

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
February 12, 2008**

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

GARY HUTTMANN, Chairman
DARLA LIPKE, Vice-Chairman
TAVER CORNETT, Secretary
STONY SIXMA - Arrived 9:03
JIM RUSSELL
FRANK SEVERINO
JAY YOUNG - Absent

STAFF PRESENT

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

APPROVAL OF MINUTES

Approval of November 13, 2007 Minutes

Member Cornett **MOVED** for **APPROVAL** of the Minutes. Member Lipke **SECONDED** the motion. The motion **CARRIED** unanimously. (Member Sixma not present)

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

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

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

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

- Member Cornett: none
- Chairman Huttman: none
- Member Severino: none
- Member Lipke: none
- Member Russell: none
- Member Sixma: none

CONSENT AGENDA

NONE

CONTINUED ITEMS

Z-07-076 – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, Hinrough LLC, Owner**, requesting a **Rezoning** from the A-2W (Rural Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification to the A-3W (Transitional Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification. The property is located on the east side of South US Highway 1 at its intersection with Kennedy Parkway, south of the City of Oak Hill; ±9.36 acres (Ashley) **30-day continuance requested**

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

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

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

S-08-010 – Application of **Santiago Meliams, Agent for Owners, Florida Power & Light, Company, Owners**, requesting a **Special Exception** for a Public utility uses and structures on A-2 (Rural Agriculture) zoned property. The property is located on the west side of Old Mission Road, approximately one mile from its intersection with SR 442 near the City of Edgewater; ± 21.45 acres (Stockham) 8438-01-00-0970 **30-day continuance requested**

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

NEW BUSINESS

NONE

OLD BUSINESS

PUD-07-138 – Application of **Grant Renne, P.E, EPI, Inc, Agent for Owner, Mike Amendolagine, USA Development Corp, Owner**, requesting a **Rezoning** from the B-4C(5) (General Commercial / Thoroughfare Overlay Zone / Highridge Neighborhood) zoning classification to the USA Development Corp. BPU DC(5) (Business Planned Unit Development / Thoroughfare Overlay Zone / Highridge Neighborhood) zoning classification. The property is located on the south side of International Speedway Boulevard (U.S. Highway 92), approximately 300 feet from its intersection with Indian Lake Road. The property is near the Volusia County Branch Jail, west of the City of Daytona Beach; ±1.9 acres (Stockham) 6206-01-01-0010

John Stockham, Planner III, presented the Staff Report. The subject property is located on the US 92 divided highway corridor. He explained the visual of the site plan showing the proposed convenience store of 3,000 square feet with 5 fueling islands, off street parking, a storm water management pond to the south and landscape buffers. There will be driveways on US Highway 92 and Colin Kelly Avenue. There will be a wet retention pond built on site, a 10 ft wide landscape buffer and a 6 ft screen wall that has been added to proposed development agreement. Zoning will continue with a more detailed study when it continues through site plan review. Traffic engineering has found that there will be no negative impact on the thoroughfares in the vicinity. Environmental management information states that the plan meets the requirements of the Land Development code. The wetland on site is not jurisdictional since it is less than ½ acre. The plan shows a 50 ft wide landscape buffer and it minimizes the amount of off street parking on site reducing the amount of storm water to be treated. The non residential development policies of the High Ridge Plan will be met because of the buffering of the screen wall and minimal impact to the site for neighborhood convenience. Staff recommends **Approval** of the plan with four (4) conditions. 1) Staff recommends changes to the master development plan be implemented. 2) A lot combination of existing lots be bound with application through the land development office. 3) The minimum lot size shall be 1.9 acres, which is the size of the site. 4) Remove ATV/Motorcycle and personal water craft sales from the proposed development agreement. He concluded with photographs of the site.

Grant Renne, EPI, Inc 220-D South Woodland Blvd, Deland, Agent for the Owner, stated he is here to answer any questions of staff.

Member Cornett asked Mr. Renne if there would be any problem with the 4th condition concerning automotive and marine sales.

Mr. Renne stated there would not be a problem.

Member Cornett **MOVED** to FORWARD case **PUD-07-138** to County Council with a recommendation of **APPROVAL** with the conditions as submitted in writing and by staff. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-148 – Application of **Basyle Tchividjian, Landis Graham & French, Attorney for Contract Purchaser, Dawn Bethea, Contract Purchaser, Ken Khounnala and Nick Sithideth, Owners**, requesting a **Special Exception** for a Kennel on the FR (Forestry Resource) portion of the FR (Forestry Resource) and RC (Resource Corridor) zoned property. The property is located on the west side of Prevatt Avenue North ± 3,500 ft. north of its intersection with Lake Pearl Drive, abutting the City of Lake Helen; ± 21 acres (Nagle) 7120-01-20-0100 Tentatively schedule for the **March 20, 2008 County Council at 2:00 p.m.**

