

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
February 13, 2007**

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
DARLA LIPKE, Vice-Chairman
TAVER CORNETT, Secretary
STONY SIXMA
JOSEPH RUDOLPH
JEFF GOVE

left early
arrived 9:05 a.m.

STAFF PRESENT

MIKE 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
DARILYNN MARTIN, Recording Secretary

APPROVAL OF MINUTES

Approval of the January 9, 2007 Minutes

Member Sixma **MOVED** to **APPROVE** the minutes for January 9, 2007. Member Rudolph **SECONDED** the motion. Motion **CARRIED** unanimously.

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.

Mike 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.

CONTINUED ITEMS

S-06-129 – Application of **Eula Ann Fuquay, Owner**, requesting a **Special Exception** for a Kennel on MH-3 (Urban Mobile Home) zoned property. The property is located on the east side of Cucumber Lane North at its intersection with Parsley Lane, in the community of Samsula; \pm 5 acres (Nagle) **Staff Continuance request for 30 days**.

Member Sixma **MOVED** to continue case **S-06-129** for 30 days. Member Rudolph **SECONDED** the motion. Motion **CARRIED** unanimously.

CONSENT AGENDA

NONE

NEW BUSINESS

NONE

OLD BUSINESS

NONE

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

V-07-001 – Application of **Keith and Brenda Myrick, Owners**, requesting a **Variance** to Section 801.01(d) to allow the cumulative area of all accessory buildings or structures to exceed 50 percent of the principal structure (1,452 sq. ft. in lieu of the maximum 1,337 sq. ft. allowed) on R-3 (Urban Single Family Residential) zoned property. The property is located on the southwest side of Roberts Street, approximately 300 feet northwest from its intersection with Lowndes Avenue, in the Tomoka Estates Subdivision adjacent to the City of Ormond Beach; ± 40,000 sq. ft. (Stockham)

John Stockham, Planner III, presented the Staff Report. He stated on the subject property is a single-family home built in 2000 that has an overall footprint of 2,674 square feet, which includes an unheated garage and an enclosed rear porch. Also permitted and constructed in 2000 was a 900 square-foot detached garage, built behind the principal structure. Section 801.01(d) of the Zoning Ordinance states that the cumulative area of all accessory buildings or structures (excluding swimming pools and pool enclosures) shall not exceed 50% of the square-foot area of the principal structure when located on a residential lot less than 1-acre in size. This would allow a total cumulative square footage of accessory buildings of 1,337 square feet on the subject property. Based on the applicant's property survey, dated October 2, 2006, there were multiple accessory structures on the site, totaling 2,080 square feet in area. The applicant is proposing to keep three buildings on the site, one 900 square-foot masonry garage, one movable 472 square-foot metal shed, and an 80 square-foot pump house shed, for a total of 1,452 square feet of accessory buildings. He stated this exceeds the maximum allowed by only 115 square feet. He stated special circumstances and conditions do not exist that are peculiar to this property, and stated the applicants did not obtain a building permit prior to erecting the 472 square-foot accessory building. If a permit had been applied for, the nonconforming issue would have been explained and no new structure could have been added to the parcel. However, the subject property was already nonconforming, based on the amount of pre-existing accessory structures, and the applicants have removed three of those accessory structures, thereby reducing the amount of nonconformity. Although literal interpretation of the Zoning Ordinance would not necessarily deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, and would not create an undue hardship on the applicant, through the variance process the applicant now has fewer structures, which makes the property less nonconforming. Staff feels if the variance were granted this would be the minimum variance to make possible the reasonable use of the accessory structures because the subject property is only proposing to keep three accessory structures that

collectively, would only be 115 square feet more than permitted. The granting of the variance with the Staff recommended conditions will be consistent with the Zoning Ordinance and compatible with the Comprehensive Plan. The proposed accessory structure will not be injurious to the surrounding property owners since it meets the required setbacks of the principal structures. The height of the roll-up door is proposed at 10 feet, and the overall height of the existing structure is 12 feet, which are under the maximum permitted height of 15 feet. Therefore, Staff recommends **APPROVAL** of this request, subject to the following 3 conditions.

1. A building permit for the 472 sq. ft. accessory structure shall be obtained and final inspection be performed within 60 days of approval of the variance application.
2. The structure shall not be used for business purposes or for the storage of business equipment and vehicles per Zoning Ordinance 80-8, as amended.
3. The accessory structure shall not be converted to a living area or be used as a separate dwelling unit per Zoning Ordinance 80-8, as amended.

Mr. Stockham then showed the site plan with the proposed building and the buildings that have been removed, on the overhead projector.

Chairman Huttman asked if conditions two and three only apply to the 472 square-foot structure.

Mr. Stockham replied yes that is correct.

Keith and Brenda Myrick, 1112 Roberts Street, Ormond Beach, Owners, stated they have read and agree with the staff report.

Member Rudolph **MOVED** to **APPROVE** case **V-07-001** with conditions, as presented by Staff. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-010 – **Application of Phillip and Cora Edwards, Owners**, requesting a **Variance** to the north front yard setback on Evergreen Road (19 ft. in lieu of the required 25 ft.) for a porch addition to a single-family dwelling on R-4 (Urban Single Family Residential) zoned property. The property is located on the south side of Evergreen Road at its intersection with 2ND Avenue, in the Daytona Park Estates subdivision, east of the City of DeLand; ±11,250 sq. ft. (Nagle)

Christian Nagle, Planner II, presented the Staff Report. He stated the applicants have requested this Variance to add an approximately six-foot wide front porch to their home. The subject property is a corner lot, and the home faces Second Avenue. He stated the applicants entered into a contract with their builder to install a manufactured, modular single-family dwelling on the property. When the applicants purchased the home it was with the understanding it would include a front porch. However, when the builder placed the home on the property it was not placed properly to enable a front porch to be built on it in compliance with the R-4 front yard setback requirements. The home is setback 25 feet from Second

Avenue, and it should have been setback 31 feet to allow for the porch. He stated the applicants explained to him that they had a dispute with the builder and it took a long time for them to close on their home, so they agreed to close on the home so they could get a C.O. (Certificate of Occupancy) on the home and move into it. At the time of closing the builder promised the applicants he would come back and that a front porch would be added. The building permit for this home was issued in 2003, and the C.O. was issued in July 2004. The approved building plan permit did not include the front porch. Staff noted that the single-family dwelling, without the front porch, complies with the minimum applicable yard requirements of the R-4 classification, which is 25-feet from the front property line. He stated Staff finds there are no special conditions and circumstances peculiar to this property. He added that although the applicants were not responsible for the construction of the home, literal interpretation of Zoning Ordinance would not deprive them of rights commonly enjoyed by others in the same zoning classification. Since the dwelling complies with the minimum front yard requirements, the applicants can continue to use and enjoy their home without the granting of the variance. He then showed two photos of the home on the overhead projector. He stated Staff acknowledges that a lack of a front porch will cause temporary hardships for the applicants due to adverse weather and other conditions. Staff noted the applicant has other forms of relief available from the alleged actions of the builder, besides the granting of the requested Variance. He stated the requested Variance is not minimum variance necessary to make reasonable use of the home. However, Staff finds that the granting of the requested Variance is in harmony with the Zoning Ordinance, and should not be injurious to the area involved. However, Staff recommends **DENIAL** because the applicant has not met all five criteria of Section 1003.03 of the Zoning Ordinance.

Member Cornett asked about the concrete pad in the front of the home that was shown in the photo. He wanted to know if it ran the length of the home, and if it was in the dimensions of the requested porch.

