

# DRAFT

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION  
PUBLIC HEARING HELD  
May 13, 2008**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Darla Lipke**, at 9:05 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:

**DARLA LIPKE, CHAIR  
FRANK SEVERINO, VICE CHAIR  
GARY HUTTMANN, SECRETARY  
TAVER CORNETT  
STONY SIXMA  
JAY YOUNG  
JAMES RUSSELL**

**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 April 8, 2008 Minutes

Member Cornett **MOVED** for **APPROVAL** of the Minutes. Member Huttman **SECONDED** the motion. The motion **CARRIED** unanimously.

## **PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES**

**Chairman Lipke** 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: no
- Chair Lipke: no
- Member Severino: no
- Member Huttman: no
- Member Russell: no
- Member Young: no
- Member Sixma: no

## **CONSENT AGENDA**

NONE

## **CONTINUED ITEMS**

**Z-08-024** – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, K1J4, LLC, Owners**, requesting a **Rezoning** from the A-3 (Transitional Agriculture) zoning classification to the A-2 (Rural Agriculture) zoning classification. The property is located at the terminus of Airport Road, approximately ¼ mile north of CR 15-A, the property is the Bob Lee Airport; ± 33.23 acres (Zechnowitz) 6017-00-00-0050 **30-day continuance requested**

Member Cornett **MOVED** to continue case **Z-08-024** for 30 days. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

## **NEW BUSINESS**

NONE

## **OLD BUSINESS**

NONE

## **VARIANCE AND SPECIAL EXCEPTION APPLICATIONS**

### **ITEMS TO BE CONTINUED**

**S-08-025** – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, K1J6, LLC, Owners**, requesting a **Special Exception** for a Fixed-wing aircraft landing fields and helipads on the proposed A-2 (Rural Agriculture) zoned property. The property is located at the terminus of Airport Road, approximately ¼ mile north of CR 15-A, the property is the Bob Lee Airport; ± 33.23 acres (Zechnowitz) 6017-00-00-0050 **30-day continuance requested**.

Member Sixma **MOVED** to continue case **S-08-025** for 30 days. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

## **NEW BUSINESS**

**S-08-026** – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, RLH Family Limited Partnership, LLC, Owners**, requesting a **Special Exception** for a Temporary campsites for 3 days before, during and 3 days after any regularly scheduled racing event at the Daytona Beach International Speedway for Speedweeks, Biketoberfest, the Pepsi 400, and Bike Week on A-1 (Prime Agriculture) zoned property. The property is located on the east side of County Road 415 North approximately 600 ft. north of its intersection with Pioneer Trail, in the Rural Community of Samsula; ± 10.07 acres (Nagle) 7211-00-00-0033 **Tentatively schedule for the June 19, 2008 County Council at 2:00 p.m.**

**Christian Nagle Planner II**, presented the Staff Report. This is a request for a temporary campground for racing events held at the Daytona Beach International Speedway. The property has been primarily used as a pasture, however, it has also been used as an overflow parking lot for the Cabbage Patch site during special events. Staff showed aerial views of the property and surrounding properties. He stated the property has two gated driveways that connect to Tomoka Farms Road, has trees to the north side and east side with an adjacent single family home owned by the applicant and is fenced. The applicant submitted a conceptual site plan which indicates 80 tent and RV campsites that are 20 feet by 40 feet each, accessible by the two driveways and two way drive isles. He stated that there are areas for a security area, registration area, which includes trash containers, portable toilets, fire equipment, drinking fountains, electrical power poles and electrical outlets. He stated that the applicant indicated there will be a maximum of 100 campsites with no vendors, no special events, and no contests allowed. Facilities will comply with the Health Department requirements and fire protection will be provided by the fire services section with the applicant providing the security cooperating with County Staff for the arrangements. Traffic engineering commented that the campground is estimated to generate 370 daily trips and may make service problems on Pioneer Trail, however, a recent study from the County stated there will not be adverse service problems for Pioneer Trail. He stated that Tara Boujoulian with environmental management stated that if approved it will subject the property to the county tree pruning requirements and recommended to preserve the existing trees along the north and east boundary lines to help meet the minimum tree requirements. The Sheriff's Office commented that the campground will have minimal affect on their operations. The Fire Department asked for applicant to coordinate with them to provide the fire equipment and improvements. He stated this is the first request for the campground by the property owners. Staff recommends the **APPROVAL** of the request for one year subject to 17 conditions listed in the Staff Report.

**Member Huttman** asked if the only adjacent land owned by the applicant is the single family dwelling.

**Mr. Nagle** stated that the applicant owns the property to the east which has a single family dwelling.

**Mr. Glenn Storch, of Storch, Morris, & Harris, 420 S. Bevel Road, Daytona Beach FL.** He stated that there are few places that are ideal for this use. The applicant owns the land to the east which has cattle on it and to the south are the Cabbage Patch and Spotnick. To the north is a horse area and to the west is a temporary campground. The applicant has worked closely with the fire and police departments to have parking there during events. There is a need for temporary camping in the area and this is within the concept of temporary camping that the area would not be impacted most of the year. This is a pasture that will not have impacts to it most of the year except for the times of events and the requirement for a better driveway. He stated the conditions required in the Staff recommendations are appropriate. He indicated that if a tree ordinance as in subdivisions has to be met with changes to the pasture, it could be a problem. There is no problem with maintaining the current site trees and since this is a temporary camp ground, no further trees should be needed and it needs to remain pasture land.

**Mr. Nagle** responded stating the tree item is based on Land Development code requirements.

**Mr. Dyer** stated the application of the Land Development Code in regards to trees on this property is not addressed in the proposed 17 conditions. He stated that the Land Development Code would be a separate process and staff is not asking for agreement from the applicant today as part of the Special Exception.

**Mr. Nagle** stated the 17 conditions are based on zoning ordinance requirements criteria for Special Exceptions.

**Mr. Storch** stated that there are no objections to maintaining the current trees. He stated, however, that there would be an objection to developing the site as the intention is to maintain the property as agriculture pasture.

**Member Huttman** asked for clarification of Staff's recommendation of Approval for one year because there is a request from the applicant that the approval be done administratively from one year to another, that is not mentioned.

**Mr. Nagle** stated that the applicant requested approval for one year with the option of additional years being reviewed and approved by the zoning enforcement official for four subsequent years. He stated that Staff is recommending that it be approved for one year.

**Member Huttman** continued that in Conditions 6 and 7 there is bolded language that implies multiple year approvals and that site plans are to be submitted each year.

**Ms. Robinson** stated that it will be clarified that the approval is for one year initially and that is the County Council policy on new temporary campgrounds. She stated that the

County Council prefers to see if it is successful and that they comply with all conditions in the first year. When the applicant returns for the second Special Exception and the County Council then looks at administrative approvals on a year to year basis with the usual maximum of five to seven years.

**Member Huttman** asked if the conditions would be changed after 2009.

**Ms. Robinson** stated that it will be clarified for the County Council.

**Chair Lipke** asked Mr. Storch if he had reviewed all the conditions and was in agreement.

**Mr. Storch** replied yes.

**Chair Lipke** asked that the intent is not to have special events.

**Mr. Storch** confirmed that there was to be no special events or vendors.

**Mr. Nagle** stated that this would only be a campground.

**Member Cornett** asked about parking for the campground.

**Mr. Storch** stated that the campers parked at the campground will be able to attend festivities at the Cabbage Patch.

**Member Cornett** stated the 10 acre parcel with vehicles and 100 campsites could create an extra traffic burden in the area.

