

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
APRIL 14, 2015**

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
JEFF GOVE (Absent)
WANDA VAN DAM
JEFFREY BENDER
JAY YOUNG
RONNIE MILLS
JOSEPH ALLEVA

STAFF PRESENT:

IAN WILLIAMS, Assistant County Attorney
SCOTT ASHLEY, AICP, Senior Zoning Manager
WILLIAM GARDNER, Activity Project Manager
SUSAN JACKSON, AICP, Planner III
CAROL MCFARLANE, AICP, Planner II
SHERRI LAROSE, Zoning Technician
SARA PAYNE, Staff Assistant II
YOLANDA SOMERS, Staff Assistant II

APPROVAL OF MINUTES

- March 10, 2015

Member Alleva moved to APPROVE the minutes. Member Young seconded the motion. Motion CARRIED unanimously (6:0).

Ian Williams, Assistant County Attorney, provided legal comment.

Disclosure of Ex Parte Communications

Members of the Volusia County Planning & Land Development Regulation Commission Board were asked to please disclose, for the record, the substance of any ex parte communications that had occurred before or during the public hearing at which a vote is to be taken on any quasi-judicial matters. All members present disclosed any communication as listed below.

Member Mills disclosed the following:

Case S-15-008: Spoke with Ms. Joie Alexander and Mr. Glenn Storch and received separate emails from Mr. James Morris and Ms. Cheri Joiner-Smith.

Case PUD-15-026: Received separate emails from Mr. Rob Merrell and Ms. Deborah Kreinest.

Member Young disclosed the following:

Case S-15-008: Spoke with Mr. Glenn Storch and received separate emails from Mr. James Morris and Ms. Cheri Joiner-Smith.

Case PUD-15-026: Received separate emails from Mr. Rob Merrell and Ms. Deborah Kreinest.

Member Van Dam disclosed the following:

Case S-15-008: Spoke with Mr. Glenn Storch and received separate emails from Mr. James Morris and Ms. Cheri Joiner-Smith.

Case PUD-15-026: Received separate emails from Mr. Rob Merrell and Ms. Deborah Kreinest.

Chair Severino disclosed the following:

Case S-15-008: Spoke with and received email from Mr. James Morris, spoke with Mr. Glenn Storch, received separate emails from both Ms. Joie Alexander and Ms. Cheri Joiner-Smith.

Case PUD-15-026: Received separate emails from Mr. Rob Merrell and Ms. Deborah Kreinest.

Member Bender disclosed the following:

Case S-15-008: Spoke with Mr. Glenn Storch and received separate emails from Mr. James Morris, Ms. Joie Alexander and Ms. Cheri Joiner-Smith.

Case PUD-15-026: Received separate emails from Mr. Rob Merrell and Ms. Deborah Kreinest.

Member Alleva disclosed the following:

Case S-15-008: Spoke with Mr. Glenn Storch and received separate emails from Mr. James Morris, Ms. Joie Alexander and Ms. Cheri Joiner-Smith.

Case PUD-15-026: Received separate emails from Mr. Rob Merrell and Ms. Deborah Kreinest.

ITEMS TO BE CONTINUED OR WITHDRAWN

V-15-027 Application of John A. Ingles, owner, requesting a variance to separate two nonconforming lots on Urban Single-Family Residential/Indian River Lagoon Surface Water Improvements and Management Zone (R-4W) zoned property. The property is located at 158 Azalea Road, Edgewater; \pm 8,700 square feet each parcel; 8413-05-00-1630 and 8413-05-00-1640.

Due to incomplete public notification by the applicant, the case will not be heard and struck from the agenda.

Election of Officers:

Member Mills MOVED to delay the election of officers to the next PLDRC hearing that has a full complement of board members.

Member Young seconded the motion. Motion CARRIED unanimously (6:0).

PUBLIC HEARING ON APPLICATIONS

S-15-008 - Application of Glenn Storch, attorney, Carter-Volusia 1339 Highway 415 Land Trust, owners, requesting a special exception for a nonexempt excavation on Rural Agriculture (A-2) and Forestry Resource (FR) zoned property. The property is located at 528 S.R. 415, New Smyrna Beach; \pm 44.70 acres; 7234-00-00-0030, 7235-01-02-0050.

Chair Severino discussed the uniqueness of this case and requested all participants to limit testimony to new testimony or testimony related to the changes in the application.

Scott Ashley, AICP, Senior Zoning Manager, presented the staff report.

Member Van Dam asked if there was additional information that addressed Requirement: x.D. A discussion of the environmental impacts of the proposed excavation, including but not limited to the impact of the proposed excavation upon existing wells (page 51 of 105).

Mr. Ashley responded by discussing the reduction in size to address the wetland line and dewatering technique. He then noted that the report addressing the aforementioned topics was received on April 13, 2015, and staff had not had the opportunity to review, and he would, therefore, defer to the applicant.

Member Mills requested confirmation that a permit from the St. Johns River Water Management District (SJRWMD) was required.

Mr. Ashley answered in the affirmative.

Glenn Storch, 420 South Nova Road, Daytona Beach, Florida, 32114, attorney for the applicant Carter-Volusia 1339 Highway 415 Land Trust, Daryl Carter, Trustee. Mr. Storch presented the changes that occurred between the PLDRC and County Council hearings, which included the reduction of the project and lake areas, a traffic study, and additional conditions, which were stipulated by the applicant. He then discussed consistency with the Comprehensive Plan and density. He noted the timeline of no more than five (5) years and discussed the benefits of the proposed project. He also addressed the concern of possible extensions after the expiration of the initial five-year term, and added that there would be an annual staff review done to ensure the accuracy of the timeline, and to provide information regarding the amount of dirt removed, how much remains, the status of the monitoring wells, and complaints.

Mr. Storch discussed the requirement of a chain link perimeter fence and a request for waiver to allow for the utilization of an alternate fence material in order to maintain the rural character of the proposed site. He then addressed vegetative buffers along the frontage and the timeline for installation to occur prior to, or concurrently with, the construction of the lake.

Mr. Storch stated the hours of operation will be limited to 8:00 a.m.-5:00 p.m., Monday through Friday, with no operation on holidays. He also discussed the use of a bond to ensure completion of the project.

