

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
DECEMBER 9, 2008**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Frank Severino**, 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:

- FRANK SEVERINO, CHAIRMAN**
- GARY HUTTMANN, VICE CHAIRMAN**
- JIM RUSSELL, SECRETARY**
- TAVER CORNETT**
- JEFF GOVE**
- STONY SIXMA**
- JAY YOUNG**

STAFF PRESENT

- MICHAEL DYER, Assistant County Attorney**
- BRUCE PAGE, Assistant County Attorney**
- BECKY MENDEZ, AICP, Senior Planner**
- SCOTT ASHLEY, AICP, Planning Manager**
- JOHN H. STOCKHAM, ASLA, Planner III**
- CHRISTIAN NAGLE, AICP, Planner II**
- YOLANDA SOMERS, Zoning Secretary**

APPROVAL OF MINUTES

NONE

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

Chairman Severino 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,

1 special exceptions and variances are quasi-judicial in nature meaning that this body is acting
2 more like a court and must take into account all oral, written or demonstrative evidence
3 presented. Their decisions on these cases must be based on competent, substantial evidence
4 in the record. Competent, substantial evidence has been defined, as that evidence a
5 reasonable mind would accept to support a conclusion.
6

7 **Disclosure of Ex Parte Communications**

8 Members of the Volusia County Planning & Land Development Regulation Commission Board
9 are asked to please disclose, for the record, the substance of any ex parte communications that
10 have occurred before or during the public hearing at which a vote is to be taken on any quasi-
11 judicial matters.
12

- 13 • Jay Young stated none
- 14 • Taver Cornett stated none
- 15 • Jim Russell stated none
- 16 • Frank Severino stated for case V-08-067, he received emails from Roy McDonald,
17 Gray Wilson, John Clemenshaw, Garrett Grainger, Elaine and Carl Gerwee.
- 18 • Gary Huttman stated none
- 19 • Stony Sixma stated none
- 20 • Jeff Gove stated none

21 22 23 **CONTINUED AND/OR WITHDRAWN ITEMS**

24
25 **Z-08-037** - Application of **Rafael Gonzalez, Agent for Owner, Victor M. San Inocenio,**
26 **Owner**, requesting a **Rezoning** from the A-1 (Prime Agriculture) zoning classification to the A-4
27 (Transitional Agriculture) zoning classification. The property is located on the east side of State
28 Road 415, at its intersection with Sorrento Road in the community of Samsula; ± 14.785 Acres
29 (Nagle) 8201-00-04-0010 **30-day continuance requested**
30

31 Member Cornett **MOVED** to **ACCEPT WITHDRAWAL** of Zoning case Z-08-037. Member
32 Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.
33
34

35 **CONSENT AGENDA**

36
37 NONE

38 39 **NEW BUSINESS**

40
41 NONE

42 43 **OLD BUSINESS**

44
45 NONE

1
2 **VARIANCE AND SPECIAL EXCEPTION APPLICATIONS**

3
4 **NEW BUSINESS**

5
6 **V-08-061** – Application of **Michael and Martha Juncal, Owners**, requesting a **Variance** for an
7 east side yard setback from the required 50 ft. to 25 ft. and a variance for a front yard setback
8 from the required 100 ft. to 40 ft. on FR (Forestry Resource) and RC (Resource Corridor) zoned
9 property. The property is located on the north side of Old DeLand Road, approximately ½ mile
10 northeast from its intersection with U.S. Hwy 92; ±4.2 acres (Ashley) 6110-02-61-0110

11
12 **Scott Ashley, AICP, Planning Manger**, presented staff report by summarizing the
13 characteristics of the property. The property is near the Forestry station on Old DeLand Road
14 in the middle of the County between the City of DeLand and City of Daytona Beach. It is
15 surrounded by State owned land. The majority of the property is RC zoned and there is about
16 1.1 acres FR zoned which requires a minimum size of 20 acres. There is a hardship on the
17 property as it does not meet the land area requirement and with the wetlands and required
18 buffers further affect the structure setback requirements. The RC zoned on the property is
19 wetlands as provided by the applicant’s survey. Recently a RC line adjustment was approved
20 and it will follow the wetlands on the property and touch Old DeLand Road. Since the RC line
21 is a wetland line, the buffers required further impact the setback requirements.

22
23 **Member Cornett** asked which way the property would be accessed from.

24
25 **Mr. Ashley** replied access would be from the west off U.S. Hwy 92 and the driveway will be on
26 the east side of the property.