**Mr. Storch** stated that this is the first year and it is not required to have temporary camping for every event. So it is possible that maintaining the area for additional parking may be an option if permitted.

**Mr. Nagle** replied that parking is permitted.

**Mr. Robinson** asked if the property owners to the south had been contacted for cross access for pedestrian use rather than walking on Tomoka Farms Road to get to the sites to the south and it would be safety feature.

**Mr. Storch** responded stating that it is an excellent idea.

**Mr. Sixma** stated it works for both.

**Chair Lipke** asked if the pedestrian access should be added to the conditions.

**Mr. Storch** stated that small changes as creating openings in the wire fence would be fine if that would be acceptable.

**Ms. Robinson** stated that in the past there was some consternation with property owners.

**Mr. Storch** stated that it would be checked out before hand and they agree to all Staff's conditions.

Member Sixma **MOVED** to **FORWARD** Case **S-08-026** to the County Council with **APPROVAL** of conditions as defined in the Staff Report. Member Severino **SECONDED** the motion. The motion **CARRIED** unanimously.

**S-08-027** – Application of **Victor Liviccori, Agent for Owners, Victor Liviccori and Kathleen Grieco, Owners**, requesting a **Special Exception** for a Single-Family dwelling on B-8 (Tourist) zoned property. The property is located on the south side of an un-named easement at its intersection with Ocean Shore Boulevard, approximately 70 feet northeast of Brooks Drive, in the community of Ormond by the Sea; ± 3,527 sq. ft. (Nagle) 4203-11-00-0080 **Tentatively schedule for the June 19, 2008 County Council at 2:00 p.m.**

**Scott Ashley, Planning Manager** stated that Staff has looked at additional information just received in regards to V-08-028 and S-07-027. Due to the amount of information, possible questions, and limited time for review, he requested that the item be continued for 30 days.

**Mr. Dyer** stated that would be date certain for the next PLDRC meeting on June 10, 2008.

**Mr. Victor Liviccori, 1111 Ocean Shore Blvd., #8, Ormond by The Sea, Owner**, stated he and his wife, Kathleen are the owners.

**Chair Lipke** stated Staff has requested the case be continued so Staff and the Board have the opportunity to review the additional information just provided.

**Mr. Liviccori** stated that Staff was helpful which included an on site visit. He stated it was explained to him he needed to turn in all the information by the meeting time as no other new information could be turned in after the fact. He continued that the packet he received from Staff was recommending the Special Exception and was not recommending the variances requested.

**Mr. Dyer** stated that Staff's recommendation for continuance is not intended to penalize him and he may introduce the additional information today to the Commission. He stated the Commission and Staff have requested the opportunity to review the additional information and that the cases be continued to the next Commission meeting, both the Special Exception and the Variance. He stated that the Variance case decision is confined to the Commission's record and it is important to have the information today.

**Chair Lipke** asked if not hearing the case today would cause the applicant a hardship.

**Mr. Liviccori** stated that his wife is not here as the last of their six children is graduating from college in New York. He stated he will be leaving for New York tomorrow then be attending his daughter's wedding on June 6<sup>th</sup>, so will not be back until June 18<sup>th</sup> as he thought he would have to be back for the County Council meeting on the June 19<sup>th</sup>.

**Chair Lipke** asked if a two month extension would work for him.

**Mr. Liviccori** expressed his concern regarding Code Enforcement.

**Mr. Robinson** stated that he would not be scheduled for Code Enforcement. She stated that June 10<sup>th</sup> is the next PLDRC meeting then July 8<sup>th</sup>. She asked if July 8<sup>th</sup> would accommodate him.

**Mr. Liviccori** stated that July 8<sup>th</sup> would work.

Member Cornett **MOVED** that Case **S-08-027** and **V-08-028** be given a 60 day continuance so that Staff may review the previously submitted information. Member Young **SECONDED** the motion. The motion **CARRIED** unanimously.

**V-08-028** - Application of **Victor Liviccori, Agent for Owners, Victor Liviccori and Kathleen Grieco, Owners**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate parcel 4203-11-00-0080 (Lot 8) from parcel 4203-11-00-0090 (Lot 9); **Variance** to Section 600.01 *Nonconforming Lots* to allow a substandard lot; **Variance** to the front yard setback (15.2 ft. in lieu of the required 25 ft.); **Variance** to the rear yard setback (5.2 ft. in lieu of the required 20 ft.); **Variance** to the west side yard (4 ft. in lieu of the required 15 ft.); Variance to the east side yard (10.1 ft. in lieu of the required 15 ft.); **Variance** to Section 810.04 *Design and Location Requirements for Off Street Parking Areas* to allow a driveway (1.1 ft. from the west side property line in lieu of the required 5 ft.) for a single-family dwelling on B-8 (Tourist) zoned property. The property is located on the south side of an un-named easement at its intersection with Ocean Shore Boulevard, approximately 70 feet northeast of Brooks Drive, in the community of Ormond by the Sea; ± 3,527 sq. ft. (Nagle) 4203-11-00-0080

Member Cornett **MOVED** that Case **S-08-027** and **V-08-028** be given a 60 day continuance so that Staff may review the previously submitted information. Member Young **SECONDED** the motion. The motion **CARRIED** unanimously.

**V-08-031** – Application of **Todd Fehr, Owner**, requesting a **Variance** to the front yard setback on 15<sup>th</sup> Street (27 ft. in lieu of the required 40 ft.) and a **variance** to the west side yard setback (1 ft. in lieu of the required 8 ft.) for a single-family dwelling on R-4 (Urban single-Family Residential) zoned property. The property is located on the west side of Broadway Avenue at its intersection with 15<sup>th</sup> Street, in the community of West Highlands; ±10,000 sq.ft. (Zechnowitz) 8004-01-35-0200

**Dave Zechnowitz, Planner III**, presented the Staff Report. He stated the property is a corner lot located in West Highlands subdivision west of Orange City. The lot has been approved by the Land Development Division as a legal building site which is eligible for permits. The lot is bisected by an AT & T easement diagonally through the property for a buried fiber optic cable. He stated the right of way to the south is less than 50 feet wide, which requires a greater setback that is, 40 feet from the pavement. The west property line abuts an unopen 25 feet wide alley. In order to construct the proposed 1400 square foot one story home on the property, the applicant has requested the west side yard setback, 1 foot in lieu of the 8 feet required, and the south front yard setback 27 feet in lieu of the required 40 from the edge of the traveled way. Staff finds there are several non self imposed hardships existing with regard to the lot and therefore recommend APPROVAL of the requested variances.

**Todd Fehr, Owner, 1750 Almond Street, Orange City**. He stated he had no questions.

Member Sixma **MOVED** to **APPROVE** of case **V-08-031**. Member Young **SECONDED** the motion. The motion was **CARRIED** unanimously.

**Scott Ashley, Planning Manager** stated since Staff is reviewing S-08-027 information, he requested for this case to be moved to later in the agenda.

**Chair Lipke** stated the case will move to be last on the agenda.

**Mr. Dyer** asked if the commission and Staff had the opportunity to review the new information received from the applicant.

**Mr. Ashley** stated the applicant did provide new information. It is clarity of the action of the chain of title from adjacent property owner. He stated the information highlights items already in the Staff report and Staff had no objection to continuing.