1 Mr. Storch addressed the noise concern, noting noise will be limited to 62 decibels. He
2 also emphasized there will be no stockpiling and discussed the use of sock drain
3 technology. He noted that two monitoring wells will be installed between the lake and
4 nearby residences, and that logs will be provided to the county and the SJRWMD. Mr.
5 Storch offered that a 24-hour telephone number would be provided to the county Land
6 Development Manager to address complaints.

7
8 Mr. Storch reviewed the applicant-imposed conditions, which included a landscape
9 buffer along SR 415, irrigation of the driveway access, strict truck safety protocols, and
10 preservation of existing wetlands and vegetative buffer.

11
12 Mr. Storch addressed slope concerns, noting the side slope will be 6:1 to a five-foot
13 depth, creating a 30-foot shelf before getting to the point of 1:1. He stated that the slope
14 change was contingent upon receipt of permits from the SJRWMD, as well as a Florida
15 Department of Transportation (FDOT) permit for driveway access.

16
17 Mark Dowst, 536 Halifax Avenue, Suite 100, Daytona Beach, Florida, 32118. Mr. Dowst
18 stated his professional engineering credentials and his connection to the project. He
19 discussed the review of groundwater, wetlands, proximity to neighbors, and traffic to
20 ensure the development is practical, safe, well sited and an asset to the community. He
21 noted the reduction in size was based on the wetlands being located and flagged,
22 whereas the previous version of the site plan was an approximation of wetlands and the
23 required distance of 150 feet. He then presented a plan overlay depicting the reduction.

24
25 Mr. Dowst addressed the concerns of sinkholes, wells drying up in the area, and
26 permanent damage to the wetlands. He noted that an expert groundwater hydrologist,
27 geotechnical engineer, and a biologist were consulted and found the concerns soundly
28 refuted. Mr. Dowst explained the excavation construction and the reduction in noise,
29 turbidity, and stockpiling elimination as the excavation goes further down into the pit.
30 He stated that the pit would be dewatered in stages and explained how the clean water
31 would be restored to the wetlands and each cell of the project. Mr. Dowst addressed
32 reclamation and the side slope, stating there will be a 6:1 slope extending to a depth of
33 five feet below the seasonal low water. He also discussed a requirement to shape the
34 slopes and plant a variety of aquatic plants to establish a thriving ecosystem.

35
36 Mr. Dowst addressed borrow pit suitability and the use of backhoe digs for a bigger,
37 more accurate sample. He stated there were approximately 20 backhoe digs done, and
38 emphasized work on the borrow pit will cease if material is found unsuitable, even if the
39 project depth is not reached.

40
41 Nicholas Andreyev, Andreyev Engineering, 4055 St. Johns Parkway, Sanford, Florida,
42 32771. Mr. Andreyev stated his professional credentials and his experience in
43 groundwater. He explained the impact dewatering has on wetlands and neighboring
44 wells, as it relates to contamination. He noted that he had reviewed the report done by
45 Universal Engineering and found it to be consistent. He added that he had based his
46 assessment from the report done by Point Four, specifically as it related to the aquifer
47 being affected by breaching and groundwater being lowered by the lake placement. He
48 then addressed the impact from contaminated sites, specifically the nearby landfill,

1 stating it would be impossible for water to move from the landfill to the borrow pit
2 because the hydraulic barriers cancel positive flow.

3
4 Joe Young, Biological Consulting Services, 208 Rush Street, New Smyrna Beach,
5 Florida, 32168. Mr. Young read his statement into the record, which addressed the
6 proposed borrow pit being designed to avoid impacts to existing wetlands and being
7 positioned within the landscape to provide a 150-foot upland buffer. He added the
8 upland buffer will protect the existing wetland areas from potential secondary impacts
9 that could occur throughout the excavation and construction process. He noted that the
10 construction process will include the use of wetland hydration pipes to eliminate
11 hydrological drawdown affect and that the wetlands will be monitored during the
12 construction process, as a secondary precaution. He added that a restoration plan will
13 be implemented to create a littoral zone line along the lake edge, which will provide
14 habitat for aquatic-dependant species and provide a habitat transition zone. He then
15 listed the potential species that may utilize the habitat.

16
17 Sans Lassiter, Lassiter Transportation Group, 123 Live Oak Avenue, Daytona Beach,
18 Florida, 32114. Mr. Lassiter stated his professional credentials and his connection to
19 the project. He stated that the traffic impact would be similar to eleven homes on a daily
20 basis, but the lake would eliminate the construction of ten homes and would dissipate
21 after five years. He then discussed the driveway permit from FDOT and addressed site
22 distance, signage, and that the site would consist of only one entrance.

23
24 Chair Severino inquired if the fence waiver was to waive the requirement or to request
25 an alternate material be used.

26
27 Mr. Storch stated the waiver was to allow for an alternative, rural-type material but noted
28 that it would be a functioning barrier to keep people and animals restricted from the site.

29
30 Discussion ensued regarding the pumps. It was stated that the pumps were diesel
31 powered, not electric, and would be located in such a way as to minimize the distance
32 to the various header systems and rehydration pipes. It was also determined that the
33 pumps would be approximately six to eight inches, containing a four-cylinder, enclosed
34 engine.

35
36 Chair Severino asked where the hydraulic barrier will be located in relationship to the
37 borrow pit and monitoring well.

38
39 Mr. Dowst explained that the location will change, depending on which cell is being
40 constructed, but that the barrier will be located between the pit and wetland.

41
42 Chair Severino asked about the monitoring well location.

43
44 Mr. Dowst stated that one monitoring well will be located at the project entrance and
45 another at the common property line. He further explained that the initial hydration
46 pipes will be installed on the west side of the project and then deployed, should there be
47 a drop in the wells.

1 Chair Severino discussed the purpose of the monitoring wells to protect water source
2 from drawdown. He then asked for assurances that the wells will not be in conflict with
3 the protections put in place.

4
5 Mr. Andreyev explained that the location of the hydraulic barrier will be between the
6 monitoring wells and the watering area. He noted that the water will be pumped back to
7 balance the affected area, should a drop in levels occur. He also stated that the
8 monitoring wells will not give false readings due to the hydraulic area and should be
9 able to detect issues beyond the excavation site.