27
28 **Member Cornett** asked if the road was sufficient for access by emergency vehicles.

29
30 **Mr. Ashley** replied that the road is a little wider than a one lane road and was the predecessor
31 to the current U.S. Hwy 92.

32
33 **Michael Juncal, 5507 E Washington Blvd, Tampa, applicant**, stated that the forestry station
34 has all kinds of heavy trucks that travel that road as well as the power company.

35
36 **Chairman Severino** asked the applicant if he understood and agreed with the staff
37 recommendation.

38
39 **Mr. Juncal** replied affirmatively.

40
41 No public participation closed public hearing.

42
43 Member **Cornett MOVED** to **APPROVE** variance case V-08-061 with the following condition(s):

- 44
45 1. Prior to the commencement of any site work or construction of site improvements, the
46 applicant shall obtain all required building and environmental permits and required

1 inspections, and comply with all applicable fees, codes, and ordinances.

2
3 2. No impact to the on-site wetland or its 50-foot wetland buffer shall be permitted.

4
5 Member **Huttmann** **SECONDED** the motion. Motion **CARRIED** unanimously.

6
7 **V-08-067** – Application of **Robert & Marie Estes, Owners**, requesting a **Variance** for a front
8 yard setback on Pompano Avenue from the required 15 ft. to 7 ft. and a variance for a front
9 yard on South Atlantic Avenue from the required 25 ft. to 7 ft. on R-9W (Urban Single-Family
10 Residential / Indian River Lagoon Surface Water Improvements and Management [SWIM]
11 Overlay Zone) zoned property. The property is located on the east side of South Atlantic
12 Avenue at its intersection with Pompano Avenue, in the community of Bethune Beach; ± 5,000
13 sq. ft. (Ashley) 8505-01-16-0010

14
15 Court Reporter - Kathy Frierson, VRC 432 S Beach St. Daytona 32114 (386) 255-2150

16
17 **Scott Ashley, AICP, Planning Manager**, summarized the staff report and explained the
18 subject property was within Bethune Beach and was an oceanfront lot. The property is a
19 nonconforming lot as it is less than 7,500 sq. ft. in lot area and less than 75 ft. lot width as
20 required by the R-9 zoning classification. The applicant has submitted a nonconforming lot
21 letter from a title company stating that the neither current nor any prior owner has owned any
22 contiguous or adjoining property since July 28, 1980; therefore staff considers this lot is a legal
23 nonconforming lot. The applicant is proposing a single-family dwelling with parking underneath
24 and a building footprint of 20 feet by 36 feet. The multi-level structure would enable the
25 applicants to comply with the 1,000 sq. ft. minimum floor area requirement of the zoning
26 classification. Since the property does abut the beach or shoreline of the Atlantic Ocean there
27 are applicable provision of the Volusia County Charter that make the beach domain of the
28 County. Article II, Section 205.1, the public has the right to have access to the beach and right
29 to use for recreation and other customary uses. This right of use and access is a public trust
30 that the County shall by ordinance shall define, protect and enforce. Charter Article II, Section
31 206.1 defines the beaches as the land and waters lying seaward of the seawall or line of
32 permanent vegetation and within 3 miles seaward of the mean low water mark. Section 20-1
33 of the Code of Ordinance defines the line of permanent vegetation as the extreme seaward
34 boundary of the natural vegetation which extends continuously inland. The applicant's plan
35 depicts the line of vegetation to be approximately 28 ft on the north side and 30 ft in depth as
36 measured from the front lot line adjacent to South Atlantic Avenue. County staff has conducted
37 a site visit and has determined that the defined vegetation line is actually approximately 12 ft to
38 14 ft from the front property line, with the proposed 7ft. front yard setback, as requested, the
39 structure will encroach onto the beach. Staff recommends denial as the application violates the
40 County Charter is not compatible with the Comprehensive Plan as referenced in the staff report,
41 and does not meet the criteria for approval of a variance. Nine photos were displayed and
42 explained survey marker found on site as well as current vegetation on the property.

43
44 **Member Huttmann** referred to photo 7 and asked how this structure would line up with the
45 existing house shown in this photo.

1 **Mr. Ashley** replied the home to the south was built with a variance approved in 2001. That
2 property is bigger and has a revetment and was approved a 7 ft. front yard setback and 6.5 ft.
3 setback from the top of the revetment.