**V-08-032** - Application of **Michael Woods, Applicants, John & Kathleen Bastone, Owners**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate lot 100 (parcel 7936-01-00-1000) from Lot 101 and Lot 102 of the River Ridge subdivision (Map Book 23, Pages 58 and 59, Public Records) in the R-3 (Urban Single Family Residential) zoning classification. The property is located on the east side of Hontoon Road ±1400 feet south of its intersection with River Ridge Road in the community of Hontoon Island; ± 0.3 Acres (Nagle) 7936-01-00-1000

**Christian Nagle, Planner II**, presented the Staff Report. He stated the request is to separate lot 100 from lot 101 and 102 of the River Ridge subdivision. Property location was shown. The subject property is a vacant 71 ft. wide lot that was platted in February 1955. Adjoining properties have single family dwellings. The property does not meet the R-3 classification minimum 85 feet lot width requirement making it a non conforming lot. Lots 100 and 101 and part of lot 102 were formally owned by the property owners

and are an undivided lot for purposes of the zoning ordinance. The subject property and adjoining properties have been zoned R-3 since 1980. The current property, lot 100, from July 2001 to October 2002 was owned by the current property owners along with lot 101 and part of lot 102 with a total property frontage of 165 feet along Hontoon Road. In October of 2002 the current property owners sold lot 100 to Carl Marvin and sold lot 101 and part of lot 102 to Mr. Walker. The property sold to Mr. Walker exceeded the minimum lot width requirement and a building permit was issued. The variance application stated that Mr. Marvin applied for a building permit to develop lot 100 and was he was told it could not be developed due to lot width issues. The applicant returned Mr. Marvin's money and lot 100 was reacquired by the applicant in 2003. Mr. Nagle stated Staff reviewed adjoining properties ownership patterns and included in the Staff Report the characteristics of the 57 parcels that are within 1300 feet of the subject property located along Hontoon Road or River Ridge Road. All 57 parcels exceed the minimum R-3 lot area requirements and 45 of the 57 parcels exceeded the minimum lot width requirement. Three of the properties were more than 165 feet wide, 12 parcels are non conforming lots with varying widths of 69 feet to 79 feet. The platted lot widths varied from 62 feet to 141 feet. The subject parcel is one of the few vacant lots left. The applicant considered applying for rezoning to reduce the minimum lot width requirements. However, the property is too narrow to comply with the R-4 classification minimum 75 feet width. The next available zoning would be R-5 which has a minimum lot width of 50 feet and minimum lot area of 5,000 feet. However, the property is not eligible to be rezoned to R-5 because of the land use designation which is urban low intensity. He stated that the parcel was formally composed of two platted lots and part of a third plat lot which collectively met the R-3 zoning classification. He stated that the property owners created their own hardship. The owners did purchase two separate parcels from separate owners. However, once the parcels come under common ownership, the non conforming lot can not be sold without prior granting of a variance. In lot 100's existing state, the property owners can not obtain building permits and the variance is the minimum needed to make reasonable use of the property. Staff found that the property owners did create their own hardship by the acquisition and sale of the subject property and adjoining property. Staff recommends **DENIAL** of the variance request.

**Michael Woods, of Law Firm Cobb Cole, 351 East New York Avenue, Suite 200, DeLand, for the applicant.** He stated this is a request of last resort. They have a platted lot that is insufficient for the zoning based on lot width. When it was purchased by the property owner it was a non conforming lot but buildable due to the adjacent property. It has now been determined it is no longer buildable and there is no other recourse other than a variance. In the Staff report, criteria sections 4C, 4D and 4E of section 1003.01 of the zoning ordinance have been met. He stated he will be addressing criteria 4A and 4B regarding special conditions unique to this property and whether this is the direct result of action by the applicant. He presented a Power Point image of the plat area. Lot 100 was created in 1955. The subject parcel is located on a bend in the road and is 70 feet in width and is 81 feet by the canal. He indicated on the Power Point display, the lot widths of lots 99 to 104 as platted in 1955. Lots 99,102,103,104 were all 75 feet in width and lot 100 was 70 feet in width. He showed

the lots as they were in 2001 indicating lot 100 remaining as a separate lot of record. He stated that in July 2001, Mr. & Ms. Bastone purchased two parcels with the intent for them to be separate. They then conveyed the same two parcels in October 2002. One of the lots conveyed was 95 feet in width which met the lot width requirement and was built upon by the new owner. The second lot was 75 feet in width, and could not be built upon by the new owner and as a result the Bastone's purchased the property back. He continued that in 1955 there were 6 lots of record and currently there are 4 lots of record and/or 5 if you count Lot 100 that is in question. He stated that property owners sold various lots and parts of lots in the area to illustrate how lot 100 ended up 70 feet in width.

**Member Young** asked for clarification of area property sales.

**Mr. Woods** explained various lot/property sales among different owners.

Discussion continued in regards to lot sales and size changes.

**Mr. Woods** stated the subject lot has been in existence since 1955 and has remained the same size and shape. The applicant is asking for the lot to be designated as a buildable lot subject to the requirements of the Land Development Code and Zoning Ordinance setbacks. He stated that in 1990 a determination was made by the county that R-3 was the appropriate zoning for the area and that created a situation where the property owners had to sort it out by themselves. The applicant did not know the right questions to ask and when they did ask the county, they did not get the complete information. He stated that when the county rezones a property they do not compel specific action to get a non conforming status for a non conforming lot size. He stated the theory is, over time, new zoning requirements will be adjusted by various property owners to cause non conforming lots to become conforming lots. The theory is that you do not place a burden on any one particular property owner because property adjustments will all work out. The reality is that at some point between 1955 and now, you do have some losses of development rights in this area. He stated if you had a right to build 10 homes on 10 lots, then the county says you have to have larger lots, your yield over those lots will be reduced. He stated in this case the property owner is paying taxes on a lot that is regarded as being developable with a tax value of over a \$100,000 and the owner is being told by the county the lot is not developable. He continued that Staff stated under the 4A criteria of special conditions and circumstances that exist that are peculiar to this land, which are not applicable to other lands in the same zoning classification, do not exist. He said that the county has imposed a zoning category that has lot width requirements that are in excess of the subject lot. The parcel in question, as it currently sits, is located between two parcels that can not be used as donor parcels to make the subject lot conform to zoning requirements. He stated the lot does not have the frontal width to be able to be built on under the current zoning and the applicant is left with purchased property intended for residential use with no other recourse to fix the situation. He stated that criteria 4B, is that applicable conditions are the result of the actions of the applicant. He stated that the purchase of the two parcels by the same individual is what caused the need for the variance. He stated that if the

parcels had been purchased singularly, one by Mr. Bastone and one by Ms. Bastone, there would not be a problem. The fault is that the clients were not savvy enough to purchase the adjoining lots in different ownerships. He stated that solutions may be to sell to other property owners or purchase additional land. He continued that the applicant can not purchase additional land and the adjoining properties are already developed. There is no way to get a fair market value by splitting it off and selling it to the adjacent property owners. He stated that there is no harm to the neighborhood by granting the variance. It is using the lot as originally platted and the requested variance is not inconsistent with the Comprehensive Plan. He asked for support of the request.

**Member Huttman** stated that he understood that the request is to separate two lots but the applicants do not own them both.

**Mr. Woods** answered that the application was presented as it is, because there is a remainder lot that is un developable pursuant to the sale. Both parcels have been conveyed, with one parcel being repurchased by the Bastone's.

**Member Huttman** inquired if the conveyances have been completed legally.

**Mr. Woods** replied that the conveyances are legal but the question is whether the subject parcel is build able and the situation is that it is not without a variance.

**Mr. Dyer** explained that there are two concepts. One is the zoning ordinance which is treating it as a combination of lots. The second issue is the actual chain of title of ownership of the lots, legal interest may have been conveyed, but by virtue of the zoning code it is treating the lots, because they are under common ownership as one for purposes of the zoning code only. The zoning code would not govern the actual ownership of the property. The applicant's are seeking relief from that combination of lots requirements so they can utilize or develop the property under the terms of the zoning ordinance.

