

SPEAKER:

The June 17, 2021 hearing for the planning and blended element revelatory commission is now called the order. If I could please have everyone silence any audible devices that they could have if you could join me for the Pledge of Allegiance.

I pledge allegiance to the flag of the United States for America. And to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

SPEAKER:

Good morning. I would like to thank everyone for joining us this morning in the chambers and those of you joining us through the PO DRC webinar. There are forms in the rear of the dais back here if anyone would like to speak on any of the cases being heard today, if you will fill one of those out and hand it to my immediate left to miss Cushing's. And then you can be heard at that time, when the cases brought forward. Could I please have the roll call?

SPEAKER:

Yes, sir. (role call)

SPEAKER:

Thank you. We do not have any minutes to discuss today. I will move right on in to the comments to be made. For those of you joining us this morning through the webinar, after the staff has percentage your case today and the commissioners have had an opportunity to ask any questions of staff, Ms. Summers will engage the mics. At that time I will ask you to state your name and address for the record.

This will give you an opportunity to add any pertinent information and answer any questions the commissioners may have about your case. We also may have request to take for or against the case is being heard today and have time to have public part as a patient for those of you in the chambers, I will ask you to come forward so you can be recognized.

For those of you joining us through the webinar, Ms. Summers will engage your microphone so you can be recognized. At that time, I would like for you to state your name and address for the record and we will be limiting you to a three minute time limit and I will give the commissioners opportunity to ask any questions they may have for you.

After the comments have been heard, I will give the opportunity to address any concerns and answer any questions the commissioners may have. At this time, I would like to turn it over to Mr (Name) for legal comments.

SPEAKER:

I would just like to remind the commission and members of the public that decisions by this body on special exception cases and cases which result in property from one plastic is to another pursuit of zoning ordinances are recommendations only to the County Counsel and do not constitute a public hearing, final hearing.

New evidence may be introduced at the County Counsel public hearing. Decisions on variances made by the this body constitute final action subsequent to an appeal to county counsel. No new

evidence may be presented at the time of the County Counsel public hearing on the appeal.

The party that appeals such a decision is confined to the record before this body. Hearings on rezoning, social exceptions and variances are quasijudicial meeting the body is acting more like in a court and must take into account every thing for Santa. The decisions must be based on competence substantial evidence in the record, which has been defined as evidence that a reasonable mind what except to support conclusion.

SPEAKER:

Thank you. While we are on legal comments I would like to ask the commission to disclose any expert to communications that of occurred before or during the public hearing and to which a vote is to be taken on any quasijudicial matter. I will start with Mr Feller.

SPEAKER:

None.

SPEAKER:

None.

SPEAKER:

None.

SPEAKER:

None.

RONNIE MILLS:

I have to make a disclosure this morning, one of the cases, C2924, Miss Jaclyn Campbell is my sister-in-law and I've spoken with legal about this and will let Mr (Name) explained that this morning.

PAOLO SORIA:

Thank you, Mr chair. This body is subject to the ethics code and therefore subject to chapter 112 for voting conflict. The relevant portion is because you are appointed, it states that no appointed public matter will participate in any matter related to the officer's private gain or loss or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

A relative is defined in the statute as any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Noticeably absent is a sister-in-law.

So the sister-in-law is not a relative as defined in the statute. And because your wife has no special private gain or loss you do not have the voting conflict to vote on this particular matter.

RONNIE MILLS:

Thank you. OK. I have disclosed that and we do not have any matters to be continued or withdrawn, do we?

SPEAKER:

No, sir.

RONNIE MILLS:

We will move right on his next business. Miss Shelley, can I get you to read the next case into the record?

EDITH SHELLEY:

First cases case S – 21 – 067, a special exception for a role event session on prime agricultural zone property.

RONNIE MILLS:

Thank you. Good morning, Miss Smith. Can I get your name, I mean, name for the record, you are staff, so... You don't need your address, I don't know. Go ahead and state your name. If you want to give this a staff comment.

SPEAKER:

This is a special exception for a role event centre. The owner received a code violation for operating a wedding venue in their home. She wants to come into compliance. She wants to continue living on the property and continue her wedding business.

There is an existing residence, this is on State Road 44, it is zone A 1 agriculture, it is almost 15 acres in size, and also part of the (unknown term) plan and there were goal is to maintain the existing rural agricultural natural, cultural and scenic values associated with the (unknown term) community.

There are active grazing (inaudible) on the property but this is not considered agri-tourism and the reason why is an agri-tourism activity does not include construction of new structures or additional structures and facilities intended primarily to post shelter, transport or otherwise, and it numbers of the general public.

She has a few steps to go through. This is step one, the special exception process. That needs to be approved by the County Council. Step two, she will need to build a home on the house to live in. Step three, she will need to go through a change of use to change the residence into a commercial structure, commercial assembly structure, and step four is a final process where she will go before the develop into review committee to hash out all of the engineering and environment issues.

The applicant attended a staff review meeting and received comments from our staff. She has an idea of what this process will entail. The comments are on page 30-39 in your packet.

I don't know how to change that... Step one, here we are. We have criteria for rural event centres. This is a relatively recent ordinance of ours. You need to have 10 acres, she has 14.97 acres. It has to be served by a public road, she is on State Road 44. You have to have 20 foot wide landscape buffers, she has 35 feet in the front, the east and west sides are both 20 feet, and on the south she is approximate 600 feet of heavily treed area.

She has to meet all of the fire and building codes for a commercial structure. In this case, that would be sprinkle in the building. She is not allowed to have any events between 11 PM and 8 AM. No loudspeakers or call systems are allowed to be heard on the adjoining properties. Any artificial lights would have to (inaudible) from the adjoining properties.

She has to have space for parking and ADA requirement. She is proposing 40 spaces and proposing to Us at 120 people. You cannot have overnight stays and she has to go through the final site plan process to complete this.

We also have to look at the standard special exception criteria. That is consistency with the zoning code in the plan, looking at the public interest, looking at traffic congestion, seeing if it would be a public nuisance, looking at the neighbourhood character, again, the local plan plays in here. If there are going to be any impacts to the environment, and we found the venue to meet all of these requirements.

The closest neighbour is a church to the west. There is a 20 foot landscape buffer there. There is also an additional 50 foot pasture where they have grazing rights. There is 70 feet on the west side of the property. Let's see...

The church provided a letter of support and that is on page 40. That is the closest property. Traffic engineering did note some congestion on State Road 44 on the weekends. The venue will generate a net increase of 144 trips and that is on page 24 if you wanted to look at the analysis and what our folks said about that.

They say this will require some mitigation for the traffic on the weekends. That will be determined during that fund cycling process. Our environmental staff does not object to the special exception.

With that, our staff recommendation is to forward the Peschel exception case number S21067 to the County Council for final action with recommendation of approval, subject to the conditions on page 10 of 48. You can barely see them on the screen. They were on page 10 as well.

I believe the applicant is present and has a presentation as well and is happy to answer any question you may have.

RONNIE MILLS:

Thank you. Do we have any questions from staff?

SPEAKER:

Not at this time.

RONNIE MILLS:

Thank you very much. Is the applicant present?

SPEAKER:

Good morning, Jessica with (unknown term) law firm, 149 S. (inaudible) Avenue, Daytona Beach. I don't have a formal presentation, I can't say it better than staff, I wanted to thank them for going through this process.²

Our client is a property owner who in 2017 had a dream of opening a wedding venue. Like we see in a lot of these cases, they were not sure what boxes they had to check to get there. So when County staff told them they had to go through a special exception process, they pose operations and we have been working with the county ever since.

We are excited, we think we have done a good job of checking the boxes on the special exception

criteria. We've got a little more of a buffer on the front than is necessarily required, it is 20 feet, we are giving 35. Followed by a cow pasture. That would be a great scenic view, I think.

There was a picture on the screen, I don't know if we can go back. I think it is a fantastic site. I would get married there, I got married at a barn in Tallahassee. The owners want to build another residence on the site and this will be converted to the commercial structure. We will go through site plan to make sure there is an elevator and all of those concerns are addressed.

We are here to answer any questions that you have. We are excited to have a letter of support from our property owner and are ready to move forward and have this open.

RONNIE MILLS:

Thank you. Do we have any questions?

SPEAKER:

I do. I have a couple of questions. Is it currently operating?

SPEAKER:

It is not.

SPEAKER:

When did it shutdown?

SPEAKER:

2017.

SPEAKER:

They opened and shut down in 2017?

SPEAKER:

Yes, they were alerted by staff it was not permitted, they close operations, had a Facebook page up, took that down and we have been working with staff to get it up.

SPEAKER:

The residence they build in 2017 is a single-family residence was not intended as a residence.

SPEAKER:

It was converted to the residence as a single family residence. She lives there now and has lived there for four years.?

SPEAKER:

But it was constructed in 17 and the venue started and 17. So was the intent of the structure initially a single family residence or a venue?

SPEAKER:

I believe they intended both.

SPEAKER:

Out of the same building?

SPEAKER:

Yes, it was constructed to single-family standards, she also wanted to operated wedding venue.

SPEAKER:

Staff has always said it is not an entertainment section can I you have no animals on site other than the grazing animals?

SPEAKER:

We have grazing cows because the structure is new, it does not into the agri-tourism exception. That is why we are going through the special exception process. None of the group processes take place in the homecare

SPEAKER:

Looking at the traffic study, for full disclosure I live less than a mile from there. That intersection is basically acceleration zone from 415 for people heading east to the beaches, especially on the weekends. Is there a lease telling going into this property?

SPEAKER:

That is something we need to take a look at the requirements that will be the improvements that we need or the site plan. I know that what we have generally seen for other venues, not in this area that there is sometimes a requirement that they hire an off-duty police officer to manage traffic during events.

We have not gotten to that level of detail on the traffic mitigation side yet but we will during site plan review.

SPEAKER:

Is there any plan, I believe if memory serves, the church directly to your East has a deceleration (inaudible), is there any plans to use theirs and use cross access?

SPEAKER:

We can look at that.

SPEAKER:

I'm only looking at that from a, a police officer standing there will create worse injection, not help the situation. That is all the questions that I have. Thank you.

RONNIE MILLS:

Any other questions?

SPEAKER:

I would like to ask if the applicant is fine with all 13...

SPEAKER:

Yes, we are in agreement with the staff recommendation's.

Audio lost

****Audio restored****

SPEAKER:

How many single-family structures can you have on the property?

SPEAKER:

We can have one dwelling unit per 10 acres. However, in this case we also have a vision in our code that says agricultural properties can have two principal uses. So we are doing this through our ordinance for the rural event centre which would allow this.

SPEAKER:

So basically she has to follow all of the criteria of a rural event centre in order for the existing residents to be taken out of that status and into an event centre.

SPEAKER:

That's correct.

SPEAKER:

So she can live on the property while she is building the new property.

SPEAKER:

That is my understanding.

SPEAKER:

For a short period of time there will be two single family homes on the same property.

SPEAKER:

With one occupied, correct.

SPEAKER:

With one occupied. OK. I know this probably wasn't in your purview, but when the first residents came through did anyone question the fact that the single family residence had urinals in the bathrooms? I'm just curious, I have just always wanted one in my own bathroom.

SPEAKER:

We do have members from our code compliance group who have dealt with this violation and they can speak to that.

SPEAKER:

OK, I'm just looking into the intent from the beginning. That is all I have, thank you.

SPEAKER:

Do you have a question (Name)?

SPEAKER:

Further to that, they were given a certificate of occupancy to live in this as a single-family dwelling. They have a current certificate of occupancy. As they build a new one, that will then become the

single-family and this will transition over to a rural event Centre? So there will still be in the future, one single family residence in one event Centre on this property.

SPEAKER:

Yes her.

SPEAKER:

Thank you so much.

SPEAKER:

Any further discussion on the motion? We're going to take a vote, all those in favour?

SPEAKER:

Did you want to bring up, she mentioned that there is another staff member who could more easily

SPEAKER:

If her staff member can add more insight, I would be gladly interested in listening to it. No she wasn't thrilled and coming up. (Laughs)

SPEAKER:

I just wanted to make sure that everything was discussed.

SPEAKER:

Hi Pam (Name), Volusia County Co. compliance, we had meetings with (Name), if I am pronouncing that wrong I apologize, that (Name) had brought up the fact that this had been originally a single-family residence permit, that was issued to build a single-family residence, however, during the inspection period they found a giant gathering place, men's room, ladies room, then a separate area where she was living at the time.

SPEAKER:

So that goes back to my question of intent on the original.

SPEAKER:

And so, she did state that she wanted to have, there was a wedding event Centre, she had a Facebook page and it got taken down, I have not seen in two years. She just said that she wanted to live there while she was using it. As the event Centre.

SPEAKER:

OK, thank you. Well, I think this will be a great asset to the community, but two of my greatest concerns would be the traffic in the area and then the (indiscernible by captioner) of the wedding Centre. The inbound is not a problem, the outbound, I have been to many weddings and always had someone take me home. So that is my biggest concern having some and take me out of the event Centre without a deceleration lane.

And secondly, what happens midway through the build of the second house? If they change their mind? To this current structure. How do you rectify that? Does it turn into a barn, do they have to take the kittens out?

SPEAKER:

On the event Centre, you can have a catering and kitchen set up, you can have bathrooms, obviously. For the weddings and things at that. I do not know what her, if they go through trying to build a single-family residence and she changes her mind, I cannot speak to that.

SPEAKER:

I understand, I am playing devil's advocate, all this and we have two family structures on one site and were asking for variance on that and I do not have any support for that.

SPEAKER:

Can I make a comment as well? You mentioned as well that they could have a kitchen on site?

SPEAKER:

It is an event Centre,

SPEAKER:

I have notice on page 7 it said that no food will be cooked on site, that it will all be limited to catering.

SPEAKER:

Then the kitchen will have to go. If that what is says, if that is that one of the provisions, then that has to go.

SPEAKER:

Just a quick clarification, just answer your question, having work with both of the agents and the applicant, she has tried very diligently to try to understand our codes. The fire Marshal has been out there, the building official has been out there, code has been out there, they have been many, many meetings to talk about this process and that is why it was so important for us to put it through that technical review process so that she would be aware that it is not just a matter building a home but there are also other commercial requirements she will need to meet.

I do believe that her intent is to do that, she's been trying to move forward with some of those commercial issues already.

SPEAKER:

So, when my neighbours read this, so that they know what is going on, I just want to be very clear, they are currently not operational as a wedding venue and they cannot be operational until all this is taken care of?

SPEAKER:

That is correct.

SPEAKER:

And it could be a while before this all comes to fruition. OK, thank you.

SPEAKER:

And will this special exemption only work for this person or does it go with the property?

SPEAKER:

Because of the property.

SPEAKER:

One other, that I would like to say, to Frank's comment about what happens if they decide not to do the event Centre, with this A1 property, what is to stop you for doing a farmworkers house. Same thing.

SPEAKER:

You may recall, last month we brought you our ADU recommendations. We are allowing for a second property to be on a property. It could be farmworkers housing if there are other options, if this is on workout.

RONNIE MILLS:

We have a motion on the floor, we have a second, I will move forward with the vote. All those in favour signified by saying I've. No opposable, it it passes.

EDITH SHELLEY:

Case number PUD – 21 – 087, resolution 2003 – 233, to reinstate and amend the birch trust land of element residential planned unit of element.

SPEAKER:

Good morning, this is a request for a reinstatement and an amendment to an existing PUD. The birch trust PUD located near Oak Hill. In 2003, the PUD was approved on a piece of property that is located on the north side at the terminus of Birch Road. Across the street from the Riverwood Park.

This development was for seven lots that were initially three lots consisting of residential structures and then it was expanded to possibly include four additional brand-new lots, today we are dealing with the reinstatement are just two of those seven lots.

The applicant is one of the owners of the lot, on the screen you will see the second lot on the screen, that is what is considered Lot 2 and Lot 4 of the project are the subject of today's case.

Those two owners were the only ones that were in favour of trying to reinstate the PUD. There is not consistency among all the owners to go forward with this process, so we are only dealing with those to lots. Two and four, which with the reinstatements would be considered parcels one and two of the future birch PUD subdivision process if this is approved.

The reason it expired, the applicant at the time went through the subdivision process, however they did not complete that process, they did not get the final (unknown term) done, they sold off the lots before that occurred. In violation of the PD. So under the elements of the PUD requirements in the subdivision regulations were not done. The zoning regulation PUD document did expire, so again, we need to reinstate it and then again, since we are only doing those two lots, amended to only address those two lots that we're talking about today.