Mr. Nagle replied yes, it ran the length of the home. He explained (while showing the plot plan drawing on the overhead projector) that the crossed hatch area would be where the front porch would go. He stated the proposed front porch is six feet in width, and would cover the concrete pad area and part of the concrete steps, but it would not cover all of the steps. According to the application, the proposed porch would be open, not enclosed, and there would be a roofed cover over the front door. He stated the applicant pointed out to him that they did not have any control over the placement or permitting of the home. Their understanding with the builder was that the home would be placed properly to allow for the porch. He stated he asked the applicant if she got the opportunity to review the plot plan with the building permit that was submitted, and she told him yes, she saw the plot plan at that time, but she did not understand the implications of the plot plan. She did not realize that with that plot plan, it would not meet the setback requirements for a front porch. He added she told him yesterday they are having problems trying to keep the front door in good repair because it is starting to weather and rot because it is getting wet.

Chairman Huttman stated the Staff report mentions the home has two front yards. He asked what the setback would be if that were not a 2nd front yard.

Mr. Nagle replied if the home faced the other way, the side yard would be a minimum 8 feet, as long as the other side yard were 12 feet in width. He stated it has two front yards because it is a corner lot.

Chairman Huttman asked if that would be a special condition or circumstance peculiar to that property.

Mr. Nagle and Member Rudolph both replied no, it is just a corner lot with two front yards.

Member Gove stated he had a question regarding the plot plan being shown on the overhead projector, and a question regarding the original permit drawing in the PLDRC packet. He stated it appears the entire concrete walkway in front of the home was not on the original permit drawing. Also, with regard to the other setbacks, it appears that the small section on the rear of the building was not on the original plot plan either.

Mr. Nagle replied the small section on the rear of the building is a shed that is attached to the structure.

Member Gove asked if that was in conformance.

Mr. Nagle replied yes, the home meets all of the minimum yard requirements of the R-4 zoning classification.

Member Gove asked if the only distinction here was that they were being asked to put a roof on the concrete area in the front yard.

Mr. Nagle replied yes, an open, un-enclosed, roofed porch. He added that Mr. Gove was correct in his comment that the permit drawing in the PLDRC package did not show the concrete slab area in front of the structure.

Cora Edwards, 2360 Evergreen Road, DeLand, Owner, clarified that the builder put down the concrete, and it is 5 feet wide. She stated she wants the posts to go into the concrete and have a 1-foot overhang. She explained she had no way of knowing the home was not being placed properly. She stated the home does not look the way she wanted it to look, and without the front porch, there is no overhang to protect the front door, and the wood is rotting already. She explained the builder told her it would take 3 to 4 months to put the home on their property, but it took 14 months, so they were desperate to close and get in there. That is why they agreed to close on the home prior to having the porch installed. She stated the builder had given her a signed statement saying he would install the porch, and he later tried to get the contractor who installed the screen room on the back of her home to install the porch without a permit. She stated that contractor told him no. She stated it has been a very difficult time for her, trying to get this done.

Member Lipke asked if the plan for the porch is to have it look like the original design, as shown here.

Ms. Edwards replied yes, it would have approximately six posts that go into the concrete, and there may be some railings on it to cover up more of the concrete.

Member Rudolph asked about neighboring homes.

Ms. Edwards replied her one neighbor's home was built prior to hers, at a time when there were different setback requirements. She stated that home was a lot closer to the front property line than hers. She added that neighbor was just given approval to put a porch on.

Member Rudolph asked Mr. Nagle whether he knew if that was the case across the street, that the house was closer to the road than 25 feet.

Mr. Nagle replied no, he did not have knowledge of that.

Member Rudolph wanted clarification from Mr. Nagle that there was proper notice of this request, and there were no acknowledgements from any of the neighbors with regard to this request.

Mr. Nagle replied he has not heard from any of the neighbors regarding this request.

Member Rudolph commented he thought this was an unusual situation and Staff is limited in their ability to do anything, but he supports the request.

Member Rudolph **MOVED** to **APPROVE** case **V-07-010**. Member Sixma **SECONDED** the motion.

Mike Dyer, Assistant County Attorney, commented that in Staff's report, they have delineated the five criteria for granting a Variance, three of which, in their recommendation, they have found have not been satisfied. He then asked the PLDRC to comment specifically on criteria 4(a), 4(c), and 4(d), for the record, as to how they had found this criteria to be satisfied.

Member Rudolph replied with regard to 4(a), he found there were special circumstances and conditions peculiar to this property, and even though a corner lot is technically two front yards, he thinks it is still a special condition. With regard to 4(c), literal interpretation depriving the applicant rights commonly enjoyed by other properties, he stated it has been presented to them that there is a similar situation across the street, as far as the setback is concerned.

Member Cornett commented with regard 4(d), the request being the minimum variance to allow reasonable use. He stated he felt that a 5-foot slab was the minimum necessary to provide for a porch, for front access to a building.

Member Rudolph replied he agreed.

Member Lipke stated it appears it is an improvement for the neighborhood aesthetically, and it is a reasonable request.

Motion **CARRIED** unanimously.

PH-07-015 – **Application of Scott Baker, Attorney for Owner, Ronald Luznar, Owner**, requesting a **public hearing** on whether or not to allow, pursuant to the Cabbage Patch BPUD-99-108 (Resolution No. 2000-54), the following:

Temporary campsites for 3 days before, during, and 3 days after any regularly scheduled racing event at the Daytona International Speedway for Speedweeks, Biketoberfest, the Pepsi 400, and Bikeweek, and related special events and itinerant merchant sales.

The property is located on the northeast corner of Tomoka Farms Road and Pioneer Trail, near the Silver Sands Bridle Club, in the Rural Community of Samsula; ± 4.2 acres (Zechnowitz)

Dave Zechnowitz, Planner III, presented the Staff Report. He stated the subject property is the site of the Cabbage Patch Bar and bi-annual Itinerant Merchant Vendors events during Bikeweek and Biketoberfest. It is a BPUD with a Development Agreement that requires a public hearing by the PLDRC to allow temporary campsites, which then enables the applicant to have special events such as the Coleslaw Wrestling event. The applicant plans to provide a maximum of 40 campsites with portalets, hand wash sinks, trash containers, and a special event area (as shown on site plan). The last public hearing the PLDRC approved for the applicant was in 2002 for the 2003-2004 Bikeweek and Biketoberfest events. He added there has been no camping, and no request for special events from the applicant on this property from 2005 to the present. Staff recommends **APPROVAL** of this request for one year, for the 2007 Bikeweek and Biketoberfest events, subject to the 15 conditions listed in the staff report, as the use should not materially alter the character of the area. He stated for the 2008 and future years the applicant intends to apply for an amendment to the BPUD to allow special events under the Outdoor Entertainment Events Ordinance.

Member Cornett wanted clarification that Staff is recommending approval for only Biketoberfest and Bikeweek even though the request is for more events than those two events.

Mr. Zechnowitz replied yes, only this coming Bikeweek (in March) and Biketoberfest.

Scott Baker, 444 Seabreeze Boulevard, Daytona Beach, Attorney for Owner, stated they are in agreement with Staff's recommendations, and the owner will comply with the conditions for approval.

Member Rudolph wanted to confirm that Mr. Baker had the most recent staff report, which modified the conditions and added another condition.

Mr. Baker replied he did have the most recent amended report, and is in agreement with it.

Member Lipke asked where the amount of campsites (40) came from.

Mr. Zechnowitz replied it is the same number that was requested in 2002. The 40 campsites are for the vendors, not for the public.

Mr. Baker added that the DRC recommended approval of final site plan last week, so the owner is in full compliance with the conditions to date.