10
11 Discussion ensued regarding traffic. It was determined that the traffic study
12 differentiated between types of vehicles, and specifically addressed trucks, turning
13 radius, safety concerns, weight, acceleration rates, and signage. It was also noted that
14 the daily numbers, as discussed, would increase by 10 times and that an acceleration
15 and deceleration lane would not be used, unless required by FDOT.

16
17 Member Young inquired about the reintroduction of the water after the dewatering
18 process.

19
20 Mr. Andreyev explained the use of a sock pipe, which filters water through gravel and
21 percolates back into the ground. He noted the sock is constructed of perforated pipe.

22
23 Member Van Dam asked if relocating the monitoring wells to the north of the project
24 would decrease the chance of breaching from nearby landfills.

25
26 Mr. Andreyev answered that the drawdown would first occur closest to the dewatering
27 and would not propagate beyond that point because of the hydraulic barrier. He further
28 explained that a drop in the monitoring wells, beyond the normal fluctuation, would be
29 the first indication a breach, but if the pressure in the well was maintained, there would
30 be no incentive for the water to flow that way.

31
32 It was also noted that the monitoring wells were not required, but were being installed
33 voluntarily by the applicant and that SJRWMD will monitor the site closely at the onset
34 of the project. After permitting, SJRWMD will perform monthly site visits, and all
35 monitoring well information will be furnished to SJRWMD and Volusia County.

36
37 Further discussion regarding traffic ensued.

38
39 Mr. Lassiter stated that a 100-foot taper was being proposed for southbound traffic, but
40 there were no future provisions for a northbound, left turn lane.

41
42 Mr. Storch added this option may be later explored, should the annual review deem it
43 necessary.

44
45 Member Young asked for further explanation of the signage.

46
47 Mr. Storch stated there will be signs posted on both sides of the highway indicating
48 trucks entering highway. He then stated that this could be a condition.

1 Jim Morris, 750 Oak Heights Court, Port Orange, Florida, 32127, representative for the
2 opposition. Mr. Morris requested to cross-examine the expert witnesses who spoke.

3
4 Chair Severino requested direction from Mr. Williams.

5
6 Mr. Williams stated that per Florida Statute Section 286.0115, party and party
7 interveners to quasi-judicial proceedings have the ability to rebut and cross examine
8 witnesses. However, direct examination is not always required and questions can be
9 filtered through the commission.

10
11 Commission discussion ensued, and it was determined that the commission would allow
12 for cross-examination, directly to the witnesses. The applicant would have the
13 opportunity for rebuttal at the end of the questioning, without objection from the
14 commission.

15
16 Mr. Morris called for Mr. Dowst and questioned the required permits and their status,
17 driveway design, his understanding of the special exception criteria, conferences with
18 FDOT, and posted speed limits.

19
20 Mr. Morris called for Mr. Andreyev and raised question regarding the report delivered to
21 staff the morning of the hearing and the Beck Ranch project.

22
23 Mr. Storch objected to the question regarding the Beck Ranch project.

24
25 The commission determined that the Beck Ranch project had no relevance to this
26 application.

27
28 Mr. Morris called Mr. Lassiter and raised question regarding trip counts, the 100-foot
29 taper, the 50-foot turning radius recommendation, and interface safety.

30
31 Mr. Williams asked, and Mr. Storch agreed to rebuttal at the end of the hearing.

32
33 Chair Severino opened the floor for public participation.

34
35 Rick Bordignon, 4165 Falling Leaf Drive, New Smyrna Beach, Florida, 32168, spoke in
36 opposition. He raised concern regarding dust, noise, traffic, truck acceleration,
37 stockpiling, and possible future excavation. He referenced excerpts of a news article
38 about an excavation project managed by the applicant. He also disputed that the
39 application met Special Exception Criteria, **(h) it will materially alter the character of**
40 **surrounding neighborhoods or adversely affect the value of surrounding land,**
41 **structures or buildings.** He presented pictures of his home and analyses from a
42 professional property appraiser, which stated his property would suffer a 15-20%
43 decrease in value.

44
45 Chair Severino inquired about the aforementioned article.

46
47 Mr. Bordignon responded the article was published in *The Road Toad* in 1993.

1 Member Van Dam asked if the appraisal indicating a reduction in property value was
2 reflective of the construction period and if one had been done indicating post-
3 construction.

4
5 Mr. Bordignon responded that the appraisal was reflective of the five-year construction
6 period and no assessment had been done for post-construction.

7
8 Member Bender inquired about the appraisal and why it was not on professional
9 letterhead.

10
11 Mr. Bordignon explained it was an excerpt of a letter from Pomeroy Appraisal
12 Associates of Florida, which was presented in an effort to adhere to time constraints.

13
14 Mr. Storch clarified that the letter provided was not an appraisal and states “...*properties*
15 *within 1,000 feet of the proposed borrow pit.....would have damages or a loss of value*”.
16 He rebutted that the lake will be approximately 1,700 feet away.

17
18 Chair Severino asked the report be tendered to staff.

19
20 Cheri Joiner-Smith, 4170 Saddle Club Drive, New Smyrna Beach, Florida, 32168, spoke
21 in opposition. She cited zoning regulation 72-293(15)b.1.(iii), which states that
22 proposed slopes must comply with a 1 foot vertical, 6 feet horizontal to a depth of 10
23 feet below the dry season elevation, unless waived. She raised concern about the five-
24 year timeline and referenced the model suggested by Mr. Storch, known as the Weaver
25 Pit. She noted county council approval in 2003, with an anticipated completion period of
26 three years, but an actual completion in 2015. She then expressed concern regarding
27 traffic and noise, specifically the back-up audible signal.

28
29 Member Van Dam asked if the concern was that the applicant will ask for an expansion
30 on the same pit, or that another property owner will ask for a borrow pit.

31
32 Ms. Joiner-Smith responded that both were areas of concern.

33
34 Bill Ranew, 4025 Bexhill Drive, New Smyrna Beach, Florida, 32168, spoke in
35 opposition. He expressed concerns about the truck traffic, traffic congestion, noise,
36 possible water contamination, sinkholes, failed wells, and the rural integrity of the area.

37
38 Thiele Wetzel, 4060 Sorrento Road, New Smyrna Beach, Florida, 32168, spoke in
39 opposition. He raised concern with noise from the pumps and contaminants leaching
40 into the water table.