4
5 **Member Huttman** asked what the footprint could be without the necessary of a variance.
6

7 **Mr. Ashley** replied minimum [floor area] requirement of the R-9 is 1,000 square feet. The
8 structure would have to consist of at least 2-stories of residential floor area to meet the
9 requirement.

10
11 **Member Russell** referred to Photo 1 and asked whose property the sand fence was on.
12

13 **Mr. Ashley** explained that measured from the survey there is approximately 15 ft. from the
14 edge of the actual pavement of South Atlantic Avenue to the applicant's property line.
15

16 **Member Russell** asked if it was staff's opinion that the sand fence was on the County's
17 property.
18

19 **Mr. Ashley** replied it would appear so.
20

21 **Member Cornett** commented to the commission that without the setbacks the footprint would
22 be approximately 200 sq. ft. based on his calculations.
23

24 **Becky Mendez, AICP, Senior Planner**, referred to a memo written by County Assistant
25 Attorney, Stacy Manning.
26

27 **Michael Dyer** asked staff if Mr. Estes had received a copy of this memo.
28

29 **Ms. Mendez** replied affirmatively.
30

31 **Chairman Severino** asked who officially delineates the vegetation line.
32

33 **Mr. Ashley** replied that the surveyor provides it on the survey however staff goes out and
34 inspects that information and based on their expertise has determined otherwise.
35

36 **Attorney Beazley** objected to any testimony regarding the location of any lines on any property
37 that hasn't been done by a licensed Florida surveyor.
38

39 **Ginger Adair, Natural Resource Manager**, stated that staff had conducted a site visit to
40 determine the permanent vegetation line as defined in the County Code, which has not been
41 surveyed. It would be best if it was surveyed however she didn't believe a surveyor would be
42 the best person to decide the location of the permanent vegetation versus the femoral
43 vegetation line. This property is an active property for sea turtle nests and has had a nest
44 every year since the County has had records. The debris that is brought in from the ocean
45 during tide is further inward than the applicants' survey as the permanent vegetation line.
46

1 **Mr. Ashley** presented on the overhead screen the applicant's 2006 survey showing a
2 vegetation line approximately 11 to 13 ft. from the front property line. Then he displayed the
3 updated 2008 survey that shows the line has shifted seaward.
4

5 **Member Cornett** asked what femoral vegetation was.
6

7 **Ms. Adair** replied that is the vegetation that comes and goes through the natural cycle of
8 seasons, and it is not considered as permanent vegetation.
9

10 **Mr. Dyer** asked Ms. Adair to explain the process is to determine the line of vegetation and it is
11 relevant to the recommendation to the zoning staff.
12

13 **Ms. Adair** replied that the zoning staff asked the Environmental staff to help determine the
14 vegetation line. The process is field inspection of the vegetation considered to be permanent,
15 that which has been there – stays there, and based on field inspection and knowledge of the
16 plants on the beach.
17

18 **Mr. Dyer** asked Ms. Adair what relevance the determination had on construction once it is
19 made.
20

21 **Ms. Adair** replied that the County Code states land to the east of the permanent vegetation line
22 is considered the public beach and is not eligible to be built upon.
23

24 **Member Russell** asked Ms. Adair if there were any historical photos [of the property] prior to
25 the hurricanes.
26

27 **Ms. Adair** replied she didn't believe they had photos prior to the 2004 hurricanes.
28

29 **Member Huttman** asked Ms. Adair if the beach property shrinks because of changes in the
30 permanent vegetation line.
31

32 **Ms. Adair** replied that the beach is a dynamic system so the land area can decrease.
33

34 **Member Cornett** asked if historically there was an inlet in Bethune Beach.
35

36 **Ms. Adair** said she was not aware.
37

38 **Ms. Mendez** summarized the 5 part variance criteria.
39

40 **Ms. Adair** stated Jennifer Winters sets the conservation poles every year for sea turtle season,
41 which is determined based on the permanent vegetation line.
42

43 **Chairman Severino** asked about the 720 sq. ft. footprint as shown on the site plan being
44 nonconforming and if there would be any additional variance necessary based the proposed
45 site plan.
46

1 **Mr. Ashley** replied he was not sure what the intention of the applicant was, he presumed the
2 applicant was intending on constructing a multi-story home to comply with the minimum 1,000
3 sq. ft. floor area requirement; however, if that is not correct then the applicant would need an
4 additional variance.

5
6 **Chairman Severino** asked Mr. Dyer if the applicant could apply again for variances.

7
8 **Mr. Dyer** stated that the applicant could reply within 1 year or appeal the decision to the County
9 Council which would be confined to the record today.