Member Rudolph **MOVED** to **APPROVE** the request for **PH-07-015** with conditions, as presented by Staff. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

OLD BUSINESS

S-05-111 – Application of **Clay Henderson, Holland & Knight LLP, Attorney for Owner, Four Jays Landfill, LLC, Owner**, requesting a **Special Exception** for a Materials recovery facility on the A-1 (Prime Agriculture) portion of the A-1 (Prime Agriculture) and RC (Resource Corridor) zoned property. The property is located on the east side of State Road 415, approximately 1.5 miles south from its intersection with State Road 44, south of the Rural Community of Samsula; ± 45.6-acres of the ± 64.5-acre parent parcel (Nagle) **This item is tentatively scheduled for the March 15, 2007 County Council public hearing.**

Christian Nagle, Planner II, presented the Staff Report. He stated the subject property is situated in a rural area near Samsula, which has an area development pattern that includes a mixture of businesses, wooded parcels, mobile homes, and single-family dwellings on acreage parcels. The parent property is 64 acres in size and includes property that is zoned A-1 (Prime Agriculture) and RC (Resource Corridor). However, this request is limited to only the portion of the property that is zoned A-1 because the RC zoning classification does not allow Landfills or Material Recovery Facilities as permitted Special Exception uses. He stated the applicant is also proposing to sell finished MRF (Material Recovery Facility) by-products. Staff finds this is acceptable as long as such sales are restricted or considered an ancillary use to the proposed MRF. He stated the applicant has requested a separate zoning variance to allow the MRF to be setback less than 125 feet from a wetland, and also a second separate variance to allow the proposed MRF to be setback less than 125 feet from the north side property line. He stated those variance requests would be heard later in the agenda. He explained that the proposed facility would primarily be selling finished wood landscaping mulch. He stated the property owner was cited June 8, 2005 by the Zoning Compliance Staff because the property did not comply with the approved final site plan, and also for the processing, packaging, storage, retail or wholesale sales of agricultural products not raised on the premises, without proper zoning approvals. The applicant has submitted this Special Exception application, and the two related Variance applications in response to those citations. The property also has a County wetland protection regulation violation due to the un-permitted filling of over 7.5 acres of wetlands and wetland buffers on the property without benefit of a County Wetland Alteration Permit. The applicant has submitted a separate County Wetland Alteration Permit application to County Staff and Tara Boujoulian, Environmental Specialist III, has been working with the applicant on that particular application. He stated Ms. Boujoulian was here to answer any questions pertaining to her December 2006 comments that were included with the PLDRC packet. He stated that Four Jays Recycling, which is owned by the applicant, has a Florida DEP (Department of Environmental Protection) registration for a Yard Trash Processing Facility. Despite the applicant's DEP registration, the applicant is required to comply with applicable

County zoning and land development codes related to this use on his property. His proposed activity, which he has been conducting on the property since 2005, is a MRF as defined by the Zoning Ordinance. The materials he will be processing through the facility will come from external customers, and from the recycling of suitable material from his landfill and land clearing business. Mr. Nagle then showed the Special Exception conceptual plan on the overhead projector while he spoke about it. He stated that corrections of the plan are needed to show the source and date of the wetland buffer area boundary on the property. The plan that is in the PLDRC packet is based on the filling of county wetlands in violation of the county's wetland protection requirements. It does not show wetlands that were on site prior to the improper filling. He stated this plan shows the MRF being setback 65 feet from the road to the north, and the Zoning Ordinance requires that the MRF be setback 125 feet from that public road. He stated the applicant attends to address that through his separate Variance request being heard later today. The plan also shows the MRF setback less than the required 125 from the wetlands on the property, and the other separate Variance will address that. He stated the plan needs to include complete landscape buffers (as required by Section 808.02 of the Zoning ordinance) along the 4 property perimeters. There is also a label on the plan noted as a future road. The location of this road needs to be shown on the plan, and the proposed road must meet Land Development Code and Zoning Code requirements. Staff notes that the property is in a desirable location for the operation of the applicant's existing landfill, and the requested MRF because there are other similar businesses in the area, and Staff is of the opinion that landfills and material recovery facilities are needed resources that provide public and private benefits. Staff recommends **APPROVAL** of the request, subject to the 14 conditions listed in the staff report because with adherence to all Staff recommended conditions, it is consistent with the Comprehensive Plan and the Special Exception evaluation criteria of Section 1104 of the Zoning Ordinance as discussed in the staff report. If the wetlands and wetland buffers on the property are protected and restored Staff also finds that the granting of the Special Exception with staff recommended conditions is in harmony with the general intent and purpose of the Zoning Ordinance.

Clay Henderson, Holland & Knight, LLP, 200 South Orange Avenue, Suite 2600, Orlando, Attorney for Owner, spoke while a PowerPoint presentation was being shown on the overhead projector. He stated their frustration lies with the fact that the County regulations and ordinances do not match the State regulations and statutes, and that his applicant is in the middle of it. He stated they had to make a choice, to be fined by the Code Enforcement Board, and go forward and fight it out in court, or try to work through the process. They chose to try to work through the process and that is why they are here. He stated this often happens in environmental regulations, where the zoning regulations are not in sync with the state law, so they are here under the County Zoning Ordinance, applying for a Special Exception for a MRF, which lists in the County Ordinance, a rule that has been repealed by the State. He stated the Four-Jays Landfill is a nonconforming facility. He stated these sites (Samsula and Four-Jays) are there because they are nonconforming, as they predate the Zoning Ordinance, and they have been able to proceed under that nonconformity, as both a C & D (Construction and Demolition) site, and yard trash facility. He commented that the PLDRC approved the Hart application a few years ago, and he was referring to that because he wanted to make sure that their conditions are consistent with that. He stated what is unique about this site is that it sits between two landfills. He explained that the applicant's nonconforming landfill could continue

to be expanded without PLDRC approval. However, landfill space is a premium, and if they did this they would be out of business in three years. What they are proposing is something that is less of an impact, that will have a continual use and produces a recyclable product. That is how they are trying to conserve landfill space. He stated that although landfills are disgusting, they are a fact of life, and they perform an essential public service, are very highly regulated, and are important to this community. He spoke about the tornadoes of the prior week that caused the loss of 500 homes in the community, and where the debris from those homes ends up. He stated the amount of debris generated in this County from the 2004 hurricanes was equal to the world trade center disaster. He spoke about the landfill in Miami called Mt. Andrew, which is a 200-foot landfill, which did not exist prior to hurricane Andrew in 1992. He stated this is a family-owned business that has been there since 1983, employs 48 people, is a nonconforming use, and has permits from the DEP, both for the C & D operation and for yard trash. He then spoke of the differences between the state regulations and statutes and county regulations and ordinances. Because the use is nonconforming, it is not set up under the County Zoning Ordinance. They are operating under permits from the DEP, for construction and demolition, and for yard trash. He stated the only reason they are here is because they were cited by the County's Code Enforcement Board for selling mulch. The state permit requires them to take in the materials and convert it into mulch and sell it back off-site as recycled facility within 6 months. That act of sale of the mulch is what made them in violation of their nonconformity, which is why they are here today. There is no Volusia County Zoning designation for a Yard Trash Facility. It is set up as a MRF, and the Zoning Ordinance says, you shall be a MRF pursuant to rule 62.701.700. He stated that rule does not exist, it has been repealed. He stated they are doing the best they can, by being here today, but it still doesn't match, and when they leave the PLDRC and go to the County Council, they will still have to work with them to try to do some policy things. He stated they have 3 separate requests, the Special Exception request, and two separate Variance requests. He stated he would be asking to continue the Variance request on the wetland buffers because they cannot make the request and all of the conditions match yet. He explained the processing of the products, and stated that doing this conserves landfill space, and they encourage the use of mulch across the state because it is a tool of water conservation. He stated he feels that turning debris into mulch is environmentally better than turning Cypress trees from wetlands into mulch. He then addressed the wetlands issue. He stated there was a wetlands violation, and the owner made an all encompassing agreement with the State, and took steps with the State to resolve that issue, such as putting the back part of the property (19 acres) into a conservation easement, they restored an acre of wetlands by planting 400 trees, they purchased 6 credits in the Colbert mitigation bank, and they paid a fine, and agreed to put in a 50-foot wetland buffer. He stated they have asked the County, and the County has adjusted the RC boundary to now conform to the State wetland conservation easement boundary. They are now working on getting a County Wetland permit. They have applied for the permit, and once they have gone as far as they can go with that, they will come back to the PLDRC to request a Variance, subject to the conditions that are in that permit. He explained if this were any other matter, there would be a 50-foot buffer requirement from the wetlands, and that would be taken care of under that ordinance. The problem here is that the Zoning Ordinance requires a 125-foot buffer around wetlands, so the Zoning Ordinance varies from the Wetlands Ordinance, and with State requirements. He stated it is impossible, under this circumstance, to comply with the 125-foot buffer because the applicant would be using another 100 feet into the landfill itself. He pointed out on the overhead projector, where