41
42 Joe Kendall, 3815 Cottonwood Drive, Titusville, Florida, 32780, spoke in opposition. He
43 stated he is a partner of a pit located at SR 442 and I-95 and questioned the applicant's
44 claim that there is a shortage of fill.

1 Ursula Higdon, 4200 Falling Leaf Drive, New Smyrna Beach, Florida, 32168, spoke in
2 opposition. She noted the recent sale of her home and projected a loss of
3 approximately \$30,000 because of the borrow pit project. She raised concern with
4 contaminated wells, traffic count, noise, cost of dirt, cost to the taxpayer, and truck
5 traffic.

6
7 Robert L. Hart, 252 S. SR 415, Samsula, Florida, 32168, spoke in support, noting the
8 need for a borrow pit excavation.

9
10 Barry A. Ownby, 532 SR 415, New Smyrna Beach, Florida, 32168, spoke in support,
11 noting the availability of the lake to possibly extinguish fires.

12
13 Harvin Clark, 2129 Avocado Drive, Port Orange, Florida, 32128, spoke in support.

14
15 Keith Jung, 425 South SR 415, New Smyrna Beach, Florida, 32768, spoke in support.

16
17 Rosemary Cuccherro, 291 N. County Road 415, New Smyrna Beach, Florida, 32168,
18 spoke in opposition, expressing concern with traffic, truck traffic, and the rural integrity
19 of the area.

20
21 Helen Wells, 638 Rasley Road, New Smyrna Beach, Florida, 32168, spoke in
22 opposition, raising concern with noise and traffic.

23
24 Chair Severino adjourned for lunch at approximately 12:00 p.m.

25
26 Chair Severino called the hearing to order at 12:36 p.m. and continued public
27 participation for case S-15-008.

28
29 Chris Sherman, 240 Hackamore Drive, New Smyrna Beach, Florida, 32168, spoke in
30 opposition, expressing concerns with environmental issues, truck traffic, the rural
31 integrity of the area, and possible additional variances.

32
33 Perry Mason IV, 776 North Orange Avenue, Apt. #5208, Orlando, Florida, 32801,
34 representative of the property owner. Mr. Mason presented photographs of borrow pits
35 constructed by the applicant and then submitted a letter from Heffington & Associates
36 disputing the loss of property value.

37
38 Chair Severino asked if there were photographs depicting site progression.

39
40 Mr. Mason stated he did not have photographs depicting site progression.

41
42 Dawn O'Connor, 4165 Falling Leaf Drive, New Smyrna Beach, Florida, 32168, spoke in
43 opposition. She stated her concerns with drawdown from the wetlands, decline of
44 property values, the industrialization of the rural community, contradictions of how much
45 fill can be excavated in a five-year period, wells drying up or becoming contaminated,
46 and truck traffic. She also questioned the requested slope waiver.

1 Mike Sims, 193 West New York Avenue, Lake Helen, Florida, 32744, spoke in
2 opposition. He questioned the volume of water extraction, the dewatering and
3 rehydrating system, monitoring inside the wetlands, who will be monitoring the wells,
4 who will report findings, and who is designated to make decisions.

5
6 Member Mills inquired about rehydration.

7
8 Mr. Sims affirmed there will be rehydration, but questioned its sufficiency in minimizing
9 impacts to the wetlands. He also stated the dewatering operation has a finite influence
10 of around 600 feet. He noted there might be a foot of drawdown and for accuracy there
11 should be a water budget analysis done. He then reiterated concern that no one had
12 been designated to monitor the site.

13
14 Mr. Storch requested to question Mr. Sims and addressed the rehydration method,
15 environmental resource permit, differing opinions of accomplishing the same goal, and
16 the condition by applicant for reporting monitoring well information.

17
18 Mr. Morris reviewed the definition of burden of proof as well as competent substantial
19 evidence. He addressed that the driveway design and information regarding a
20 conference with FDOT had not been presented. He then presented a traffic scenario as
21 it relates to the I-4 alternate project. He contended that a 100-foot taper is not enough
22 for a safe exit for a dump truck. He discussed the late delivery of the applicant's
23 hydrological report, property values during construction, traffic trip counts, dewatering
24 procedure, management of pump noise, impact fees, and the change of the rural
25 character of the area to more industrial-like. He disputed the project will be finished in
26 five years. He then expressed his concern that if another special exception for a borrow
27 pit is presented, unless the trip count per day exceeds the trip count that the traffic
28 engineer estimates for SR 415, the commission would be legally bound to approve.
29 He addressed the movement of the fill throughout the Volusia County road system. He
30 then stated the environmental impact has not been addressed. He addressed a pre-
31 engineering request that would have evaluated the project and reached beyond the
32 minimum standards. Mr. Morris addressed the precedential nature of this special
33 exception request. He raised concern with the site vicinity to nearby landfills and
34 disputed the applicant had met all special exception criteria. He then requested to
35 discuss the conditions proposed by the applicant listed in the staff report.

36
37 Commission discussion ensued regarding concerns with the conditions. It was
38 determined that all concerns should be heard prior to the commission vote.

39
40 Mr. Morris reviewed the applicant's proposed conditions and included the following
41 modifications:

42
43 Applicant proposed condition 2 be modified to:

44 No Area Expansion – ~~Any proposed~~ There shall be no expansion of excavation area.
45 ~~must obtain an additional special exception~~

46
47 Mr. Storch agreed.

Applicant proposed condition 5 be modified to:

No Permit Extensions – Expansions or Waivers – The applicant shall not request an extension of the five-year special exception time period or **expand on the existing pit or add new.**

Mr. Storch agreed to not requesting permit extensions or expansions, but objected to the exclusion of waivers as the applicant had requested a waiver for the slope.

Applicant proposed condition 10 be modified to:

Pump Dewatering: The pumps used for dewatering shall be designed for quiet operation and shall be surrounded by earthen berms for noise abatement. Pumps shall not exceed 58dB – 62dB **at the project boundary and, except for emergency caused by an act of God, shall not be powered by on-site generators.**

Mr. Storch also clarified the pumps are diesel pumps and was not in agreement with a provision for emergencies that allows for on-site generators. Mr. Storch reiterated the pump decibel requirement of 58db-62db, which also includes the power source. Mr. Storch concluded that the condition state “Pumps shall not exceed 58dB-62dB....” be modified to include “at the project boundary.”