**Member Huttman** asked if there was anything the adjoining property owners the Arnold's could do to object to the requested variance.

**Mr. Woods** stated that the Arnold's have their building permit and built on the lot. Where the determination is being made is at the Staff level and that the subject parcel can not be built upon.

**Member Severino** asked for clarification concerning the comment made, that the wrong questions were asked by the owners and the answers were incomplete.

**Mr. Woods** replied that the question is did the property owner do due diligence as ask at the county staff level, if they could buy the property and build on it. The situation is that when the Walker's received their permit, the question was not asked as to what is going on with the remainder parcel. The Walker's lot met the zoning width requirement. Ideally the situation may have been able to be dealt with at that point. The applicant did

go to the county and asked what to do to purchase the property and they thought they were doing everything required of them to be able to purchase the property then resell it. He stated the owners did not know how come the lot width issue did not come up initially. He stated there are no other options but to appeal to the board.

**Member Cornett** asked if the owners had a title insurance claim because when you purchase property you usually get title insurance to verify the title and the non conforming lot.

**Mr. Woods** answered he did not know. When the property owners purchased the two properties, you had two lots that were developable, one was under the size limit and one was in excess of the size limit. Any individual persons could have bought the properties separately and they would have retained their ability to build on both of the lots. Title insurance review would not necessarily consider common ownership of adjacent parcels.

**Member Cornett** stated the lot was then sold to Mr. Marvin.

**Mr. Woods** answered that is when the issue came up.

**Member Cornett** asked what happened to the title insurance at that transaction and the subsequent repurchase.

**Mr. Woods** answered he did not know. The purchase went through, it was sold to the Marvin's and the Bastone's bought it back from the Marvin's. The Property Appraiser's page shows it was a \$100 sale which implies it was a re-conveyance back to the Bastone's, to reverse the original lot sales.

**Walter Bennett, 2227 Hontoon Road.** He stated he is the owner of lot 104, which is 75 feet and part of lot 103 which is 25 feet. He continued that Mr. Arnold is the owner of lot 101 and 25 feet of lot 102. He is also speaking for Mr. Angelier, he is the owner of lot 103 which is 75 feet and 25 feet of lot 102. He stated they have no objections to granting the variance. It is a vacant lot setting useless. He knows Mr. Bastone, he is honest and forthright. He stated he has lived in the neighborhood since 2001 and the Bastone's have been good neighbors. He stated he spoke for Mr. Arnold, Mr. Angelier and himself and they are in favor of granting the variance, adding as long as the setback regulations are followed for side yard building standards of 8 ft per side minimum and 20 foot maximum.

**Ms. Robinson** stated the applicants are not asking for any variances to the setbacks. Should the Commission grant the variance and the applicant applies with a house plan that does not meet the setbacks, they would have to come back before the Commission and ask for another variance.

**Member Russell** asked if the title was conveyed.

**Mr. Woods** replied, a sale did go through, a title was conveyed from the Bastone's to Mr. Marvin. Mr. Marvin discovered it was an un buildable lot and it was conveyed back to the Bastone's.

**Member Russell** asked if Mr. Marvin asked for his money back and the Bastone's were good enough to buy it back from him for the amount he paid.

**Mr. Woods** replied yes and the problem is the Bastone's to work out rather than Mr. Marvin's.

**Member Severino** stated he understands the Walker's buying lots 101 and part of 102 from the applicant and either the Arnold's or Walkers going for permitting. During that time, the county apparently does not have the vehicle for or just did not catch the fact the original transaction from the Bastone's was not legal as far as the Comprehensive Plan is concerned. He stated now, as an afterthought, the Bastone's are being punished. He asked for further explanation.

**Mr. Ashley** stated that the Staff does not know about transactions. Staff does not track public records. The transaction goes through, the deed is recorded, then the property appraiser's office maps it out. Staff does not know when a property is sold until a permit is applied for. He continued that apparently there were two parcels to start with and the Bastone's bought the two parcels and they never legally combined the property. The Walker's showed up with a parcel that conformed to the R-3, 95 feet in width, minimum zoning requirement being 85 feet in width and there were no other questions to ask because this property conforms. If they weren't legally combined as far as 101 and the portion of 102, Staff would have said you need to do a lot combination so that the property does not get sold or petitioned off and make it a legal lot of 95 feet width. Lot 100 did not come up until there was a request for a permit. It is a non conforming lot as far as the zoning requirements, so a non conforming lot letter must be submitted to show the new owner or previous owners did not own any other adjoining property to indicate it was a legal non conforming lot. The situation could not be proved, as the prior owner owned more property, making Lot 100 part of another lot that was conforming. By selling the lot it created a new non conforming situation that can only be rectified by petitioning and selling to adjacent property owners or seeking a variance. Staff would not be involved in knowing any of this information until an applicant comes forward and tells us or seeks a permit. That is when additional questions are asked as to conformity. The Walker property conformed and there was no need for any additional questions on the rest of the neighborhood. It was only when Mr. Marvin came in with a lot that did not conform that the issue came up.

**Chair Lipke** stated it appears that there was no malicious intent, it was a complicated series of transactions and she assumes this is a reasonable request. Granting the variance should not impact adversely anyone or the surrounding environment.

**Member Russell** stated that the subject lot is 81 feed wide along it rear property line and the front of the lot is 70 feet wide and divide them by two and you come up with

75.5 feet. It was platted and approved as a plat at 70 feet on the front. He continued that the fact that the Bastone's bought it back, speaks well of them.

Member Huttman made a **MOTION** to **APPROVE** the variance request for **V-08-032** based on literal interpretation of the zoning ordinance would deprive the property owner's of rights commonly enjoyed by other properties in the same zoning classification. Literal interpretation of the provisions of the zoning ordinance would work an unnecessary and undue hardship on the applicant and granting the variance does not create traffic congestions, fire hazards or block adequate light or air. Member Russell **SECONDED** the motion.

**Member Cornett** commented that if the motion passes, that there will probably be another variance request later.

**Chair Lipke** asked if that was because of the lot size and setback requirements.

**Member Huttman** stated that the applicants have been put on notice that if they can't design something that will fit on the lot they will have to come back, for another variance request.

The motion passed **UNANIMOUSLY**.

## **OLD BUSINESS**

**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

**John Stockham, Planner III**, presented Staff Report. He explained some background information that in 2007 the applicant was cited by Code Enforcement for various violations including construction without a permit for the addition of a front porch. The porch encroaches into the required 25-foot front-yard setback and this presents the need for a variance. He showed the site plan indicating that the porch is at 17 ft in lieu of the 25 ft. He stated that if the variance is not granted and the applicant does not remove the porch, this violation will be forwarded to the Code Enforcement Board for action. He stated that with regard to the criteria there are no special circumstances even though the home was constructed in 1966, it was originally built to a standard setback of 25 feet without the front porch. He stated the circumstances are the result of the owner's actions as they have owned the property since 1989 and constructed the porch without a building permit. If the porch were to remain, it would not be harmful to the surrounding area since it has existed since 1990 and does not block traffic views. However, the variance requested does not meet the setback requirements for the zoning ordinance established in 1980, and therefore is not in harmony with the zoning ordinance or the comprehensive plan. He continued that reasonable use of the property

does not require the use of the front porch. Staff recommends **DENIAL** since the porch was built without a permit and it does not meet the current setbacks and there are no apparent hardships with the subject property or structure. He showed the front porch with screening and structural modifications completed by the applicant in response to requirements to bring it up to current building codes. He showed an aerial of the location, surrounded by single family homes in a rural area with narrow roads, just north of Orange City.