10
11 **Edward H. Beazley, Jr, 221 North Causeway, New Smyrna Beach, attorney for owner,**
12 asked Ms. Adair if she had been to the property.

13
14 **Ms. Adair** replied she had been to the property about a year ago.

15
16 **Mr. Beazley** asked several questions of Ms. Adair and Mr. Ashley, which each answered
17 regarding the photos presented in the staff presentation and the specific variances being
18 requested. He started a PowerPoint presentation and asked Robert Estes several questions
19 pertaining to the presentation. Mr. Estes did answer those questions. He summarized the five
20 part criteria for a variance. He stated that the variance request did not involve the vegetation
21 line; they were for front yard property lines.

22
23 **Bruce Page, Assistant County Attorney,** asked Mr. Estes about the surveys involved in this
24 case.

25
26 **Member Russell** asked what Mr. Estes' legal address was.

27
28 **Robert Estes** stated it was 128 Cunningham Drive, New Smyrna Beach.

29
30 **Member Russell** asked Mr. Estes if he knew when he purchased the property that it would be
31 almost impossible to build a residence of any significant size on it.

32
33 **Mr. Estes** replied no.

34
35 **Member Gove** asked what the hardship was and why the variances are necessary.

36
37 **Mr. Beazley** replied that Mr. Estes owns a residentially zoned property and that he wants to
38 build a residence on.

39
40 **Member Gove** asked why the applicant can't abide by the regular setbacks.

41
42 **Mr. Beazley** responded because of the condition of the property and the topographic features
43 of the property.

44
45 **Member Huttman** asked staff if the variances were to be approved would the permanent
46 vegetation line be established on a survey during site plan building permit.

1
2 **Mr. Page** replied that the survey is essential to the case. The two surveys presented do not
3 establish the permanent vegetation line.
4

5 **Mr. Beazley** asked Ms. Mendez questions several questions regarding the building permit
6 stage of development if the variances are granted which would require a new survey. Ms.
7 Mendez replied that a new survey would be necessary and that the permanent vegetation line
8 would be required on that survey.
9

10 **Kathryn Shepard, 1907 Hill Street, New Smyrna Beach, representing Barrier Island**
11 **Citizen Resource Group**, stated she visited the property last night, with or without of the
12 variance about 1/3 of the property is fragile dune. Within of about ½ mile south of the property
13 is the Canaveral National Seashore where about 3500 sea turtles nested last year. She stated
14 she objected to the variances.
15

16 **Roy McDonald, 6980 Turtlemound Road, New Smyrna Beach, representing the Bethune**
17 **Beach Property Owners Association**, stated he objected to the variances.
18

19 **Angie Cornell, 6804 South Atlantic Avenue, New Smyrna Beach**, objected to the variances
20 because the beach and turtle habitat needs to be preserved.
21

22 **Janet Goldman, 6800 South Atlantic Avenue**, stated she agreed with the recommendation
23 made by staff. This area is a prime location for sea turtle nests. High tides inundate this
24 property.
25

26 **Gale Demers, 6838 South Atlantic Avenue**, stated her house was showed in Mr. Beasley's
27 presentation. The property is washed over even when there is a northeastern not to mention a
28 hurricane. The owner would be backing into South Atlantic Avenue and Pompano Avenue
29 intersection which would be a hazard.
30

31 **Mr. Ashley** commented that an email was received this morning from Joy Hayden which is a
32 resident of the area and is opposed to the request.
33

34 **Mr. Beazley** stated that the variances are for the front property lines, not the vegetation line.
35 He objected to the comments regarding about the traffic concerns from the public as that
36 person is not qualified to give that opinion. The owner deserves the right to build on his
37 property.
38

39 **Mr. Dyer** offered to answer any legal questions the commission may have. There has been
40 testimony about the County Charter. Summarized the memo entered into evidence written by
41 Stacy Manning. He stated he was not aware of anything in the survey statutes that require
42 anyone to be a surveyor to establish the vegetation line that Ms. Adair routinely determines.
43

44 **Member Huttman** asked Mr. Dyer about the charter issue, should variance applications that
45 appear to violate the charter be accepted.
46

1 **Ms. Mendez** replied that the first application was returned to the applicant because it violated
2 the Volusia Charter; however, when this application was received and was being returned for
3 the same reason, the applicant insisted on being able to have a public hearing.

4
5 **Member Gove** commented that he doesn't think the lot is unbuildable but doesn't see how to
6 approve the request without the permanent vegetation line being certified because that is the
7 why of the need for the variances to the front yard property lines.