With the agreement, we are looking at some of the proposals, there are only two lots, we are proposing amendments to the agreement that address those two lots specifically. There is a new plan, we call it exhibit C, which addresses all seven lots but is more specific in highlighting the two lots that will be called again parcel one and two. We are also talking about some develop in

changes, and the documents currently there are references to lots two and four, that needs to be modified to parcel one and two and we have also made some changes to some environmental requirements and this is in the class to overlay zone.

For the Indian River Lagoon service water improvement area for the Indian River. So, there are special requirements, if there will be any additional septic tanks put in, and then water management for new construction, lot two does have a single-family home, lot one is empty, so that would come up, with the new projects such as new home or accessory structure, on either lot, parcel one or parcel two.

In revealing the case, this was determined, consistent by the County Council in 2003, staff was concerned at that time because it was in the floodplain, they felt confident in what was being proposed and in the PUD we do have a requirement that any new construction must be done with similar construction or on pilings. The applicant on part of this PUD is asking for the ability to subdivide her light in the future, she has a much larger lot, parcel one. The size would comply with standards. Staff at the previous 2003 case had concerns about the floodplain and we still do shape your dive referenced that in the policies and the development agreement on pages six and seven.

Certainly, as part of your deliberations to forward your recommendation to Council to determine whether one additional lot will be a major concern or issue for you and also to forward to the Council.

Based on them again we are just doing a reinstatement, we are addressing minor tweaks and some additional tweaks with the changes since we are only doing two lots, one additional quick thing is the road issue. It is a county maintained road but is not fully within the public right-of-way. With the original seven lots, when we went through a subdivision process there is going to be relocated and fixed that it was located in right away.

We are only dealing with the two lots now. The applicant has agreed to provide easements to the county for maintenance of the road as it exists. Public works is in agreement with that. As part of the future subdivision process, we will be addressing that.

In the rest of the project, if and when it comes back or if there is a redevelopment to the property to the south, which is (unknown term) Park then the road may be addressed and realigned at that time. Since County is maintaining the road, there is no substantial increase or effect on traffic and we are just getting easements to ensure our maintenance.

With that, staff recommend that you forward this to County Counsel with recommendation of approval of the develop and that has been suggested to you with any changes that you sequenced discussion today.

RONNIE MILLS:

Do we have any questions for staff?

SPEAKER:

I've got one question. Is there anything major that has changed that has impacted this PUD?

SPEAKER:

One of the changes I think we are addressing our comments on the resiliency regulations that we have gone through. Address the briefing on page 7... Part of the East Central Florida regional

resiliency plan, that is tied into our concern with the floodplain issue.

In the future, up to several decades, the models to show one of the coastal areas will be flooded. That is the concern, we are adding an additional lot. That is the major change that has occurred in this area.

SPEAKER:

Thank you, Sir. Is the applicant present?

SPEAKER:

Good morning, speaker and Associates. I'm here on behalf of my self as well as Robert.

SPEAKER:

Could I get your address?

SPEAKER:

1019, town centre drive, (unknown term) Florida, I am... I wanted to point out some of the history so you fully understand. In 2003, Rose Birch was alive, her husband had died, they requested the subdivision in connection with estate planning., At the time, the original agreement expired in 2008, rose Birch died in 2007.

None of the heirs apparently realized that they were required, because it was a five year lapse of time, required to recording anything additional to what was already done. The county issued building permits through 2019, based on this development agreement. Because it contained a momentary plan attached to it and everyone assumed that was valid, no one went further to look at it until unfortunately or fortunately I did some due diligence, Scott Ashley pointed out that the agreement had expired and here we are today.

I am requesting, there are obviously two issues in the staff report, is the additional lot that I am requesting. Parcel one consists of a 206 foot lot along the waterway. All of the other lots, the developer to agreement, requires a minimum of 11,000 square feet. All of the other lots are approximate 100 feet in width.

This would allow me to divide that parcel and meet the same requirements as the other lots that are on the property. Unfortunately, I could not get the other lots to join in this application. I could not get them to fully appreciate the importance of this application.

And then, I think, there were some issues of where they wanted the property, so they would not consent to the application. All I am asking is that the property, recognizing that the future land use element does have some language where you discourage additional development within the floodplain, it does however have an exception if it is located within the floodplain that they should be constructed to minimize the amount of additional fill, thereby reducing the potential for flood damage to the structure, supporting facilities, adjacent property can -- consist with the flood as per the land built in code.

Specifically, this developing agreement contains additional requirements, all of the developed has to be on pilings or (inaudible), it has to have stormwater management, it has to have a buffer that they put in place, a wetland buffer, 25 feet on any future development, it has those protections.

I don't believe that there is any real reason to treat this particular lot differently than the other lots that are there. When the remaining lots come in for their application, if you applied the same reasoning, you would not be able to approve those remaining lots. We are requesting, or I am requesting, that you, I be able to split, in the future, subdivide in the future that lot so long as it meets all of the criteria that is established in the existing development agreement.

And then, there is the right of way, I don't think Scott touched on that, the existing right of way, the existing pavement lines up with the existing right-of-way. At some point, the 50 foot right-of-way, the pavement, the paved right-of-way was not within the 50 foot right-of-way.

But when I met with Public Works and there were some additional language in the prior agreement, this road could be vacated, Public Works did not have a problem with vacating it but it was going to be another process because it ends in the RV Park. This is adjacent to an RV park. And that may be a process that we come back to later in the future once everyone is on the same page to address.

But currently, the agreement provides for a minimum of 15 foot right-of-way, which is the area which the existing asphalt crosses over the lots. That should address, Volusia County will have an effect 65 feet of right away there. To a road to nowhere and it is not really needed. I can't find any real rational reason to relocate the road into the right-of-way. When you have a prescriptive easement and the road goes nowhere. It is just additional maintenance.

And then I wanted to point out, in the actual agreement that was proposed, the revised agreement, there were a couple of, I think, items that may need to be adjusted. Of course, I'm proposing that it permit eight upon a future application for an additional subdivision, but on page 6 there was an arbitrary... Wetland buffer for 90 feet, which is the five foot that pertains to the existing residential structure on there. And 116 feet would be 25 feet and I would request that that be 100 feet because, if this lot is divided, it would pertain to the new lot and 116 feet, from what I was told, was an arbitrary number. Thrown out there. I believe the 90 feet is where the actual structure is.

So I am requesting the 116 be changed to 100, just to match up with what a potential lot would be. On page 8, it refers to, I just want clarification of this, the language in here requires the easement across the asphalt for all of the lots. And requires a 15 foot easement. That is what I understand we were looking at adopting today.

There was some language in the staff report that referred to potentially leaving some language in there and I just want to make it clear that what we have in front of us is in fact the proposed agreement for that paragraph two.

In paragraph K, on page 8, it also referred to, in the second sentence, it says in the event the subdivision or final site plan is not submitting on or before the above referenced date, there is no above referenced date. Because that five year period was removed from the expiration of the development agreement.

So it has already been submitted. I've submitted everything at the same time, back in early March for the subdivision. For the review. It has not been completed yet, but it was submitted already. It indicates that it was simultaneously here with but that language in the second sentence referring to an above reference date is a little bit confusing. I would just request to clarify that.

RONNIE MILLS:

Go ahead.

EDITH SHELLEY:

I must be misunderstanding but when I go to the page numbers, I am not finding, in the draft...

SPEAKER:

I'm looking at the draft ordinance.

SPEAKER:

At the bottom of the page or the number she was referring to.

SPEAKER:

I'm sorry, I'm not looking at the top of the page.

EDITH SHELLEY:

I finally found the 116, just wanted to make sure... Got it. I eventually did switch but I wanted to make sure everyone was aware of that. Thank you. Just for clarification.

SPEAKER:

And just so everybody understands also, this parcel of land is located adjacent to an RV park which is zoned B7 for a marina. This area will most likely be developed as a marina. The right-of-way will probably terminate into the marina.

As far as the density of development, the other property across the street, next to the RV Park, is zoned R3 which would allow a 10,000 square foot minimum lot. This development agreement allows 11,000 square feet. The additional lot would comply with all the terms of the development agreement. I would respectfully request the ability to maintain the language in the proposed development agreement which would allow me in the future, at some point, to subdivide that lot.

RONNIE MILLS:

thank you. Any questions?

SPEAKER:

I wanted to go back to staff eventually and ask a comment to staff. If they go along with this.

RONNIE MILLS:

are there any other comments or questions? Thank you. Mr Ashley, can I ask you to come back up and address the concerns the applicant had?

SPEAKER:

Yes. Staff has no objections to the changes that were referenced on page 19 concerning the... I don't have a line number, the sentence says, on page 19, on the middle of the top paragraph, as part of the reference wetland restoration during future pruning, parcel one shall restore a five foot wide wetland buffer for the Eastern and based on the adjustments, we are talking that would need to be the Eastern 96 feet. And a 25 foot wetland buffer for the remaining 100 feet.

That would address that issue. On page 21 in your agenda packet, page 8 of the agreement document, staff concurs with the applicant concerning paragraph K, that is confusing line which, obviously that was a carryover that should have been struck. So staff will make that adjustment

when it goes forward to the Council, so that is clarified.

As far as the Right Away language, we do have, I should've put them in the package but we have the surveyors easement document, the reference to the road is a minimum of 15 feet, the easement that we got, at a later process was actually a little more. I left that is the minimum.

When we go through the subdivision review process, get concurrence from the development engineering staff what would be the actual number they reference a certain distance from the edge of the payment, I don't really have a clarity on the plans. Where is the actual edge of the pavement? That would be addressed more specifically during the subdivision review process.

RONNIE MILLS:

And when you take this to counsel?

SPEAKER:

Yes, we will highlight that as well?

RONNIE MILLS:

Any questions?

SPEAKER:

This is to acknowledge the PD but not split parcel one right now.

SPEAKER:

No, the subdivision that would be proposed as parcels one and two to be created through the process after this occurs to the rezoning process for reinstatement and then, with the language is proposed, and if you agree in counsel, what is in agreement right now gives the opportunity for the applicant to come back at some future date to apply to subdivide parcel one into one additional lot.

RONNIE MILLS:

OK. Any other questions? Ms. Booker, he has addressed the 100 to 116, that will be corrected and also the date is going to take that out, is that right? OK. As far as the right of way, once they look at the surveys, that will be addressed at the Council meeting. OK?

SPEAKER:

They are changing it to 96 and 100?

SPEAKER:

Yes.

SPEAKER:

I did need to clarify that, we are going from 116 to 100, so I need to add that, so 106 and 100.

SPEAKER:

You're right. (Laughs)

RONNIE MILLS:

OK, we all... OK. Alright. Do we have any public participation for this case?

SPEAKER:

No, sir.

RONNIE MILLS:

Would anybody in the audience like to speak to this case? OK, we will close it to public participation and open for commission discussion over motion.

SPEAKER:

I will try and muddle through this much. In case PUD – 21 – 087, I make a motion that we forward the amendment to resolution number 2003 – 033 to reinstate the trust amendment with the conditions specified in the changes that were agreed to today.

SPEAKER:

I second.

RONNIE MILLS:

I do have a motion from Mr Feller to forward case PUD – 21 – 087 to the County Council for final action with the recommendation of approval of the requested major amendment to resolution number 2003 – 033, with staff recommended version of the amended development agreement. And also the changes that have been agreed to today by staff with Mrs. Booker.

A second from Mr Sixma, any discussion? All those in favour, all vote aye. Motion carried unanimously.

EDITH SHELLEY:

V-21-090. Application requesting variances to the maximum fence height and minimum yard requirements on rural residential zoned property.

DARREN EBERSOLE:

(Name), planning and Veltman services, we have an application here for a variance to the maximum front yard fence height, and to the minimum yard requirements for front yard setbacks. Properties located on the west side of (Name) Road, at the intersection of Beresford Road and the land, it is on world residential which requires a minimum lot area of 1 acre and went over hundred feet, the property exceeds these requirements at 1.25 acres and 159 feet in width it is a corner lot, adjacent to a 15 foot wide ingress and egress easement. Along the east and north property labels as (indiscernible by captioner) easement be on the east is used to provide access to the property to the north, and the applicant has erected a six-foot vinyl fence.

You can see that here on the photo, along that easement, through feet from the travelled way. Easement B continues to board of the northern property boundary and is unopened and heavily vegetated. There is a photo there as well of what that photo looks like.

The applicants would like to build a 6 foot fence for two primary reasons, one to provide security and privacy, and the other is that they have a large number of chickens on the property that have had a habit of wandering onto Neighbors properties and they believe that this barrier will assist them in corralling the chickens to their property.

Variance to is requested to legitimize the placement of the house, when the house was permitted by zoning in 2005, the reviewers measured from the property line and not from the ingress, egress

easement as our code would dictate. So variance to is included to memorialize the placement of the house.

So as we reviewed the variance case, we found for variance one associated with the fence, it fails to meet one of the five criteria. We find that it does not meet literal interpretation because they can build the fence, albeit it is a bit further into their property and eats up some of their property. We find that it does not deprive them of any rights.

We find that they meet the remainder of the criteria, there are unique circumstances associated with the property due to these easements. The applicants are not responsible for the creation of the easements, this is the minimal variance that would allow them to obtain one, after the fact ferments for what is there, and then also to continue building a fence around the remaining sides of the property.

Variance to we recommend approval because it meets all five criteria, they have an approved building permit, this is just out of a abundance of cautions to legitimize the place in the house. We provided seven conditions associated with the staff report for your consideration today if you choose to approve the variance one.

And we also have received, I have before public participations associated with this case as well and you have copies of those. That is my presentation, if you have any questions, feel free.

RONNIE MILLS:

Thank you, any questions for the staff?

OK, I have a question. I am looking here at your staff recommendations, you need a building permit for a chicken coop?

SPEAKER:

Over a certain size, yes.

RONNIE MILLS:

OK, and at what point would be considered bona fide agriculture?

SPEAKER:

Well, the zoning classification allows for personal agriculture pursuits but not commercial. So, they could not get a bona fide agricultural exemption for those chicken coops.

RONNIE MILLS:

They could?

SPEAKER:

They could not. They are not allowed to have commercial agricultural activities in our zoning.

RONNIE MILLS:

OK, I understand. Thank you. Is the applicant present?

SPEAKER:

Good morning, I am Francesca Formoso, my address is 1716 (Name) Road.

RONNIE MILLS:

You have heard the staff comments, anything you would like to add?

SPEAKER:

I would, the primary reason that we initially erected the fence in the first place was in order to comply with the complaints that we were being notified of regarding our neighbour, sorry, to the west. Who was consistently completing that our chickens are going into their yard. And getting into their compost bin and so forth.

We did our very best to contain them, but that was the primary reason for the fence. As far as the six-foot fence is concerned, 4 foot fence will not contain the chickens. So that is why we are pursuing the six-foot fence in the first place.

We have a signed letter that I brought, I am sure you have copies of, of some of the adjoining, adjacent neighbours who are not unsupportive fence. All of our neighbours are more than happy for us to keep our chickens contained in our own yard. Which is our primary desire as well.

So, we would very much like to be able to keep a 6 foot fence as a barrier in order to continue with our hobby.

RONNIE MILLS:

OK.

SPEAKER:

I did have one more thing I wanted to mention, I do not have a problem with any of the conditions that were presented. Except for, a portion, the last portion of number four, where it says that the chickens would not be permitted to free range. The reason I have an objection to that is that we love our chickens very much (Laughs) And there are times when we do allow them, as we have a very large yard, to free range.

That is one of their enjoyments, so that they can gain grubs and bugs from the yard. So, not allowing them to free range, in my opinion, would diminish the whole reason that we have them and love them.

So, that is the part that I would like to have crossed out.

RONNIE MILLS:

Which one is that, ma'am?

SPEAKER:

Number four, the last portion. Oh, OK.

So, if they are provided with the right amount of boundaries, free ranging as their love and we do not want to take that opportunity away from her chickens.

RONNIE MILLS:

OK. Alright, let us see if the commissioners have any question? Micheli.

EDITH SHELLEY:

With your original cope will this does hustling to do that, for my own, we see these things quite a bit, I will understand the reason you want the 6 foot, but I am assuming, is your fence permitted? You hire defence company?

SPEAKER:

We hired a fence company.

EDITH SHELLEY:

I see companies being hired, that apparently are not notifying you in advance and we could've handled this much earlier. That was my only comment.