**Member Cornett** inquired if the other houses in the vicinity meet the current setbacks.

**Mr. Stockham** stated it did not appear that anyone was encroaching.

**Mr. Russell** asked to see the slides that indicate the improvements to the porch and asked when was the applicant told to make the improvements to meet the requirements.

**John Welch, Owner, 2655 Grayson Street**, responded he did not realize he needed a permit for the porch. He stated he applied for a permit to modify his roof. In the mean time his neighbor turned him in because he was beefing up the front porch for the roof permit to be issued.

**Member Russell** asked if the permit was issued.

**Mr. Welch** stated he was to pick up the permit at 12 noon but he was called at 9:00 am stating his permit was cancelled.

**Member Russell** asked if he did the improvements without a permit in hand.

**Mr. Welch** stated yes, he was told by a friend he needed to beef the porch up to satisfy the roof permit because it would need to be done.

**Member Huttman** asked if the permit he was going to get was to make modifications to the roof and not the front porch.

**Mr. Welch** stated yes.

**Member Russell** asked why after 19 years this was triggered.

**Mr. Welch** stated it was because he had a next door neighbor that did not like him. The porch is strapped to code for when he built it but everything has changed since the hurricanes. He stated his neighbors were at his porch after the hurricanes due to no power.

**Member Severino** inquired if he purchased the home in 1989.

**Mr. Welch** stated yes.

**Member Severino** asked if the porch existed at the time of purchase.

**Mr. Welch** stated it was not, but there was a small overhang on the front.

**Member Severino** asked if he would have requested a variance at the time prior to construction of the porch and what was the reason for the porch.

**Mr. Welch** answered that when he bought the house, the front was rotted out and he had to replace it so he built a front porch. He stated his family and the neighborhood kids use it when it rains and otherwise hang out on.

**Chair Lipke** reported that the Commission has a letter from a neighbor stating that they do not have any objection to the request.

**Mr. Dyer** stated that it is not necessary to read it as it has been submitted as part of the record.

**Chair Lipke** asked where the neighbor is located that submitted the letter.

**Mr. Welch** stated he has one neighbor to the right and the lady to the left with the rental is who turned him in for working on the porch, she lives in Miami and does not care. He stated he did not ask for letters. There is a neighbor across the street and one over from them. The rest are snow birds.

**Member Russell** asked Mr. Dyer if a precedence would be set if it is voted to allow the request. He asked if it would cause others to come in that have done things illegal over the last twenty years.

**Mr. Dyer** stated the decisions on variances are not precedence setting in that each case has a unique set of facts. Decisions do need to be based on the five criteria for variances and the burden for meeting the standard for variances falls on the applicant. One of the criteria that would be applicable is whether or not literal interpretation of the zoning ordinance would deprive the applicant rights commonly enjoyed by other properties in the same zoning classifications county wide, not just the neighborhood.

**Chair Lipke** asked what the implications would be if the Commission supports Staff's recommendation for denial besides being referred to Code Enforcement.

**Mr. Dyer** stated that it is his understanding there is a Code Enforcement case that sited them for constructing a porch without a permit and a permit can not be issued do to intruding into the setback. If the variance is denied, the property owner can come into compliance by removing the structure to the degree that it intrudes into the setback and any remaining porch would need a permit. He stated that compliance, absent a permit for the structure and a variance, would be removal of the violation.

**Member Russell** asked what the depth of the front porch is currently.

**Mr. Welch** answered that it is approximately 7 to 8 feet.

**Chair Lipke** asked the applicant if he were denied what the impact would be on him.

**Mr. Welch** replied it would severe because he is currently out of work. He stated he had blue prints done which cost him already and he does not know what he would do.

**Chair Lipke** asked if he could remove it himself or would he have to hire a contractor.

**Mr. Welch** stated he would have to hire someone.

**Member Young** asked who originally constructed the porch, him or a contractor.

**Mr. Welch** stated he did, not a contractor.

**Member Russell** asked if the roof for the porch was installed by him.

**Mr. Welch** stated it was installed by him about 20 years ago.

Member Huttman **MOVED** to **APPROVE** case **V-08-018** based on the fact that the porch has been there for 18 years and it would create an undo hardship on the applicant. Member Russell **SECONDED** the motion. The motion **CARRIED** by a vote of 6 to 1. Member Young voted against the motion.

**V-08-021** – Application of **William Shaw, Agent for Owners, Carlos and Deborah Fernandez, Owners**, requesting a **Variance** for side yard setbacks (18 ft. in lieu of the required 50 ft.) for a single-family dwelling and detached garage on RC (Resource Corridor) zoned property. The property is located on the west side of Sundance Trail, approximately 1,100 feet north from its intersection with Art Center Boulevard, near to the City of New Smyrna Beach; ± 35,000 sq. ft. (Nagle) 6335-01-04-0040

**Christian Nagle, Planner II**, presented the Staff Report. He stated the request is for side yard variances for the subject property to reconstruct a new single family home on the property once the existing family home is removed from the property. The property is located near New Smyrna Beach including a single family home and accessory structures. The applicant is planning to demolish the existing one story home and detached garage on the property and build a new 4,000 square foot two story single family dwelling and attached garage. The proposed home will have a first floor foot print area of 3,000 square feet. The property is nonconforming due to its 100 foot lot width and 0.8 acre area. The zoning is RC, Resource Corridor, which has a 25 acre minimum lot size and minimum lot width of 150 feet. The original single family dwelling was built when the property was zoned R-3 and it was administratively rezoned after the adoption of the 1990 Comprehensive Plan. Due to the width of the property, a variance is needed to build any new single family home on the property because of the 50 foot

minimum side yard setback requirements of the RC zoning classification. The applicant worked with the Staff to develop a proposed house plan that will have an attached garage with 18 ft side yard setbacks and 120 ft. away from Turnbull Bay. Staff found that the owner can not meet the criteria for the zoning ordinance and the RC zoning requirements which creates an undo hardship on the property owner since a principal structure can not be built on the property or other structures without the granting of side yard setback variances. He stated the requested variances are the minimum variances needed to allow the property to be redeveloped. The applicant worked with Staff to minimize impacts to the wetlands and wetland buffers on the property. The variances would be in harmony and should not be injurious to the immediate area. Mr. Nagle said Staff recommends **APPROVAL** subject to the two conditions included with the Staff Report.

**William E. Shaw, 3328 Royal Palm Drive, Edgewater.** He stated he worked with Staff to put it together so it would be in harmony with all of the requirements. The purpose of the requested variance is to improve the side setbacks. The proposed replacement house was moved 60 feet away from the water and 100 ft. or more from the road. The neighborhood is made up of similar homes. The proposed side yards are actually an improvement. He said a neighbor called thanking them for moving the garage an additional 10 ft. from the sideline. He stated he agreed with Staff's conditions.

Member Sixma **MOVED** to **APPROVE** case **V-08-021** with conditions as presented by Staff. Member Huttman **SECONDED** the motion. The motion **CARRIED** unanimously.