Christian Nagle, Planner II, presented the Staff Report. The Special Exception request is for a proposed boarding kennel. Development in the area includes single family dwellings, vacant parcels and forestry parcels. The zoning ordinance defines a kennel as a premise other than hobby breeders where five or more domesticated house pets over 6 months of age or 5 or more class two wild life (section 39.602) are harbored whether for profit or personal use. The applicant is requesting a Boarding Kennel with up to 150 dogs and 25-30 cats on the property and will not be used for breeding of cats or dogs or a veterinarian clinic. The facility will be open to public, including indoor/outdoor dog runs and dog play areas. The dogs will be allowed outside three (3) times a day but not after 6:30pm. The cats will be caged and not allowed outside. He presented the conceptually site plan of a 5,000 square building and run areas totaling about 11000 sq feet. The proposed facility is to have double fences that are around the kennel area and a proposed 6 ft privacy fence that is along the front of the facility. The front of the facility has off street parking and a storm water retention pond. The facility will be set back over 300 feet from North Prevatt Avenue. The facility is designed to avoid impact to wet lands, wetland buffers and 100 year flood plane areas on the property. The plan features a 20 foot landscape buffer along a portion of the south property line, however, the buffer will need to be redesigned or moved due to private ingress and egress for the subdivision owners. He presented further plan details that illustrated the locations of the fences, septic plant, well, parking area, and a proposed 6 foot high landscaped berm 100 ft long for noise reduction. Review of comprehensive plan requires maintenance of a 50 ft wet land buffer and the plan does this. Noise control, waste control and site security are concerns; however, the owner includes improvements to these items. There are 6 adjacent residential properties that have large setbacks, especially from the residential dwellings. A GIS map is shown indicating the distances between adjacent properties and homes. Staff found that the Special Exception is consistent with Comprehensive Plan policy. Staff is recommending **APPROVAL** of the proposal subject to 7 recommendations in the Staff Report.

Member Severino asked what is the zoning for the City of Lake Helen.

Mr. Nagle answered the zoning is RE which is a single family residential classification with a 5 acre minimum. City of Lake Helen city limits is to the south of the site.

Chairman Huttman asked why staff recommends a 6:30 p.m. curfew but did not address an a.m. curfew.

Mr. Nagle replied the 6:30 p.m. curfew was proposed by the applicant. Staff would agree to the addition of a morning limitation as to when the dogs may be outside.

Mr. Dyer stated that last Thursday, County Council considered a proposed ordinance 2008-03 which is an ordinance amending the County's regulations pertaining to kennels, hobby breeders, humane societies and animal shelters. He asked if the County has shared a copy of the proposed ordinance with the applicant and asked if Staff has applied the terms of this proposed ordinance to this application.

Mr. Nagle answered yes they have.

Mr. Dyer explained this is under the pending ordinance doctrine where the County is actively preparing an ordinance and it allows the county to apply the proposed ordinance to an applicant. He asked if the applicant had any objections with the exception for one issue that will be addressed by the applicant.

Mr. Nagle replied not to his knowledge.

Mr. Dyer asked if the application has a minimum 50 ft setback that the proposed ordinance will be requiring.

Mr. Nagle replied yes.

Mr. Dyer asked Staff if the application as proposed, meets the new proposed ordinance's kennel facility outdoor and indoor regulations. The current ordinance defines a kennel to be more than 5 domesticated pets and the proposed condition # 2 caps dogs and cats to 100. Under the proposed ordinance with the property zoned A-1, A-2, or FR and there are 20 acres or more, you may have more than 30 animals.

Mr. Nagle answered the property is approximately 21 acres and 20 of the acres are zoned FR and it is consistent with those requirements. Under the proposed ordinance the Special Exception process the applicant can request for more than 30 animals on the subject property which has been done.

Mr. Dyer inquired has the applicant failed to meet any of the 9 criteria for the Special Exception.

Mr. Nagle answered no based on the available information and if the applicant complies with the Staff's recommendation. The chief concern of Staff was the noise impact on the surrounding properties.

Chairman Huttman inquired of Staff if there is a requirement as to what the type animals would be cared for in condition #5 for the 1 employee to 25 animals requirement.

Mr. Nagle stated the 1 employee to 25 animals is the Animal Control Staff's recommendations for an Animal Care Facility or Kennel. He stated he spoke with Ms. Wilson, the Animal Control Director, and she agreed with Staff's recommendation that a person be on site 24 hrs a day for the safety of the animals.

Mr. Dyer stated that at the County Council hearing, Ms. Wilson testified that one person could not care for more than 25 dogs/cats.

Basyle Tchividjian, Attorney for Applicant, 145 E. Rich Ave, DeLand, He stated in research of 2005 records there were approximately 71000 dogs and cats in unincorporated Volusia County. That is a tremendous number of dogs and cats and there is a need for a professional place for care. When the word Kennel is heard people cringe due to the perception. Technically this will be a kennel but will be referred to as the Rustic Wolf Animal Lodge. Many people have to leave town and need someone to care for their animals. This will not be a shelter or breeding facility. There are only 5 or 6 Kennels in County. The applicant will work with the neighbors and County in developing a kennel that will give kennel a good reputation, setting high standards in animal care and could be used as an example in the future. In researching other professional kennels in the area he found no problems with the neighborhoods, noise, or odors. This applicant has gone beyond what was required to make this facility environmentally friendly, community friendly and animal friendly. It is on 20 acres in a rural area, far enough away and close to center of property with consideration of the wet lands. He stated there are specific policies they have addressed and 9 criteria. He stated traffic circulation is not an issue. Steps will be taken in regard to air quality and odor control, by solid waste bagging daily placed in a commercial dumpster picked up weekly and septic tank use. The dogs will only be outside 3 times a day which is about 2-21/2 hrs a day. Otherwise they will be inside in air conditioning or heated area. The noise control is being addressed by locating the kennel on 20 acres and installing sound barrier materials within the kennel walls. A privacy fencing or wall will be at the south façade of the dog runs. An 8 foot landscape sound berm will be on the south side of property and a 6 foot high solid privacy fence shielding the facility on Prevatt Avenue. Lighting will not be an issue. Ascetically the building will be designed as a log cabin to fit in with the rural area. The environmental buffers will be completed. He stated they have taken steps to fit into the neighborhood which is rural with no defining characteristic of area. He addressed the nine criteria items. He stated Kennel is listed as a Permitted Special Exception in FR zoning and there is no inconsistency with the Comp Plan. This facility is a benefit to the public interest and in a good location. He continued there is no issue with not meeting the requirements for the Special Exception and the applicant will meet the requirements imposed by the state and federal government or local governments and has resolved all issues with the County.