Applicant proposed condition 11 be modified to:

Lake: The developer shall record a covenant stating that the excavation pit shall only be filled with water **and shall not be used for C&D or other waste.**

Mr. Storch agreed.

Applicant proposed condition 18 be modified to:

24-Hour Contact: The applicant will provide a 24-hour a day contact manager, including phone number, to address any issues, concerns or emergencies **and resolve within 24 hours, or at most, one week.**

Mr. Storch agreed and added: **the 24-hour contact telephone number will be provided to any neighbor who wants to have it.**

Mr. Storch then modified the conditions further, to which Mr. Morris agreed, as follows:

Applicant proposed special condition 9 be modified to:

Annual Progress Reports: The applicant shall submit an engineer’s certification and progress report to the Planning and Development Services Division on an annual basis outlining that the excavation is proceeding in accordance with the terms of the excavation permit and/or DRC requirements and/or conditions, **and to provide information of location of delivery of fill and traffic improvements that will be reviewed based on direction of fill.**

Applicant special condition 15 be modified to:

Monitoring Wells: The applicant shall install and operate a monitoring well between the excavation-site and south property boundary adjacent to the Falling Leaf Drive properties. **Logs will be provided to the county and the St. Johns River Water Management District on a monthly basis.**

1 Mr. Storch asked an additional provision be included, which requires signage for trucks
2 entering the highway (two signs on the south and two signs to the north, for the total of
3 four signs).

4
5 Chair Severino open the floor for rebuttal.

6
7 Mr. Storch addressed Ms. Higdon's claim of losing \$30,000 on the sale of her house.
8 He noted the sales comparison was based on the sale price in 2008.

9
10 Mr. Storch stated that the applicant agreed to all county staff recommendations,
11 voluntarily added conditions such as signage, additional reporting to SJRWMD, truck
12 safety protocols, and agreed to Mr. Morris's modifications.

13
14 Additional discussion ensued regarding the modification requested for Condition 10.

15
16 Member Young inquired about the size of the trucks to be utilized.

17
18 Mr. Storch confirmed 18 cubic yard trucks will be used, and then clarified that if all soil is
19 not excavated, the excavation will be shut down in five years, including restoration.

20
21 Member Van Dam asked if the SJRWMD monitoring was a condition offered by the
22 applicant.

23
24 Mr. Storch answered in the affirmative and agreed to add it to the permit, if requested.

25
26 Member Bender asked to address trucks that are fully loaded and crossing over the
27 southbound lane to go north.

28
29 Mr. Storch stated that all trucker drivers will operate within the established safety
30 protocol. He added that if FDOT asks for something additional, the applicant will
31 comply.

32
33 Member Bender asked who will be responsible to monitor truck driver standards.

34
35 Mr. Storch replied that a site manager will be responsible for monitoring driver
36 standards. He added that the neighbors will be provided with a 24-hour contact to
37 report any infractions. He noted that safety protocols will be enforced, and will be a part
38 of any contract with truckers.

39
40 Chair Severino asked Mr. Ashley for comment on the modified conditions.

41
42 Mr. Ashley noted the staff recommended conditions are on pages 3-5 of the report,
43 which include conditions reviewed in January and that the modified list of conditions
44 Mr. Storch provided may be found on page 19 of the staff report. He added that the
45 new modifications, as discussed, can be incorporated either on the existing staff list or
46 the applicant's list.

47
48 Commission discussion ensued.

1 Member Young expressed his concern about truck acceleration and deceleration.

2
3 Member Van Dam stated that the special exception process allows for too much
4 information presented after the case that could be relevant to a vote. She noted the
5 applicant is doing his best to minimize the impact during the five-year construction
6 period and noted that the truck traffic will be temporary. She then asked Mr. Ownby if he
7 planned to continue to live on the property.

8
9 Mr. Ownby stated he had no intention of moving.

10
11 Member Mills stated that he believes if the lake area were to be developed with homes,
12 the traffic impact would be much greater. He then added that the applicant is willing to
13 do the project the right way.

14
15 **Member Mills moved to FORWARD special exception case S-15-008 to the county**
16 **council for final action with a recommendation of approval, with the staff**
17 **recommendations and the revised recommendations agreed upon by the**
18 **applicant and Mr. Morris.**

19
20 **Member Young seconded the motion. Motion CARRIED unanimously (6:0).**

21
22 **V-15-018** - Application of Eric and Sherry Sergi, agent for Trivett Group Inc., owner,
23 requesting variances to the minimum yard requirements for a proposed single-family
24 dwelling and an existing accessory structure on Rural Residential (RR) zoned property.
25 The property is located at 2139 Hontoon Road, DeLand; \pm 2.2 acres; 7925-03-00-0090.

26
27 Scott Ashley, AICP, Senior Zoning Manager, presented the staff report.

28
29 Eric Sergi, 232 Fairway Pointe Circle, Orlando, Florida, 32828. Mr. Sergi confirmed he
30 had read all the conditions listed in the staff report and had no questions.

31
32 Member Mills asked if there were plans to build a seawall at the edge of the property
33 towards the waterfront. He expressed his concern as it appears there is only
34 approximately two feet before the property slope towards the canal.

35
36 Mr. Sergi explained there is a porch with a retaining wall and he is waiting for
37 confirmation from the engineer if it will be viable.

38
39 Member Mills stated he is concerned about the erosion problem and the drip of the roof
40 that goes on the slope.

41
42 Mr. Sergi acknowledged the possibility of erosion.

43
44 Member Mills asked if the request includes the existing concrete patio.

45
46 Mr. Sergi responded that it does not.

47
48 Member Mills asked to confirm his understanding that there would be an approximate
49 five-foot flat surface between the edge of the dwelling before the start of the slope.

1 Mr. Sergi answered in the affirmative.

2
3 There was no public participation.

4
5 Member Van Dam asked to confirm the requirement stated in the Environmental
6 comments (page 13 of 21 of the staff report) would be covered in the staff
7 recommendation 2 (page 6 of 21 of the staff report).

