Exception** for a Public utility uses and structures on A-2 (Rural Agriculture) zoned property. The property is located on the west side of Old Mission Road, approximately one mile from its intersection with SR 442 near the City of Edgewater; ± 21.45 acres (Stockham) 8438-01-00-0970

Member Sixma **MOVED** to continue case **S-08-010** for 30 days. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

V-08-018 – Application of **John and Kathy Welch, Owners**, requesting a **Variance** for a front yard setback (17 ft. in lieu of the required 25 ft.) on R-4 (Urban Single-Family Residential) zoned property. The property is located on the west side of Grayson Street, approximately 152 feet north from its intersection with Minnesota Avenue; ±18,997 sq. ft. (Stockham) 7033-00-00-0200

Member Severino **MOVED** to continue case **V-08-018** for 30 days. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

NEW BUSINESS

PUD-08-011 – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owners, Indigo Development, Owners**, requesting a **Rezoning** from the A-2(1)(5)

(Rural Agriculture / Low Impact Urban / Highridge Estates) zoning classification to the IPUD(5) (Industrial Planned Unit Development / Highridge Estates) zoning classification. The property is located on the east side of Indian Lake Road at its intersection with Old DeLand Road. The property is within the Highridge Estates south of the City of Daytona Beach; ± 20 acres (Zechnowitz) 6101-00-00-0010 **Tentatively schedule for the April 24, 2008 County Council at 2:00 p.m.**

Dave Zechnowitz, Planner III, presented the Staff Report. The subject property is a wooded parcel which is undeveloped except for two City of Daytona Beach water supply wells. Area development includes an auto auction, an asphalt batch plant, correctional facility, ACT Cooperation, Bail Bond office and a restaurant. The applicant has proposed two concept plans to maintain flexibility in the development agreement. Plan one is an eight lot industrial subdivision with two access points on Old DeLand Road and three shared access drives on Indian Lake Road. The proposed uses for the IPUD are a modified list of I-1 Zoning Classification requirements uses. Concept plan two is for an automobile storage area which may be used by the Auto Auction adjacent to the east. The features of the plan are a paved roadway grid system that provides access to grass parking and storage areas with one access drive at the north end of the site on Indian Lake Road. Both plans depict tree preservation areas and landscape buffers located within the existing utility easements including the city water sites. The required tree preservation areas and buffers must be located on land controlled entirely by the applicant and must be protected in perpetuity. The proposed development will have central utilities and access to the county thoughtfare system and will meet county land development code regulations. Water and sewer will be provided by the City of Daytona Beach whose well sites will be protected by the County's well protection ordinance. He stated, that according to the County Traffic Engineer, traffic from either concept plan will not adversely affect the level of service of thoughtfares in the area. He stated that comments from the City of Daytona Beach in regards to the well head protection and automobile storage have been addressed in the revised development agreement. Staff recommends **APPROVAL** of the request subject to the staff modifications to the master development plan.

Member Cornett asked what kind of automobile, truck, trailer, motor cycle, mobile home manufactured dwelling, on Pg 6 of 14, Line 17, of the development agreement, are they referring to. Is it storage, manufacturing, racing.

Ms. Robinson answered, it states that it is manufacturing which is a prohibited use.

Mr. Zechnowitz stated that the development agreement contains the list of I -1 uses that are not permitted.

Ms. Robinson stated that a correction is needed to a sentence starting on line 11 to 12, it should state, "all permitted principle uses in the I-1 Zoning Classification are permitted including automobile storage", the words "are permitted" need to be added.