the existing landfill, the conservation easement area, the restored area, and the State permitted wetlands impacts are. He stated they cannot setback 125 feet from that without dismantling the landfill. He then addressed the Staff recommended conditions. He stated they support the conditions, however, condition 6 relates to the time period by which this comes back to the PLDRC. Staff is recommending the time be one year and then it could be extended either annually or bi-annually, and that it would expire within 5 years. He stated he recommends the time period be good for 5 years, which is the same as the recommendation for the Wine landfill to the south, where the condition was that it was good for 5 years, they would file with the County every year the same reports they would file with DEP to determine compliance, and it doesn't have to be extended every year. He stated they would come before the PLDRC each year, but he does not want to have to continually do this annually. His only recommendation for changes with the conditions is that condition 6 should be consistent with the Special Exception that was approved for the Wine landfill.

Mike Dyer, Assistant County Attorney, wanted confirmation from Mr. Henderson, specifically in the Special Exception request, that of the 14 conditions on page 7, he would concede, for purposes of this hearing, to all of the conditions except condition number 6.

Mr. Henderson replied that is correct, and with regard to condition number 3, which deals with the wetlands, he is hoping that by the time they get to County Council, they will resolve all of those issues, and he will be able to make a specific presentation to them on that. With all of the other conditions, he is in agreement.

Keith Young, Owner of Four Jays Landfill, LLC, State Road 425 and State Road 415, Samsula, stated he was a second generation in this business. His parents started the business in 1983. Since his parents retired and he came aboard to take over the landfill there has been a tremendous growth spurt. At that point there were 17 employees, and now there are 52 employees. The landfill used to employ 2 people, and it now employs 17 people. He stated they needed to find a way to make the landfill facility last so they looked into recycling, and obtained a permit, and went through a transition period, from the wetland aspect and the C & D to come into compliance with everything there. He stated he was brought in on that, but at that point his parents still owned the landfill. He stated he thought everything was being done correctly at that time because the State was happy with everything, and they had their permit and had done their mitigation, and had met the criteria. They did not know they needed to go through the same process with Volusia County. He stated they were just following the State permit that says they have to move the mulch out, which is a very costly operation, and they have not received any profits from it yet, and it may be another 2 years before they see any profit from it, but they see it as a long-term investment and they hope to be one of the pioneers in this. He stated they are probably the largest recycle mulch producer in the County, and they hope to stay that way. He stated they now understand they have made mistakes in the way they have done things and they are trying to correct them.

Member Rudolph asked Mr. Young what they do for raw product with regard to selling mulch, during times when they do not have an abundance of wood product.

Mr. Young replied they build up their supply of raw product when they clear land and clean up construction sites. That is why they need so much space. They need a stocking area for that wood.

Member Gove stated he wondered why the County Code was not changed if it makes references to state regulations that are no longer in effect.

Mary Robinson, Building and Zoning Director, replied that the Zoning Ordinance can be more restrictive than state law, and several years ago when this was done, state law was referenced. She said it is something that Staff periodically looks at and they keep a list of things that need to be changed. She stated Staff could take a look at this, but added she would not say today that they would set the policy of all of the County's Codes being the same as the state DEP requirements. She commented that in some cases, a Wetlands Ordinance is more restrictive than the state regulations.

Member Gove replied he assumed it was just a difference in terminology of what the facilities are called and the licensing criteria.

Mr. Henderson commented that these things only come up after someone is caught in the system, and it is not easy to amend a Zoning Ordinance.

Ms. Robinson asked about Mr. Henderson's comment that they had to do annual reporting to the DEP. She wanted to know if he meant they had to renew their permit annually.

Mr. Henderson replied yes, and when the Wine application was done, that is how it was done. It was done as a 5-year Special Exception, and the annual registration was filed with Staff.

Ms. Robinson stated Staff could support the same 5-year recommendation with submission of the DEP permit each year to the Zoning Enforcement Official, which would be her.

Member Sixma **MOVED to FORWARD** case **S-05-111** to the County Council for **APPROVAL** subject to the 14 conditions in the staff report, with the exception that condition number 6 be changed to a 5-year time period and that it include the filing of a DEP permit annually to the Zoning Enforcement Official. Member Rudolph **SECONDED** the motion. Motion **CARRIED** unanimously.

S-06-137 – Application of **Ruby Watford, Owner**, requesting a **Special Exception** for Kennel on FR (Forestry Resource) and RC (Resource Corridor) zoned property. The property is located on the west side of Old Bubbly Road, approximately 0.2 miles north from its intersection with Shell Harbor Road, near the Township of Pierson; ± 17.45 acres (Stockham) **This item is tentatively scheduled for the March 15, 2007 County Council public hearing.**

John Stockham, Planner III, presented the Staff Report. He stated the subject property is situated in an area of Forestry Resource and Resource Corridor zoned properties that are located within the Lake George Pines subdivision. This subdivision primarily consists of large 10-acre or larger lots with the dominant use in the subdivision being ranchette type properties

with personal use agriculture being ancillary to the principal residential use. Commercial agriculture, such as timber harvesting, does not appear to be a dominant use in this subdivision. He stated the applicant is requesting this Special Exception for a kennel on the Forestry Resource portion of the property, which is 3.1 acres in size, and pointed out that portion of the property on the overhead projector. The kennel would be for domesticated canines and for the personal breeding, raising, and selling of these dogs via shipment to the general public by the applicant/owner. The applicant has been raising and breeding since 1991, and is in compliance with the minimum standards required of breeders, as inspected by the American Kennel Club. The general public would be coming to the site by appointment only, between the hours of 10:00 a.m. and 9:00 p.m., mostly on weekends. He stated the owner usually meets prospective owners in DeLand or Ormond Beach. In the past, the applicant has operated as a Hobby Breeder, which is a permitted use in the FR zoning classification. However, the applicant has exceeded the amount of puppies permitted to be raised under the Hobby Breeder rules (which is 2 puppy litters or 20 puppies in a year). The applicant has also been breeding more than one canine breed that is allowed under the rules of Hobby Breeder. Therefore, the applicant is hoping to run the facility as a kennel, which can only be approved through a Special Exception application. The Comprehensive Plan contains a specific policy (1.2.2.17) relating to the location of the requested Special Exception, with compatibility being the key issue. Based on a comment memo Staff has received from Comprehensive Planning, the number and type of animals should be limited based only on the size and dimension of that constrained area. The Animal Control Services and Code Compliance offices should inspect the site and provide input into determining the numbers and types of animals, and to attenuate noise, appropriate landscape buffers should be required, and the area proposed for the kennel shall be fenced. Staff's conditions for approval take some of those into account. He stated the site plan submitted is a drawing, which shows the house and the various rooms of the ground floor, which would be used for housing the dogs. He added there are a number of "doggie" doors, and outdoor pens where the dogs would run. From Staff's understanding, the dogs mainly run in the morning and then in the evening after the applicant comes home from work. The applicant has some cages on the front porch upstairs, and a several crates in the house. The Zoning Compliance memo shows that the subject property has been under violation for operating the business without an approved Special Exception. Based on the most recent visit made by the Zoning Compliance Officer, there were 42 adult dogs and approximately 28 puppies at the subject property. He stated the applicant has been able to sell some of the puppies since that time, but that number is still much higher than the number of animals she is permitted to have, which is five. He stated the Health Department requires that no concrete kennel runs be built upon the septic tank or drain field and that the dog waste be disposed of properly. Also, Chapter 14 of the Volusia County Code of Ordinances lists the requirements for Hobby Breeder, in terms of how to maintain the indoor and outdoor facilities, and Staff feels that chapter closely matches this case. Staff recommends **APPROVAL** of the request, subject to the 9 conditions listed in the staff report, because strict adherence to those conditions could make the site compatible with the Comprehensive Plan. Staff also feels this application with the conditions would substantially meet the expressed requirements of Section 1104.00, Special Exceptions, of the Zoning Ordinance 80-8, as amended. He then read the following 9 conditions into the record.