8
9 Mr. Ashley responded that there will be a wetland buffer alteration, which will not impact
10 the wetlands. As part of the building permit process, a request for modification will be
11 required as it relates to the buffer.

12
13 Member Mills asked if the permit would require a minimum flat area between the
14 building and the slope of the canal.

15
16 Mr. Ashley responded that would be to the discretion of the Building staff.

17
18 Member Mills asked if it would cause issues for the applicant to require a minimum five-
19 foot flat area between the building and the beginning of the slope.

20
21 Mr. Ashley responded that it would be to the discretion of the Building staff when the
22 final plans are reviewed. It was not a concern of the Planning staff.

23
24 Member Mills asked if there could be a condition added to require a buffer between the
25 side of the building and the beginning of the slope at the bank of the canal.

26
27 Mr. Ashley responded that condition could be added.

28
29 Mr. Sergi commented he is looking into putting in a gutter system to help relieve the
30 concern.

31
32 Ms. Van Dam asked if the motion should also include the condition of a required
33 minimum five-foot flat area between the building and the beginning of the slope.

34
35 Member Mills responded that he agrees to approve with recommended staff conditions
36 because this concern would be addressed during the permitting process.

37
38 **Member Van Dam moved to APPROVE variance case V-15-018 requesting**
39 **variances to the minimum yard requirements for a proposed single-family**
40 **dwelling and an existing accessory structure on Rural Residential (RR) zoned**
41 **property, subject to the following conditions:**

- 42
43 1. The waterfront yard variance is limited to the single-family dwelling as
44 shown on the enclosed property survey from Hitt Land Surveyors, Inc.,
45 FILENAME: BP-9, signed and sealed with date of January 29, 2015. Any
46 future expansion of the single-family dwelling beyond the required yards
47 established by the RR zoning classification and Variance 1 shall require a
48 separate variance.

2. The applicant's or authorized agent(s) shall obtain and complete all required development and building permits and inspections for the proposed single-family dwelling and any other accessory structures.

Member Bender seconded the motion. Motion CARRIED unanimously (6:0).

S-15-019 - Application of Michael Wojtuniak, P.E., agent for Kenneth Floyd, owner, requesting a special exception for a garage apartment on Transitional Agriculture (A-3) zoned property. The property is located at 3070 Butler Ridge Road, Deltona; \pm 2.52 acres; 9112-00-00-0315.

Scott Ashley, AICP, Senior Zoning Manager, presented the staff report.

Michael Wojtuniak, Engineering Permitting, Inc., 311 South Woodland Boulevard, DeLand, Florida, 32720. Mr. Wojtuniak stated that he was the agent for the applicant and offered to answer any questions. He acknowledged and accepted all staff recommended conditions.

There were no questions from the commission.

There was no public participation.

Member Young moved to FORWARD case S-15-019 to the county council for final action with a recommendation of approval, with the following three staff recommended conditions:

1. The special exception is limited to one 1,650 square-foot garage apartment building containing a maximum living area of 798 square feet based on the Variance Site Plan (Sheet No. C-1) prepared by Engineered Permits, Inc. and dated February 23, 2015, and including the architectural floor plans and elevations (Sheets A-2 through A-5) prepared by Engineered Permits, Inc. and dated February 19, 2015. Any future expansion of the structure beyond the current footprint, and not in compliance with A-3 classification yard requirement(s) and garage apartment code definition, shall require approval of a separate special exception and/or variance, building permit and inspections.
2. The property owners or authorized agent(s) shall obtain and complete all required building and Health Department permits and inspections for the proposed garage apartment.
3. The area of the proposed garage apartment currently contains a carport surrounded by scrub. A gopher tortoise burrow was located approximately 32 feet behind the existing carport. Construction or clearing cannot occur within twenty-five (25) feet from the entrance of any gopher tortoise burrow. If this activity cannot be avoided near the burrow as described, a relocation permit is required from the Florida Fish and Wildlife Conservation Commission.

1 **Member Mills seconded the motion. Motion CARRIED unanimously (6:0).**

2
3 **S-15-020** - Application of Daniel Levesque, owner, requesting a special exception for a
4 recreational area on Prime Agriculture (A-1) zoned property. The property is located at
5 385 Gobblers Lodge Road, Osteen; ± 10 acres; 9307-01-04-0080.

6
7 Scott Ashley, AICP, Senior Zoning Manager, presented the staff report.

8
9 Ronald S. Levesque, Jr., 1140 W. 15th Street, Orange City, Florida, 32763. Mr.
10 Levesque represented the applicant, Daniel Levesque, because the applicant could not
11 remain for the hearing due to work obligations. Mr. Levesque assured the commission
12 that the applicant understands and accepts all the conditions recommended by staff.

13
14 Chair Severino asked that Mr. R. Levesque confirm that the applicant understands the
15 conditions and agrees with them.

16
17 Mr. Levesque responded yes.

18
19 There were no questions for the applicant from the commission.

20
21 There was no public participation.

22
23 **Member Young moved to FORWARD case S-15-020 to the county council for final**
24 **action with a recommendation of approval, with the following five staff**
25 **recommended conditions:**

- 26
27 **1. Any exterior lights associated with the archery facility are to be located no**
28 **closer than 50 feet to the property line; be directed internal to the site; be**
29 **shielded from adjacent neighbors; and, be turned off no later than 9:00 pm.**
30
31 **2. All areas and activities associated with the recreational facility shall be**
32 **located no closer than 50 feet to the property lines.**
33
34 **3. The property owners will be responsible for obtaining appropriate building**
35 **permits for any signage, electrical, permanent or temporary structures or**
36 **appurtenances thereto constructed upon the property.**
37
38 **4. Signage shall be limited to one sign at the entrance to the property**
39 **measuring no greater than 16 square feet. The sign shall not exceed 6 feet**
40 **in height and shall be located no closer than five (5) feet to the property**
41 **line.**
42
43 **5. There shall be no loud speakers or call system.**
44

45 **Member Bender seconded the motion. Motion CARRIED unanimously (6:0).**

V-15-023 – Application of Gary Herndon, agent for Herndon Properties, LLC, owner, requesting variances to the minimum yard requirements for a single-family residence on Prime Agriculture (A-1) zoned property. The property is located at the east side of Maytown Road, Oak Hill; \pm 1.93 acres; 8447-02-07-1990.