Mr. Glenn Storch, Attorney for Owner. He presented some history of the area including that the subject property was originally owned by Consolidated Tomoka. He stated that there were concerns about placing an auto auction on Highway 92, so an agreement was made between Consolidated Tomoka, the County and the Auto Auction, creating an area by the jail, not on Highway 92. The Auto Auction has done well and they now have included other businesses in the same area as the School Board and an Asphalt Paving area which are all working together. He stated the Auto Auction is now running out of land to expand. Indigo Development which was Consolidated Tomoka, sold the subject property to a Tampa business for light industrial uses. He stated there are alternate plans for the property, one site plan in the event the Auto Auction does not buy the property and another site plan if the Auto Auction does purchase the property. He stated both site plans work well as the property is designated as Industrial in the Comprehensive Plan. Uses that are prohibited in the contract for purchase agreement are based on negotiations with the seller of the land and the Auto Auction in the event that the Auto Auction does not buy. The plans are basically identical as both plans have a perimeter of vegetation around the land as a buffer from Indian lake road. He stated the well head area easement owned by Daytona Beach is 200 ft. x 200 ft. and there will be further negotiations with Daytona Beach to preserve trees. He continued that it has been agreed to follow Staff recommendations of a minimum of 15% coverage of tree vegetation. He further stated that there would be a very light impact to the traffic system and to surrounding owners.

Member Sixma stated that the Auto Auction has done a good job at their location.

Mr. Storch commented that they have been there about 15 years.

Member Cornett **MOVED** to **FORWARD** Case **PUD-08-011** to the County Council with a recommendation of **APPROVAL** with the amendments made by Staff. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

OLD BUSINESS

NONE

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

NONE

OLD BUSINESS

NONE

PUBLIC ITEMS

- 1. Request to Rehear Variance case V-07-121, Application of Bo Hawryluk, Agent for Owners, Corrado and Dominica DiPietro, Owners
.....Dave Zechnowitz, Planner III, Zoning

Mr. Dyer stated that rehearings are governed by section 1105 of the Zoning Code which provides that decisions by the Commission or the County Council with regards to the zoning decisions can be subject to request for rehearing. If the request to rehear is granted it does not mean that the case would be heard in it's entirely at this time but at a later scheduled date and time. If the request is denied there would be no rehearing scheduled. The ordinance states that if it is alleged that the Commission in making a final decision has overlooked or misapprehended some facts or points of law, a rehearing of the decision may be granted by the Commission. In this case the applicant has asked for the rehearing so the burden is on the applicant to demonstrate that the Commission has misapprehended some fact or point of law in the decision.

Bo Hawryluk, Intercoastal Construction, contractor for Mr. DiPietro. He stated the original request was for a side setback for the perimeter of the pool deck. Most of the pool deck is within the setback requirements except for one section and for that area they requested a 2.5 setback.

Mr. Dyer asked the applicant what he believed the Commission misapprehended in making the decision in the previous hearing.

Mr. Hawryluk stated the original hearing called for a full side set back variance by Staff, when the case was for a portion of the side of the pool deck, not the whole side.

Member Lipke asked how the miscommunication occurred

Mr. Hawryluk replied that Staff thought the request was for a full side setback variance and it was only for a small portion of the side of about 10 to 15 feet.

Mr. Dyer asked if the applicant was at the original hearing.

Mr. Hawryluk stated he was not.

Mr. Zechnowitz stated that he did misapprehend the fact that it was not 2 ½ feet for the entire length of the pool. It is the custom and practice to request a variance for where it is needed. If it is 2 ½ feet at any point, then a variance for 2 ½ feet in lieu of the required 5 feet is needed. He stated that he may not have pointed out that at the closest to the house it is 6 ½ feet from the property line, then narrows down to 2 ½ feet.

Mr. Dyer inquired if Staff's recommendation to the Commission would have been different if it had been stated that while a 2 ½ feet setback was requested the setback was 6 ½ feet at some point.

Mr. Zechnowitz replied no, the premise of the recommendation for denial was based on the fact that the applicant chose to locate the pool in its present location, so the hardship is self created.

Member Young asked if the variance is still for the 2 ½ feet so the request has not changed.

Member Lipke clarified that the request has not changed except that the information stating the portion of the 2 ½ feet is only a small portion was not included at the original hearing.

Mr. Zechnowitz confirmed they did not have that information.

Member Lipke restated the Commission will have to decide if they did not have all the information or were misinformed, in order to reach a decision on a rehearing.