8
9 **Member Russell** asked Mr. Dyer asked about 1003.00(4)(e) as a basis for denial and whether
10 it could be defensible in federal court.

11
12 **Mr. Dyer** replied that the commission has heard the staff's recommendation and you are not
13 bound by that recommendation. It is the burden of the applicant to prove they meet the criteria.

14
15 Member **Huttmann MOVED** to **DENY** Variance case V-08-067 based on staff report. Member
16 **Cornett SECONDED**. Motion **CARRIED** unanimously.

17
18 **S-08-080** – Application of **William Clausen, Agent for Owner, County of Volusia**, requesting
19 a **Special Exception** for a Communication tower exceeding 70 ft. in height (340 ft.) on P
20 (Public) zoned property. The property is located on the west side of Indian Lake Road,
21 approximately 1500 ft. from its intersection with US Highway 92, adjacent to the Volusia County
22 Emergency Operations Center (EOC), near the City of Daytona Beach; ± 480.36 acres
23 (Stockham) 6101-00-00-0011

24
25 **John H. Stockham, ASLA, Planner III**, summarized staff report stating the request was for a
26 340-foot communication tower to replace a dilapidated existing tower. This location is
27 compatible with the Zoning and Future Land Use of the property. FAA has given a letter of No
28 HAZARD for this tower and no opposition has been received. Staff recommends approval of
29 the request with conditions and would like to point out condition # 4 states that all permits must
30 be obtained from FAA as well as FCC and any other governmental agencies and the applicant
31 will coordinate with the FAA technical operations so that the equipment can be updated safely
32 and condition # 6 states tower must be lighted per the FAA Advisory Circular listed. The site
33 plan depicts the tripod tower with equipment. He presented photos showing the existing tower
34 to be replaced, the wooded site of the new location, proximately of the second tower and
35 parking lot. There is a companion variance case that addresses the separation between the
36 proposed replacement tower and the existing EOC Tower B.

37
38 **Becky Mendez, AICP, Senior Planning Manager**, stated there are wetlands on the site. They
39 have been identified, it is in the NRMA. There may be wetland buffer impacts while
40 construction of the tower pads however all other vegetation shall be preserved.

41
42 **Mr. Stockham** explained there is a drainage area on the site plan. The drainage pipe currently
43 surfaces where this tower is proposed however the site plan shows the pipe would continue
44 under the tower pad and surface on the other side of the tower.

1 **Bill Clausen, Information Technology, Volusia County**, stated the existing tower was built
2 approximately in 1977 and is at the end of its life cycle. The proposed 330 foot lattice tower is
3 also designed to collocate 2 commercial wireless carriers.

4
5 **Member Cornett** asked how close to a structure it is.

6
7 **Mr. Clausen** replied about 300 ft. from EOC.

8
9 **Member Cornett** inquired about the impact on the parking lot.

10
11 **Mr. Clausen** replied it is designed to collapse on itself and moving the tower will improve safety
12 concerns.

13
14 **Member Severino** asked staff why a condition was not made about the demolition of the
15 existing tower.

16
17 **Mr. Stockham** replied that the condition can be added.

18
19 **Member Cornett** inquired about the timeframe of demolition.

20
21 **Mr. Clausen** replied no more than two weeks.

22
23 **Member Sixma** asked if Mr. Clausen was in agreement with the six conditions in the staff
24 report.

25
26 **Mr. Clausen** replied affirmatively.

27
28 Member Sixma **MOVED** to **FORWARD** special exception case S-08-080 to the County Council
29 with a recommendation of **APPROVAL WITH THE FOLLOWING CONDITION(S)**:

- 30
- 31 1. The Special Exception approval is for a radio communications tower not to exceed a
32 height of 340 ft., including lightning rod or any other extension.
 - 33
34 2. Existing vegetation shall remain intact adjacent to the proposed base and pad of the
35 tower.
 - 36
37 3. Approval of Variance Case V-08-081 by the Planning and Land Development
38 Regulation Commission (PLDRC) to Section 817.00(w)(5)(c) *Communication towers.*
39 *Setbacks and separation*, to allow a tower separation from a nearby communication
40 tower (EOC Tower B) to be reduced from the required 5,000 ft. to 1,254 ft. in distance.
 - 41
42 4. All permits shall be obtained from the Federal Aviation Administration (FAA), and
43 Federal Communications Commission (FCC) and/or any other applicable federal, state,
44 or local governmental agencies as required and submitted to the Growth and Resource
45 Management Department (GRM). The facility shall be maintained and operated in full
46 accordance with all applicable federal, state and local regulations and permits. In