Mr. Dyer asked if the applicant is agreeable to the proposed seven (7) conditions by Staff in the report.

Mr. Tchividjian replied the only issue that is questionable would be condition #5 requiring 1 employee for every 25 animals and an employee or volunteer 24/7. He asked if the final ordinance states differently they would like to be able to adjust and if needed allow for a possible caretaker in housing on the property.

Mr. Dyer replied that he understands that the applicant is asking if the final ordinance changes the 1 employee to 25 animals to a higher number they would want to be subject to the new ordinance. He clarified, if the number is different in the new ordinance they would be subject to that number.

Mr. Tchividjian added there would need to be clarification as to what on the premises means. Does it mean a person in the facility, or other location on property? The applicant does not want to stipulate to something that is not final yet.

Mr. Dyer stated that it should be stipulated that the applicant will be subject to a change with regards to the staffing requirements if there is a change.

Mr. Tchividjian continued addressing the criteria addressing number 6 stating there are no traffic problems. He added there is no evidence that the project will be hazardous or dangerous to the public as it will be well protected within fences and supervision. It will not cause annoyance or harm to the community as the facility will be strictly regimented. The sound issue has been addressed and it will not adversely affect the area as there is no consistent neighborhood, it is a rural area. Most of the 20 acres will stay the same, not developed. There is no evidence that the natural scenic beauty will be affected or that there are any pollution problems. This meets a need in the county that will increase as the population increases.

Member Cornett asked about the care of cats.

Mr. Tchividjian responded the cats will be inside in an air conditioned facility and not outside.

Chairman Huttman asked about the length of stays of a pet.

Mr. Tchividjian stated that it is 99 % of the time for short periods. He added the applicant had requested 120 animals, staff has said 100. The number of animals on site usually runs at about 50% capacity.

Chairman Huttman asked about pet protection and spayed a neutering.

Dawn Bethea, Contract Purchaser, stated every animal coming in will have to have proof of vaccinations. They will not have to be spayed or neutered to stay there.

Commissioner Cook of City of Lake Helen stated he had a town council meeting, and a resolution was made up, that was sent to Staff along with copies of the list of the owners.

Mr. Nagle responded Staff did receive the resolution and it was distributed to the Commission members along a summary of the concerns and the list of owners.

Commissioner Cook of City of Lake Helen stated there was a lot of resistance to the kennel from Lake Helen residences and County residences. He stated we are looking at an area not developed now, but could be developed in the future around the kennel and future property values could be impacted. He asked for the Commission to consider not allowing the kennel.

Betty O’Laughlin, 715 McKenzie Road, Lake Helen, FL, she stated she is a citizen of Lake Helen and she is the President of the Environmental Council of Volusia and Flagler Counties. She stated she is representing the citizens not here. She stated she thought the property was rezoned to commercial. She read the FR classification then added when the applicant bought the property the FR zoning conditions were in effect. She stated she understood there could be no septic tank due to the wet lands and added that the bagged refuse only dumped once a week will be a problem due to smell. The noise will be there with 100 dogs. She asked why there were no noise buffers for the 3 sides with residences. She stated how can it be environmentally friendly when wedged between the flood plan and wet lands. She stated the type of soil listed can only be dredged and filled to be able to build on and that will disturb the environment including some gopher burrows. She continued that once this exception is granted more will be asked for. The area is surrounded by homes, and kennels do not need to be there, it will disturb the lay of land.

Chairman Huttman clarified to her this is not a zoning change.

Member Severino asked where Ms. O’Laughlin’s property is located on the site location map displayed.

Ms. O’Laughlin stated she lives on McKinsey Road on 7 + acres and it backs to wet lands.

Member Lipke inquired if Ms. O’Laughlin’s property was on the site location map.

Mr. Nagle stated she is not one of the six closest houses on the site map. He stated the property distances that separate the properties range from 193 feet to 1160 feet. The separation of the residences range from 797-1765 feet away from the proposed kennel. The kennel is sited to be 325 feet west of North Prevatt Avenue and sited to avoid impact to the wet lands and the 100 year flood plane. It also provides for a proposed 50 foot wet land buffer.

Betty O’Laughlin asked where Baxter Avenue is on the map and where are the rest of the houses on the site location map on Baxter Avenue.

Mr. Nagle stated the Staff used the property appraiser’s information for the exhibit and indicated the 6 closest properties to the proposed kennel. He continued showing where Baxter is located on the map.

Ms. Robinson asked Staff to indicate where Baxter Avenue terminates.

Betty O’Laughlin stated that the noise will still be a problem.

Commissioner Cook stated there are 6 homes on Baxter Avenue.

Member Severino asked if the City of Lake Helen had a satellite photograph and the estimated distances before they passed the resolution.

Commission Cook answered that they did not.

Mr. Tchividjian added in response that the applicant will continue to work with Lake Helen. He stated the applicant did attend the City of Lake Helen commission meeting and did not understand what was being addressed about the kennel. The fair ground comparison does not make sense. He stated they researched the names on the petition that was supplied to the Commission and found that no one listed on the petition are abutting property owners and the closest was ½ mile away. He stated the law is clear with what we can do and not do. The opinions of neighbors and residences are not based on factual evidence. He stated that public opposition to a zoning decision is not sufficient to support a laboratory zoning decision. In order for the Special Exception not to pass you have to have expert testimony or factual evidence and say that one of the nine conditions can not be met. We have heard concerns and no evidence. Concerns can be addressed but the decision should be based on fact.

Chairman Huttman clarified that the curfew is not a listed as a condition.

Ms. Robinson explained that the Commission can add a condition for hours of operation.

Member Lipke inquired that about owner not living there.

Mr. Tchividjian answered that the applicant does not live on the premises but if it is a condition that someone be there 24/7, the most convenient way is to have a caretaker living there at night while employees come during the day.