Mr. Dyer stated if the request to rehear is granted, a date certain would be scheduled and it would have to be re-advertized.

Member Cornett stated that based on the fact the applicant was not present and less on the misapprehension, he **MOVED** to rehear case **V-07-121** for the opportunity of due processes. Member Sixma **SECONDED** the motion.

Mr. Dyer clarified that if an applicant does not attend a hearing it does not entitle an applicant to a rehearing.

Member Young stated that he thought the drawings that showed the area were presented at the original hearing.

Mr. Zechnowitz replied yes the drawings were at the original hearing.

Member Sixma stated that there may have been miscommunication between Staff and applicant.

Member Severino stated that he agrees but does not think it would have made a difference in the outcome as it does not change the graphics presented. 2 ½ Feet at any point on the property is 2 ½ feet for the whole property. No evidence presented changed it.

Member Lipke inquired if the argument is to not rehear the case based on the fact there is no additional information and asked if there were any further costs to anyone for a rehearing.

Ms. Robinson stated there is a new application fee and the applicant has to re-notify the adjoining property owners.

Mr. Hawryluk stated he paid a reapplication fee and the request is different from the first request as it is for only a partial setback and is not for the whole area. Most of the pool deck screen enclosure is within the setback requirements. The small portion is so the owner can walk around the pool, otherwise the screen will be right on the edge of the pool.

Member Young asked the applicant if the drawing was with the original application.

Mr. Hawryluk replied that the new one has been modified because the request is not for the whole side setback, only for the small portion.

Discussion continued concerning rehearing and variance fees.

Ms. Robinson stated that the applicant did not submit a new application fee. He paid a rehearing fee which is a request to rehear the case. If the applicant gets a rehearing then it is a new application fee.

Mr. Dyer stated that if the rehearing request is denied there would be no reapplication fee because there would be no additional hearing by the Commission. He stated that for the Commission to grant a rehearing it requires that the Commission misapprehended some point of fact or law. He continued that the request for the rehearing and the motion to approve needs a simple majority vote to approve not four minimum votes.

Discussion continued with the applicant clarifying the request for a rehearing.

Member Lipke asked the applicant if there would be additional information not presented in the first case, if the case was reheard, other than the 2 ½ feet issue.

Mr. Hawryluk answered yes as he has explained to Staff.

Member Sixma clarified that the variance application was originally for the whole side, but it is only for a small section.

Mr. Dyer answered that the original request has not changed, at the smallest point it was for 2 ½ feet setback and for the greatest point the set back is 6 ½ feet.

Mr. Zechnowitz stated that he did not provide to Commission the information they now have that it is not 2 ½ feet for the entire length of the pool. The applicant still needed a variance because it does not meet the 5 feet setback at some point.

Mr. Dyer added that Staff did not specify that the 2 ½ feet was not consistent for the entire side.

Member Lipke stated that the applicant was not at the original hearing, however, the drawing was.

Member Cornett made a **MOTION** to rehear case **V-07-121** based on the potential for new information, misapprehension of facts and the applicant was not present at the original hearing. Member Sixma **SECONDED** the motion. The motion **FAILED** by a 3 to 3 vote. Members Russell, Young and Severino voted in opposition.

Discussion continued with an explanation of the outcome of the hearing with the applicant.

1. Proposed amendment to the Zoning Ordinance 80-8 regarding Farm Ponds
.....Michael Dyer, Assistant County Attorney, Legal Services