1. Any approval granted shall initially be permitted for a time period of one year, at which time the approval may continue for another two years provided that all conditions of approval are being met. A new application must be submitted in order for this use to be potentially approved again after any expiration.
2. Zoning Compliance shall inspect the site on an ongoing basis in order to check on the number of animals permitted as well as the adherence to the site plan requirements. The initial inspection shall be within four (4) months of County Council approval in order to begin to verify compliance with any and all required conditions of approval. The number of animals permitted on the site at any one time shall be limited to 30 total.
3. All dogs and any possible cats kept on the subject property shall be licensed by Volusia County Animal Services and either spayed or neutered, except for breeding animals. The applicant shall be responsible for obtaining such licenses as well as submitting and maintaining adequate records in order to assist Volusia County Zoning Compliance staff with verification of this Special Exception.
4. The appropriate landscape buffers shall be required per the requirements of Table 1, Section 808 of the Zoning Ordinance for any areas that have open exposure to neighboring dwellings. Existing trees and understory plantings shall be used toward these buffering requirements.
5. The outdoor area proposed for the kennel shall be enclosed by an additional 6 ft. high fence in order to properly confine the animals on the site. None of the fences for the dog runs shall be within 50 ft. of a property line.
6. Chapter 14, Volusia County Code of Ordinances, shall be used as the basis for the conditions of the indoor and outdoor facilities. In order to better meet these conditions, more windows shall be added as needed to the first floor portion of the kennel.
7. Building permits shall be obtained for the improvements that have been done and continue to be done on the facilities. These required permits shall be obtained within 120 days of approval by County Council of this application.
8. The applicant shall comply with all applicable Health Department requirements pertaining to the subject property and kennel.
9. Appropriate Volusia County and Health Department Staff may visit the subject property and investigate any alleged violations of this Special Exception. This Special Exception may be revoked by a decision of the County Council, after due public notice, if supported by competent evidence for the creation of a public nuisance or failure to reasonably comply with this Special Exception.

He then showed an aerial photo of the area, and pointed out where the subject structure was located, and showed other various photos of the property, house, crates, and pens for the animals.

Mike Dyer, Assistant County Attorney, asked about the referenced Chapter 14 Ordinance listed in condition six. He wanted to know if Animal Control Services would be administering any inspection for this facility or if the Zoning Department would be handling that, should the Special Exception be approved.

Mr. Stockham replied his understanding is that Animal Control Services only responds to complaints, and investigates upon getting complaints, so they would not be inspecting this property on a regular basis for adherence to the conditions. He stated that Zoning Compliance would be inspecting the property for adherence to the conditions.

Mr. Dyer asked about the reports relating to the smells emanating from the site from last summer and fall. He wanted to know if those issues had been resolved favorably.

Mr. Stockham replied yes.

Chairman Huttman wanted clarification of the intent of condition number one. He stated the approval is for 3 years, (for 1 year, and then it can be extended for 2 more years), or, could it be continually extended for 2 year periods provided they meet the conditions, and then only after not asking for it to be continued, does it expire, and they would have to reapply.

Mr. Stockham replied he believes the intent is that if they were to get all the approvals and extensions, that after 3 years they would have to come back with a new application.

Mary Robinson, Building and Zoning Director, asked who would approve the 2 years.

Mr. Stockham replied, the way it reads is, at which time the approval may continue for another 2 years provided that all conditions of approval are being met.

Mr. Dyer asked if the intent is that the Zoning Enforcement Official would grant the two additional 1-year extensions, or that the applicant would have to apply to the PLDRC for the extensions.

Mr. Stockham replied that could be determined by the PLDRC.

Chairman Huttman asked why they would have to reapply, if they are still in compliance with the conditions every 2 years.

Mr. Dyer stated his understanding was that Mr. Huttman felt that the two, 1-year extensions should be approved by the Zoning Enforcement Official rather than reapplying and coming before the PLDRC again.

Chairman Huttman replied yes, if they were interested in continuing it and they are compliant with the conditions, why couldn't they just continue it.

Mr. Dyer added, then at the end of the 3 years they would reapply.

Chairman Huttman replied no, he is not suggesting that.

Mr. Dyer replied that the PLDRC does have some discretion in how they wish to deal with that.

Chairman Huttman replied he does not have particularly strong feelings one way or the other, other than he did not clearly understand what it meant.

Mr. Dyer commented that the issue of kennels has been of concern involving the County, so he assumes that additional time was spent on this case to make sure the recommendation is as solid as possible. He stated what could be done is to have a 3-year period that would include two 1-year renewals, and have a new application be made in the event that there are any additional regulations put into place to deal with this type of use that would be applicable.

Chairman Huttman wanted to hear from the applicant to make sure she understood what the conditions are.

Ruby Watford, 122 Old Bubbly Road, Pierson, Owner, stated she has ordered a product to spray her lawn to eliminate any odor problem. She stated she has read the staff report, and believes she can meet the recommended conditions, although money would be the only issue with regard to the fence, but she will find a way to come up with the money. She stated she was not sure where the 6-foot privacy fence needed to be.

Mr. Stockham replied it should be around the current fences that the applicant has, and no closer than 50-feet to the property lines.

Ms. Watford asked about the shrubbery. She wanted to know if what she already has is sufficient, or if she needs to plant more around the kennel area.

Mr. Stockham replied Staff recommends that she plant more on the northern portion of the property line since there are views to the neighboring property's house.

Member Rudolph commented that the conditions are very important and she needs to be able to comply with all of them, and she needs to address any concerns regarding them now.

Ms. Watford replied she was worried with the financial aspect of coming up with the money for the fencing because she knows that privacy fencing is not cheap, but she has alternatives to get the money, and she stated she would be able to comply with all of the conditions.

Mr. Stockham clarified for Ms. Watford that the 6-foot high fence does not need to be a privacy fence. It could be a chain link fence.

Member Rudolph **MOVED** to **FORWARD** case **S-06-137** to the County Council for **APPROVAL** with conditions as listed, with the amendment to condition # 1, that any interim approval be done by the Zoning Enforcement Official, and after three years a new application would come before the PLDRC for approval. Member Lipke **SECONDED** the motion. Motion **CARRIED** with a vote of 5-0. Member Cornett not present to vote.

V-06-144 - Application of **Clay Henderson, Holland & Knight LLP, Attorney for Owner, Four Jays Landfill, LLC, Owner**, requesting a **Variance** to Section 817.00 (p)(2)(a)(iii)(D) to allow a material recovery facility to be located within 50 feet of a wetland in lieu of the required 125-foot wetlands setback. The property is located on the east side of State Road 415, approximately 1.5 miles south from its intersection with State Road 44, south of the Rural Community of Samsula; ± 54.4-acres (Nagle)

Clay Henderson, Holland & Knight, LLP, 200 South Orange Avenue, Suite 2600, Orlando, Attorney for Owner, requested a 30-day continuance of this case. He stated they hope to be back before the PLDRC at the next meeting, with all of the conditions set up to resolve the issues regarding this case.

Mr. Nagle stated it might take more than 30 days. He suggested the case be continued until after the County Council or the DRC (whichever is later) acts on the applicant's Wetland Alteration permit application.

Member Sixma asked if the continuance should be for 60 days.

Mr. Nagle replied it should be continued, and be reheard at the next available PLDRC meeting after final action on the applicant's Wetland Alteration permit application, and the applicant would have to re-notify the adjoining property owners, and re-post the property at that time.