Mr. Dyer added that Staff’s proposed condition is that someone be on site whether they are living there or not.

Member Lipke asked if the design would change if someone was living in the facility.

Ms. Robinson clarified that the Forestry Resource zoning permits a single family residence.

Member Lipke asked Staff if there is any recommended change from FR to another zoning classification.

Mr. Nagle answered that the property has a FR land use designation and it is not a rezoning.

Member Lipke asked if the idea of a development in future is consistent with the Comprehensive Plan at this time.

Mr. Nagle answered that the FR zoning only allows for one single family dwelling per 20 acres. The applicant could not further develop the land without applying for rezoning and it was approved by the County Commission.

Ms. Robinson explained that the applicant would have to initiate a large scale comprehensive plan amendment first which takes about a year.

Mr. Dyer added that there are nine conditions and any one of the nine can be used as a basis for denial of the application, but there must be substantial evidence on which to base a decision.

Member Lipke asked if the berm on the south side and the extra interior insulation are reasonable accommodations for the sound issues for the kennel.

Discussion continued concerning sound accommodations.

Mr. Nagle added that the limitation for outside animal time is about 1 ½ hours and it could be included as one of the conditions.

Chairman Huttman stated he proposes a condition for the morning time.

Mr. Tchividjian suggested a 7 a.m. curfew could be added, as the facility will not open until 8 a.m. giving time for the outside animal time to be finished before opening.

Mr. Dyer stated an 8th condition can be added that provide for a curfew for hours 7am-7pm for outside time for the dogs.

Mr. Dyer added also to add to the 5th condition saying “or as later amended in proposed ordinance 2008-03” which is related to the 1 employee to 25 animals staffing requirement. This will be considered at the March 20th, 2008 County Council.

Member Lipke asked if the Commission’s recommendation could be amended by the Council.

Mr. Dyer answered yes.

Member Lipke **MOVED** to **FORWARD** case **S-07-148** to the County Council recommending **APPROVAL** as amended by Staff during the course of the hearing. The amendment being to Condition #5 and an additional Condition #8 relating to curfew being added. Member Severino **SECONDED** the **MOTION** as amended. The **MOTION** was **CARRIED** by a vote of 6 to 1 with Member Cornett voting in opposition.

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

V-08-012 – Application of **John and Joy Perrow, Owners**, requesting a **Variance** for a front yard setback from Indian Harbor Avenue (17 ft. in lieu of the required 20 ft.) on MH-5W (Urban Mobile Home Subdivision / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoned property. The property is located on the northeast corner of the intersection of Indian Harbor Avenue and Indian Creek Road, near the City of Oak Hill; ±9,000 sq. ft. (Ashley) 8538-02-00-0040

Scott Ashley, Planning Manager, presented the Staff Report. He stated the variance request is for a front yard setback. He stated that the applicant is requesting to replace their current 12 ft by 57 ft mobile home including a 9 ft x 34 ft screen room with a 28 ft by 68 ft newer home. However, the proposed new home does not fit on the property to meet the setback requirements of the MH-5 classification. The applicants are requesting a 17 ft. front yard setback from the western property line abutting Indian Harbor Avenue in lieu of the required 20 ft. setback requirement. The canal front property does meet the lot requirements of the MH-5 of 50 ft wide and 5,000 sq ft lot area. The existing mobile home faces Indian Harbor Avenue and the side faces Indian Creek to the south. Due to the subject property being a corner lot, 20 ft setbacks are required for each street front with a side yard setback of 5 ft. and to the north waterfront, side; a 25 ft setback is required. He stated that the review by Staff found no special circumstances associated with subject property. The proposed change out of the residential home is a proposal of the applicant which is a self imposed hardship as the applicant is proposing a structure that is larger than what can fit on the lot. Staff research found other mobiles available that could fit on the property and conform to the required setbacks of the MH-5 classification. Staff recommends **DENIAL** of the request.

Member Cornett asked Staff how many other double wide units are in the area.

Mr. Ashley answered there are several other double-wide mobile homes in the area indicating on an aerial map the subject property and neighboring mobiles homes. He stated the subdivision is a finger canal subdivision and it has a mixture of single and double-wide mobile homes throughout.

Chairman Huttman asked if the current porch is set back the required 20 feet.

Mr. Ashley replied that based on the survey, the screen room is about 21 feet from the property line.

Chairman Huttman noted that the new porch would be about 4 more feet into the 21 feet area.

Mr. Ashley answered yes.

Chairman Huttman asked for a visual indication on the aerial photograph of where the new home would sit on the property.

Mr. Ashley indicated the approximate location on the aerial map of the new mobile home based on the applicant's location request.

Member Russell asked if double-wide mobile homes are now 28 ft. or 24 ft. width.

Mr. Ashley stated Staff's research found that there are 24 ft. wide units. More common seems to be the 28 ft wide, but they also make 30 ft. to 32 ft. wide units. Single wide mobile homes are mostly 16 ft. wide.

Joy Perrow, Owner, with husband John Perrow. She stated one of the reasons for choosing this size of trailer was for mobility for her husband, who is often in the wheel chair at home and he needs the space to move about. She stated they thought this home gave him the room he needed as he is a veteran with 100% disability and they liked the layout of the particular home. She continued that there is a mobile home on the next corner lot that is placed further out on the lot than their's would be if granted the variance.

Member Russell asks how long they have owned the lot.

Joy Perrow answered they purchased the lot last year.

Member Russell asked if they were aware of the restrictions at the time of purchase.

Joy Perrow replied they were not aware of the restrictions.

Member Lipke asked Staff where the other mobile home is located that was referred to by the applicant.