Ms. Robinson stated this is to amend the Zoning Ordinance by adding back in Farms Ponds and to tweak the Tailwater Recovery System definition and provisions of what it does. The County Council voted to not provide funding to Soil and Water Conservation, which use to be the party responsible for issuing permits on Farm Ponds and doing the reviews. That function has now come back to the County Zoning and Environmental Management Division. The definition of Farm Pond will be added. Tailwater Recovery System is in the current ordinance with some revisions as striking the Department of Agriculture Natural Resource Conservation Service. Pages 3-7 is about the Tailwater Recovery Systems addressing the application and paying of the required fee, a limited exemption letter for being considered an exempt excavation, it must lay entirely within the land owners property, and can not create any off site drainage. She continued that the Tailwater Recovery Systems must be located on a parcel zoned Forestry Resource A-1, 2, 3 or 4, the agriculture districts, MH3 (equivalent to the A-2 district allowing a mobile home) and must be approved by the St. Johns Water Management District prior to filing any application with the County. Farm Ponds and Tailwater Recovery Systems must be completed within 6 months of the permit issuance. Farm Ponds are more restrictive. They shall not exceed $\frac{3}{4}$ of an acre, must be entirely within the land owners property, not creating any off site drainage, and allows for one Farm Pond per parcel of land that is 10 acres or greater in size located on Forestry Resource, agricultural zonings or MH3. They must be constructed in conjunction with an agriculture use and have an agriculture exemption issued by the property appraiser. It is limited for live stock. Trailwater Recovery Systems have been stricken from the Zoning Classifications and will now be listed under the Exempt Excavations section of the Zoning Ordinance, which is section 817 and the Zoning Classifications where it's permitted. After feed back from the publication date there may be more restrictive language as in terms of size before the County Council meeting.

Mr. Dyer stated the ordinance is largely a clean up. Tailwater Recovery Systems and Farm Pond activities have been permitted to occur in the County and treated as an exempt excavation meaning the property owner would not have to get an approval for a Special Exception. The language for the Farm Pond is more clearly

stated. The Tailwater Recovery Systems definition has been amended and the definition for Farm Ponds has been added. The intent is having more restrictions to make it more consistent with an agriculture operation.

Mr. James, for Comprehensive Planning, stated a consistency letter had been issued March 10 and he added a correction for the last paragraph in the letter adding this ordinance is consistent with the overall goals, objectives and policies of the Comprehensive Plan.

Ms. Lee was available for any questions, as her department dealt with the inspections of Farm Ponds.

Member Lipke asked how these could be misused.

Mr. Dyer answered that there are concerns that a Tailwater Recovery System could be constructed, which could be a number of acres in size and it is not intended to be part of an agriculture operation, but possibly a recreational water body or an excavation to sell the dirt. The current ordinance and what is proposed does not prohibit anyone from excavating the Farm Pond or Tailwater Recovery System and not relocating the dirt to other parts of the property.

Member Sixma asked what the main changes are.

Mr. Dyer answered that primarily the Farm Ponds and Tailwater Recovery Systems had a role for the Soil and Conservation District to do the permitting. The licensing and permitting will be back with zoning. Secondly, there will be clarifying of the standards and it will be located all in one place.

Member Severino asked if the language on page 4 line 7 concerning Farm Ponds poses a hardship for farmers by limiting Farm Ponds to $\frac{3}{4}$ of an acre and a farm that is 10 acres or greater can only have one pond.

Mr. Dyer answered that it is limiting. He stated this hearing is for a Comprehensive Plan consistency determination and recommendation from the Commission. The next step is a first reading by the County Council.

Member Cornett **MOVED** to **FORWARD** the proposed amendment to the Zoning Ordinance 80-8 regarding Farm Ponds to the County Council with a recommendation of **ADOPTION**. Member Russell **SECONDED** the motion. The motion **CARRIED** unanimously.

STAFF ITEMS

COMMISSION COMMENTS

PRESS AND CITIZEN COMMENTS

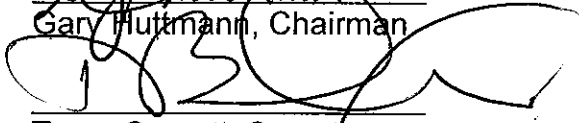
NONE

ADJOURNMENT


Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 9:50 a.m.

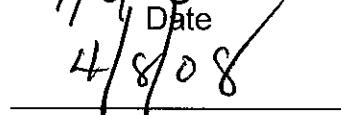


Gary Huttman, Chairman



Taver Cornett, Secretary



Date


Date