RONNIE MILLS:

Mr Young, did you have a comment mac

JAY YOUNG:

I just wondered what kind of traffic is down that road, will that obstruct other people's views?

SPEAKER:

There is no one that goes down that road except for the neighbour to the north. Excuse me, to the west. And that neighbour has another way out that draws in that action. So they have two ways of evacuating their property. Minus one way, there is no other traffic on that road. We are in essence, landlocked.

RONNIE MILLS:

Thank you. Any other questions for the applicant?

FRANK COSTA:

Yes, I do. How many chickens?

SPEAKER:

Currently we have a little under 100. I have been recently notified that 100 is the limit. If you include chicks in roosters, we have under 100.

FRANK COSTA:

Are you raising a specific type, are they layers, or they show birds?

SPEAKER:

We mostly have layers, we have shouldered, we do not show them. I am a schoolteacher. So, I am involved in some of those agricultural programs offered in middle school. But we do not personally show birds, per se. But we do have birds that we could show, if that is your question.

FRANK COSTA:

I am just look at the intent of the number of birds and what you're doing with them. Because I personally have 20 or 25 myself.

SPEAKER:

We love our pets. We started with nine and our flock has just grown over the several years that we have had them. We have had them over two years. Our flock just gross.

FRANK COSTA:

How many are layers of the hundred or so?

SPEAKER:

Well, we have several checks, laying great now we probably have about 40 layers.

FRANK COSTA:

So that is approximately 35 to 40 chicken eggs per day. What do you do with those eggs?

SPEAKER:

We give them to her family.

FRANK COSTA:

Good answer, that is what I want to hear.

The next question that I have for you is, again I know that with the 25 words that I have for the 20 birds that I have, flies are definitely an issue, I am on 5 acres so does not affect my neighbours. How do you currently control the amount of accumulation thereof of the chicken manure. With 100 birds.

SPEAKER:

Well, we do the composting system. We have in the summertime, when it gets really rainy, we have more flies at those times, we have flytrap. We also have lots and lots of lemon balm. We planted all around our coops on outside areas where they can't get to it. It would not be harmful to them even if they did eat it.

Lemon balm goes a long way, so we have a planted in a lot of locations and it does diminish the flies and mosquitoes.

FRANK COSTA:

Yes, I have used that on my property as well. To the free range comment, I am in agreement with you, free range chicken eggs are better than a coop egg.

SPEAKER:

Amen.

FRANK COSTA:

Hands down. And that is a question that I have for staff in a minute. But from your perspective when the fence went up, the neighbours were complaining that the chickens were going on their property?

SPEAKER:

Yes, we had several complaints from the same individual.

FRANK COSTA:

Have you tried giving him three eggs? (Laughs)

SPEAKER:

Yes, some people cannot be...

FRANK COSTA:

Now that the fence has gone up, that complaint has gone away?

SPEAKER: To my understanding it has gone away completely. We have more fans to erect, right now we have a temporary structure so unless this gets resolved we are looking at putting up further fencing along the west side, that is our goal. Minus the easement, of course.

FRANK COSTA:

We are talking chickens and layers, roosters involved? How many?

SPEAKER:

Probably seven or eight adults and then lots of chicks that are still growing. So what we do is rehome the roosters. We are rehoming. (Laughs) Yes.

FRANK COSTA:

Too many roosters as a whole other nuisance. That is all I have for you, thank you.

RONNIE MILLS:

Do we have any other questions for applicant? We will see if we have any public participation and I might know we were presented with a letter with the approval of her neighbours here. I think there were four of them on that.

Did you have a question for staff?

FRANK COSTA:

I do have a question for staff. Staff recommendation number three, where did the are not permitted to be free range come from? Is that in code somewhere?

SPEAKER:

For this case we started with the provisions for the backyard chickens. Conditional use permit that we have and we use that as a baseline for the restrictions on the chickens.

All of this is in our code under the backyard chicken ordinance.

FRANK COSTA:

But isn't the backyard chicken limited to basically smaller lot sizes than what we are dealing with?

SPEAKER:

It is. We felt these conditions were appropriate for the recurring complaints that we had.

FRANK COSTA:

And we are on RNR and I assume they don't have an agricultural exception and could not get it?

SPEAKER:

They could not, they cannot have commercial agricultural pursuits on the property. Personal use only. I wanted to add, it is not up there now, can we pull those photos back up? This picture you have in the middle on the bottom, the vegetation, that is what the northern property boundary looks

like. That vegetation is there, that is where the ingress, egress, easement is on the north side of the property.

The picture on the right with the fence, that is the road that gives the property owner to the north access and they are the only ones who have access to that road. And as you can see on the site plan, the green portion is the portion applicable to this variance.

RONNIE MILLS:

I have a question, also. If we approve the variance for the fence, does that not take care of the problem with the free ranging and the chickens?

SPEAKER:

It does.

RONNIE MILLS:

Would that recommendation be needed for the fence?

SPEAKER:

We have no objection to modifying that.

RONNIE MILLS:

You have no problem to striking that recommendation?

SPEAKER:

I don't.

RONNIE MILLS:

And obviously she has agreed to the others, is the applicant aware of what size coop she can have without a building permit?

SPEAKER:

We have spoken to her about it but might need to have more discussion.

RONNIE MILLS:

She needs to be aware of that because she does not want to get a code violation for a larger chicken coop without a permit. Most people would not think that you need a permit for a chicken coop.

SPEAKER:

Yes, we have had ongoing conversations at this point. We've got a pretty good relationship going. I can work with her.

RONNIE MILLS:

OK.

FRANK COSTA:

What is the maximum size?

SPEAKER:

I think 150 square feet.

FRANK COSTA:

Before you need a permit? I didn't know that either.

RONNIE MILLS:

Do we have any other questions for staff?

FRANK COSTA:

No but I have a question for the applicant.

RONNIE MILLS:

OK, I can get the applicant to come forward?

FRANK COSTA:

You compass the menorah, open compost pits?

SPEAKER:

No, it has a plastic cover.

FRANK COSTA:

You must have several for 100 birds.

SPEAKER:

We eliminate the compost that we do not use in our garden.

FRANK COSTA:

I'm looking at recommendation number for the were they required to have it in a fly tight been for storage. Would

become a problem when you are trying to compost? Compost needs air to circulate.

SPEAKER:

Yes, I would agree. I had a couple of questions with the things on there.

FRANK COSTA:

Will that will become gospel when it goes to vote, so it is time to discuss those now.

SPEAKER:

Coops in general, you can keep them as clear as you want to but there will be manure in those coops at some point, that is a process of life. That is another issue that I did not quite understand. Not having manure in the coops.

I understand potentially not having an excessive amount or it potentially becoming a health risk but, when I walk into my coops on any given day, there is going to be some kind of manure there. That's life.

So the fly tight composting, having manure in the coops, even the size of the coops, we were not aware we even needed to have a permit for a coop. My husband is a carpenter and he handbuilt our coops. So we will have to look into that. But that is news to me as well during this whole case.

FRANK COSTA:

There is a lot here regarding a fence and the chicken coop is thrown in here, so rather than flipping through these pages, approximately is the difference between your coops and your nearest neighbours? What would you say? In feet?

SPEAKER:

I am guessing but, to their home? Their actual home? I would say at least 100 feet. 75 feet? I would have to measure it. The majority, we have the majority of our coops in our backyard and then we have one little coop that is for our smaller breeds like (unknown term) and that tiny coop is the one that would be closest to our neighbour.

I would guess, at least 75 to 100 feet from his house. It is on a diagonal peered I don't know. I'm guessing.

FRANK COSTA:

Going to number six on the recommendation, your enclosures that your coops currently, are they screened from universe? Can they see them from their house? Or is that where the fence would come into play?

SPEAKER:

Correct. At this moment he can see the coops from his yard and everything else going on in our yard.

FRANK COSTA:

It just continues to swivel to more questions for staff.

SPEAKER:

Originally we were considered a backyard chicken situation, and then, let me just say this, let me back up for a moment, because of the numerous complaints that were coming from not my neighbour from the West, I apologize, I was wrong before, from the north, Hobart and his wife, all of those complaints we originally got a code enforcement citation that said we were not allowed to have more than five chickens and no roosters on our property.

It was filed through code enforcement, everything went through, it was in the computer system. At that time, we panicked because we love our chicken so much and thought, we are all rural residential, I don't know why this would be the case, why would this person file this complaint against us, that is when this process began.

That is when we found out that this does not apply to us, we can have up to 100 chickens and that was thrown out. But I think it is my assumption, I should say, that that originated due to the numerous complaints that were coming from the neighbours to the north.

That is why all of this happened. Our fences, the problems, the variant, the whole thing. We are just trying to make good on our neighbours and do the best that we can for all of those involved.

FRANK COSTA:

OK.

SPEAKER:

I'm just saying, that is probably why those conditions originated as such. Because, originally, it was the assumption that we are only allowed to have five chickens. Thank you.

SPEAKER:

Thank you.

SPEAKER:

If I could clarify about the building permit, so everybody knows, it is required if the coop is 120 feet or larger.

SPEAKER:

Or larger. OK.

SPEAKER:

120.

SPEAKER:

Chair, can I ask a question?

RONNIE MILLS:

Yes.

RICHARD FELLER:

Has anything but about the size of the coops? Are we looking to have to do variances on the size of coops at this point? Is that a part of this?

SPEAKER:

The coops are not a part of this we have not received any complaints about the coops.

RICHARD FELLER:

Perfect. Thank you.

RONNIE MILLS:

While you are here, when we were, when he was speaking about the closed fly bins, is that in the ordinance?

SPEAKER:

That was all in the backyard chicken ordinance. We tried to apply the standards that would apply to backyard chickens in these circumstances to alleviate the concerns of the neighbours that had complains.

RONNIE MILLS:

OK, the backyard chicken ordinance, does that entail art zoning?

SPEAKER:

It does not. Which is why we put it in the conditions. Otherwise it would've been reverted to the code requirements.

RONNIE MILLS:

These are additional to try to address the complaints. But does the fence not address the complaints that have been made?

SPEAKER:

The fence does, if approved, the fence will go a long way to alleviate some of the concerns. I believe that neighbour has also provided you with a petition saying that they agree that the fence is a remedy or mediation for the issue.

RONNIE MILLS:

I guess my question is, if that is the case, and it is not required in the backyard ordinance and if they are addressing the issue with the fence, why are we pushing additional recommendations to them for this closed fly been?

SPEAKER:

It all came about because of the number of complaints from one particular neighbour to the north.

RONNIE MILLS:

Just one?

SPEAKER:

They have been in our office several times speaking to different staff members. As the applicant have been going through, trying to remedy some of these issues, which is how it ended up in staff report. Was two, we recognized that some of the neighbours had concerns. We were trying to address them.

RONNIE MILLS:

What I am wrestling with here is we are addressing the issue with the fence, if we allow that to go forward. Then why would we need these additional recommendations?

SPEAKER:

That is entirely up to you guys.

FRANK COSTA:

I would like to make a motion and clean this up.

RONNIE MILLS:

We will get to that. Do we have any other public participation?

SPEAKER:

Yes, online, Mr John (Name).

RONNIE MILLS:

(Name)? OK. Are you there? Mr (Name)? If you are there, turn on your microphone, sir. Is he still on? Mr Paulo, are you taking note of this?

SPEAKER:

I'm here, hello! Sorry.

RONNIE MILLS:

Go ahead. State your name and address for the record.

SPEAKER:

John Clary, 59 five S. Ridgewood Avenue. DeLand, Florida.

RONNIE MILLS:

And you would like to speak to this case?

SPEAKER:

I just wanted to make a comment, I sent it in in writing is an email, that we are concerned about maintaining access to that easement. I wanted to be sure that that was not... We were not unable to use the easement in the future because we own two lots to the west of the subject property.

RONNIE MILLS:

Alright. It's you just don't want the fence to encourage the easement, correct?

SPEAKER:

Correct. I wanted to make another comment about the noise of the roosters. That is one thing I've spoken with Francesca about. It is quite annoying to have those roosters going all the time.

RONNIE MILLS:

Alright, sir.

SPEAKER:

That is pretty much all of my comments. Thank you.

RONNIE MILLS:

Any questions for the... Individual online? Thank you for your participation, sir.

SPEAKER:

I just wanted to mention that when you ask about other participation, there was a gentleman in the back that raised his hand.

RONNIE MILLS:

OK. If I could get you to fill out a form, sir, to my immediate left? Or I will have you come forward and then you can speak and then fill out a form after-the-fact. Do we have anyone else?

SPEAKER:

No, sir.

RONNIE MILLS:

If you want to come forward, sir?

RONNIE MILLS:

If I could get your name and address for the record.

SPEAKER:

My name is Albert Thibodeau.

RONNIE MILLS:

Is there anything you'd like to add to this case?

SPEAKER:

We sent some information by email, a couple of problems that we have had that have continued up until the recent point. But, it is true that the chickens were really laying into our yard like you would not believe. My wife is very particular about the lawn, it is not really mine maintain, she does. But, the chickens made a consistent presence and we noticed a minimal effect in trying to contain the chickens until recently.

The number of chickens started out as a small number, and quite honestly, we live where we live because of the nature of where we live, it is quiet, it is peaceful. There are roosters in our immediate neighbourhood, just across the fence, and they do corrode day and night, especially on full moon. It does not bother us in the least bit.

We have a very sound muffled house, very well-built, and the question that came up or a comment that came up, rather, about, I wish I could see the map, does anybody... OK.

Alright, let me start with the bottom right photograph, that is a classic fence that was put up, vinyl, it goes, as stated in your notes, 15 feet into the egress, roughly 15 linear feet. We agree with the county that that must be removed. The second thing is that the gate that is used to access 1716 from the road that we share with them, at the gate, is rarely closed.

It is also 6 feet, the problem that we have with that section of six-foot fence is that when my wife is in her car, she is at about 4 1/2 feet, she is missing another foot and 1/2 to see around the fence to the other side. My truck sits at 5'3", I level. Again, I cannot see over a 6 foot fence. Francesca has a teenage son who has teenage friends and they drive like teenagers. We have all been there, right?

So, it is a dangerous situation for us. When we pull in, we just have to hope that no one is going a calm and hit the front of the car. Blatantly. I have had two instances already, and I just want to raised a red flag. Aside from that, them wanting to have their privacy, I completely get it, I have no issue at that whatsoever. Other than the fence height at the intersection.

She mentioned that we have two means of getting onto our property and that is correct. One that brings us out down by Highway 44 and one that goes to where we normally go into Orange city and that is the road that we use, it is our primary ingress and egress means to get to and from. She stated that there is nobody else who uses that road, I am sorry but that is not correct.

That is how everybody gets to our house, because if they are on GPS and it says 1710 Fatio Road, the GPS will direct them that way. UPS, FedEx and Amazon have all told me that they cannot come in this way because it is too tight. In fact, there is a point in the recent past that one of the posts in the fence, before the linear part went up, it was hit by a vehicle.

We were wrongly accused of having done that, but another neighbour stepped up and said "Wait, it was not Alan, it was Amazon". So, we are trying to make sure that we are not being viewed as the bad guys. We have things that we want to maintain: privacy, certainly, and her nearest chicken coop, the little house, if the access ingress is 15 feet wide, thin that is 20 feet for my property.

In the property at that point is probably 45 to 50 feet. So, it will be close to 75 or 80 feet, something along that. The smell is not bad, they are doing a good job of keeping the smell to the minimum. We like the sounds of chickens. It kind of sounds like a farm, it is really nice. But we know there are others in the neighbourhood who are not fond of it. John Clary being one.

Let me see if there's anything else... we want to agree with the county that the portion of fence that encroaches into the easement "must be removed", I am reading from the notes. She states that currently there is no barrier other than vegetation between her property on the north side and, yet there is a fence, there is a 5 foot chain-link, something to keep the chickens in. It does a good job, as soon as they put that up around the beginning of this year, 99% of the problem stopped.

They still have a few chickens that I believe are running loose in the rest of the Littlewoods that is not closed in, I see them, I could've killed a dozen and 1/2 or two chickens easily and had plenty of free meals, that is not my nature.

Chickens do what chickens do. But responsible neighbours to what they are supposed to do and I have no promise of that. Am I missing anything? I think that is about it. Maybe have some questions for me.

RONNIE MILLS:

And he would have any questions for the speaker?

SPEAKER:

There was a note that said "if a convex type mirror was installed, that can help out", is that something you would be open to?

SPEAKER:

Yes, that is something I submitted. Nobody else?