Mr. Ashley indicated the mobile home to the north of the subject property and he stated it is closer to the property line than the subject property unit would be. He added according to the property appraiser's records both units were put in place approximately 1970.

Member Cornett recommended **APPROVAL** of **Case V-08-012** for a variance of a 17 ft. front yard setback in lieu of the required 20 ft. setback because there is hardship not self inflicted due to the disability of a veteran and this is the minimum variance needed for reasonable use of the land. Member Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

V-08-013 – Application of **Travis Robbins, Owner**, requesting a **Variance** for a rear yard setback (35 ft. in lieu of the required 50 ft.) to construct an addition to a single-family dwelling; a **Variance** for a west side yard setback (5 ft. in lieu of the required 25 ft.); and a **Variance** for a rear yard setback (5 ft. in lieu of the required 50 ft.) to construct a detached accessory storage structure on A-2 (Rural Agriculture) zoned property. The property is located on the north side of McMillon Drive, approximately 180 feet east from its intersection with Sparkman Avenue near the City of Orange City; ± 11, 000 sq. ft. (Nagle) 7033-01-01-0030

Christian Nagle, Planner II, presented the Staff Report. He stated the owner is asking for variances for a pump house, and a screen room addition to the home. The area is a rural area with some smaller lots near by. The subject property includes improvements and features that limit where the proposed pump house and screen room can be built. Review of the conditions shows that the lot is a nonconforming lot in area and width as it is 79.4 feet wide and 11,000 sq. ft. total area. The A-2 zoning classification has side and rear yard setbacks that are intended for much larger lots. The well can not be moved to be able to build a pump house to meet the A-2 setback requirements. Staff finds that the requirements of the zoning ordinance will cause a hardship because the requested improvements can not be made without the requested variances. Staff noted that typical screen rooms for homes vary in width but 10 ft to 12 ft wide porches are most typical. Staff found there is no justification for the 15 ft wide screen room in what the applicant submitted. Staff recommends **DENIAL** for a 15 ft wide screen room addition but recommends granting a variance to allow a 12 foot width for the proposed screen room. Staff recommends **APPROVAL** of the variances with the conditions in the Staff report.

Travis Robbins, Owner asked for the 15 foot screen room due to physical injuries to do be able to get a spa to fit for use for rehabilitation. He stated that a 8 ft. x 8 ft. spa would be too close to the walls and the extra space would allow spa access for repairs. The proposed 34 ft. length screen room allows for future changes. The proposed pump house also could be used for storage of lawn equipment.

Chairman Huttman asked if he could work with the 12 foot wide screen room.

Mr. Robbins stated it would make it tight for the 8 ft. x 8 ft. spa and he wanted the 15 wide screen room area for family use also as his home is only 1200 square feet in living area.

Mr. Dyer asked the applicant if he had read the Staff Report.

Mr. Robbins stated he did and would agree with what the commission recommends.

Member Russell **MOVED** to **APPROVE** case # **V-08-013** with Staff's recommendation granting a rear yard setback of 38 feet in lieu of the required 50 feet and subsequent variations for the pump house. Sixma **SECONDED** the motion. The motion **CARRIED** unanimously.

S-08-014 – 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 parcels (Nagle) 7235-01-02-0010 and 7235-01-02-0020 **Tentatively schedule for the March 20, 2008 County Council at 2:00 p.m.**

Christian Nagle Planner III presented the Staff Report. He stated the request is for a Material Recovery Facility (MRF) including the sale of finished by products on the A-1 zoned portion of the property. The parent property includes the Four Jays nonconforming land fill, material recovery facility, wooded areas and wet land areas. The request for the Special Exception is to continue the operation of the material recovery facility already on the property and sale of by product materials. The MRF facility has been on the property since January 2005. The current MRF facility is about 10.4 acres in area. It is located to the east of the nonconforming landfill. On March 15, 2007 County Council approved a Special Exception for the MRF on the A-1 zoned section of the property that included a number of conditions. The applicant is asking for a new Special Exception with changes to those conditions to continue operation of the MRF. (Material Recovery Facility). The Development Review Committee has conditional approved Four Jay's wetland alteration permit related to the proposed MRF. Four Jays Recycling Inc. has a Florida DEP registration to operate a yard trash processing facility which it receives and to process land clearing debris. The applicant processes and sells the by product as landscape mulch. The applicant must comply with the Land Development Code and Zoning Ordinance requirements of the County despite the previous DEP registration. Staff's review of the request found that it is consistent with Comprehensive Plan. A review of the Special Exception Plan showed that the wetland boundaries need to be verified by the staff and indicated on the site plan. The proposed MFR is set back less than 125 feet from an unopened public road. The applicant has submitted an application to the County Council to vacate this right-of-way. The MRF is less than 125 feet from the on site wetlands for which they have submitted a separate variance application and a County Wetland Alteration permit to address the situation. The site plan does not comply with the needed landscape buffer requirements which is 50 feet wide and needs to include landscaping. The plan needs to show the yard trash haul road that is to be moved out of the required 50 foot buffer along the south property line. Staff found that the proposed Special Exception with the Staff's recommendations is consistent with the Comprehensive Plan. Staff is

recommending **APPROVAL** subject to the compliance with the 15 amended conditions in the Staff Report.