1 addition, the IT project manager and construction contractor shall contact Tim Priola
2 with FAA Technical Operations (386-226-3979 and timothy.s.priola@faa.gov) with
3 regard to the dates and times of the tower construction and of the demolition of the
4 existing tower. This is for radar calibration purposes and coordination with the air-traffic
5 controllers in the air traffic control tower at Daytona Beach International Airport (DBIA).
6

- 7 5. Development of the parcel shall be subject to submittal of a final site plan to the Land
8 Development Division for review and approval prior to building permit application. The
9 site plan must comply with applicable Zoning Ordinance and Land Development Code
10 requirements. The subject parcel shall be developed in accordance with the site plans
11 prepared by KCI Technologies, dated 11/04/08, as may be modified by these conditions
12 and/or modified by further County review and/or modified by the FAA/FCC and/or other
13 permitting requirements. The site plan submitted with this special exception shall
14 replace the conceptual site plan submittal requirement of the Land Development Code.
15
- 16 6. This structure must be marked and lighted in accordance with FAA Advisory circular
17 70/7460-1 K Change 2, Obstruction Marking and Lighting, with a med-dual system –
18 Chapters 4, 8(M-Dual), & 12.
19
- 20 7. Demolition of existing tower EOC Tower A shall occur within 30 days of operational
21 status of the new tower.
22

23 **Member Severino** asked about avoiding wetland impacts.

24
25 **Becky Mendez, AICP, Senior Planning Manager**, replied that there would be an impact to the
26 wetland buffer not the actual wetlands. Staff has worked very close with the applicant to
27 minimize or avoid all wetland impacts, there is a public safety issue being addressed with this
28 tower.
29

30 **Member Huttman** inquired whether the additional condition would replace the existing
31 condition number three.
32

33 **Mr. Stockham** replied that it would not replace that condition because there is another existing
34 tower (EOC Tower B) and condition three addresses that tower.
35

36 Member **Young** **SECONDED** the motion. Motion **CARRIED** unanimously.
37

38 **V-08-081** – Application of **William Clausen, Agent for Owner, County of Volusia**, requesting
39 a **Variance** to Section 817.00(w)(5)(c) to allow a tower separation from the required 5,000 ft. to
40 1,254 ft. on P (Public) zoned property. The property is located on the west side of Indian Lake
41 Road, approximately 1500 ft. from its intersection with US Highway 92, adjacent to the Volusia
42 County Emergency Operations Center (EOC), near the City of Daytona Beach; ± 480.36 acres
43 (Stockham) 6101-00-00-0011
44

1 **John H. Stockham, ASLA, Planner III**, summarized the staff report by stating this was the
2 companion case to the special exception case S-08-080. The ordinance requires a separation
3 distance of 5,000 feet from the proposed tower and a lattice tower.
4

5 **Bill Clausen, Information Technology, Volusia County**, stated that the coverage would be
6 affected on the radio system if we were to move the tower 5,000 ft. The actual switching point
7 for the radio system is located in the EOC building and the tower needs to be located fairly
8 close to the building so that the existing coverage is not affected.
9

10 Member **Cornett MOVED** to **APPROVE** variance case V-08-081 with the following condition(s):
11

12 1. Companion case S-08-080 regarding the Special Exception request shall be approved.
13

14 Member **Sixma SECONDED** the motion. Motion **CARRIED** unanimously.
15

16 **OLD BUSINESS**

17
18 **S-08-072** – Application of **Robert Foster, Attorney for Owners, James and Linda Taylor,**
19 **Owners**, requesting a **Special Exception** for a nonexempt excavation on A-1 (Prime
20 Agriculture) zoned property. The property is located on the west side of Oak View Plantation
21 Road, approximately 600 feet south of its intersection with Rudman Road in the community of
22 Osteen; ±10 acres (Stockham) 8330-00-00-0330 **Tentatively schedule for the December 18,**
23 **2008 County Council at 2:00 p.m.**
24