SPEAKER:

Mr Thibodeau, could you provide the picture of the 5 foot fence to (Name), we need that for the record.

RONNIE MILLS:

Alright, thank you for your participation and for your insight.

SPEAKER:

you very much for your time.

RONNIE MILLS:

OK, if we improve this variance, is any portion of this fence going to remain in the easement?

SPEAKER:

No. The fence is going to, as proposed, rise along the south edge of the easement.

RONNIE MILLS:

OK.

SPEAKER:

There is a portion of this fence that you see, existing, there is a portion of that fence, approximately 15 feet, that is within the easement that will have to be removed.

RONNIE MILLS:

Being that it would be not within the easement, and the easement is within the property line, the setback to that fence would be about how much from the property line?

SPEAKER:

It would be 15 feet from the property line. The required setback is 40 feet.

RONNIE MILLS:

OK, the easement that the speaker just spoke of, for his ingress and egress, you are telling me that that 6 foot high fence is going to be at least 15 feet off of that ingress and egress? Is that correct, sir?

SPEAKER:

No, that is right up to the edge of the easement itself. The easement's 15 feet wide from property boundary and so the first 15 feet from the property boundary from the east and north side is that ingress, egress easement.

RONNIE MILLS:

OK. So, the roadway is in their property?

SPEAKER:

The roadways and their property.

RONNIE MILLS:

And that was how far from the fence?

SPEAKER:

Is about 3 feet from the roadway.

RONNIE MILLS:

OK, thank you sir. OK...

Alright, any other comments?

SPEAKER:

No, sir.

RONNIE MILLS:

OK, Mr Feller...

Sir, come back up would you like to restate your name?

SPEAKER:

Mr Thibodeau, the bottom right photograph, the fences built 15 minutes from the fence which is the property line to the east, we have the 50 foot ingress and egress, and is just inches away, it is not 3

feet in from there, what they are commenting on with 3 feet, you can see where the grasses,

RONNIE MILLS:

That is 3 feet from the road...

SPEAKER:

(indiscernible by captioner)

SPEAKER:

This intersection, if they were to spell back the fence, how far back would you like it? Lengthwise, how far back would you like it?

SPEAKER:

From the intersection, I'm not sure I'm understanding.

SPEAKER:

So the chairman is asking, if the fence were shifted in, how far-

SPEAKER:

I really do not want to make them do that, they have gone through a lot of expense to do this. If things are left the way they are with the exception of where our ingress, egress and their Street come straight from Fatio, and go straight to their property, as long as we can see from that, if it is 5 feet, that will meet what we need. I think these posts are probably 6 feet from each other. So if we were able to lower one section from 6 to 4 feet, problem solved.

RONNIE MILLS:

That is what I was asking. Just the one section, that is what I was trying to get up. OK, can I have the applicant come forward again. I was when to let you address any comments that were made anyways.

SPEAKER:

OK, we have already purchased a convex mirror that we are already installing, it was purchased well before this hearing because we know that is necessary. In the event that we were to lower anything, 5 feet, 4 feet, it is not going to help the way the road and the corner is situated when someone is coming up this road. They will not see a car coming out. So, my preposition is to have that convex mirror for both parties.

So if we are coming out of our gate, or they're coming on that street, everyone will be notified that there is a vehicle coming and there will be an understanding that everyone will stop and wait for a moment before proceeding. To provide the most caution. I think that is going to be the best way to prevent any safety hazards without touching or drenching the fence in a new way.

Leaving the fence and the gate as such, providing the convex merit. There is a power pole right outside, we can put the convex mirror there, where would be able to allow us to see anyone coming down and for them to see if anyone is coming out. Of the gate.

I think that would be sufficient, and if anyone wants to verify this efficiency, of the convex mirror that is fine, we have agreed to it, we have no problem with it. But, anything else will incur a lot of cost. If

you are in a car and you're coming down, even if the fence were 4 feet, that is not necessarily going to let you know that another low riding car is coming out of the gate, it will not be affected.

SPEAKER:

Did you say there was a power pole?

SPEAKER:

I am just saying, make sure you check with the power company before you install a mirror.

SPEAKER:

We can attach it to a fence or a tree if it is not kosher to do it on a powerful. We were already planning to do that because we want to have a safe way of entry for anyone involved. Truly, we do. Any other questions for me?

RONNIE MILLS:

No, I think we're done.

OK, do we have any other discussion? I will close public participation in open a discussion.

SPEAKER:

I would like to make a motion and clean it up as we go. I would like to make a motion that we approve variance number one on case V2 1090 and that we approve variance number two on case E – 21090 with staff recommended conditions number one, and number two. Conditions three, four, five, six and seven be stricken from the recommendations.

SPEAKER:

I would second that motion.

RONNIE MILLS:

Any discussion on the motion?

SPEAKER:

And I say that reason because the variances about the fence, have nothing to do with the chickens, if the chickens are in violation there need to be variance for that or the size of the coop that needs to come back as a separate complete item, not add pork to this particular to variances which is what I see here with three through seven.

I am saying that that is not part of the variance that we are talking about today.

RONNIE MILLS:

and also we are not allowing it either. Because the ordinance still prevents that.

SPEAKER:

Thank you.

RONNIE MILLS:

The other thing is, I would ask that if you would add the mirror to the recommendations.

SPEAKER:

I'm in agreement with that is the applicant has indicated they would add the two convex mirrors to the intersection.

SPEAKER:

So we have three conditions.

RONNIE MILLS:

Yes.

SPEAKER:

Yes, we would add 1/3.

RONNIE MILLS:

Who seconded that? Mr Feller. I have a motion to approve variants one and 2 4 V2 one – 090 with the staff recommendations one and two, striking three through seven and adding additional condition of the convex mirror on the corner in question. With the second from Mr Feller.

Any discussion on the motion? We will take a vote on it. All in favour say I. Any opposed? Motion carries unanimously.

SPEAKER:

Good luck.

RONNIE MILLS:

Mr Ebersole. Sorry. Miss Shelley? You didn't get to read the next case.

EDITH SHELLEY:

O. Just go ahead, Mr a result. Case V – 21 – 093, variance to the minimum yard requirements and maximum lot coverage on urban single-family residential R9's owned property.

DARREN EBERSOLE:

The applicant has arrested several variants associated with the residential unit that encroaches on the sides and back. The variance pertained to building permits for the garage. The building is located on the east side of Cardinal Boulevard, 120 feet south of the intersection. The property is zoned R 9 which requires a minimum area of 725 square feet and the lot has 705 feet. The property is nonconforming and substandard as it is 4800 square feet and 60 feet in lot width. The property is substandard because it is less than 500 square feet in area.

The lot is considered awfully nonconforming and eligible for building permit subject to allow conduction on a substandard lot. Required setbacks of the zoning are 25 on the front, 20 on the rear and on the side yard of seven feet.

The property contains a house, which was constructed in 1958. The house encroaches into the front, side and rear yards. The applicant purchased the property in 2020 and constructed a 4 1/2 foot extension onto the front of the garage without a permit.

The footprint, this is important to note, the footprint of the house prior to the garage addition is considered lawfully nonconforming. However, variances one, two and three were included in an abundance of caution to memorialize the nonconformity of associated with the house.

Variance one is to allow construction on a substandard lot. The parcel was plotted in 1913 as part of Wilber by the sea. Staff reviewed the public record for common ownership and it was determined this property has never been held in common ownership and therefore is lawfully nonconforming.

Variance two is to the rear yard requirements. To reduce the rear yard from the required 20 feet to 12.33 feet to the rear. Variance three is to reduce the side yard from seven feet to 5 1/2 feet on the west side of the property. Variance four is to reduce the front yard setback.

Prior to the unpermitted addition to the garage, the house encroached one foot into the front yard. The applicant has expended that with the unpermitted garage extension. The applicant have stated that, due to the original depth of the garage, it was not sufficient in size to store a midsize vehicle and close the garage door. So they went ahead and expanded it to accommodate their vehicle.

Variance five is for lot coverage. Again, this is needed in order to obtain a building permit. They need a variance to increase the maximum lot coverage from 35 percent allowable by code to 41 percent.

It should be noted, I said before that the house exceeded the lot coverage prior to the addition. The lot coverage prior to the addition was 39.4 and this variance will increase the lot coverage by 1.6 percent over the lawfully nonconforming lot coverage.

When evaluating the variances, we feel that variance four which is the front yard setback variance, we feel it fails to meet one of the five criteria. We feel that there is no special condition or circumstances and that the actions are a direct result of the applicant, as they constructed the addition without permits.

However, we do find there are, the literal interpretation may deprive the applicant's of rights commonly enjoyed. Minimum variance will allow the applicant to obtain permits and is not considered injurious to the area. We also recognize there are unique circumstances with the property as it is significant lead smaller than the zoning requirement would normally dictate.

For variances one, two, three and five, we find that the variance meets all five criteria. And is included, like I said, before to memorialize the location of the house.

With that, that is the end of my presentation if we have any questions, feel free.

RONNIE MILLS:

Thank you Mr Ebersole. Any questions for staff?

SPEAKER:

I have a question. I kind of know the area Cardinal but in this particular case, is that addition, is that out of... Outside of the scope of what you see on that road?

DARREN EBERSOLE:

Most of the houses along the stretch of Cardinal encroach the front yard one or two feet. This is approximately...

SPEAKER:

Let me ask a different way, this addition take away from the value of the neighbourhood?

DARREN EBERSOLE:

I can't really speak to that. It looks different than the other houses in the neighbourhood with the addition.

SPEAKER:

Thank you.

RONNIE MILLS:

Any other questions for staff? OK. Is the applicant present? Good morning. Can I get your name and address for the record?

SPEAKER:

I am Sadie and this is my husband John and we live 4033 Cardinal Boulevard.

RONNIE MILLS:

You've heard the staff report anything you would like to add?

SPEAKER:

We bought the house in 2020 from a neighbour and move here and did not realize until we moved in that our Jeep Cherokee will not fit in the garage with the door closed. It hangs out.

So we bumped out, we started to bump out the garage. We got notified, we got a permit so we are going through the process of getting a permit, it does not look different than any of the other houses. The neighbour two doors down has the exact same bump out that we do.

If you go down one block, the houses, you can barely park in your driveway to get your vehicle off the street. Ours, there is plenty of room, we have pictures... We just want to be able to park our vehicle in the garage and be able to close the door.

That is our thing. It doesn't really... All of our neighbours agree with us that we should be able to park our car in our garage and close the door. We have pictures of some of the block down, of the other houses that are... A lot closer than ours.

RONNIE MILLS:

If you would like to submit those into record, you would not get them back. But you can give them to (Name) to my left. They will become part of the record.

SPEAKER:

No, they want the ones with houses...

RONNIE MILLS:

Anything else you would like to speak to other than the pictures?

SPEAKER:

Not really, other than we just want to park your vehicle in our garage and close the door.

RONNIE MILLS:

Let's see if we have any questions from the commissioners.

SPEAKER:

I am trying to get my hands around, you said that you were looking to get a permit, is this process what you are trying to do, get the permit through this process? It looks like a pretty substantial, I don't want to say substantial addition, it's not just a thin layer of plywood, it looks like it matches the house and everything. Did you have a contractor do this?

SPEAKER:

We hired one so that we could get all of the paperwork and everything straightened up.

SPEAKER:

Who did the addition? You did personally? OK. You are not aware that you needed a permit to do a garage door and all of that?

SPEAKER:

No. I knew the garage door had to be approved which, I have one from Home Depot. That would meet requirements. But I did not put it up or nothing because...

SPEAKER:

There is no garage door right now.

SPEAKER:

It's in the box.

SPEAKER:

But it's not up yet.

SPEAKER:

We stopped and I got the contractor and we tried to get everything straightened up. So everything would be...

SPEAKER:

We moved here from rural Illinois, so... This whole process is...

SPEAKER:

Extending the door for the garage door, that is all we did, basically bring that out. It used to be a carport, so we brought that out fore foot, was going to bring the door out. That was it.

SPEAKER:

Perfect. Mr chair?

SPEAKER:

Yes.

SPEAKER:

You do have a licensed contractor now and you are waiting for this variant so permit to be approved and you can continue on. I don't see in the in the package, any comments or complaints from your current neighbours left or right? Or across the street? No? Are you considered part of Wilber by the sea? You are. OK.

You're going to be tied to a higher standard with the permit so hopefully what you have done does not have to be undone to move forward. For your sake. And off-topic, what part of Illinois did you move from?

SPEAKER:
Springfield, Quincy area.

SPEAKER:
McKeown Illinois, West Central, rural farmland.

SPEAKER:
Welcome! Thank you.

RONNIE MILLS:
Any other questions for the applicant? Let's see if we have any public participation. If we do I will let you come back and address any concerns someone may have. Do we have public participation.

SPEAKER:
No, sir.

RONNIE MILLS:
does anyone in the audience want to participated? Hearing no, I will close to public part is patient and open back up for discussion and motion.

SPEAKER:
I motion that we approve variances one, two, 34 and five with the three staff recommendations.

SPEAKER:
Second.

RONNIE MILLS:
I've got a motion to approve variance 21 – 093, all five variants, five variances, with the staff recommended conditions. And it is from Mr Costa and the second from Ms. Shelley. Any discussion on the motion? Hearing none, all in favour signify by saying I. Any opposed? Motion carried unanimously.

Alright. Ms. Shelley, could I get the next case read into the record?

EDITH SHELLEY:
Case Z – 21 – 094, a rezoning from the rural agricultural zoning classification to the transitional agriculture zoning classification.

RONNIE MILLS:
Thank you. I have... Let me see. Mr Bedford.

SPEAKER:
Good morning, Trevor Bedford, planning and developing services, this is a request to rezone in approximately 5.02 acre property from A2 to A4. Rural agriculture to transitional agriculture.

The property is on the north side of West Beresford Road, the applicant is requesting to rezone the parcel in order to be able to put this into two lots. They would like to build a home for their son and have an agricultural operation on the other parcel. The current minimal lot size for the a to zoning is 5 acres, the A4 zoning allows 2.4 acre parcel.

There is enough frontage along West Beresford Road to allow for two lots of the A4.

As you can see, most of the adjacent properties are zoned A – two, however a lot of them are not performing in size. There are several that are between two and 2 1/2 acres, so we do not feel that the a – for classification is out of character with the development patterns in the area.

There is also some light industrial to the southwest, that appears to be a boat storage type of business. We feel again that the a – four is the best way to allow the applicants to move forward with their plans. It maintains the uses, there is no difference in the permitted use list for a four and two, it is just a slight difference in setback requirements, but it does keep the large lot patterns in the area.

We believe that this meets all of the criteria for a rezoning case. We believe it is consistent with the comp plan as A4 is compatible with the future land use. We do not believe this will have a significant impact on the economy or the value of the area, there will be minimal impacts to government services and we do not believe it will be interest to the health, safety of the public. We request that you forward this to County Counsel for final action with a recordation of approval.

RONNIE MILLS:

Thank you, Mr Bedford. Any questions for the staff?

Is the applicant present?

Good morning Mr Woods. If I can get your name and address.

SPEAKER:

Good morning, Michael Woods, 241 N. Boulevard here in DeLand. Very happy to be in front of you and in person.

I am here on behalf of the property owners, Chris and Jacqueline Campbell, with their straightforward request, it is truly to effectuate lots. They own Pinnacle landscaping, and so the primary reason for getting this property was for agricultural use. If you're familiar with the area, this is down the commercial boat storage is where the Beresford paddle boat used to come out of. You have a couple of irregular lots in the vicinity. (indiscernible by captioner)

Basically what you have in the immediate vicinity of our property, if you look right there, a number of those parcels are between 1.7 and 2.7 acres in size. And with our split, we will be continuing to maintain frontage on West Beresford Road for both lots. We are not relying upon any of the other road. Our frontage is a little over 400 feet in our minimum width is about 150 for either lot, so we will have some leeway to shift one way or the other, and as I said, the agriculture uses the primary concern. They also want their son to have a single-family home. (Name) will be working on that.

Technically speaking, right now with the way that the primary agriculture use works in the county, you can do both of the things that they are doing on a single property, but for liability standpoint, they

want the sun to have his home in his name and let the commercial business have the agricultural possible. We can't get there without having the lot split. The only thing I would add, and you can kind of see on the tail and is the A3 to the east, a2 and A4, for a size standpoint of a few good A3 we dropped on a 1 acre, we want to avoid that, there's a subdivision underway nearby, but we want to keep in the nature of this corner.

If you have any questions, I am happy to answer them.