**V-08-023** – Application of **Garrett Usina, Jr., Owner**, requesting a **Variance** to Section 806.02 to allow a fence height (6.5 ft. in lieu of the maximum allowed 4 ft.) in the front yard adjacent to Highbridge Road on RC (Resource Corridor) zoned property. The property is located on the south side of Highbridge Road, approximately ½ mile west from the intersection with John Anderson Drive, near the community of Ormond Beach; ± 11.5 acres (Stockham) 3205-00-00-0020

**John H. Stockham, Planner III**, presented the Staff Report. He stated the subject property consists of about 8 acres of dry land that is surrounded by the Halifax River and Bulow Creek. There is an existing residence that was constructed in 1966 that has 3,130 square ft. of heated living area. The site has miscellaneous improvements such as a swimming pool, boat dock, boat house, and patio. According to the applicant there had been a fence on the northern side of the property adjacent to Highbridge Road which included 6 ½ ft. wood posts. The fence no longer exists, but some of the posts remain. The applicant is proposing to install a new six foot high aluminum fence in between existing 6 ½ ft. coquina fence posts that have been recently added. Fence and building permits were not obtained prior to the site work. Environmental Management did not report any environmental impacts from the request, however, the applicant is required to mitigate for any impacts into the 50 ft.-wide wetland buffers during the permitting process. The applicant's home was constructed in 1966 and there apparently was a wooden fence at the time. The fence was destroyed during the

hurricanes of 2004, therefore, the applicant wants to erect a new fence for property protection and safety. Photographs show that during bike week motorcyclists park their motorcycles along the fence line area, leaving litter in the area. The applicant is requesting a 6 ft.-high fence instead of the permitted 4 ft. high. Prior to 1992 the area was zoned A-2 and there were no applicable fence regulations at that time. The current height restriction is 4 ft. There is a canal surrounding the property and a bridge to access the location of the home along with a gate. Staff recommends **DENIAL** because the work was started without a permit, without obtaining approval for this height, and Staff finds there is nothing unique to justify going higher than 4 ft. He showed the example of the fencing, the coquina rock posts and original wood posts, driveway and gate.

**Member Huttman** stated, in the Staff report, it is discussed that a 4 ft. fence is adequate for the property boundary and for a deterrent for potential trespassers. There is information from the applicant stating it is not adequate. He asked where Staff got the information that a 4 ft. fence is an adequate deterrent.

**Mr. Stockham** stated that in addition to the fence they have “private property/no trespassing” signs. He continued that Staff would like the applicant to work with the Public Works office to get the roadway pull-off restored to an original state with native vegetation and perhaps that would discourage vehicles from pulling off the road. Apparently, people get this area confused with the State lands just across the road to the north. He stated that the combination of the fence, signs, and restoration of the area, would help the situation.

**Mr. Dyer** stated that the burden does not fall on Staff to justify why County Council adopted a 4 ft.-height fence limit. There is no special exception process for properties that need additional security and or allows for a higher fence that 4 ft and it should not be used for the criteria, only as a side comment.

**Gary Usina, Owner, 59 Highbridge Road.** He stated that he agrees that a 4 ft. high fence would be a good visual deterrent, however, in his experience working with large events, visual deterrents do not work for everybody, specifically for the individuals that are enjoying their property during special-events weeks in Volusia County. He said he has photos of lots of garbage. They have a gate now that is not getting the job done, he has to walk out and get people off the bridge. Prior to the fence being destroyed in 2004, this was not much of an issue. Since 2004 there have been a few confrontations, there has been a suicide, he had to call the police to get a body. He stated his concern with a new child is the security of the property. He stated he does not think a 4 ft. fence will work if people are able to step or hop over it. The first company erecting the columns represented that they were getting the permits, but they did not. He stated he hired a new person, who discovered the permits had not been pulled and then found out that they would need to obtain a variance. He stated he then started the variance process. He stated the majority of the property is an island, but they have an area in front by the mailbox. He showed pictures of what they find in front of their home.

**Member Severino** asked what the fence height was prior to the 2004 hurricanes.

**Mr. Usina** stated they were 6-foot wood panels, they were in bad state, and water came over Highbridge Road and blasted everything out.

**Chair Lipke** stated she visited the property and disagrees with Staff. They have a very unique situation and property. There are no neighbors, with a piece of property across the street for sale. It is an island with an entrance and the coquina has an historic look. There were lots of people there on a week day and it looks rather random. She could see there could be confusion and encroachment onto the property. The property is extremely unusual and the plan looks great.

**Mr. Usina** commented that they tried to preserve what you see on A1A and the St. Augustine area. He stated they have signs posted all over the shore line. In addition the shore line was dense Brazilian Pepper which was cut out which contributed to inviting more people.

**Mr. Sixma** asked if the property is over 8 acres.

**Mr. Usina** stated it is depending on the tide.

**Mr. Dyer** stated that the comments about the uniqueness of the area relates to the first of the five criteria that there are special conditions and circumstances which exist or are peculiar to the land involved.

**Chair Lipke** stated she does not think the 4 ft would do anything other than a visual detractor for half the people.

**Member Russell** asked the applicant if he feels the 4 ft. would not be a sufficient deterrent.

**Mr. Usina** answered that it would deter a lot of people. It is just a hop over the fence for the beer drinkers and or people fishing. The added two feet would cut down on the problem people.

**Member Severino** stated in addition to the uniqueness of the land, there was an administrative change in zoning after the fence was existing with its previous allowable height and due to the act of God, the fence was demolished. Now the applicant is having to follow the new requirements based on the administrative change causing an undue hardship.

**Member Severino** **MOVED** to **APPROVE** case **V-08-023** based on the uniqueness of the property as well the hardship burden of the administrative zoning change. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

**S-08-029** – Application of **Brian Hammer, Owner**, requesting a **Special Exception** for a Kennel on FR (Forestry Resource) zoned property. The property is located on the south side of Colony Road, approximately 1,340 feet west from its intersection with Sadale Run in the community of New Smyrna Beach; ± 120 acres (Stockham) 8209-01-03-0010 and 8029-01-03-0030 **Tentatively schedule for the June 19, 2008 County Council at 2:00 p.m.**

**John Stockham, Planner III**, presented the Staff report. He stated the area is very rural with farms, pastures, Forestry Resource areas with 10 to 160 acres parcels and single family dwellings. This request is for a private facility containing ten dog runs for hunting dogs. A survey of the property and layout was shown. He stated the zoning ordinance for kennels and the Comprehensive Plan policies for compatibility between properties, environmental buffers and neighborhood protection. Neighborhood protection includes items as security, lighting, noise control and odor waste control impacts. He stated that the distances between the kennel and lot lines, the enclosure for the dogs, and natural buffers of the forested land will help protect the neighboring properties. The building layout on the site plan is designed to protect the wetland and provides the 25 foot upland buffers. Comments made from Environmental Management were in regards to the entrance drive to the home and the facility and will have to be addressed separately. The total number of animals to be sheltered will be 10 hunting dogs and 2 house cats, which is within the number of animals permitted by the proposed animal control ordinance. Site drawings and photos were presented. One of the conditions in the Staff report includes a fence to be installed on the southern side to help sound impacts on the subdivision to the southeast. Staff recommends **APPROVAL** subject to the 4 conditions in the Staff Report.

**Member Severino** asked what the density of the vegetation within the 500 foot buffer area.

**Mr. Stockham** stated it is covered with densely wooded tall pine trees and saw palmetto.

**Member Severino** asked if that was not sufficient for the sound barrier.

**Mr. Stockham** stated the kennel building has two walls and a ceiling but is otherwise an open air kennel with fencing. He stated sounds do travel and the screen fence would help in blocking some sound.

**Mr. Ashley** stated the property has the FR zoning making it exempt from the tree protection ordinance in the Land Development Code. The trees could be cleared causing an unconstructive view from the adjacent properties to the kennel. He stated the fence would be added protection in case of tree removal to help reflect sounds.

**Member Severino** asked if there are ordinances that would protect surrounding property owners from visuals and sounds if the forestry has been cut down at a later date.