Mike Dyer, Assistant County Attorney, commented he agreed with Mr. Nagle.

Mr. Henderson replied that is fine.

Member Rudolph **MOVED** to **CONTINUE** case **V-06-144**, and for it to be reheard based on the applicant's request. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

V-06-145 - Application of **Clay Henderson, Holland & Knight LLP, Attorney for Owner, Four Jays Landfill, LLC, Owner**, requesting a **Variance** to Section 817.00(p)(2)(a)(iii)(C) to allow a material recovery facility to be located within 50 feet of a north side property line in lieu of the required 125-foot north side property line setback. The property is located on the east side of State Road 415, approximately 1.5 miles south from its intersection with State Road 44, south of the Rural Community of Samsula; ± 54.4-acres (Nagle)

Christian Nagle, Planner III, presented the Staff Report. He stated the applicant is requesting the Variance to allow his proposed Material Recovery Facility (MRF) (should that Special Exception be approved by the County Council) to be located less than 125 feet from the north side property line. Four Jays has been operating the requested MRF since 2005 without the necessary Zoning and Land Development approvals. The site contains a nonconforming

landfill, and abuts a nonconforming landfill to the north (Samsula Landfill). Landfills and MRF's are permitted Special Exception uses in the A-1 zoning classification, but not in the RC zoning classification. Therefore, this Variance request is limited to only that portion of the property that is zoned A-1. He stated this Variance request is predicated on the requested separate Special Exception approval of the MRF. The Zoning Ordinance was amended in 1998 to require Special Exception approval for a MRF, and to add the 125-foot setback requirement from wetlands and property lines, for a MRF. These rules and setback requirements were in effect before the owner began his MRF operation. He stated that along the north property line is a referenced public road, and the applicant has said he is in the process of applying for a right-of-way vacation for that road. That particular right-of-way is located within 125 feet of the north property line. Staff notes the request is driven partially on the desire of the applicant to make his MRF large enough to process and sell more than 79,000 cubic yards of materials through the proposed MRF. Should the MRF site process less materials, the applicant would have a greater ability to locate his MRF farther away from the north property line. He has the option to downsize it, move it, or discontinue it should the related Special Exception not be granted. Staff finds there are no special conditions and circumstances that are peculiar to the land. The owner has created his own hardship by starting and continuing to operate a MRF, without benefit of required County Zoning and Land Development Code approval and by locating the MRF less than 125 feet from the property line, as required by the Zoning Ordinance. Staff finds that the property owner enjoys rights not commonly enjoyed by other property owners in the A-1 and RC classifications, because the property owner benefits by and can continue to operate his nonconforming landfill on the subject property, per Section 600.02 of the Zoning Ordinance. Staff finds the property owner already has reasonable property use and can continue reasonable property use without the granting of the requested Variance. The requested Variance is also not the minimum variance required to make possible reasonable use of the property. The owner is not dependent on this Variance to continue his reasonable property uses. As stated before, the property owner has the option to relocate, downsize or discontinue the MRF to comply with setback requirements. Staff also finds that the granting of the requested variance is not in harmony with the general intent and purpose of the Zoning Ordinance. Granting the requested variance allows the applicant to locate a MRF within setback areas, contrary to Zoning Ordinance requirements. Therefore, for reasons discussed, and listed in the staff report, Staff finds the applicant has not met all five applicable conditions for granting the requested Variance, and Staff recommends **DENIAL**.

Member Gove stated the acreage figure is different in the Variance request than is in the Special Exception.

Mr. Nagle explained the acreage difference. The Variance application is only for the 45.6-acre portion of the parcel. The Special Exception application includes the entire parcel.

Member Gove wanted to know what the 54.4 acres was that was listed.

Mr. Nagle explained that the 54.4 acres was the entire parcel.

Clay Henderson, Holland & Knight, LLP, 200 South Orange Avenue, Suite 2600, Orlando, Attorney for Owner, stated all of the previous discussions concerning the Special Exception,

including the staff reports, and the testimony that was presented to the PLDRC should be added and be part of the record for this, in case it is appealed.

Mike Dyer, Assistant County Attorney, asked Chairman Huttman if that was acceptable.

Chairman Huttman replied that was acceptable.

Mr. Nagle commented Staff wanted to make sure that the staff report and all related attachments are also a part of the record.

Mr. Henderson replied that is fine. He stated the Ordinance requires a landfill to be setback 125 feet from an adjoining property owner. What is unique to this property is that there are adjoining landfills on both sides of the property. A PowerPoint presentation regarding this case was being shown on the overhead while Mr. Henderson spoke, as he pointed out the locations of the adjoining landfill and the owner's C & D (Construction and Debris) operation. He explained that the C & D operation is setback 12.5 feet (pursuant to the DEP rule) from the adjoining property owner, and if they were to continue this use as a C & D landfill they would be able to do that for the rest of the property. He pointed out the platted road that they have applied for a vacation of, through the County Council. He stated the landfill to the south (Hart) was approved by the County Council with a setback of 50 feet from the property line. He stated all they are asking is to be treated consistently with the other property owners.

Member Rudolph wanted clarification that the request is 50-feet in lieu of the required 125-feet, and that was the setback between Four Jays and the landfill to the north.

Mr. Henderson replied that is correct.

Mr. Nagle stated the requested Variance is along the north property line, which is the Samsula Landfill. He added that this Variance is only for the applicant's requested MRF, so this Variance request is dependent upon separate approval of the Special Exception for the MRF. He explained that when the County Council heard the Hart/Wine Special Exception case, for a Material Recovery Facility, it was the County Council that approved their (Hart/Wine) 50-foot setback from the Four Jays property.

Chairman Huttman asked if the Staff recommendation on the Hart/Wine Special Exception was a 125-foot setback.

Mr. Nagle replied yes.

Member Sixma asked why Staff would require a 125-foot setback, considering where the property is located.

Mr. Nagle replied because Section 1003 of the Zoning Ordinance requires for the approval of a Variance, that the applicant meet all 5 criteria. In this case the request does not meet all of the criteria, so Staff had to recommend denial.

Member Lipke asked if there was any feedback from the north property owner.

Mr. Nagle replied no.

Mr. Henderson stated the Zoning Ordinance provides for 5 criteria for approval of a Variance. He then addressed how they met all of the criteria. The first of the criteria is whether or not there are special circumstances peculiar to the land. In this case it is unique because it is a nonconforming landfill that sits between two landfills, so the literal interpretation of the ordinance would be absurd. With regard to literal interpretation of the Zoning Ordinance depriving the owner of rights commonly enjoyed by other properties in the same zoning classification, he explained that the property owner to the north was able to put his landfill all the way to the property line, and the owner to the south was able to put his landfill up to within 50 feet of the subject property. With regard to the requested Variance being the minimum variance to allow reasonable use of the property, he explained it is minimum in the sense that a 50-foot setback is reasonable in this case because it is consistent with the Variance to the south. With regard to general intent, and the Comprehensive Plan, he explained that the recommendation on the related Special Exception was that it was consistent with the Comprehensive Plan.

Member Lipke **MOVED** to **APPROVE** case **V-06-145** based on the evidence presented by the applicant.. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

PUBLIC ITEMS

1. Proposed Small Scale Amendment CPMA-001-07 (Bowyer-Malphurs-1)Montye Beamer, Director, Growth & Resource Management
2. Proposed Small Scale Amendment CPMA-002-07 (Bowyer-Malphurs-2)Montye Beamer, Director, Growth & Resource Management
3. Proposed Small Scale Amendment CPMA-003-07 (Bowyer-Puckett)Montye Beamer, Director, Growth & Resource Management
4. Proposed Small Scale Amendment CPMA-004-07 (Bowyer-Keebler)Montye Beamer, Director, Growth & Resource Management
5. Proposed Small Scale Amendment CPMA-005-07 (Bowyer-Bass Capital Fern)Montye Beamer, Director, Growth & Resource Management

Ron Paradise, Planner III, Comprehensive Planning Activity, explained there are 5 small scale map amendments that are located generally in the Seville area. He stated that since they are associated by geography and the requests are similar he would give a report that captures the staff report of all 5 amendments. He stated Mr. Dyer would most likely want to have a recommendation that addresses each application individually, after the discussion.