RONNIE MILLS:

Thank you, Mr Woods. Any questions for the applicant?

I do have some public participation and Mr Woods I will let you come back and address any concerns and has. I have a Miss Harriet Thomas.

SPEAKER:

Good morning, how is everyone doing? I am Harriet Thomas, I lived at 140 (Name) Avenue, I am the old Alexander property. I inherited that.

The concern is that when we change that, it actually could put two houses on that, is that correct? If that was divided. So we are concerned about the density that could happen out there. It is very rural and we want to keep the rural character. Of the area.

That is my concern.

RONNIE MILLS:

OK. Would anyone like to speak to that? Mr Woods?

RONNIE MILLS:

Mr Woods, if you do not mind I want to go through everybody before you address.

I have one more, Mr paid? Mr Paige? Would you like to come forward Sir?

SPEAKER:

Hi, my name is (indiscernible by captioner) on the corner is where I live, my concern is, as a previous woman suggested, that there could be two houses, as it is now, if it was 5 acres though it was there would be one access to it. The two accesses to it, by dividing lots, is an increase of in and out in a bad section of the road that I have a problem with now. We're the shortcut with trucks and a lot of things coming down the road, and with two lots side-by-side versus one inward, the increase in traffic and or from the business, which I do not know how involved that is, with traffic coming in from that, you are on a downhill slope heading towards the lake and it has been a problem.

We have had the county out there, we have discussed things at them, and they have put up some things and all sorts of stuff. My concern is that, I understand a person wants will the house, great, they can do that without dividing it. But then there will be one exit out. With two exits out on that road, I'm concerned about the traffic.

RONNIE MILLS:

And you live where Sir?

SPEAKER:

I live on the corner, just towards the lake.

RONNIE MILLS:

And how large is that piece of property?

SPEAKER:

2.6 or 2.7. I'm not sure.

RONNIE MILLS:

Thank you, sir. Any questions for the speaker?

Mr Baker? Oh, I am sorry, that is my apologies. That's the wrong case. (Laughs)

OK, no more public, anybody on the web that would like to speak to this case?

SPEAKER:

No, sir.

RONNIE MILLS:

I thought I had three on this. We tried this way, anyone else in the audience like to speak to this case? That will be be nobody.

Mr Woods, can you address the current concerns that are come up.

SPEAKER:

Sure, with the concern Harriet brought up, yes there could be two homes. Which will increase density and surrounding properties, again, this is why the staff report reflects and I made a point to emphasize as well, that lots including (Name)'s 2.6 acres, and you have a couple lots, Miss Thomas across the way, is conforming with the acreage. With the immediate vicinity in the area. But a lot of people have smaller lots than the 5 acres.

I will be very straightforward, that is not our intent to do that, but yes, I do have to acknowledge that legally rezoning will allow for the two lots. As far as the access is concerned, I'm very aware of what he is speaking about, I ride my bike on that ship, it is a nice view, there's a bit of a hairpin on that corner there, you are basically driving into the lake and then you have to cut hardback right.

Again, usually we are talking but a much larger subdivision, much of these will have 150 yards with with the (indiscernible by captioner) you have adequate setback requirements and your quarters and your site view process will not let you put a blind driveway.

I do not think changing the 5 acres to 2.4 acres will change the nature of that safety. So when I first had the commerces with our staff, about a lot split, all we thought was available was the A3, and I to myself I did not feel comes with that because that leads you down that pathway and I think the A4 allows us to keep, you still have elbowroom, you so have the nature of that section.

RONNIE MILLS:

OK,

SPEAKER:

Is this land being used for anything right now? Or is it just vacant?

SPEAKER:

Just vacant.

RONNIE MILLS:

Thank you Mr Woods. We will close the floor for public participation and open up for discussion and motion.

SPEAKER:

If there is no discussion, I would back the staff recommendation and forward it to County Counsel, Case Z – 21 – 094 with approval.

SPEAKER:

I would second that.

RONNIE MILLS:

Have a motion to forward Z – 21 – 094 to County Counsel for final action of recommendation of approval from Mr Sixma and the second for Mr Costa.

FRANK COSTA:

I just want to get a classification. Would you say that many of these are not conforming (inaudible), lot size? With the exception to the north and to the west, or south rather, that A2 lot that is there, that is conforming? The one directly to the right in the picture?

SPEAKER:

I do not want to say definitely, but it looks like it probably is. And then the property above it is probably...

SPEAKER:

But as we are getting closer to the lake, it is nonconforming a twos.

RONNIE MILLS:

Any other discussion on the motion? We will take a vote. All those in favour signify by saying ICOM a and he opposed? Motion carried unanimously.

EDITH SHELLEY:

Case V-21-095.

TREVOR BEDFORD:

The applicants are seeking variance and a proposed addition. The first variance would be to reduce the west side yard from 5 feet. The second variance is to reduce the west side yard from 5 feet to 3.7 feet for a proposed addition. The next variance would be to reduce the allowable side yard. This is located on the north side of Douglas Street, in the Edgewater area.

It is zoned H5 and requires a minimum lot area of 5000 ft.². The property is 50 feet wide, so it meets all the zoning requirements. For some background, the existing residents was originally permitted in

1988 with 5 foot setbacks in either side. It was incorrectly constructed at 3.6 feet on the west and 6.1 feet on the east side. We imagine this is probably a construction error.

Since it was permitted and the inspections were filed, we consider it a legal nonconforming structure. However, that doesn't mean if this were ever damaged or destroyed, the applicants would not be able to replace the residence in its current location.

In order to allow them to rebuild or replace in that situation, we would request the variance to legitimize the current placement of the residence. As you can see on the variant site plan on the left, they are proposing an addition. It is about three 84 ft.². They would request this go along the existing building line. This would provide space for an office in Art studio, and it will also increase accessibility, as one of the applicants uses a walker and wheelchair to get around.

They also request a variance to the side yard in order to extend and build this addition. This would exceed the maximum lot coverage bite to 80 feet. The maximum lot coverage is 35%, and this would put them at 39.3% lot coverage. This lot coverage calculation includes existing residence, the proposed addition, and to sheds that exist on the property. They also request a variance to increase the maximum lot coverage.

Our recommendation on variance one, for the existing residence and setbacks, we believe that this meets all five criteria. We believe that the special conditions are the existing structure was placed incorrectly, and it was prior to the applicant's purchase. Interpretation of the code would not allow them to rebuild the structure. This is the minimum to legitimize the current placement, and it is not injurious to the area since it has been in place since 1988.

The staff recommendation is to deny variance to for the setback to the proposed addition it fails to meet one criteria. We do not think that it is the minimum variance use of the land, as the expansion could be reconfigured to move a couple of feet in to meet the 5 foot setback. We do think the unique circumstance is the current placement of the residence. The literal interpretation would prevent them from building along the existing line. We do not believe it is injurious to the area because they are using the same setback to the building line that has been in place since 1988.

Variance three, the recommendation is again denial. There are no unique circumstances to the lot coverage. We do not feel it is a hardship to work within the lot coverage and that it is not necessary to make use of the land. However we do believe this is the last criteria would not be injurious to the area. A lot of properties in this area do exceed the maximum lot coverage, so this would not be out of character.

Should the PL DRC find the applicants provided substantial evidence to support approval of the variance, we have one staffer commended condition.

RONNIE MILLS:

Thank you, Mr Bedford. Any questions? Is the applicant present? Come forward, Sir. If you want to state your name and address, we have a microphone over there. You have heard the staff report, anything you want to add?

SPEAKER:

When we brought the house in 2015, I was able to walk at that time. Shortly thereafter I was diagnosed with severe osteoporosis in my spine. It has progressed and I went from walking to a

cane to a walker and to a wheelchair some of the time, and always when I go out.

We have developed new hobbies, and my husband is now an artist. He needs his art studio. It has taken up so much of the room that we have where our offices are. It is really hard for me to get around. Especially if I am in a wheelchair, I can just forget about it. When I have a walker, I can kind of wiggle here or there. But I am always afraid that I'm going to fall, and falling is the worst thing for me.

Even though it is a health issue, it is a handicap issue. I wish you would consider that. It is really important for us to have this. Thank you.

SPEAKER:

As Trevor has pointed out, a lot of the houses in this area that are a lot newer than ours cover a lot more than 35% of the lot. We don't know if they got variances or not, but there are so many of them so we sort of think not. At any rate, we are continuing the house the same way that it was. It is not to change or anything like that. So we think that it is reasonable for us to add on this room and only cover another 4.3% of the extension over 35%. We are not doing some huge construction one way or the other. That's about it, I suppose.

RONNIE MILLS:

Alright sir. Let's see if we have any questions for you.

SPEAKER:

With this extension, you will be using contractor?

SPEAKER:

Yes, we need to get this to get the permit.

RONNIE MILLS:

Let's see if we have any public participation. Any public participation on this one?

SPEAKER:

No sir.

RONNIE MILLS:

Anyone in the audience want to speak to this case? OK, we will close the floor and see if we can get you moving on your way sir.

SPEAKER:

One question for staff I forgot to ask. I believe it is the west side of the property, the proposed addition would be just continuing along the house line that was already built into the 5 foot, because of the way it was done from surveying or whatever was done before. It is not encroaching any further than the existing house, correct? And the back meets current setbacks, there is no invariance required for this edition? That is all I wanted to clarify.

RONNIE MILLS:

Any other questions? Alright, we will close the floor and open it up.

SPEAKER:

I will make a motion on this one. I'm very familiar, my relatives live right nearby. I think it is fine. I recommend that we approve variance 21 – 095 with the condition that staff have recommended and approve all three variants.

SPEAKER:

I second that.

RONNIE MILLS:

Who seconded that? We have a motion to approve variances one, two, and three with the staff recommended conditions. From Mr Young and Mr Feller. All those in favour, signified by saying aye. Motion carried unanimously.

Ms Shelley, can I get you to read the next case?

EDITH SHELLEY:

Yes. Case number... 0-21-100, proposed ordinance 2021-17 amending Chapter 72, code of ordinances for nonexempt excavations. This case is tentatively scheduled for the August 3, 2021 County Council meeting. Hearing, excuse me.

RONNIE MILLS:

Thank you. Ms Smith, can I get the staff report?

SPEAKER:

We are here to discuss proposed ordinances. At the County Council meeting, they asked us to explore options with our excavation ordinances relating to setbacks. This is for nonexempt excavations only, it does not impact some of the exempt activities that we have.

Excavations are required to go through the special exception process. They all come through you first before they go to counsel. Our current setback for wetlands is 150 feet. The ERP process only require 50. The question became why do we require 150 feet. That is because distance affects yields for mining companies. The more they can dig, the more they can make.

Wetland considerations relate to dewatering. Some argue the new or improved technologies should allow for a reduced setback to wetlands. Our growth management went out and looked at regulations in other counties and jurisdictions. They talk to environmental interests and pretty much everyone involved in the mining industry, and they came back with recommendations for proposed changes.

You will see in underlying strikethrough version of section 72 on page 7 through 11 of your packet. The proposed changes are on page 8. What we are proposing is that the setback to wetlands can be reduced if the applicant can demonstrate through a commonly accepted hydrologic model that there will be no short-term or long-term drawdown of adjacent wetlands where impacts to groundwater quality.

This analysis has to be signed and sealed by a PE or hydrogeologist and also allows for third party review when the application comes in. This analysis must be submitted with the special exception application. It also allows a monitoring program. The minimum set bound -- setback to wetlands is 25 feet outside of the natural resource management area and 50 feet within the norm.

The ordinance also includes a five-year review to see how it is working. We could send it to V card to review it. They had no recommended changes. We sent it to the Volusia (indiscernible) coalition, and I believe you were handed both of those letters in your packet today. We have some additional public comment on pages 12 through 17. You will operate as our local planning agency and make recommendations to the local planning Council for these sort of ordinance changes. We are asking you to provide comments and recommendations and then we will send it on to the County Council for their consideration.

I would be happy to answer any questions, and if you have any questions about the analysis, we also have our environmental management Director in the room. They can share what people are doing in other areas, or give you the details on excavations.

RONNIE MILLS:

Thank you, Ms Smith. Any questions for Ms Smith? I would like to talk to your environmental people. Good morning. State your name for the record please?

SPEAKER:

Ginger Adair, environmental management Director.

RONNIE MILLS:

We are reducing this from current 150 to 50, is that correct?

SPEAKER:

What it says is if an applicant wanted a reduction in the 150, they would have to provide an analysis that showed what that reduction would be. It doesn't say you could reduce it to 50 feet, but there is leg which that says in no case with the setback be reduced more than 25 feet plus whatever the appropriate wetland buffer is. That is what Miss Smith was saying. In some areas, the wetland buffer is 25 feet, in some areas it is 50.

An area that is 50 feet, the lowest setback could go if the applicant could prove no adverse impacts to wetlands, would be 75 feet.

RONNIE MILLS:

OK. Some of these special exception excavations, we have also required sloping going into the excavated area. Would that still be in place?

SPEAKER:

Yes, that doesn't impact those requirements. It is really about the dewatering. In an excavation, if they dig in the pit, that's can have the effect of drawing down. There is sort of a cone of influence, they call it. The water goes down here, the water from over here tries to fill that in. In that area of influence, you can see a drawdown effect some distance away from the actual excavation.

What typically happens in excavation is that there is dewatering of the site, they try to pull the water out of the pit so that the sand that they mine has less water. Obviously, they are not trying to mine the water. There are different dewatering technologies that would take the water out of that sand and move it. In the case of adjacent wetlands, typically that gets put back into the wetland as hydration. An applicant could presumably, under this change, submit a dewatering plan that demonstrates that what they are doing does not impact the wetland. It does not draw down the wetland or the wetland buffer.

That would require this pretty substantial analysis. And then we would have the opportunity to get a third-party review of that, because quite frankly, I am not a hydrologist. Some of these things are very technical and specialized. If that can be demonstrated, under these rules that setback could be reduced.

RONNIE MILLS:

That would be temporary impact?

SPEAKER:

There could be both temporary and permanent impacts. Certainly, as they draw on the wetlands and rehydrate that dewatering water, there could be temporary impacts that they would have to it – might demonstrate that they do not have permanent impacts to that adjacent water.

RONNIE MILLS:

Any questions from staff? That is all for now. Thank you for now.

We do have some public participation forms for this case. We will start out with Mr Baker, Mr John Baker.

SPEAKER:

Good morning.

RONNIE MILLS:

Good morning Sir, can I get your address for the record.

SPEAKER:

Good morning John Baker I am the president of the department the Council for Volusia County. We oppose lessening the setbacks from wetlands and surface water. Natural surface water bodies. We know that (inaudible) has had a much more stringent ordinance since April 1993. That Seminole County recently made their water pick much more stringent. The proposal... We have a problem with the proposal it does not appear to address ground water quality issues.

One of the members, Mr Don White his family had a plant nursery that started in Port Orange back in the 50s, in a nearby borrow pits put them out of business because it ruined their water supply for their plants.

We believe that the proposal is in conflict with certain elements of the copper has a plan. I have outlined those issues to staff, I can go through those if you need.

Specifically, in the groundwater and after for recharge. As well as the competitive plan to protect groundwater quality. Again, we do not see anything in this that addresses groundwater quality. Talks about the levels but it does not talk about if you make the groundwater saline in the neighbours well. Finally, there does not appear to be any supporting scientific evidence from any impartial third-party to support this. The seemingly radical change.

That is all I have unless you would like me to go through those goals. I do have a copy from the ordinance from City of Oviedo.

RONNIE MILLS:

You just need to turn that into Miss Cushing to my left.

SPEAKER:

The newspaper stated that Seminole County revised theirs sometimes in late April. I have enumerated the setbacks in the new ordinance as well.

RONNIE MILLS:

Do you happen to know why they increased their setbacks?

SPEAKER:

There I can tell you specifically about the city of Oviedo. The night and morning before I started to work for the city of Oviedo in August 1992, the (inaudible) borrow pit came in. They basically said we have looked at your comprehensive plan, land development code, here is how the cow was going to meet the cabbage.

They did not like being told this is what we are going to do. So, I was new on the job I had worked in a couple of places in the city of Ormond Beach in Lake County. I was instrumental in writing that comp plan. Parts of the comp plan in city of (Name). Mining and minerals there access to some fantastic engineers. Write a bunch of technical reports and books. I run the stuff past them, worked for Lake County I also had access to a little exposure to their very good mining ordinance. I put those two together to write this ordinance for the city of Oviedo.