Scott Ashley, AICP, Senior Zoning Manager, presented the staff report.
Gary Herndon, 1033 Bells Highway, Walterboro, North Carolina, 29488. Mr. Herndon stated that he had nothing to add to the staff report.

Public participation:

Clifford Umschelp, P.O. box 107, Oak Hill, Florida, 32759. Mr. Umschelp read the following into the record:

The subject parcel noted above briefly recorded as 199 is situated adjacent to a private airport and is without legal access to the runway. It is located in such a position which should the variance be granted, poses a clear and present danger to the lives and safety to those members of the airport runway owners group, whose properties lie in close proximity to runway activities as well as members of the aviation community who also make legal use of the aforementioned aircraft runway for purposes of landing and taking off from the subject airport runway. The subject parcel noted above lies beneath the final approach course. The final approach path of aircraft executing an approach to landing on the subject north/south runway. Landing aircraft typically cross over the subject parcel at an altitude varying from 50-75 feet above ground level. This close proximity to a landing touchdown zone constitutes a distracting threat to the safe execution of a successful landing, thus endangering the lives and safety of the pilot and passengers. The subject application has made little or no effort to successfully locate and purchase an alternative piece of property of requisite size and location without the necessity of filing a request for variance. Thus the applicant herein seeks to thrust the burden to obtain an appropriate parcel already in compliance onto the shoulders of the members of the Volusia County Planning and Land Development Regulation Commission thereby relieving himself the burden of due diligence. The applicant has failed to notify all interested runway property owners of his intention to seek a variance in the subject matter. In fact he has limited his notification process solely to friendly owners of newly adjoining properties to his above-referenced lot. The parcel has been the subject of a previous request for variance and has been previously denied a building permit. Applicant's application for variance is extremely convoluted and disrupting and leading to confusion and misconception. There is no summary survey of his nonconforming lot notwithstanding this lack of clarifying the survey, the applicant substitutes a request for a multifaceted maintenance on easements which waiting that setback are requested measured from easement lines rather than from property lines. No visual survey aide has been provided. The applicant has submitted false and misleading information as to ingress and egress rights attached to his property and affecting the landing strip at Blue Ridge Airport. No such right exists for the benefit of property of the applicant; he does not have the right to use the airport property for any purpose whatsoever. I am one of the original airport property owners who designated a portion of my property to create the airport runway, which does not extend to lot 199 of the applicant.

1 Mr. Umschelp expressed his concern that he and others in the community were not
2 notified. He then requested that the variance be denied because of lack of notification
3 and the applicant's lack of due diligence.

4
5 Member Van Dam asked Mr. Umschelp if his property abuts the subject property.

6
7 Mr. Umschelp stated his property does not abut the subject property.

8 Member Van Dam asked if his property is located in the community.

9
10 Mr. Umschelp answered in the affirmative.

11
12 Member Young asked to confirm if he is an owner of the flight organization.

13
14 Mr. Umschelp answered in the affirmative.

15
16 Member Young asked if he is an officer or a representative of the flight organization.

17
18 Mr. Umschelp stated he is a donor of property for the creation of the runway.

19
20 Member Young asked to confirm the objection to the variance.

21
22 Mr. Umschelp answered in the affirmative.

23
24 Member Bender asked for clarification about the donation of the easement for the
25 runway.

26
27 Mr. Umschelp explained that property owners located on the west side of the runway
28 donated a portion of the east end of their property to form the runway.

29
30 Vaughn Grasso, 1701 Maytown Road, Oak Hill, Florida, 32759. Mr. Grasso expressed
31 his concerns, which included lack of notification, airport runway required setbacks, a
32 lawsuit that addressed which parcels have rights to the airport runway, safety and the
33 fear of a lawsuit from a plane mishap.

34
35 Warren Brull, 1725 Maytown Road, Oak Hill, Florida, 32759. Mr. Brull explained the
36 original agreement of the property owners to create the runway. He then commented
37 on a legal decision that modified easements for the property owners on the west side of
38 the runway to have rights to the runway. He further stated that the easements of the
39 subject property lot 199 were not included in the decision.

40
41 Member Young asked for clarification about the lawsuit as it relates to the right-of-way
42 use of the runway.

43
44 Mr. Brull explained the lawsuit and at the judge's decision to modify the easements on
45 the west side for properties abutting the runway to have rights to the runway. The judge
46 also denied a request by the prior owner to include the subject property lot 199
47 easements for runway rights.

1 Brad Jones, 1815 Maytown Road, Oak Hill, Florida, 32759. Mr. Jones is in support of
2 the applicant. He explained he is an active pilot and sees no eminent danger. He
3 stated that the hearing should be about variances and not runway rights. He then
4 stated that since he moved to the community, he has maintained the shell road on
5 easements that do not belong to him without help from the surrounding property
6 owners. He said the applicant has offered to help maintain the shell road. He then
7 stated there was a barn erected 300 feet from the runway by Mr. Grasso's brother and
8 there were no protests to building it. He said the airplane path does not go over the
9 proposed building. Further he stated a pilot who houses his plane on Mr. Grasso's
10 property uses the runway, but is not a member of the community. He said he feels the
11 applicant would be an asset to the neighborhood for his willingness to maintain the road
12 and property.

13
14 Member Van Dam asked to confirm where Mr. Jones's property is in comparison to the
15 subject property.

16
17 Mr. Jones explained his location, the structures located on the property, and the position
18 of the runway.

19
20 Member Bender asked if there were safety issues if a plane had an emergency landing.

21
22 Mr. Jones clarified there are always safety issues. He responded that the air traffic is
23 minimal and there is usually only one flight a month in and out of the airport.

24
25 Member Young asked if the rights to use the runway would pass to a new property
26 owner.

27
28 Mr. Jones answered in the affirmative.

29
30 Member Mills stated that it is not the purpose of the commission to decide rights of use
31 to the runway. He further stated that the intent of the hearing is to decide if the
32 applicant can have reasonable use of his property.

33
34 Chair Severino asked if proper notice had been executed for this case.

35
36 Mr. Ashley stated that proper notice had been done. He explained that the mailed
37 notice is only required to be sent to the adjoining property owners. He said the
38 applicant posted his property with a sign provided by county staff as required.