The properties are owned by individual applicants, and per the legal department, it was determined that these small scales could be processed separately. The proposal is to change the land use on the properties from Agricultural Resource (AR) to Rural (R). The AR is a designation that facilitates agricultural uses and has a density of one unit per 10 acres. From the zoning perspective, consistent with the AR, these properties are zoned A-1, Prime Agriculture. The Rural land use category has a density range of 1 unit per 1 acre, to 1 unit per 10 acres. The preferred density is 1 unit per 5 acres in the Rural land use category. The requested Rural designation is a transitional designation and represents a mixture of low density residential and agriculture. These properties are located north of the Seville area just south of the Volusia/Putnam County line. With the exception of CPMA-002-07 (Bowyer-Malphurs-2), which is 3 acres, the other four are 10 acres in size and are associated with larger parent parcels that range anywhere from 15-30 acres in size. It is possible that CPMA-002-07 may be eligible for building permit issuance as a non-conforming lot. However, staff did not receive a non-conforming lot letter and staff did not do any abstracting work to determine if that lot would be eligible for building permit issuance. All the amendment areas, with the exception of CPMA-005-07, are currently used for agricultural uses and they are taxed at an agricultural rate. CPMA-005-07 has been used in the past for agricultural purposes. The crop grown has been, and is, fern with seran for shade. The amendment area is designated as Ag Resource to reflect the existing agricultural use of the property, and it does recognize the predominant agricultural use of the area and in the northwest Volusia area. Located to the south of these amendment areas is the rural community of Volusia, which is designated as Rural on the future land use map. It recognizes a long-standing rural concentration of population in a non-urban context. However, many of the parcels that are just to the south of these amendment areas are in the 10 plus acre range and are used for agricultural production. Ag uses in the area include, fern, citrus, cattle, etc. The requested Rural still allows agricultural uses; however, it does represent an increase of density in core agricultural areas.

To be financially feasible, agriculture needs to take advantage of an economy of scale. Large tracts of land are needed to exploit an agricultural economy of scale, and generally 10 acres in Volusia County is thought to be the minimum size for a feasible agricultural use to occur. Five acre or less lot sizes that may be allowed in the Rural category would create a condition where property is subdivided into parcel sizes that may no longer be feasible to farm. Smaller parcels result in typical ranchette-type areas that are predominantly residential uses with personal use agriculture.

However, the most problematic element associated with an increase of density within agricultural areas is the introduction of non-agricultural oriented residential development into agricultural areas. Agriculture can be associated with noise (pumping), chemical use (herbicides, insecticides, etc.), high water consumption (irrigation and freeze protection); and some agricultural uses in northwest Volusia can generate these types of impacts. Individuals who move to the "country" to occupy acreage oriented ranchette-type lots can complain about late night pumping noise and the loss of well pressure due to high irrigation and freeze protection activities. From the perspective of the farmer, agrarian/residential conflicts come in the form of trespassing, vandalism, having to deal with neighbor complaints, and the prospect of increased regulation and other interference. The result of the introduction of residential

density into agricultural areas can be a loss of agricultural productivity and investment as farming becomes too difficult.

The requested Rural category allows agricultural uses. However, the Rural also sets the stage for low density development that is more geared to residential uses than agriculture. As has been stated, the introduction of residential uses in agricultural areas has the potential to create agrarian/residential land use conflicts. Therefore, the higher density that can be realized in the Rural would not be consistent with this Policy.

In addition, the introduction of residential uses into agricultural areas can create land use incompatibilities. Land use compatibility, whether uses occur in urban or non-urban areas, is a major theme of the County Comprehensive Plan. With the nature of the agricultural uses located in the area, and the potential for agrarian/residential conflicts, the proposed amendment is not consistent with the Comprehensive Plan.

The introduction of higher residential density that would be ushered into the area by the requested Rural has the potential to create land use conflicts between established agricultural uses and new residential development. Such conflicts are usually harmful to agriculture. In addition, facilitating harmonious, compatible land use patterns is a prime goal of the County's Comprehensive Plan. Finally, the existing AR category is intended to protect agriculture by maintaining low densities and allowing a wide range of agricultural uses. Therefore, County staff recommends that these small scale map amendments not be adopted.

Ty Harris, Attorney for Applicant, Law Firm of Storch, Morris and Harris, stated that up until the last few sentences he agreed with Ron Paradise's report. He believes the Comp Plan change to Rural is the correct change in this case. The property fronts on Rt. 17, directly abutting the Rural area. His clients are farmers who have been farming in the Volusia County area for over 40 years. The University of Florida produced a study on what the uses are for west Volusia County. The only use they came up with was fern. The farmers who remained in the fern business transitioned from citrus to leatherleaf fern. The fern industry is declining due to fern production no longer being viable, due to NAFTA, etc. Fern is going out. However, staff is saying they want to lock in agricultural uses for this area. The reason for locking it in is if you introduce people in a residential community into here at a density of one unit per 2.6, 2.7 acres, no one will come in and ask for a rezoning in the future. If that number of people will be allowed this may produce a potential conflict between agricultural use and the new residents to the area. Mr. Harris stated he does not believe this argument and it is not supported by the Goals, Objectives and Policies in the Comp Plan. That is where he and staff diverge. This area currently allows A-3, which allows 1-acre lots right next to it. There already exists a density that is greater than the requested land use change. These small scale amendments were asked for because you lock in what the applicant can ask for a rezoning. The idea is that you take those 10 acres that you get the Comp Plan change for, and you spread that density out on the entire parcel. So, if you were to run the entire map doing that, the most you could get would be 2.6 to 2.7 acres. You can't even come in by virtue of this Comp Plan application and ask for 1-acre lots. The applicant is not even asking for the density that is right next door to them.

Mr. Harris stated that another thing that sets this property apart from other areas that have agricultural uses is the fact that the property is fronting on Rt. 17. So it has access off of a major road, and as the staff report points out, there are no transportation issues in the area. He believes that mitigates in favor of the applicants' request.

Mr. Harris stated there are sections of the Comp Plan that are not evident in the staff report that apply to these cases. He believes staff is confusing rural residential with urban residential and cited Policy 1.4.1.1, which states, "urban growth shall be directed away from designated agricultural areas. Also, Policy 1.4.1.3 states, "In agricultural areas, Volusia County shall prevent the intrusion of incompatible land uses such as urban density residential." He believes there is a disconnect here because the policies staff is trying to put forward are reasons to deny the applications, and they are really pointing toward an urban type of development. The Comp Plan is not saying rural residential, it's saying urban residential. What the applicants are proposing is a rural residential development pattern. The maximum density being between 2.6 and 2.7 by spreading the density throughout the entire property. Based on the above, Mr. Harris asks the PLDRC Commissioners to approve the applications.

Betty O'Laughlin, 715 McKenzie Rd., Lake Helen, stated she is the president of the Environmental Council of Volusia & Flagler Counties. She opposes the amendments, stating the changes will encourage density and will result in a loss of agricultural green space. Piece by piece, cumulatively, the loss of agriculture green space will be irreversibly enormous.

Chairman Huttman asked Mr. Harris about the math regarding the density change of 1.1 to 2.7

Mr. Harris deferred the question to the civil engineer with Bowyer-Singleton.

Todd Kasbeer, Bowyer-Singleton & Associates, spoke regarding spreading out the density across the parcels; just taking the overall size of the parcels and dividing that by the number of units you would get across the 10 acres on 4 of the pieces and the 3 acres on one of the properties came to about 2.6 or 2.7.

Member Gove asked about the map exhibits.