25 **John H. Stockham, ASLA, Planner III**, summarized the staff report by stating this request is
26 for an existing excavation for a Koi pond that has been abandoned for more than one year. It is
27 the intent of the property owners to allow the property to return to as much of a natural state as
28 possible. This property has been cited and is awaiting a Code Enforcement Board hearing
29 pending the outcome of the Special Exception process. The property does have wetlands on it
30 as well as a pole barn structure. Staff would be agreeable to allowing the pole barn to remain
31 on the property providing a building permit is obtained and the debris is removed. The Koi
32 pond is approximately 1.38 acres of the total property's 10 acres. Staff recommends approval
33 of the request with conditions as it would not be injurious to the neighborhood and would be in
34 harmony with the purpose and intent of the Ordinance.
35

36 **Member Severino** inquired if there was a remaining public safety concern that needs to be
37 address in addition to condition number five.
38

39 **Mr. Stockham** stated staff felt that condition number five was adequate to address any public
40 safety concern.
41

42 **Member Gove** asked for a clarification of the intentions of the Koi pond.
43

44 **Robert Foster, 108 W. Rich Avenue, DeLand, attorney for property owners**, stated that this
45 is to get a resolution of an issue that the property owners were not aware of until they were
46 cited by the Code Enforcement staff for excavating without a permit. The property owners had

1 entered into a partnership with an individual to raise and sell Koi. The property was purchased
2 by the Taylors and the intent was to have the Koi operation and eventually build a residence.
3 The individual assured the property owners that all permits were obtained and legal. The
4 original pond was the intention and the expansion was done without their permission but was
5 conveyed that the expansion was done legally. The economic hardship of filling in the pond
6 would be on the property owners and this was done against their expressed instructions. There
7 is not enough fill on the property to fill in the pond, so the property owners are asking that the
8 property be allowed to remain as is and although it was intended that the Koi operation
9 continue as it can be quite profitable, the owners have agreed to abandon the operation so that
10 compliance can be obtained on the property.

11
12 **Member Cornett** inquired about the intentions for the pole barn.

13
14 **Mr. Foster** replied that he was not able to answer whether it would be removed or a building
15 permit would be obtained. The judgment that was reached in the lawsuit states that the pole
16 barn belongs to the partner and not to the property owners, therefore to settle the pole barn
17 issue the property owners will have to either obtain the ownership through a levy based on the
18 judgment or whether to remove it all together. A determination given by this commission will
19 assist in counseling the property owners in this matter. It would be a recommendation that the
20 property owners obtain ownership of the structure and then obtain a building permit.

21
22 **Member Cornett** **MOVED** to **FORWARD** Special Exception case S-08-072 to County Council
23 with the recommendation of **APPROVAL WITH THE FOLLOWING CONDITION(S)**:

- 24
25 1. The impacted portion of the site shall be cleaned-up and all previous fish-farming
26 equipment such as plastic drums, hoses, cages, fish tanks, etc. shall be removed from
27 the site and legally disposed.
- 28
29 2. The pole barn on site may remain intact as long as it is not enlarged or reutilized for
30 commercial purposes. Also, the structure requires a post-construction building permit.
- 31
32 3. The whole site is to remain in its now naturalistic state and shall not be altered or further
33 disturbed without a new development order. The proposed 10 ft. wide road shall not be
34 built.
- 35
36 4. No commercial activity is allowed on the site without another special exception or
37 rezoning.
- 38
39 5. To help ensure safety and security, the existing fence and gate shall remain in place
40 and be maintained by the current and any future land owners.
- 41
42 6. The owner shall be allowed to gather one time within six months of the rendition any
43 remaining koi fish out of the pond for the purposes of sale and then shall not farm any
44 additional fish on the site.

7. The site shall be exempt from any landscape buffer planting requirements as long as the existing perimeter trees and understory plants are preserved and left undisturbed.

Member Huttman **SECONDED**. The motion **CARRIED** unanimously.

V-08-073 – Application of **Robert Foster, Attorney for Owners, James and Linda Taylor, Owners**, requesting **Variance** to Section 817.00(o)(2)(iv)(C) for a north property line setback from the required 150 ft. to 100 ft.; for a south property line from the required 150 ft. to 50 ft.; for an west property line setback from the required 150 ft. to 40 ft. from any abutting property; and a **Variance** to Section 817.00(o)(2)(iv)(D) from the required 150 ft. to 35 ft. from any natural or man-made surface water body, watercourse, or wetland on A-1 (Prime Agriculture) zoned property. The property is located on the west side of Oak View Plantation Road, approximately 600 feet south of its intersection with Rudman Road in the community of Osteen; ±10 acres (Stockham) 8330-00-00-0330

John H. Stockham, ASLA, Planner III, summarized the staff report by stating that the request is to allow an existing nonexempt excavation that has been abandoned for more than a year that is located too close to the property lines and an existing wetland. It was once used as a koi farm operation. This is a companion case to Special Exception case S-08-072. Staff recommends approval with conditions as it will bring the property into compliance and will not be injurious to the surrounding neighborhood.