39
40 Chair Severino asked if FAA input was necessary.

41
42 Mr. Ashley stated the airport is a private airport and FAA would be involved with flight
43 safety. He further stated there may be licensing with the state for the actual airport
44 itself. He said that he is not familiar with the suit discussed or if the applicant has rights
45 to the runway. He then reiterated why the staff had recommended the application for
46 approval.

47
48 Member Van Dam asked if there is any knowledge of additional regulations by the FAA,
49 or any other agency, that impact the proximity of a home built close to a runway.

Mr. Williams stated that he does not know what level the FAA would be involved for a private airport. He stated if the variance is granted, it does not mean a structure can be built because of permitting. He further stated that some of the discussion has not been relevant to the setback variances.

Member Mills moved to APPROVE variance case V-15-023 requesting variances:

- 1) a variance for a south front yard from the required 100 feet to 87.52 feet;
- 2) a variance for the east front yard from the required 100 feet to 75.53 feet;
- and,
- 3) a variance for a north front yard from the required 100 feet to 76 feet for a single-family dwelling on Prime Agriculture (A-1) zoned property, subject to the following condition:

1. The applicant shall obtain all applicable building permits prior to construction of any structure on the subject property.

Member Alleva seconded the motion. Motion CARRIED unanimously (6:0).

PUD-15-026 - Application of Robert A. Merrell III, Esq., attorney for 1057 Oceanshore Investors, LLC, owner, requesting a Major Amendment to Resolution No. 2007-157 including, but not limited to, new uses, parking requirements and alternative master plan on Business Planned Unit Development (BPUD) zoned property. The property is located at 1057 Ocean Shore Boulevard, Ormond Beach; \pm 1-acre; 4203-00-03-0030..

Scott Ashley, AICP, Senior Zoning Manager, presented the staff report, including new development agreement revisions.

Member Mills asked for clarification on the notification process for condominiums.

Mr. Williams explained the notification of adjoining property owners is a county requirement. Notification is based on the Property Appraiser's records and if the Home Owner's Association is listed as the owner, that is where the notice will be sent. He further stated that the Home Owner's Association then notifies the individual condominium owners.

Members Mills asked if the permit to extend the seawall was not to be taken into consideration at this hearing.

Mr. Williams affirmed. He further explained that the seawall is in the plan to show what the applicant would like to do in the future, but it is not part of the approval process at this hearing.

Robert Merrell, Cobb Cole, 149 South Ridgewood Avenue, Daytona Beach, Florida, 32114 representing Minto Communities-Florida. He then introduced Brian Cale representing Minto Communities-Florida, project manager. Mr. Merrell then gave a summary of the project. He then stated that he would like to make part of the record the revisions made to the Development Agreement mentioned by Mr. Ashley. He further stated that with the two changes to the Development Agreement, the Ocean Shore Condominium Association, located adjacent to the project, voted unanimously to

1 support the request. Mr. Merrell stated the applicant is in agreement with the staff
2 recommendations.

3
4 Mr. Merrell addressed the seawall. He explained the seawall was built in the 1950's,
5 and the applicant would like to renovate it to match the surrounding seawalls. He stated
6 that the reason it is mentioned in the report is because, if the applicant meets all
7 permitting requirements, they do not want to come back for another zoning hearing.

8
9 Member Mills asked for clarification if moving the seawall northward was to align with
10 other existing seawalls.

11
12 Mr. Merrell affirmed.

13
14 There was no public participation.

15
16 Member Van Dam asked if the staff recommendations will include the agreement
17 reached with the Ocean Shore Condominium Association.

18
19 Mr. Merrell responded the agreement was included.

20
21 Mr. Ashley clarified that the motion would include the staff recommendations and the
22 two changes in the Development Agreement, which the commission received on
23 April 13, 2015.

24
25 **Member Van Dam moved to FORWARD case PUD-15-026 to the county council for**
26 **final action with a recommendation of approval, with the following two staff**
27 **recommended conditions and two applicant changes in the Development**
28 **Agreement:**

- 29
30 **1. Development of the parcel shall be subject to submittal of a final site plan**
31 **to the Land Development Division for review and approval prior to building**
32 **permit application. The site plan must comply with applicable zoning and**
33 **land development code requirements. The site shall be developed in**
34 **accordance with the site plans prepared by Zev Cohen & Associates,**
35 **revision date March 25, 2015, as may be modified by these conditions**
36 **and/or modified by further county review and/or other permitting**
37 **requirements, and with the following conditions:**

- 38
39 **a. Comments from Jennifer Winters, Environmental Specialist III, shall**
40 **be addressed at the time of site plan review:**

- 41
42 **i. The wall and required dune planting project shall be of a low**
43 **profile design as required in Division 9. Beaches and Dunes**
44 **Sec 50-349. *Armoring standards.***
45 **ii. The proposed fire pit location shall be shielded so as not to be**
46 **visible from a person standing on the beach. More detailed**
47 **lighting plans shall be provided to ensure compliance with the**
48 **Sea Turtle Lighting Ordinance.**

1 iii. At the time of site plan approval, the existing stormwater pipe
2 that is draining into the natural dune vegetation shall be
3 redirected to avoid eroding the dune system.
4

5 2. The Development Agreement shall be revised to satisfy staff comments as
6 shown in the strikethrough and underline format attached to this report.
7

8 3. Upon the issuance of a Certificate of Occupancy for the development
9 described in this Alternative Master Development Agreement, the
10 development described in the First Amendment to the Oceanic Villas BPUD
11 Master Development Agreement shall not be constructed.
12

13 4. Hours of operation will be from 8:00 a.m. to 8:00 p.m., but may be extended
14 to 12 midnight for special events.
15

16 Member Young seconded the motion. Motion CARRIED unanimously (6:0).
17

18 **OTHER PUBLIC ITEMS**

19
20 None.
21

22 **STAFF ITEMS**

23
24 None.
25

26 **STAFF COMMENTS**

27
28 None.
29

30 **COMMISSION COMMENTS**

31
32 None.
33

34 **PRESS AND CITIZEN COMMENTS**

35
36 None.
37

38 **ADJOURNMENT**

39
40 Having no further comments from the public, staff, or commissioners, Chair Severino
41 thanked everyone and adjourned the meeting at 3:57 p.m.