Clay Henderson, Holland, & Knight LLP, Attorney for Owner. He stated that the reason for being here this year is last year County Council only approved the Special Exception for one year. The facility is approved by the State for a C & D landfill and yard trash facility and that does not mesh with the County's requirements for a MRF. He stated that the County Staff has been highly involved and thanked several Staff members. The goal is to be in compliance so that the applicant does not have to come back next year but in five years. He stated the landscape buffer requirements need to be addressed and stated that buffers are not needed between the landfills. The 15 staff recommended Special Exception conditions are fine. The company employs about 50 people in the area and they want to continue to operate. The goal is to have the MRF in compliance and protect the land fill space for the community. The reason for the expansion of this landfill was due to debris from the 2004 hurricanes and 2007 tornadoes. He displayed photographs of the property and stated there will be a landscape buffer in the front, along SR 415, but does not see the need for a buffer between the two landfills. The area in the back of the land fill is a conservation easement which is the limit to the land fill. The MRF is the area between the land fill and the conservation area. This is where the debris comes in and is converted to mulch. Mr. Henderson said there is a state requirement to move the mulch out within 18 months. He said 4 Jays was unaware of the need to obtain a Special Exception for a MRF until after they sold mulch and were cited by the County. He asked about the recommended condition to obtain site plan approval. He stated he has 16 conditions listed, the one extra being the site plan condition.

Mr. Nagle clarified that the site plan condition is that the applicant will go through the site plan review process and make the appropriate site plan improvements for the MRF.

Mr. Henderson asked again about the 50 ft landscape buffer perimeter requirements.

Chairman Huttman asked if the conditions are negotiable at the time of site plan review.

Ms. Robinson stated that a waiver to the landscape buffer requirements can be requested from the Zoning Enforcement Official during final site plan review.

Member Sixma **MOVED** to **FORWARD** case **S-08-014** to the County Council with a recommendation of **APPROVAL** with conditions as presented by Staff. Member Severino **SECONDED** the motion. The motion **CARRIED** unanimously.

OLD BUSINESS

V-06-144 – Application **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) material recovery facility minimum setback from wetlands (50 feet in lieu of the required 125 feet) 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; ± 54.4-acres (Nagle) 7235-01-02-0010

Christian Nagle, Planner II, presented the Staff Report. The variance request is to locate a Materials Recovery Facility, (MRF) within 50 feet of wetlands on the subject property. The Development Review Committee has conditional approved the applicant's associated wetlands alteration permit to locate the MRF within 50 ft. of a wetland subject to several conditions including the restoration of a 50 ft. wetland buffer on the property. The PLDRC last year (2007) granted the applicant's request to table this variance request until the wetland alteration permit could be completed. The wetland alteration permit will be issued after Staff receives the necessary revisions to the application including establishment of a 50 foot buffer from the MRF to the remaining wetlands located on the 4 Jays site. The Zoning Ordinance was amended in 1998 to require Special Exception approval for a MRF and to require a minimum setback of 125 ft. to a wetland. These rules were in effect before the property owner began the operation of the MRF. The applicant has a DEP registration to operate a yard trash processing facility on the property. The subject property is located within a Natural Resource Management area which according to the Comprehensive Plan, a minimum 50 foot wetland buffer is required. The 125 foot wetland setback of the Zoning Ordinance is more stringent than the wetland alteration requirements of the Land Development Code. An indirect affect of the 125 wetland setback requirement is to reduce the size and places where MRF's may be operated in the County. The potential MRF site must be properly sized, located and operated in compliance with applicable state and site constraints including compliance with the Land Development code in Zoning Ordinance requirement. The property owner is required to comply with the applicable County requirements despite the prior DEP registration of the MRF as a yard trash processing facility. The property owner has the option to discontinue or down size or relocate the MRF to comply with the zoning ordinance requirements. In Staff's review it was found that the property has a nonconforming land fill, wetlands, a 50 ft wetland buffer requirement and it has a DEP conservation easement of part of the wetlands. Staff found that the owner created his own hardship by starting a MRF without meeting Land Development and Zoning Code approval requirements of the County. The owner enjoys rights not commonly enjoyed by other persons who own property in A-1 and RC zoning classifications because the owner can continue to operate his non conforming landfill. The property owner has reasonable use of the property without the granting of the requested variance because they have the option to relocate, down size, or discontinue the MRF to comply with the Zoning Ordinance. Staff

recommends **DENIAL** because the applicant has not met the 5 criteria of Section 1003 for the granting of the variance, primarily due to the creation of his own hardship by locating a MRF without proper approvals, and by locating the MRF within less than 125 feet from an on site wetland.

Mr. Dyer asked Mr. Nagle to indicate which of the 5 criteria have not been satisfied for the variance application.

Mr. Nagle replied that condition 4A states that there must be special conditions or circumstances on the property but the applicant chose to build the MRF without the County approvals prior to doing it, and chose to locate the MRF less than 125 feet from a wetland, creating his own hardship.

Mr. Dyer clarified that condition 4A has been satisfied, but stated condition 4B which is the hardship not created by the applicant, has not been met. 4C is that the literal interpretation of the ordinance would not deprive the owner of rights of use of the property, condition 4D is not met, and condition 4E which is that it is consistent with the Comprehensive Plan, has been met.

Member Cornett asked what are the requirements of the DEP permit as far as the wetland set backs.

Mr. Nagle answered there are none, according to Tara Boujoulian, County Wetland Manager.

Tara Boujoulian, County Wetland Manager, stated that the State does not have setbacks from wetlands. The State's requirements have been met on the site to the best of her knowledge.

Member Severino asked Staff if in 2007 the PLDRC granted a similar variance for the 50 foot setback.

Mr. Nagle replied that the other variance granted was to allow the MRF to be located within 50 ft of the north property line and that variance was granted last year. This particular variance was continued at the applicant's request in order to have the opportunity to resolve the wetland alteration permit application. This variance application is back before the PLDRC because the DRC has conditionally approved the applicant's wetland alteration permit.