**Mr. Ashley** stated there is a sound ordinance in place if there were complaints that deals with decibel sound levels and it would have to be investigated.

**Mr. Dyer** stated there is a noise ordinance but you would have to measure the sound decibels', it has to be of a constant nature and dogs would be difficult to measure. The penalty does not grant the Zoning Department nor the County the ability to require a property owner after the fact to erect sound proofing or a fence. If there was a violation, it would be in the form of a civil penalty.

**Member Severino** stated he would listen to the applicant at this point.

**Ms. Robinson** stated in a previous case, sound abatements measures were required.

**Member Sixma** asked how many dogs would be allowed on 10 acres, 4 dogs or 5 dogs.

**Ms. Robinson** stated currently kennel is defined as 5 or more dogs.

**Member Sixma** stated if you can have 4 dogs per 10 acres and the applicant has 120 acres, he could have as many as 48 dogs legally without a kennel.

**Mr. Dyer** stated that a property owner can have up to 4 domesticated pets and not constitute a kennel. If an owner has over 4 domesticated pets, they must seek approval by Special Exception.

**Mr. Sixma** replied that the area is generally 10 acres parcels and you could potential have the 48 dogs on 120 acres, if it was individual 10 acre parcels without any permits.

**Ms. Robinson** stated that FR zoning is a minimum of 20 acre lots.

**Brian Hammer**, Owner stated he was unaware that he could not have more than 5 dogs without a Special Exception. He stated he has spent money building the facility and he has all his permits and almost all signed off. He stated he has a septic tank for the kennel.

**Chair Lipke** asked if all the dogs were his and he was not selling or breeding them.

**Mr. Hammer** stated he did not want his dogs to be a nuisance.

**Chair Lipke** stated there are two objections, one from Maria Garcia and one from Bill Bow. She asked where they are located in relation to the owners property.

**Mr. Hammer** stated that William Bow is on his west side with 40 undeveloped acres and he lives down south.

**Chair Lipke** asked if William Bow resides on the property.

**Mr. Hammer** stated no he does live there and he bought 40 acres from this owners cousin.

**Chair Lipke** asked about Marie Garcia's objection.

**Mr. Hammer** stated he does not know her or what lot she has.

**Chair Lipke** asked where lot 18 in Ashley Cove Estates is located.

**Mr. Severino** stated Ms. Garcia stated in her correspondence she has 13 acres but does not say where it is located.

**Mr. Ashley** stated that Ashley Cove Estates is to the south of the subject site. He showed the location on the overhead.

**Mr. Severino** stated Ms. Garcia's property appears to be a considerable distance away. He asked if the applicant had read the conditions purposed by Staff.

**Mr. Hammer** stated he has not.

**Mr. Stockham** stated the conditions.

1. Special Exception approval is limited to the site improvements shown on the site plan attached hereto and dated February 14, 2008 and limited to parcel ending -0010, only the 80 acre portion.
2. The maximum number of pets shall be sheltered, maintained, or board on the premises shall not exceed 12 (twelve).
3. The level of noise shall not adversely impact the surrounding properties. To meet this applicant shall install sound barrier materials inside the purposed kennel building. Also a solid 6 foot high privacy fence or wall shall be installed along the full length of the southern façade of the purposed dog runs and/or cages.
4. This use shall be subject to any future animal care facility requirements that may be added to the Zoning Ordinance 80-8 as amended.

He clarified the applicant has 2 domesticated cats as well, so the number of animals was put at 12.

**Mr. Huttman** asked how condition #4 would be enforced.

**Mr. Stockham** stated that the owner is within the number of animal limits allowed even with the purposed ordinance amendment.

**Mr. Hammer** stated he does not agree with the fence, but would do it if needed. He stated he does live out with a lot of woods he does not plan on cutting.

**Mr. Severino** stated he is hesitant to impose the fence just in case something could happen.

**Chair Lipke** added that 6 foot fencing may not do much for sound abatement in that area.

**Mr. Dyer** stated that as he understands it, there are concerns about conditions 3 and 4 of the Staff Report.

Member Severino **MOVED** to **FORWARD** case **S-08-029** to County Council with the recommendation of **APPROVAL** to include Staff Conditions number 1 and 2. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

## **PUBLIC ITEMS**

1. Presentation of Animal Control meetings regarding the Proposed Ordinance for Animal Care Facilities.....Michael Dyer, Assistant County Attorney, Legal Services

**Ms. Robinson** stated this item was before the PLDRC in January and the proposed Animal Care Facility ordinance tables have been brought back before the PLDRC. Currently the zoning ordinance requires anyone that owns 5 or more domesticated animals receive a special exception for a kennel. Staff brought a proposal before the PLDRC to amend it by striking the word kennel and rename it to Animal Care Facilities. This went to the County Council with the PLDRC's finding of consistency. There was an extensive discussion as to the numbers of animals allowed. She showed the animal numbers table that went to the County Council and the Planning Commission which is based on a range of acreages and the numbers of animals allowed. Depending on the lot size, you are either not allowed or are allowed to have the animals, or are allowed by Special Exception. An example is, less than 1.5 acres you are allowed to have up to 5 animals. We were increasing the number of allowable pets in the ordinance. There was extensive discussion at the County Council level and it was sent back to the Animal Control Board that held two meetings to discuss the issue. Contained in the packet the PLDRC has received there are five different tables with a variety of numbers. She stated there are subtle differences between the tables that reflect ideas from the County Council. She showed the Animal Control Board's table that varies greatly from the one that went to the County Council and the ideas that County Council had in regards to the regulations. She stated the Animal Control Board said up to 20 animals should be allowed as a permitted use on any lot less than 1.5 acres and allowed by Special Exception for animals up to 30. It is repeated as an allowable permitted use everywhere except a permitted Special Exception for 21-30 animals in lots greater than 2.5 and greater than 10 acres.

**Ms. Seaman** explained the discussion at Council was under what circumstances should a Special Exception be required and what circumstances should it be a permitted use. The Animal Control Board was tasked primarily to look at how many animals one

person could care for, because of their role in the care and protection of the animals in the County. They were looking at the animal's care either by an owner who has a lot of animals or as an operator of a facility as a shelter or a kennel. The Animal Control Board did not want to make that distinction and many on the board felt there should be no costs, no requirements, and no regulations on how many animals you can have no matter how much property you have. They were advised that their task was to look primarily at the care of the animals. If you have one person, how many animals can the one person care for or if it is a kennel, how many employees or volunteers should you have to care for the animals. The Board felt it was unfair and an undue burden on an animal lover who may want to have a shelter to have to apply for a Special Exception because they believe it to be costly and time consuming. The task for the PLDRC is to look at compatibility and consistency and the impact that a use has on the neighboring properties. Currently the code is fairly restrictive. In the majority of the zoning classifications you may not have more than 4 animals without asking permission. Some Council members thought it was too burdensome to ask permission because of a variety different scenarios and maybe too restrictive on the numbers. The Council has seen the recent Special Exceptions, as the kennel in Lake Helen. She stated there was citizen opposition to the kennel in Lake Helen and she explained to Council that if this was a permitted use, those citizens would never have had the opportunity to explain their concerns and the impact on their properties. The purpose of a Special Exception is that when adjacent property owners could be adversely impacted, they should have the ability to speak to the governing body. In the package the PLDRC received is what the Animal Control Board wants, which is less than 1.5 acres and up to 20 animals. She stated the task is, would that be compatible to the adjacent property owner or in those circumstances should a Special Exception have to be requested. The PLDRC does not have to address the number of people caring for the animals, the Animal Control Board has submitted its recommendations. Council has asked for the PLDRC to recommend where you think this is compatible and where additional restrictions should be placed on the property owner.