It was in reaction to being told we are the mining group and here is what we're going to do. I understand that Seminole County had some illegal borrow pits and there was also a proposal to do a 40 something acre ski resort Lake. Or a private lake for waterskiing and jet skiing. That is what the newspaper reported.

RONNIE MILLS:

Did either of the issues, was it because of water quality?

SPEAKER:

I am not aware of the water quality issues. Your proposal in front of me does not appear to look at water quality.

RONNIE MILLS:

Because of the ones you mentioned would because of the borrow pit or density?

SPEAKER:

Density.

RONNIE MILLS:

Density for water quality. When you...

SPEAKER:

It had nothing to do with density. It was certainly not in Oviedo.

RONNIE MILLS:

That is all my questions. Mr Young?

SPEAKER:

I'm curious have you ever talk to (Name). I used to be with the engineering department down there and we had a lot of problems with water quality taking the wellfield out of Westtown. Do you know their restrictions or quality control? You don't? I was just curious if you had just talk to anybody nearby that was having some issues. Because they had some issues.

SPEAKER:

There is no one anywhere near there that I talked to who was -- except Don White who's had a plant nursery near Port Orange.

SPEAKER:

Thank you.

RONNIE MILLS:

Any other questions from the speaker Thank you sir thank you for your participation. We have another one here. Mr Watts.

SPEAKER:

Happy to be with you this morning and appreciate your time on this. Had a couple of things I was going to show you but the overhead is not working and I will hold them up and pass them around if you want to see them. Let me start with I've been working with some of the groups (Name) and (Name). Who are some excavation operators that are currently at work with the sites in Volusia County. We are part of the group looking to County Council who came for a review of this. I want to talk a little bit about just what this does but what it does not do. What it does not propose to do.

Right now, let me back up. We started the conversation with County staff about the 150 foot setback that is in the genesis with that. Where that came from the standard that was it was something that was put in place back in the 1980s. It was a standard that at that point in time seemed to make sense. That has been the standard that has been in place. What is in front of you today in the proposed ordinance does not get rid of the 150 foot standard. It provides an alternative. Right now if you follow the 150 foot standard. That is a standard. That is the standard, there is not a requirement for rehydration of the wetlands from the county standpoint. If you're doing any dewatering activities there is not a requirement for bonds, monitoring of water to quality or levels are things of that nature. I want to walk through how this is intended to apply. It does not automatically change that 150 feet. That is our standard and is in place.

What it does in certain circumstances, it gives you the opportunity to do that if we provide enough data and information to show that there will not be any short or long-term impacts. That satisfies your staff to recommend that for the special exception that has to come through. It satisfies you as body that has to review that special exception. It satisfies that council on case-by-case and consider special exceptions. Let me start with why this is a good idea.

I agree with Mr Baker we have to be very cautious here because we do have the environmental areas that we need to make sure we are protecting.

This is a map this figure 1–3 this is the map of our major wetland systems are the County. I believe all of these with the clerk so they are part of the record. In addition, you have all seen this as well. This is figure 1 – 13 from the conference a plan. This is the environment Zocor overlays in the centre

of the county that are the major environmental systems that are comprehensive plan make sure we are protecting.

Also, just on this home is useful. This is a composite map that shows – the various colours here represent different agencies of ownership. These are all the proponents of the property in the centre of the county that are in public ownership, conservation ownership.

I showed this because I also want to show one of our other comprehensive plan policies which is figure 1–5. This figure is also in the conference A plan and this shows the areas that we have designated in the conference F plan for suitable as mineral researches. If you look at kind of what we are looking at here. The area we have identified as suitable for mineral resource extraction is the same area as wetland protection and environmental protection and the source of things. It is where we made a lot of our conservation acquisitions.

What we're suggesting here, proposing here is that we need to make sure there is a balance.

In that area where we do have our mineral extraction areas identified, the more we can extract from a single site the furor of those influences you have to have. If you have the ability based on the technology that is available at this point in time to extract and Earles, Dale things of that nature which are necessary. Whether it is for private development or one of the bigger users in the county or filler material right now that is the role projects that are going on in southern Florida. Is a necessary resource, this gives us an opportunity to say you can a fear of the sites because we are able to maximize the ones that are already there. As always you are doing it in a way that does not have short or long-term impacts to the wetland system.

With that, let me add one more caveat. Whatever you do here, whatever we do with regard to this particular ordinance. The things that still continue to cover and supersede the land development code and zoning code are elements of the comprehensive plan. The conservation element of the conservation plan. Sorry that is the natural development and aquifer research. And elements of the future land use, element of the comprehensive plan still continue to govern to the extent that stop or you or the Council, decides that a proposal to reduce the setbacks on a particular situation is inconsistent with any element of the comp plan. That trumps it. that will be the governing law.

In the changes in front of you today and looking at the particular text. Mr Baker raised a great point with regard to the water quality. Let me just speak through the text. I am looking at the text of the ordinance that is right for me right now. Became a subsection D under 15 D. I think this on page 8. You have the strikethrough and underline language, that we are seeking to add into the ordinance. In that first section, we talk about when dewatering is required, the setback will be measured from the dewatering area.

Right now, your setback is 150 from the wetland. This is saying that the setback will be where the water enters. We are measuring it from a different place to make sure that you are really looking at where that drawdown is occurring, which isn't in your current ordinance. That standard, that point of measure isn't included when you look at that 150 foot setback.

The subsection I, the insurance that is part of that plan. If you are dewatering, if you are drawing water out of the ground, then the water that is coming out is back into the wetland system. It is rehydrating. It is a closed loop that keeps the water on site. There typically are consumptive use permits associated with excavations, I want to be upfront about that. Typically up to 10% of water

being removed can come out of that closed-loop system, and that is to account for the fact that the soil may be moist, it may still have some water content in it.

The water management district requires there is a CUP permit approved as part of that, to analyse the impact of that 10% removal. Usually 10% removal. The small subsection 2, I think this goes to Mr Baker's point. This ensures the water being pumped in has an acceptable quality. That it will not result in degradation of the receiving wetland. I think that was a valid point that was raised. We do want to make sure we are protecting the water resources.

This requirement requires there is a monitoring of water quality in addition to quantity of where it is going. I think that is also consistent with the recharge element of chapter 10 of the copperheads of plan. -- Comprehensive plan.

Getting into the other sections here, talking about establishing a monitoring program that requires we are monitoring this. If you look at what the district requires, the water management District, it is an annual report. We have to provide annual logs of what is happening with water quality and things of that nature. That is probably not sufficient. One of the things we talked to staff about is that we need to be monthly or quarterly.

This would give staff the ability to come in and say there not only has to be monitoring, it has to be done on a more frequent basis. The reports have to be submitted to the county and they can be reviewed by a third-party reviewer that has the expertise to make sure we are checking all the boxes and keeping protections in place.

Finally, if all of that happens and there is an unintended consequence of an impact, one of the things we also worked with staff to include is that there is a bond in place. That would provide restoration of wetlands if there are any impacts, short and long-term.

I'm happy to answer any questions, but I think the key here is whether you are dealing with the 300 foot or 150 foot setback, those are important things. No argument at all, we need to make sure we are protecting these wetland and groundwater resources. What we are trying to do here is strike a balance, provide an opportunity to extract more material out of a particular site so we can reduce the overall number of sites we need to have, while making sure that we elevate the amount of protection provided by the ordinance if you go down that route.

With that, I'm happy to answer any questions. I will leave these with you.

RONNIE MILLS:
OK, Mr Young?

JAY YOUNG:
I am familiar with this, because I worked in engineering. I agree with the other gentlemen, I read section III and the comp plan. There is a lot lacking in water quality addressed in this thing. Your II mentions drawdown, and I understand the cone and all. We had a lot of salt water incursion, and it affected a lot of wells and a lot of property in that area.

I don't see in this monitoring paragraph and throughout our whole thing, in fact, reading the other parts of the comp plan which I spent time doing, is addressing any kind of standard as to water quality. Right now, throughout Florida there is a big saltwater inclusion problem. In all of the wells

and all of the water management, St. John's water management report.

I don't see any monitoring for water quality in here. The drawdown is a factor, but you can have drawdown that is acceptable and still have lousy water. Water quality. You can be pulling in salt water. I have seen this a lot. I think that we need to get something added into III with some kind of water quality monitoring, other than just drawdown. That was my big concern when I first read this thing.

SPEAKER:

The reason we are here is to get comments and input like that. I think we add that.

JAY YOUNG:

We need to add some standards about quality as well. The recirculation quality is one thing, but the drawdown quality and what we are causing is my big concern. I have had to address a lot of complaints when I was there.

SPEAKER:

I would be happy to work with staff and anyone else in the community who would like to come up with what that standard should be.

JAY YOUNG:

A hydrologist would be a good asset in creating something there for water quality. That is my big objection to it right now.

SPEAKER:

I think that makes sense and I would be happy to work with everybody to include some quality standards.

RONNIE MILLS:

Any other questions for the speaker?

SPEAKER:

You mentioned you are presenting several miners and excavators connect

SPEAKER:

I represent one principal excavator, the (unknown name) operator. West of Damascus Road.

SPEAKER:

I just wanted it for the record in case it comes up.

RONNIE MILLS:

Let's see if we have any other public comment. Thank you very much.

SPEAKER:

Appreciate your time.

RONNIE MILLS:

Do we have any other public participation in this case?

SPEAKER:

No sir. None online.

RONNIE MILLS:

Do we have anyone else in the audience who would like to speak to this?

SPEAKER:

Mr Baker, do you have any thing you could add to this or disagree with Mr Watts? Just curious. I do have a question as well after this.

SPEAKER:

I would like to note that Oviedo ordinance does not allow for discharge. You have less opportunity to contaminate wetlands, if there is some sort of contamination. That is the only thing I would like to add.

SPEAKER:

You have read a lot, have you seen any that address the water quality issue? As far as the monitoring and parts per million intrusion?

SPEAKER:

I don't remember, sir.

SPEAKER:

That is the big thing that I have a big issue with. Adjacent property... A lot of properties in the state of Florida still have wells. We have had a lot of property, a lot of issues with drawdown.

SPEAKER:

Yes sir. The one other thing about the Oviedo ordinance is that no drawdown of the water level offsite allowed.

SPEAKER:

You still drawdown, we are not addressing quality of the drawdown. You can have good drawdown and still have poor quality. Thank you.

RONNIE MILLS:

Mr Watts, would you like to say something?

SPEAKER:

I just wanted to suggest perhaps, Tim Laos who is one of our operators can speak to the water quality issue. Mr Young, if you would be interested in hearing on that, I think he has a suggestion that might be worth considering.

RONNIE MILLS:

State your name and address for the record, sir. Hand in a public participation form to Ms Cushing.

SPEAKER:

Tim Laos, 27 N. Summer Street, Orlando, Florida. I am a consultant. The water quality issue, a good way to address Mr Baker's concern is to take a sample at the very beginning at the centre baseline.

And then as we do our tests, make sure it stays within the same baseline. That would be a good example.

JAY YOUNG:

Monitoring the drawdown, or the various parts per million of salt water intrusion?

SPEAKER:

The actual water quality.

JAY YOUNG:

That is what I am addressing.

SPEAKER:

That would be another test.

JAY YOUNG:

You propose doing that on a regular basis?

SPEAKER:

Monthly or quarterly. A little background, I am with water resources at Walt Disney world. Very familiar with hydrology. I'd be more than happy to answer any other questions if you have them.

RONNIE MILLS:

Do we have any questions for him? Thank you for your input. Do we have any other people who would like to speak?

FRANK COSTA:

Two questions for you, page 5 and 17. The five-year review benchmark, how was that established? That timeline? And what it be prudent to, on something of this magnitude, do a review with 24 months as opposed to five years?

SPEAKER:

I think we are still working through that process to establish it.

FRANK COSTA:

We are matching St. John's, which I am OK with. I have faith in St. John's. But I would also like to have that opportunity to correct an issue that may come up within the 24 months, as opposed to waiting the entire five-year timeline. It is a long draw.

Secondly, on page 9 of 17. X A through E. You are talking about recommendations for monitoring wells, etc. Talking to the point about the quality of water. In this paragraph, unless it is buried someplace else, there is no timeline or time between reports. Is a report due at the beginning, middle and the end? Just a report in general? Is it something we can use as that quality of monitoring, potentially, as was suggested monthly or bimonthly scenario?

SPEAKER:

Just to clarify, that is in our existing ordinance and needs to be submitted within the special exemption application. On page 8 it goes into more detail of what they need to provide.

RONNIE MILLS:
Mr Young?

JAY YOUNG:

You are talking about section triple I. As far as that requirement addressing the report... Again, you are stressing pulldown. I would like to see some kind of addition in there that actually mentions or pulls out some quality testing. Rather than just draw down. Most of the complaints I have seen were due to quality, not so much drawdown.

SPEAKER:

What we heard is that you would like to see these revisions, and what we would do is go back and look and propose some additional revisions before it goes to council. Or we could bring it back to you, if that is your precedents -- preference.

JAY YOUNG:

What I have seen is a lot of neighbours with salt water pollution. When they start pumping and drawing down, you are also pulling in material... Dirt matter that is pulled in from the dewatering process. I would like to see something that addresses the quality of the water, checking that in some way. If they are not only not pulling it down, but they are not degrading the water. People complained their water had saltwater, a lot of neighbours. That is something I am aware of.

SPEAKER:

Yes sir. We will look at that and add that with the recommendation.

RONNIE MILLS:

When I think I'm hearing is about water quality. We need a water quality element put in the ordinance. Obviously there is not one in there from what we can see.

We also need, if there is not a water quality ordinance what we also need is parameters for the diminishing water quality. You can check your water quality if there is no standard of how low or high it can go. That should be in the ordinance should it not?

SPEAKER:

Yes sir, we will look into that and add that.

RONNIE MILLS:

Go ahead.

SPEAKER:

Are we at the point where redoing comments are we closing public participation? I do not have a question for staff just commenting.

I think that for my take I feel like there is enough revisions that I do not feel comfortable at this point to County Council before coming back and at least having some of the water quality issues. I agree with Mr Costa on the five years.

I think that is an exceptionally long time especially with the water quality issues that we have in Volusia. I think it needs a little bit more work.

SPEAKER:

I want to make sure I understand the five-year issue. What is proposed is that we would revisit the ordinance in five years to see if it is working. The five years would not be the monitoring for any specific project. That would likely be monthly or quarterly. So, in that five years can be different standard absolutely. I just want to make sure that I understood we are talking about when the staff would review the ordinance to make sure if it passes...

SPEAKER:

That was my suggestion. Is it working properly or as intended? If we go back to the original which was the hundred to 150 feet I think it is. That is my point that five year timeline but if the ordinance runs for five years, if we look at it then there are too many cows that have walked out of the gate at that point.

SPEAKER:

Perfect, thank you.

RONNIE MILLS:

We can put that two years, but if we do not have anybody applying for it in that two years you know...

SPEAKER:

I do not think that is the case.

SPEAKER:

We do have one pending excavation in-house. It would not be impacted by these changes because that parcel is in a local plan that requires an average of 100 feet from the wetland. To change that we would not allow this to occur because it would require a comprehensive plan change. That would remain at the average of 100 feet.

SPEAKER:

OK.

RONNIE MILLS:

OK we are specifically addressing this ordinance is what we are doing. What you're trying to say.

SPEAKER:

Yes sir.

RONNIE MILLS:

And how we are addressing the issues today, do we want to send it to council with our concerns?

SPEAKER:

I thought we're sending it back for revisions and coming back.

RONNIE MILLS:

That's what I'm saying, you want to revise it and send it back.

SPEAKER:

Go ahead if you want to speak.

SPEAKER:

I think somebody who has knowledge of water quality and what have you should at least review this and put some figures to it before we send it to County Council. Because I am not aware of anyone at county council, no offence, that has background on water quality. I think we need some standard in somebody with reliable knowledge to look at water quality before we resubmit this. That is my opinion. That is strictly my opinion.

SPEAKER:

I totally agree with you on that point. I do not feel comfortable with the way it is right now.

SPEAKER:

I was going to echo the same thing. I think balance looks for approval from both sides. I see a lot of good work that has been done but I do not see environmental side coming to the table and saying we look at any of this. And we are good with that. We basically have two dissents and one no comments right now. I do believe in his comeback, I am prepared to make a motion.

SPEAKER:

My motion would be to on this ordinance to be to continue to accept to review it with the recommendations make here specifically to water quality issues. I also think to the overlay in the comp plan discusses mineral rights... Wetland area is very similar. Just to look at that and bring it back to counsel.