Mr. Paradise gave an explanation of the parent parcels. He stated that land use compatibility is a fundamental tenet of the Future Land Use Element. The County did cite Policy 1.2.2.17, which speaks to maintaining land use compatibility with land uses. There is a land use compatibility element to staff's position as well as the protection of agricultural areas.

Chairman Huttman asked if this property had been extended to the north would staff's position be the same.

Mr. Paradise answered in the affirmative and stated that the northern boundary is part of an existing zoning, A-3. The A-3 zoning dates back to the early 80's, and that's how staff arrived at the Seville rural community boundary.

Member Lipke asked Mr. Harris what the reason is for the land use change and what the long term plans of the applicants are.

Mr. Harris replied that the applicants will form one type of LLC and create an exempt rural subdivision. As to the environmental objection, this piece of land is not untouched. This property has been under agriculture production. It has CUP permits for water use, which total some 6 million gallons per year. Fertilizers, pesticides, etc., have been used. When you're talking about the impact of 16 or 17 homes versus the impact of the 6 million gallon consumptive use permit, we are talking about transitioning agriculture land into something else which has less of an impact.

Bill Keebler, 110 Fallen Timber Trail, DeLand, applicant, gave an overview of the history of the fern industry. He stated the fern business is no longer viable and because of this the land use needs to be changed. The fern business cannot compete with the lower price of fern offered by foreign countries.

Ms. O'Laughlin reiterated the Environmental Council's position that they are looking at changes more carefully. They are trying to protect the County's future.

Member Lipke said she appreciates the environmental and staff's positions. She also appreciates the position of the individual landowner trying to continue their livelihood.

Member Cornett read the following 4 small scale applications in addition to the first small scale application into one single motion:

- Proposed Small Scale Amendment CPMA-002-07 (Bowyer-Malphurs-2)
- Proposed Small Scale Amendment CPMA-003-07 (Bowyer-Puckett)
- Proposed Small Scale Amendment CPMA-004-07 (Bowyer-Keebler)
- Proposed Small Scale Amendment CPMA-005-07 (Bowyer-Bass Capital Fern)

Member Lipke asked if there was any other agricultural use that has not been considered, or is just around the corner.

Mr. Paradise stated he knows of no new interesting crop that would be grown or used on these lands. There is some indication that hay and animal husbandry are up and coming.

Member Lipke **MOVED** to **FORWARD** CPMA-001-07, CPMA-002-07, CPMA-003-07, CPMA-004-07, and CPMA-005-07, to the County Council for **APPROVAL** finding them **CONSISTENT** with the Comprehensive Plan. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously with a vote of 5-0 (Member Rudolph absent).

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6. VGMC proposed Ordinance amending the Code of Ordinances Sections 90-31, 90-35(A), (C), (E)(3), and (F) and 90-37(F)
.....Michael Dyer, Assistant County Attorney, Legal Services

Mike Dyer, Assistant County Attorney, stated all Comprehensive Plan Amendments are required to have a Certificate of Consistency from the VGMC prior to the adoption of the amendment by the local governing body. The Operating Ordinance for VGMC is found within Volusia County's Code of Ordinances in chapter 90. The VGMC is given the sole authority to initiate amendments to their Operating Ordinance, subject to approval by the County Council. That is why this is before the PLDR. He stated, in conversations he has had with the VGMC attorney, his understanding is the reason for this change was to clarify that both Large Scale and Small Scale Amendments must go through the VGMC process. He stated other jurisdictions were not sending their Small Scale Amendments through the VGMC. This amendment will now specifically address Large Scale and Small Scale Amendments, should it be adopted. It provides a definition for those two, which are how it is defined by statute. It amends the hearing requirement, that a hearing would be held on either a Large Scale or Small Scale Amendment only if an adjacent jurisdiction requests one, an affected party requests one, or Staff requests one. Otherwise, there would not be an automatic hearing before VGMC, so it could expedite the process. He added that the VGMC's position has been that Small Scale Amendments have always had to go through this process, but this ordinance specifically addresses it in case there are any jurisdictions that have any doubt about it.

Chairman Huttman asked if all jurisdictions were putting forward something like this.

Mr. Dyer replied this would have countywide effect, if adopted by the County Council. The County is not authorized to initiate amendments on their own to the VGMC's Ordinance. The VGMC has the sole authority to initiate it, although the County Council has final approval over that ordinance.

Chairman Huttman replied, so the VGMC is the one that initiated this amendment.

Mr. Dyer replied yes.

Chairman Huttman replied that the County Council's approval of this changes the way things are currently done by some of the cities.

Mr. Dyer replied it would change the Operating Ordinance for the VGMC, and it would apply both the unincorporated and incorporated areas countywide. Currently, all cities, upon transmittal of any plan amendment to the Department of Community Affairs, must apply for a Certificate of Consistency from the VGMC, and they review the application for consistency with neighboring Comprehensive Plans. Their ordinance now will clarify reference to Small Scale Amendments as well.

Chairman Huttman asked if the cities were in on this, if they were given the opportunity to be in on this.

Mr. Dyer replied he was not aware of whether they were or not. He stated the VGMC typically has the chief planners from every municipality in the County sitting on it as well as other representatives. By virtue of the fact that this came from the VGMC, it has had both municipal and County input.

Member Cornett asked Mr. Dyer if he knew which municipalities have not been submitted.

Mr. Dyer replied he did not know.

Member Cornett stated there has been so much acrimony between the municipalities and the County, and he did not want anyone to be blind sided by this.

Mr. Dyer replied this Ordinance Amendment was initiated by the VGMC, not by anyone from the County. The fact that there are far more municipal representatives than County representatives on the VGMC would indicate that it has some consensus, and the cities have had some input in the process.

Member Lipke commented, since no one was here to speak on this regarding concerns with it, they might assume that it is ok versus people being in the dark regarding it.

Mr. Dyer stated a copy of this Ordinance has been sent to every chief planner (both City and County) in Volusia County.

Mr. Dyer stated he would make sure that the attorney retained by the VGMC is aware of the County Council hearing so he can speak on behalf of the VGMC.

Member Gove **MOVED** to **FORWARD** the VGMC proposed Ordinance amending the Code of Ordinances Sections 90-31, 90-35(A), (C), (E)(3), and (F) and 90-37(F), to the County Council for **APPROVAL**, finding it **CONSISTENT** with the Comprehensive Plan.

Member Cornett asked if he could **AMEND** the motion to provide notice to the municipalities.

Member Gove replied he would accept that.

Member Cornett then **SECONDED** the **AMENDED** motion.

Mr. Dyer replied he would ask the VGMC attorney to notify all of the members of the VGMC of the County Council hearing on the Ordinance.

Member Cornett replied he wanted the municipalities notified.

Mr. Dyer replied that someone from every city sits on the VGMC, so that would be the quickest way for the municipalities to be notified. He stated he would ask the VGMC to notify their membership.

Motion **CARRIED** unanimously.

STAFF ITEMS

Mary Robinson, Building and Zoning Director commented that the March meeting would be the last meeting for Members Cornett, Gove, and Rudolph, so there would be a small party to bid farewell to them, at whatever time the PLDRC chooses (before, during, or after the meeting).

Member Lipke asked if there was a run on people wanting to fill positions because she knew of a commissioner that still had not completed their re-application.

Ms. Robinson replied they needed to re-apply if they are still eligible to be on the board, and that application goes to the County Manager's office. She stated she did not know how many applications they currently have. She stated everyone is up for re-appointment in March, and she wanted to make sure that is on the County Council agenda for the second meeting in March. She stated there was one position open on the Code Board.

Chairman Huttman asked if during the April PLDRC meeting the new officers would be elected.

Ms. Robinson replied yes, although everyone should know who is returning, and who the new members are by the end of March.

COMMISSION COMMENTS

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 12:07 p.m.

Gary Huttman, Chairman

Date

Taver Cornett, Secretary

Date