**Chair Lipke** asked if there are comparable counties with comparable regulations that can be used as a frame of reference.

**Ms. Seaman** stated that they are very diverse, however, Broward County's regulations have been used as a reference.

**Chair Lipke** stated that Broward County may not be the one to consider nor Palm Beach County.

**Ms. Seaman** answered that a lot of counties have what Volusia currently has which is the maximum number of animals and anything over that without the acreage analysis. She stated some think you could rely on the noise ordinance, however, that is difficult. This leaves the property owner who is being adversely affected only a civil action to stop the nuisance.

**Mr. Dyer** stated some of the ordinances that were considered varied by approach. The approach that is being discussed is that it takes into account the size of the property and relating that to the number of animals you can have on it. The idea is that the more property you own the larger number of animals you may have on your property. Then at what point should these proposals be coming through the PLDRC and County Council for approval as a Animal Care Facility or Kennel or Shelter. If it is a permitted use, it would be entirely administrative.

**Member Huttman** stated he agrees that the type of animal you have is a large issue.

**Ms. Seaman** stated you can not regulate based on the kind of animal. There has been discussions as to the weight of the animal as big or small animal.

**Chair Lipke** asked what is the cost of the application process that is being deemed as burdensome.

**Mr. Ashley** stated the base is about \$600.00 and \$30.00 an additional acre.

**Ms. Robinson** stated it could run up to about \$900.00

**Member Cornett** stated that is less than \$1000.00 to create a commercial kennel.

Discussion continued regarding, shelter for an owner's own pets.

**Member Severino** stated after reading the minutes from the meetings, he had not thought that there was an issue of counting pets as ferrets and turtles.

**Ms. Seaman** stated that the way it is drafted now, it is only cats and dogs, not hamsters and snakes etc. For Class II wildlife, a state permit is required and the state controls that number.

**Member Lipke** inquired if the PLDRC has the ability to waive an application fee.

**Ms. Seaman** responded no, not currently. Those who have been hobby breeders will be grandfathered in and won't be required to do anything and any existing kennels that are in zoning classifications that automatically allow kennels will only need to come in and sign off that they are out there and there will be no fees, as those with hunting dogs.

**Member Cornett** commented on expecting 20 hunting dogs to be quiet.

**Mr. Dyer** stated that if you are requiring someone to apply for a Special Exception for an Animal Care Facility or Kennel, the PLDRC has the ability to recommend that reasonable conditions be imposed as a condition to grant the Special Exception. One of the recent conditions was limiting the number of animals because there is no table in the ordinance. The Special Exception process does allow the County Council to impose

conditions on property and the ordinance that went to Council, provided some conditions to be imposed on Animal Care Facilities.

**Member Young** asked to review the current regulations.

**Ms. Seaman** replied, you may have 4 animals, but if you want 5, in all the zoning classifications except A-1, you must come in for a Special Exception.

**Chair Lipke** asked if you bump that up one category is that a way to compromise.

**Member Young** stated that you can take in consideration type of animals.

**Member Cornett** stated there is a definite need based on the issues in front of the County Council to think about how to handle unwanted or feral animals. Plus there are people who are animal lovers who breed for fun. The other piece is the adjoining property owners and what they are being asked to put up with. He stated he would like to see the regulations stay as they are.

**Member Severino** asked, with current procedures, would adopting one of tables fit with how it is currently handled or are the tables outside of the scope.

**Member Young** stated it is currently 4 animals.

**Ms. Seaman** stated that the table is outside the current scope because it would expand the number of animals. She showed the matrix that Staff proposed and stated, where if the acreage is greater than 1.5 acres and less than 2.5 acres there were some Council Members that thought 6-11 animals for that size would not be bad as a permitted use, but if they had more then a Special Exception would be required.

**Member Young** stated that there are so many variables, one being the need to look at the kennel location as it could be placed close to the lot line.

**Ms. Seaman** stated setbacks are 50 ft. and some of the larger areas go up to 100 ft. setbacks.

**Member Severino** asked if you go over the current number of animals allowed, regardless of acreage, then it must be by Special Exception.

**Member Cornett** stated yes.

**Member Sixma** stated he disagrees, as the applicant with 120 acres and personal hunting dogs, should not have had to be here.

**Member Cornett** stated that when you have 120 acres, it does seem like a burden, but how many people have 120 acres. He stated you probably will be dealing with 5 to 10 acres. Given the space and noise issues and the historical perspective of 5 to 10 acre

parcels backing up to 1 and 2 acre parcels, there needs to be some protection for the majority of the property owners. He stated the applicant with the 120 acres is the exception to the rule, but if you flip it around to 10 dogs on a 2.5 parcel it becomes a balancing situation. He stated he feels there is the need to error on the side of caution for the adjacent property owners.

**Member Young** stated the 120 acre applicant could have placed the kennel where it would have annoyed his neighbors. If there is limit, at least the PLDRRC can look at that.

Discussion continued on lot patterns.

**Member Severino** asked if the PLDRRC can recommend to the Council to keep it the same or are they looking for a change.

**Ms. Seaman** stated that the PLDRRC can say they hear this on a regular basis and believe the current criteria is appropriate. The PLDRRC can recommend an increase in the number of animals, if you feel the number 4 is unreasonably low for the unincorporated area. There are so many different definitions as shelter home, shelter, or kennel. She stated it does not matter what it is called, if there are more than so many number of animals, they are impacting the adjacent property owners and under what circumstances does it need to be regulated.

**Member Cornett** asked what is the animal age limit.

**Ms. Seaman** replied that 6 months is the age limit, they are not considered an adult animal until they are over 6 months.

**Member Cornett** stated there could be several litters.

**Ms. Seaman** stated the spay and neuter ordinance should deal with that piece but you could have several litters under the age of 6 months. But at 6 months they are required to be tagged and they are counted.

**Chair Lipke** asked if there was a lot of public interest with this so that the Council has request input from the PLDRRC.

**Ms. Seaman** answered that there were a number of citizens that stated they did not want to be regulated or be told what to do. They wanted as many animals when ever they wanted.

**Chair Lipke** asked if the public knew the action by the PLDRRC was for a recommendation so they have had due notice.

**Ms. Seaman** stated yes, it is on the agenda.

**Member Sixma** stated there is so many unique exceptions to this rule, he has to agree to leave it the same.

**Member Severino** stated after reading the minutes by the Animal Control Board, if they know more about animals and they can not agree on definitions, or tables and other items discussed in two meetings and the PLDRC is doing it in a parallel form, he agrees that it should remain the same due to so many exceptions.

**Ms. Seaman** stated that the PLDRC can make a recommendation today or more time can be given.

**Member Severino** stated this is the 3<sup>rd</sup> or 4<sup>th</sup> time we have seen information on this issue.

Member Cornett **MOVED** to **FORWARD** to the County Council with the recommendation that the County maintain the existing regulations relating to Animal Care Facilities. Member Sixma **SECONDED** the motion.

**Member Severino** stated that Member Cornett said Animal Care Facility and that is the new terminology. If we wanted it to stay the same wouldn't that stay kennel.

**Mr. Dyer** stated he understood that you were referring to kennels.

**Ms. Seaman** stated kennels, shelters, or shelter homes they are all for the care and feeding of animals.

**Mr. Dyer** added for the purposes of the zoning code.

The motion **CARRIED** unanimously.

## **STAFF ITEMS**

NONE

## **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 11:50 a.m.