Clay Henderson, Attorney for Owner, stated the landfill facility is a non conforming use, it predates the County's ordinances on landfills and materials recovery facilities and it is the reason the ordinance exists. The previous owners sued the County successfully and a judge determined that the landfill was a non conforming use. When the current owners bought the property they thought they could operate the landfill and MRF due to a court order. He said a landfill site has limited site locations, but in his opinion public policy is that once the landfill is there, it should be protected as a public

use. There are no state wetland setback requirements for a MRF but you are required not to impact the wetlands. Volusia County has 50 ft. wetland setbacks. The applicant is trying to be in compliance with the State rules and with the Volusia County wetland rules. The DRC has issued a conditional wetland alteration permit and the applicant is asking for the PLDRC to honor those conditions. The applicant has entered a consent order with the State with a perpetual conservation easement agreement for 19 acres of land on the Four Jays property. To resolve state wetland violations, the applicant restored an additional acre of wetlands, planted additional trees, and purchased 6 mitigation credits from a DEP mitigation bank at the cost of \$130,000 and paid a fine to the State of \$14,000. The applicant agreed to a 50 foot wetland zoning buffer as part of the agreement. The County administratively changed the RC line to be able to conform to the conservation easement approved by State. The applicant then applied for a wetland alteration permit through DRC, which was granted with 9 conditions. As part of the permit, the applicant will improve the State approved buffer by planting wetland vegetation as recommended by the County. The County will hold a 50 ft wetland conservation easement. DRC recommended that a fine be levied (\$15,000) and paid into a County trust fund and there will be on going property monitoring by the County Environmental Staff. Mr. Henderson showed the property layout with aerial photographs showing the wetlands, the 50 ft buffer, wetland markers and what areas will be planted with wetland vegetation. He stated that Staff has found this variance consistent with the Comprehensive Plan, and has found special circumstances, that they can not support. This is a narrow application that will not open doors for any one else, applying for a similar variance.

Mr. Keith Young, Owner, 425 South State Road 415, He stated he and his brother, Glen, now run the company since their parents retired after 24 years in business of clearing land. Their father ran the landfill for use for their construction and land clearing business keeping debris separate in the C & D portion of the landfill. The brother's continued the business and worked with the DEP. Then they worked to provide mitigation for the lands and the wetlands impacted. He stated the area that is now wetlands, was not known to them previously to be wetlands, as it was a cattle pasture with grass and trees. He stated they do not go into wetlands to cut down trees for mulch, rather he said that when the debris comes in from land clearing jobs, everything is sorted and ground up into mulch and goes back out to be used as mulch in yards. He stated they did not know they needed permissions from more than one group to operate the MRF, but have learned now to work with the State and Volusia County. He said he will grade and plant trees and turn the area back to a natural state. The 125 foot wetland setback will be difficult to accomplish because they need the space for the processing of debris, when there are busy periods. The 50 foot wetland buffer setback would be best because of the need for space. About 40 to 50 people work with them on land clearing jobs, bringing back the debris for processing. He stated that DEP and Volusia County Staff come out every quarter together for their property inspections and that his company complies with the rules. They maintain a high quality landfill and the soil has been tested by Volusia County and showed the PH is in the moderate range. The landfill employs about 14 employees that handle several pieces of equipment. The

C & D landfill is being handled more efficiently and should last about 10 years before it reaches capacity.

Clay Henderson stated in summary that the Four Jays Landfill is a small business operation that got caught between the State and Volusia County rules and asked for the variance to be granted subject to the conditions that were set forth by the DRC.

Member Lipke asked why the landfill could not down size or relocate.

Clay Henderson stated these actions are done to maintain and preserve the life of the land fill. Without this amount of property for this MRF use, the landfill may not last more than a year due to the volume of the debris. Some of the volume has been the result of the recent natural disasters in the area.

Member Lipke stated that then the evidence would be that if the MRF site is down sized the landfill may be terminated in about a year.

Member Cornett asked if the materials in the 75 feet wetland setback area are land clearing materials and not construction materials.

Clay Henderson stated it is land clearing materials and it is vegetative and soil materials, not pollutants with the by products being mulch and soil.

Member Cornett asked the County Wetland's Manager for comments in regards to the results of the joint inspections done with DEP of the landfill.

Tara Boujoulian replied that the site inspections are landfill inspections, not wetland inspections but she understands that County and DEP staff has had a good working relationship with the applicants.

Member Sixma stated he has been to the landfill several times and it was run very well.

Member Severino moved for **APPROVAL** of case **V-06-144**. Member Russell **SECONDED** the motion.

Clay Henderson asked for conditions set in the DRC wetland alterations permit approval be included so that they match.

Ms. Robinson stated the letter from Tara Boujoulian of January 26, 2008 contains the 4 conditions that were put forth by the DRC in granting the appeal of the wetland alteration permit.

Member Severino modified the motion for **APPROVAL** to include the 4 conditions set forth by the DRC.

Member Cornett inquired if it would duplicate Item D by including the conditions from DRC.

Mr. Dyer answered the intent is that it is a one time payment of \$15,000 to the Environment Trust Fund.

Clay Henderson stated it is the intention of the applicant to go pull the wetlands alteration permit so when they go before the County Council that they have met all those obligations.

Mr. Nagle added that the two requests, the MRF Special Exception and the wetlands setback variance, need to go together because you must have Special Exception permission to operate the MRF in order to ask for the variance to allow a MRF within 50 ft of wetlands.

Member Russell **SECONDED** the motion for **APPROVAL** of case **V 06-144** with modifications noted. The motion **CARRIED** unanimously.

PUBLIC ITEMS

1. Proposed amendment to Chapter 70, School Impact Fee Ordinance
.....Jamie Seaman, Assistant County Attorney

Proposed Amendment to Chapter 70, School Impact Fee Ordinance 2008-04

Mr. Dyer stated this is for a consistency determination in regard to the Volusia County Comprehensive Plan. It provides for a delegation of authority to the Volusia County School Board to establish a school impact fee or to establish a methodology for setting one. What is before the Commission is a striking of the ordinance which established the methodology and process. The effect of the ordinance is to have the impact fee delegated to the School Board. He continued that there is a consistency determination from Staff and the 2 changes are page 6 lines 3-7, which is a minor change not affecting the provision and page 7 lines 11-13 that are proposed to be removed.