SPEAKER:

I will count -- V-21-095. With the addition that I would like to see some he was some knowledge of water quality be involved.

RONNIE MILLS:

I think what we're trying to say in the motion is we would like to see a water quality element introduced into this ordinance. Is that correct?

SPEAKER:

Correct. And then come back. Before it goes to County Counsel.

RONNIE MILLS:

We have pretty much laid out in what we're looking for the water quality issue and we work that out. We are obviously not here to (inaudible) your ordinance but we are here to make recommendations to its.

I got a motion. Yes ma'am.

SPEAKER:

I was trying to take some notes... So... Was there anything about you wanted to be looked at regarding off-site downdraft? I have comments here regarding the samples not a baseline but you wanted actual water quality tests, monthly or quarterly.

SPEAKER:

The baseline would establish those.

RONNIE MILLS:

We are looking from some parameters with the volunteer quality.

SPEAKER:

I made a comment up here and I was going to ask a question about it. Measuring from different places, does that make sense? I'm just throwing this out there some thoughts that went through.

I am not sure we said that but it might've been.

SPEAKER:

I might have been able to help. This would all be site-specific. Monitoring wells would be set up at the right location based on the site. If there is an area skews me, where there is residential wells obviously at the edge of the property near those wells you would want to have monitoring site. Which would measure both the drawdown in particular the salt water content of the water at the edge.

SPEAKER:

Some debris.

SPEAKER:

Total suspended solids, there are lots of ways to measure that.

We could set at the time that we will review the project, we would say here where it makes sense to have monitoring wells. Some projects may need five and some might be 10. It is completely dependent on the site.

Then we could require at a minimum, a measurement of solids in the water and some measurement of the salinity of the water. We could look at things like nutrients. Although, what is there is kind of what is there. I do not think the excavation increases in nutrients in any way. It is more about the saline and the solids in the water. Then we could identify based on the site how often. In some cases it might be monthly and in some cases that might be overkill. If we put in the ordinance of those parameters are important and it be measured pre-, during and post. Then we will be able to see if there any impacts.

The issue with the water management districts one-year modern contract. Things can be going back for nine months or 10 months before they even noticed that. We did not feel that was appropriate, we would much rather see it more often. Something is going South, we see it early.

I think we do writing the language to meet with yours on. And still have it to be site-specific. At the time that a new application comes and if we need outside assistance from a hydrologist or something like that, we have the ability to do that. Does that help?

SPEAKER:

Thank you for clarifying some of the comments I was writing was try to follow along. Figure --

SPEAKER:

I would also say if staff had some environmental support behind it might help a little bit. I know that is always difficult, do not get me wrong. And there is somebody again, just from what we have been presented from the Council today is basically please do not do this and one I have no comment on this. Would be nice to have a little something on that.

SPEAKER:

That gentleman that is open down the water, do they have addressed hydrologist or anybody in your group that is on your board?

SPEAKER:

No?

SPEAKER:

My suggestion is using an expert that is on the continuing services contract with the county.

RONNIE MILLS:

We do have a motion on the floor to have this brought back after a water quality element is introduced into the ordinance. And the concerns that we brought up to bring in the water quality elements. We have a motion from Mr I apologize for this... Valerie. And a second from Mr Young. We have a second for Mr Young. We have made our discussions on the motion, so now we will taking a vote.

All in favour signify by saying aye. Any opposed? Ordinance passed unanimously.

Next. What do you have next? That is it.

We do not have any old business to deal with today. Do we have any other public items?

EDITH SHELLEY:

No sir.

RONNIE MILLS:

I'm hearing none. Our next would be our code compliance discussion. Staff items. (Laughs)

This is going to be interesting.

SPEAKER:

We are all getting tickets. (Laughs)

SPEAKER:

My understanding on this was that we wanted discussion on the process of code enforcement. I do have a PowerPoint. We do not need to use the PowerPoint if you do not want to. If you have specific questions and you just want to go but it that way. Excuse me. I'm Chris Hutchinson I'm co-compliance manager I've been here for about four and half years. Prior to that I was go compliance manager for the city of Port Orange for three years. Prior to that I was a police captain up in Western New York battling with... That is my background.

RONNIE MILLS:

OK. I think Mr (Name) was concern with the code enforcement. Let us start off with a question and answer

SPEAKER:

Time for the moment. A lot of the time some of us know it and some of us do not. I respect your presentation but let us go to question and answer first OK?

SPEAKER:

What spurred this is we had a case of code compliance went out on a complaint my neighbour. An anonymous complaint about let us just say a fence height. During that visit, code compliance racks up an entire list of items.

I'm trying to figure how you guys... What is the operational methods that you use? Because either have a knock on old benefits complaint you never would've noticed that there was a house setback issue or potential building issue. Enter get my head wrapped around that.

SPEAKER:

That is a great question.

OK, we are completely reactive. We have to receive complaints before we can handle that. When we do get a complaint, against the property, property owner. There is a process that we follow were number one, we look to see... We can say that the fence. Number one we have to look at the zoning of the property before we do anything. Some zones you do not need a permit for a fence. You can build a fence however you want. So we have to check that. Go ahead and keep it.

That is your stop work order, delivered to you personally. (Laughs) We do check that, and then we compare the zoning with what is in the code and we have to determine that. Right now, due to COVID, we have made changes. Each one of you are going to get one of these packets. Pretty much, what is in the packet is a couple door hangers. There are three door hanger's in there. The orange one as if we get a complaint, but if we have gotten out there and maybe we don't see the complaint, maybe it is in the backyard, we leave this with the card attached to it and say, "Please give us a call, we received a complaint and we would like to address it."

The next door hanger in there is a white one. This is, we have gotten a complaint – that is the first one – this is the second one. We got to complaint, we see there is a violation. This is what you need to do. Give us a call, we would like to work with you to get it done.

Code enforcement is only after complaints. That is really all we want. We wanted to just go away, fix it, make it right and get rid of it. This one gives them more details about what needs to be done, it gives them a timeline to correct the violation. At this point, it is called informal notification. Which by statute we have to do. We have to give an informal notice. The time to correct is all up to the officer. It is officer discretion. That's that one.

Then we have one about watering, I threw that in there because Don Kerry (?) would like me to get this out to as many people as I can. The other thing in the packet is a list of common violations. And then my card.

To go back to the question, we give all this stuff out. When we get to the property – so with COVID, we actually mail an advisory notice. Trying to reduce contact with citizens. To help prevent the spread. When I started here, that was the process. I didn't like it. I think you are better off going out and talking to people, but COVID overruled my decision on that.

Once we do go out and inspect the property and we find a violation, we either leave the door hanger, or we also have another form that is a violation notice. I am getting into semantics here, but that is the same as an informal notice. We go out, we give the informal notice, we give them time to correct

the problem. But we also see – where we have this fence that is not supposed to be there, all of a sudden, there is this shed that doesn't appear anywhere on the property records. So now we have building without a permit and we open up that case.

We have an interesting one going right now, they did get a roof permit for a shed they didn't have a permit for. That has been a lot of fun. (Laughs) It got through a couple of inspections, too. That one is going before the board. So we find multiple violations. I think I got an idea about which case you are talking about, we got out there and there was a seawall and a shed built. The shed was actually attached to the house, and there is a dock and a deck and all kinds of wetland intrusions.

Mr Foster has been doing a good job to try to get that mitigated. That is what we are looking for. We love it when a respondent says, "Can I have my attorney call you?" Usually attorneys understand what is going on. A lot of them, like Mr Woods and Mr Watts, they know the city better than I do. They are really good.

I think that answers your question of what we look for. And then what we have to do, we have to open up all of these cases on the property owner to address everything. That is pretty much what we do.

RONNIE MILLS:

So you are purely reactive?

SPEAKER:

Well, yes. We have to be reactive only. We have to receive a complaint. Another issue you brought up with the anonymous complaint. I am not sure if you are familiar with what is going through the state legislator right now and what has been passed, but basically the law in a nutshell makes it that code enforcement officers cannot take any action on an anonymous complaint.

Right now, we are waiting for either the governor to sign it, veto it, or on July 1 take effect.

RONNIE MILLS:

My follow-up question to the reactive part. You get a complaint about a fence, you go, you see the fence, you see various code violations. In the process of taking a look at property A, you happen to notice that property B it a junkyard. Do you ignore that, because you are reactive? Or do you open that as a separate case?

SPEAKER:

We can open it as a separate case, we can address it with the property owner.

SPEAKER:

So code enforcement is not entirely reactive.

SPEAKER:

We have to have a complaint to get out there. There is no set thing that we have to do. If we go out to say, somebody hasn't cut their grass and right next-door somebody hasn't cut their grass, you might want to mention it.

SPEAKER:

Semantics mean a lot here. If you say you are an entirely reactive division, people think that is what

it is when it is not. You said you have a card of frequent or common violations? Look, I get a packet too! I look at the common code violations, and one is boats. If you read that, it doesn't read as what is in the ordinance. There is no mention of a certain line. I think that create some confusion.

When Mr Costa is bringing this up as, are you entirely reactive, you started with the presentation saying you are reactive. But then it comes in to, we are reactive, so if somebody makes complaint in Bethune, everything from DeLand to Bethune becomes a potential code violation.

SPEAKER:

We cannot do sweeps. The only way we can do sweeps is by order of the council. If we are at a property we can do a 360° look at the property around, and yes we can open up cases at that point.

SPEAKER:

360° from the front? Is this synonymous with the violation notice?

SPEAKER:

The violation notice.

SPEAKER:

This, or the notice of violation are synonymous?

SPEAKER:

Notice of violation are separate thing. This is the same as what we call a violation notice, something generated by the computer that says on your property, we see a violation, you need to fix it. There is a notice of violation – that is a document that is the formal notification, and it has the nasty language that we are going to fine you \$1 million and so on and so forth.

That notice is very severe, but it has to be. Because a lot of times the door hangers, the advisory notices, the violation notices don't gain any traction. But by law, we have to administer those. By Florida statute 162.

You get to the property, you have done all this, you have given them their white door hanger. They don't do anything! You go back out and inspect. At that point, we see there has been no compliance. That is when we issue the notice of violation. That is issued by posting the property and sending certified mail. Florida statute 162 states that you have to make to attempts at notification.

SPEAKER:

That triggers fines at the same time?

SPEAKER:

Typically in the code, it gives them 10 days to correct the violation. At that point, that is issued. That is 10 days from the receipt of the notice. We go out, we tried to mail it and posted the same day. We go out, we inspect, they haven't done it yet. The next step as we notice an issue of hearing. And that is to bring them before the code board. That is done the same way, it is posted on the property and mailed.

When we mail these certified mails, we mail them to the address and property owner on record. The statute requires us to use that. It is usually set up for a month or two for the next code board, so it gives them more time to come into compliance. Like I said, my background as a police officer. When

somebody did something wrong, we put handcuffs on them and took them to see a judge. I got into code enforcement, this is a little bit longer!

If the case went perfect, and I am saying perfect to get it to the code board, it is minimum 45 days.

SPEAKER:

Here is how it relates to us. You cite somebody for a fence being too high, let's say. You cite them, they do nothing. You give them the second and third notice, the notice to appear. They appear in front of the code board and speak their case. At what point in time does somebody say, "Listen, if you don't want to take the fence down, your only option is to come in for a variance." How long is the process before the public gets informed that?

SPEAKER:

Well it is kind of in their court. If we do have somebody who engages with us, we mentioned to it pretty quick.

SPEAKER:

If they ignore you completely, which is the majority of your cases, I would imagine?

SPEAKER:

We work with staff here quite often. We are down talking to them, maybe even before we get engaged by the public. We are down talking to them. This is the case we have, this is what we are looking at. What do they need to do? We usually have all of that information for them, but they just don't contact us. A lot of times we don't get that contact until we issue a notice of violation, when we post on their door, or the notice of hearing. Then they decide to engage. Some people will get right on it.

SPEAKER:

That answers my question. I was just looking for the process to how they get to us.

SPEAKER:

That is pretty much how it is. Usually there is a pre-application meeting, we will all get in together and sit down.

SPEAKER:

One thing that spurred my comment is I noticed in the code violation and they finally came to us was about two years old. For two years these folks have been drug through, it could have been from their own fault, but my point is two years ago somebody could've said, "All you have to do is get your application together and go in front of the board for a variance and your problem could potentially be solved."

Two years later, they got cited two years ago and now you are in front of us? What took so long?

SPEAKER:

Sometimes it works out where we are in the code board hearing and we finally have contact, the officer is standing up here and they finally come up. Like, nice to meet you, you know? And then that is when it might come up for them to potentially work with staff.

SPEAKER:

It does seem like the code enforcement Board helps out with that. They say, "Hey, did you know you need to apply for a variance?"

SPEAKER:

They will mention it quite often. Work with staff. We tried to have Scott Ashley here to answer stuff.

SPEAKER:

I have one other question about the law you just said. Like you said, there was a lot that just went through session, and whether it is to be vetoed... Our sources say it won't be vetoed, it will go through and become law. Is code enforcement equipped to make that changeover, because that goes into effect right away? There is no moratorium on that. Are you equipped? A follow-up question, is the only way to do code complaints through the connect live system or calling in? Can people call code enforcement directly and be responded to?

I feel like there are code enforcement issues that are not trackable in the Connect Live system.

SPEAKER:

Have you guys heard of the Amanda system? That is a computer tracking system and Sony music, we use it. When I first I heard I was trying to figure out who the heck Amanda was. Was pretty important. I did not know who she was.

Anyways, say Becky is myself as a call and complaint. She enters it into the Amanda system. It's tied into Connect Live and you should be able to access that. I am not an expert in Amanda by any means but I think it works.

We still take complaints anyway. I know they do need to do some work with connect work. There is a section in there for submitting anonymous complaint. I know they're planning on getting it fixed.

SPEAKER:

That was my question. If somebody calls in, about a neighbour and do not want to give their name because the neighbour is a SOB who are going to come over and get me.

SPEAKER:

I cannot act on that complaint. Not as of July 1.

SPEAKER:

That is interesting. I just happen to know some people who have done that... Some neighbours they find out who they are they will -- you are likely to find your house burnt down.

SPEAKER:

That is a drawback to the law. There are legitimate times when that should be a an anonymous complaint.

SPEAKER:

It's not necessarily them has a public, they just need to make it public.

SPEAKER:

We have to make it public? You have to make it available to them but you do not have to make it public.

SPEAKER:

We do not have to tell the respondent that so-and-so called. I would much rather do the proper channels and take the request from the respondent, give it to our public relations person that handles all of the public record request and give it to...

SPEAKER:

If they are requesting to tell who gave it?

SPEAKER:

We have -- we will make sure they get information.

SPEAKER:

My history is with code complaints as well. I think it is important that anybody is accused of anything should be allowed to look at their accuser. I think there are ample protections for that.

SPEAKER:

I agree 100% with that. Like I say, I am a police officer by trade. I know will be used to get the anonymous complaints they went right to the bottom of the pile. Unless it was a life safety thing. That was different.

RONNIE MILLS:

I would like to make a comment that I'm glad there's a code compliance process. A lot of the ordinance in place today people are not aware of those and we need to give folks time to get in line or to comply.

Perfect example, a building permit for a chicken. I had no idea you had to have a valid permit for a chicken.

You can have chickens but you need to have a building permit for chickens for the coup. I think sometimes we create a problem but trying to solve a problem with a lot of these ordinances that get in place. It just creates a bigger problem.

If I had my way, all of these ordinance will be reviewed and to go things that are just frivolous as far as I'm concerned. They may not be frivolous to someone else...

SPEAKER:

Or overreaching in some cases.

RONNIE MILLS:

As much as some people do not like it, we should have a sort of personal property rights to be able to have a chicken coup on our property without having a building permit.

SPEAKER:

Think it depends on the size of the chicken can. Their hurricanes. Windblown debris. That is why they want to make sure it is anchored down and put together.

RONNIE MILLS:

You can have a sailboat in your regard and do not need to tie down. There is no ordinance for that is

there?

We have to take everybody's perspective while we make these ordinances. Not just a problem, we need to look at the whole bull's-eye. The whole target not just the bull's-eye.

SPEAKER:

A lot of that is dependent on the Florida building code. That require certain things and sizes.

SPEAKER:

A lot of contractors promote think they are hiring a licensed contractor. They replace your garage door and do not realize it requires a permit. They replaced section of fence that requires a permit. Then the homeowner is in there and thinks they hired licensed contractor. Like Mr Costa said now you are dealing with everything from my dock to my sea fence is over 4 feet. It's ridiculous.