Robert Foster, 108 W. Rich Avenue, DeLand, attorney for property owners, stated there was nothing to add from the what was already said during the special exception.

Member **Cornett MOVED** to **APPROVE** with the following condition(s):

1. The companion Special Exception case (S-08-072) shall be approved by County Council.
2. Variances shall be limited to the setback dimensions as depicted on the survey/site plan prepared by Efird Surveying Group, Inc dated 7/16/2008 revised 9/23/2008.

Member **Young SECONDED**. The motion **CARRIED** unanimously.

PUBLIC ITEMS

1. Proposed changes to the Land Development Code
.....Palmer Panton, Land Development Manager

Palmer Panton, Land Development Manager, presented a staff report summarizing the elimination of four subdivision exemption provisions from the Land Development Code. Council discussions and workshops have occurred over the last few years regarding a Smart Growth and dirt road subdivisions. It has been determined that existing provisions in the code that exempt subdivisions from review make it difficult to implement Smart Growth design. The four subdivision exemptions to be removed are exemptions of 10 acres or greater, which have no review other than Zoning compliance during building permit, Division by court which has no

1 review; 2 ½ to 10 acres, which has a review for only 10,000 sq. ft and access out of the flood
2 plain; and the division of 1 acre from a 10 acre or larger property for commercial use, commonly
3 done to facilitate the development of convenience stores on corners. The removal of these
4 exemptions from the code will facilitate the Council's ability to put new exceptions into the Code
5 for large lot or family divisions or to put different types of development design standards into the
6 code. Staff recommends this be forwarded to County Council as it is consistent with the
7 Comprehensive Plan.

8
9 **Member Cornett** asked about the vision of the County Council regarding this.

10
11 **Mr. Panton** replied he did not know the full vision.

12
13 **Member Cornett** inquired whether there would be provisions for things like transportation
14 standards and expressed a concern about development in the rural areas.

15
16 **Mr. Panton** stated he presumed there would be, if approved, this is the attempt to remove the
17 exemptions. He presumes that Council will make a direction to staff to either to write design
18 standards or to find other ways to do better development in the rural areas.

19
20 **Member Huttman** asked about the magnitude of number 9 on page 7 regarding vesting of the
21 application in the pipeline.

22
23 **Mr. Panton** replied there will be a few thousand lots that have been created either through
24 previous standards or as exemptions to them County wide.

25
26 **Member Huttman** inquired about the number of those properties that are developed.

27
28 **Mr. Panton** replied that would be hard to know, not sure he would have that answer.

29
30 **Chairman Severino** asked why rush removing these provisions without having direction of
31 putting new standards in.

32
33 **Mr. Panton** replied that it is difficult to have a conversation about new standards when the code
34 allows exemptions, and that staff had been working on this for some time.

35
36 **Chairman Severino** expressed concern that the exemptions were implemented for presuming
37 a good reason and eliminating them without having direction to address those reasons.

38
39 **Member Huttman** stated that the regulations have been around for a long time.

40
41 **Mr. Panton** replied that the County adopted mandatory subdivision regulations in 1972, which
42 were amended up to 1976. The current ordinance was adopted in 1988.

43
44 **Michael Dyer, Assistant County Attorney**, stated that County Council has designated this
45 commission to regulate whether or not this is consistent with the Comprehensive Plan.
46

1 **Glenn Storch, Storch Morris & Harris, LLC, 420 South Nova Road, Daytona Beach**, stated
2 that this proposal has been developing over the last four years. He supports this proposed
3 ordinance.

4
5 Member **Cornett MOVED to FORWARD** to County Council Proposed Ordinance 2008-26 with
6 a recommendation of it being **CONSISTENT** with the Comprehensive Plan. Member
7 **Huttmann SECONDED** the motion. Motion **CARRIED** unanimously.
8

9
10 **STAFF ITEMS**

11
12 NONE
13

14 **COMMISSION COMMENTS**

15
16 NONE
17

18 **PRESS AND CITIZEN COMMENTS**

19
20 NONE
21

22 **ADJOURNMENT**

23
24 Having no further comments from the public, staff or Commissioners, Chairman Severino
25 thanked everyone and adjourned the meeting at 11:40 a.m.
26
27