Member Severino questioned that on the administrative review, the added language appears to open a loop hole.

Mr. Dyer explained the overall impact of this is that rather than the County Council establishing the methodology or the school impact fee, it would be the Volusia County School Board doing so. The School Board's proposed policies have to be advertised, noticed and have to follow the Administrative Procedures Act.

Further discussion continued concerning the administrative review process.

Member Severino asked if this new language changes the process for someone who wants to challenge the School Board about their process of establishing an impact fee or what has already been done.

Mr. Dyer answered that if someone would like to challenge the School Board, those challenges are governed by the Administrative Procedures Act through State Law.

Member Russell asked that on pg 6 line 16, it states that the school board shall find that the fee does not require fee payers to bear more than their equitable share of net capitol cost. He stated the language seems to not appear in the revised item.

Mr. Dyer replied that the methodology and fee would be up to the School Board through their rule making process and the changes have been made at the request of council retained by the school board on this issue.

Mr. Dyer asked Terry James to consider the revised language on Page 6 that removes, “ the school board shall find that the fee does not requirement fee payers to bear more than their equitable share of net capitol cost” and does the removal of this sentence render this ordinance inconsistent with the Comprehensive Plan.

Terry James stated that the sentence is an established case law and it does not make it inconsistent with the Comprehensive Plan.

Member Russell stated there seemed to be a fairness with the statement, and asked why it was dropped.

Mr. Dyer stated it was to make it cleaner, there is a body of case law and requirements that impact fees have to meet .

Member Russell asked who removed the item.

Mr. Dyer stated a council for the School Board reviewed this and made the comments.

Member Severino stated that it seems that the protections for people have been removed.

Mr. Dyer clarified that no protections have been removed.

Member Cornett **MOVED** to **FORWARD Ordinance 2008-04** to County Council finding it consistent with the Comprehensive Plan based on the comments made by County Staff. Member Lipke **SECONDED** the motion. Chairman Huttman, Member Lipke and Cornett approved the motion. Members Severino and Russell voted in opposition. (Member Sixma not present)

Attorney Clay Henderson, Special Counsel for the School board stated he has been representing the School Board on Comprehensive Plan issues. He gave a brief history that when the County Council originally passed the School Impact Fee Ordinance in the early '90s, there was no Comprehensive Plan that dealt with schools and explained the rules have changed. Now there is a Comprehensive Plan and the Charter has been amended making it necessary to change the Impact Fee Ordinance. The soul provision for changing this is so that challengers can challenge the rules the School Board adopts rather than challenge a County Ordinance. There is no question that it is consistent with the Comprehensive Plan.

Member Russell asked the Board to reconsider the previous vote.

Member Cornett restated his **MOTION to FORWARD Ordinance 2008-04** to County Council finding it consistent with the Comprehensive Plan based on the comments made by County Staff. Member Lipke **SECONDED** the motion. Chairman Huttman, Member Lipke, Cornett and Russell approved the motion. Member Severino voted in opposition. (Member Sixma not present)

2. Proposed amendment to the Zoning Ordinance 80-8, as amended, regarding Kennels to Animal Care Facilities

.....Michael Dyer, Assistant County Attorney

Ms. Robinson requested a continuance without a time certain of Public Item #2.

Mr. Dyer stated a revised ordinance will be presented to the PLDRC at a later time. The item will be re-advertised and added back as an agenda item when it is ready.

Member Severino **MOVED** to continue **Public Item #2**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

STAFF ITEMS

Changes in Staff Reports

Ms. Robinson stated that the Zoning Staff is considering ways to stream line the zoning case reports by changing the format and making it a shorter report with less attachments, but still keeping the file together to be legally defensible should there be challenges.

Member Cornett asked what type of attachments will be removed.

Ms. Robinson answered an example would be instead of attaching the entire memo from traffic engineering and or environmental, a summary will be attached in the Staff Report including any issues addressed in the memo and the memo will be available in it's entirety at the hearings.

Member Lipke asked if this information can be available on line for advance research.

Ms. Robinson answered yes, we have considered making all the attachments available online.

Chairman Huttman asked as he understands, there will be summaries of the findings in the Staff Report so it would only be omitting the supporting attachments.

Ms. Robinson stated yes and it would be more uniform and streamlined as to what the PLDRC is viewing and what is forwarded to Council for review.

Member Cornett asked if the zoning maps could add more use of color.

Ms. Robinson answered yes.

Member Severino asked if aerial photographs can be added and in some cases can distances be added.

Ms. Robinson answered that aerial photographs can be added and distances could be used in appropriate cases.

Member Cornett continued that aerial photographs have been helpful in some cases to be able to view a neighborhood.

Member Severino added that consistency in a neighborhood is one of the items that the Board takes into consideration.

Member Lipke stated there still is the option to travel to the site.

Ms. Robinson added there is internet access in the chambers. If there is a request for an aerial view of property it is easily done not taking long. She stated that Staff would welcome any suggestions in regards to format changes.


COMMISSION COMMENTS

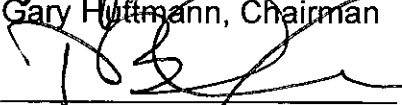
PRESS AND CITIZEN COMMENTS

NONE

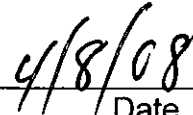
ADJOURNMENT

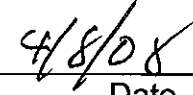
Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 4:03 p.m.



Gary Huttman, Chairman


Taver Cornett, Secretary



Date


Date