SPEAKER:

We will have a licensed contractor come out and do something that should require permits but they are going to do it on Saturday when code enforcement is not around. Do it without a permit.

I've had to replace a couple of windows in my house and I will be honest with you and I contacted Window World and they told not get the permit because going to cost you three dollars.

SPEAKER:

I mean Home Depot and some of these others, is a bigger problem.

SPEAKER:

I've heard that code enforcement people are ogres.

SPEAKER:

A lot of that is why we have Paul working.

SPEAKER:

I appreciate taking the time and educating us.

RONNIE MILLS:

Thank you sir I appreciate taking the time and talking with us.

We do have Ms. Jackson on the variant criteria section.

SPEAKER:

Last but not least. So we want to bring this forward as an item for discussion. Our various regulations currently require that in order for staff to recommend approval, they have to meet all five criteria. That is almost impossible, there are cases when we can find that. Typically it is on the nonconforming lots. They have been a lot that do not meet zoning standards for the last 40 years and they have changed hands times before they get before this board.

Somebody purchased the property expected to be able to put a house on it and find out that they cannot because it's nonconforming. We can usually find that those meet all five criteria. Almost everything else we cannot.

Specifically, the criteria... I have provided you with all of the five criteria you see a million times every month. That literal interpretation of the code would deprive them of a commonly enjoyed right.

Especially criteria for that is the minimum variance to make reasonable use of the land.

We try to be creative. Many times with these of how we form our answers. How we think about these variances. But it is very difficult to find that they meet all five and then the burden is placed on the board to determine if the applicant can provide competent and substantial evidence for you to approve the variance. If you cannot, we set ourselves up for the potential of an appeal.

We wanted to bring this forward to you for discussion whether or not you might be interested in changing the criteria to say, "A majority of the five criteria must be met in order to find approval of the variance."

I wanted to bring that forward to see what your thoughts were. Do you like the way it is or do you think changes are in order?

SPEAKER:

Has this become a big issue? Going to speak first because I have been here longer than anybody. (Laughs) For some reason.

Has this been a real issue? Because over the 15 years that I've been here, we usually either find it or we do not find it.

We have a little bit more leniency in its them and the statutes. Has this become an issue? Why has this been brought up? If you think majority then 3 to 5 could meet the majority of the conditions.

SPEAKER:

From a staff perspective, we often find it difficult to find that they meet all five of the criteria. We have to recommend denial. Even though we think the variance is fairly reasonable.

There is the burden on the staff trying to figure out how to craft the answers to those questions. Also just recently, we did have an appeal of the case it was a variance case to a corner lot site setback.

That had to go before council and was argued about the competent and substantial evidence portion. I know often times, I do not know it is a true finding by this board that competent and substantial evidence has been presented it is just that you feel that that variance is reasonable.

And so, the variance that went before the council, the appeal. In that report we did a good job of answering the questions and this board did a good job of listening to the evidence provided by the applicant and didn't make a good finding. That the criteria could be managed early on.

I do not know if in all cases an appeal to stand up to that. It's food for thought for this board to consider whether or not they want to lax the standards the bit and make it a little bit easier on both the board and on staff. Or more importantly, the applicants.

Who just like your code enforcement case that you're just talking about, that case that you are referring to it came out there because there is an RV parked. Then they found all of those structures. Often times, using that as a lead and often times the code enforcement issue for one thing and they

come forward to try and correct that by getting a variance to let us say it is not permitted. It is not in the right place.

When review their survey and permitting history on that property, we pull in a lot of other things because we do not want to take them through an expensive and time-consuming process and leave issues unresolved on the property that might get hit on later. We want to legitimize everything On that property. Think that is the best customer service we can give in a situation where they are going through a process do not really want to go through.

SPEAKER:

I do not have all the answers but I did attend the Florida planning a special convention you guys sent me to. The location is ideal they give you in our house for lunch. We will leave that they are. What I did learn during the eight hour day is that you guys are very by the book. They follow... These five greater the receipt every month are outlined in this and used statewide. The few people that I talked to there they basically are bound by this.

I understand that.

What I look at is what when I am on the outside just the general public. And I submit and all of a sudden I get inundated with I have to have an variance through a through C. The amount of paperwork of time and money spent on some items that I think are common sense in my opinion. Reasonable I think is the word used. I think they could be result of the staff level before the public has to come all the way through the process for something as simple as a corner lot.

They do not have two front yards technically they only have one. We see a lot of those. I'm just her and say, how can we make it not to put more burden on you but to take some of the burden off of the public for some of these items that I think part common sense type items that can resolve at a table top rather than coming to us?

I love coming in here listening to this but I think the general public has better things to do.

SPEAKER:

I think if we see something that happens on a regular basis. A while back I did a study of the book talks. If you remember. This is something that happens on a regular basis, like the corner I will agree on the corner lot thing. If it happens then the code is wrong. It is not us that is wrong. It is the code that is wrong. If XYZ kind of sign like appearance sign comes up every other month, then there something wrong with the code.

For if we keep giving a variance for the same thing, every month. A setback or something. And it is the code, not as. I do not think it is the criteria. I think it is the code. If you say all greenhouses are bad and it happens to be the year everyone wants greenhouses. It is the code that is the problem not as. That is my problem with that.

SPEAKER:

Just expanding on that. One of the first things that hits me is that I'm the new member and if. Or what we do? One of the things that I looked at the first part that I got. Before sitting in it and a great orientation, I wondered why everything was denied. Recommendation to deny. That I sent to my first panel I think the optics are staffed and I do this but seven panel number say yes let us do that when I believe that I did not realize it was stop saying we have to by ordinance or by default. I am not

against changing the language up a little bit to make it more... I think when the public looks of this and sees that staff did a lot of work on this and does not meet the criteria story going to tonight it's. Then our fate rests in seven people's hands. I think it would help to show that we are looking the same when you're looking at it. It is a proposal that I think is very interesting. Because of two points three and four are the biggest ones that I can understand that. It was something as a new person to the group, I looked at it and thought it was odd and thought they were going to deny everybody but I did not realize it wasn't for

SPEAKER:

It took me a bit to realize that the recommendations were extremely helpful. Because while I didn't want to go against staff, I vehemently disagreed with their findings, until I realized they are bound by their book. They have to follow that letter of the law, but all of a sudden, here is a little bit of a grey area. If we agree, we can get this to go through.

SPEAKER:

Mr Costa mentioned it, I think it was mentioned over here as well. The two front yards. That is a real pet peeve to me. And we have talked about that as a board, that that is a change that needs to be made. The ordinance says, if you are on the street and you have to front yards. We get those all the time! We have said that as a board and nothing's happened, but that needs to be looked at as a suggested change.

SPEAKER:

I agree. I believe the staff should have the latitude to look at the ordinance or the code. Sometimes it does not necessarily fit the intent. If it is a direct violation, and it can't be overcome by logic, then we should obviously deny it. But if it is a logical explanation on why that is occurring, it goes back to what I said previously on code enforcement. We need to look at these ordinances or codes and see what is logically in place, and should we not look at that and make more lenience on that?

Now, I know we have had board members who have had a problem not meeting the five criteria and wanting to deny it. But I away say, that is what we are here for. That is what the variance board is here for. If it is a legitimate request, I go for it.

SPEAKER:

A lot of times it depends on the complexion of the board, and that depends over time. Whereas a years past, there has been a lot more denials from the board, because they looked at those criteria more like staff has to. And the complexion of the board has changed, and there is more leniency, more accepting of the applicants evidence that the variance is unreasonable. And so the board has been willing to approve more variances than they have in the past.

In the past, we have been working on it administrative variance code. We currently don't have one. The staff has no authority to grant administrative variance, even when they are reasonable. Like the nonconforming lots to separate lots. We have drafted criteria... Or, let's say we have a couple cases recently where the houses just built in the wrong place. It was approved on a site plan for permitting, and it is a foot out of line. We should be able to approve that, but we don't have that authority right now.

I worked in jurisdictions where their criteria were different, they were more lenient in how they presented the cases to the boards. It is jurisdiction by jurisdiction.

SPEAKER:

It gets back to what I said before. It is all on the presentation. They go out and spend quite a few dollars to get in an attorney and present their case. I have seen a lot of participants hurting themselves with what they end up saying! Is it really fair? As a board member, I take all of that into consideration.

SPEAKER:

Can I follow-up? You mentioned that an appeal, a finding of a board member and the substantial evidence that they heard... Isn't anything they presented competent substantial evidence, if the applicant is there and presents? How would that not stand up?

SPEAKER:

There is a standard for competent substantial evidence. It is basically factual information that a reasonable person can look at to support the conclusion. Going back to what staff does in its report and what the commission does when we are actually in the hearing, staff gives recommended findings based on their expertise. They are your professional planning staff. Their interpretation and opinion, this is how they are analysing the request for the variance. They are not the ultimate fact finders. You seven are the ultimate fact finders.

That it is your decision, and it is your decision based on the competent substantial evidence presented. There only has to be one piece of evidence to support each of these criteria. That is your baseline, just find one piece of evidence. If in your opinion, it is factual and tends to prove one of this criteria, check the box. As far as the criteria, some of these are more important than others.

The first free -- three are fairly important and goes toward a fundamental aspect of the variance. It is a hardship, it is not created by the applicant, and the hardship on the land or on the surrounding property when measured against the actual code causes an unreasonable result. Essentially. That is your baseline.

The rest is that it is minimal and non-injurious to the neighbourhood. Those are not as important as the first three criteria. But as far as your common requests, those are policy decision-makers. For example, the two front plots, the corner lots, that is something that rather than amending the criteria which applies to every single variance, the criteria for those corner lots should be amended.

SPEAKER:

That is what I am saying. There are some rules that we need to revisit. Because they are the problem, and not the criteria.

SPEAKER:

But fundamentally what the ask is for the criteria is, OK, how big of a hurdle do you want staff and your applicants and yourself to put up to be able to grant a variance? That is the fundamental ask. You can ask staff, hey, there are some things that are so minuscule in nature, go ahead with the administrative variance provision. That doesn't rise to the level of having the commission actually have to rule on a hearing once a month.

You know, those five criteria, the crust is -- the request is right now the staff must find that they meet all of them. And more importantly, for you to grant a variance, you will have to find collectively that there is at least one piece of substantial evidence that meets all five criteria.

SPEAKER:

A follow-up question to that would be, you said that you don't have any administrative variances right now? Or are there variances that are passed without being heard by this board?

SPEAKER:

There are no variances that are passed administratively. We have drafted... It is still being worked on and hasn't come forward yet. We drafted it, and it didn't capture enough... We felt that it didn't capture enough. We might be reading?. -- Rethinking that.

SPEAKER:

For right now, we would still come in front. It would just be coming with the recommendation for approval based on three of five being met, rather than recommendation for denial. It would still be coming in front of the board. I think from an optics standpoint, I see a lot of people sitting there nervously thinking they are not going to get a variance for the 1.2 feet extra that is there. And then after six or seven cases, they are like, wow! They are approving them all.

I think from an optics standpoint this is better for everyone.

SPEAKER:

Are you saying that a lot of cases that come before us now wouldn't come before us then?

SPEAKER:

No, they would until and unless we adopt an administrative variance code change, which that ordinance would come before you. Until we do that, all variances would come before this board. Regardless of whether or not we have to meet all five criteria, or we meet the majority. They would all come before this board.

SPEAKER:

And for staff, for us... I'm sorry, go ahead.

SPEAKER:

I was just going to ask the last question. What impact is this? What I am trying to get my head around what we are trying to accomplish here.

SPEAKER:

We would be able to provide you with recommendation of approval on many more variances than we can now. It may also create less of a burden in drafting the staff reports. Right now, we practically give you a novel for every variance case that comes before you. We may be able to reduce the volume of paperwork that comes before you.

SPEAKER:

My final thing would be, if you do the administrative variance request and that was to come before, that would be one where it has to meet all five to be administratively done? That would not have to appeal to the same standards, because if it was a majority at that point, I still think that needs to come before a body.

But if administratively it meets all five boxes, we push it through, but I wouldn't want to see it done based on the word majority.

SPEAKER:

If there is an ordinance that gives the approval to waive a provision to staff, there can be no discretion. They have to meet all those criteria, and staff can't have any discretionary authority. That is why we have an appointed board, that is why you have it open to the public. Because you have discretion on whether or not to approve or deny an application based on the evidence.

An administrative variance procedure does not have any discretion on staff. They meet the boxes, we approve it.

SPEAKER:

As someone who has been before several community planning boards, I really appreciated coming to a board of citizenry to talk about in issue. So I like the fact that we are discussing this, and again, the points that were being made about the nondiscretionary. And there is still an appeals process, even with that going on for people. I think the conversation here today has been very beneficial.

SPEAKER:

I have a question, on the flipside of this. If as staff we recommend approval and not meet the five criteria because of one criteria the other. And the board would find it does not meet the criteria, and turned it down. What does that do on a legal standpoint as far as an appeal?

SPEAKER:

I always say that a competent substantial evidence is backward looking. Here is what the case must be. Is there competent substantial evidence to support the decision of the decision-makers. The way I phrased it is backwards looking. It is not if you are in typical court such as if you're in civil court. It's preponderance of the evidence. Does one side have more evidence of you? That is usually what guides that your future.

Here, it is your decision. If your decision is to deny, is there evidence to support your decision? There could be worn in emphasis as it does not meet that criterion seven other pieces of evidence that says it does. But the court and we the appeals process works, it just looks at your decision and the time. Did you have one piece of substantial evidence to support that decision? That is the way the appeals work.

It is not every weighing of the evidence, it's solely looking at what evidence was presented to this commission, what decision do the commission make, and the evidence much the decision and if it did, that is proven. They deny the appeal and uphold the decision.

If it is the reverse, if staff recommends approval for all five criteria, but then the commission says you do not meet criterion number five. Based on the evidence for coming, we think the request is injurious to the neighbourhood. OK, there is a whole bunch of evidence on for or for number five. This commission as a whole and that that particular application that it fails at fit criterion you can do that. Is within your authority to do so.

RONNIE MILLS:

Miss Jackson, did you get your answer you're looking for?

SPEAKER:

I think what I'm hearing is more happy with all of the criteria as. You want staff to find that they meet all five criteria for a positive staff recommendation. Is what is that what I'm hearing from this point?

No?

RONNIE MILLS:

I think I look at it this way, I know they said there are three criteria more important than those two. If the other two were not there would they not be important? Guess that is my question. Why have the other criteria in place at all?

SPEAKER:

I do not know that there were three more important. I thought their weight was the same.

SPEAKER:

That's coming from my side. When I looked at various other ways that jurisdiction have formed their various criteria. There is a model there is criteria has all five. Some of the other jurisdictions I want and have three criteria modify. It is hard to. Is not created by the applicant and the application of the code produces something that is kind of a reasonable and unmarketable essentially hard to. The minimum criteria to someone does not point to a hardship then asked for something unreasonable in exchange. Someone has a corner then the not injurious to the neighbours centre is lots and want to build a six-story house. Shorthand for compatibility.

The fundamental portions of the variance meet the first three criteria. Which I think the fourth one is the minimal one is difficult for staff having... You can always try to reconfigure the request such that it is...

SPEAKER:

I think in terms of reasonable use of the key lands. I think that is subjective.

SPEAKER:

Ms Jackson's trying to get at I think you'd like to recommend approval without having to meet all five criteria. Regardless of which one it is. You can explain why you would recommend the approval.

The expectation for your recommendation of approval should be considered. Right now it is black and white. They either make it or not and you deny it. That is what you are asking for. To be able to give the recommendation for approval without having to meet all five criteria.

SPEAKER:

Yes.

RONNIE MILLS:

With the recommendation for not meeting the five criteria. That's correct?

SPEAKER:

Yes.

SPEAKER:

...about you can do for up to five so that we could account for not meeting those five standards.

RONNIE MILLS:

I'm OK with that if they have some sort of reasoning behind not meeting the five criteria. OK? I have no problem staff approving if they do not meet all five criteria. Pasted up the staff because theirs is

black and white and we are the ones in the grey area. We are the ones who can make the decision the grey area.

SPEAKER:

The way I kind of see our ability to recommend approval say that meet four criteria subject to conditions. Resident puts the burden on the board to find competent substantial evidence. The staff could say they meet these three or four criteria have you want to work it subject to these criteria. Still have the conditions in there.

But if the conditions are not in place we would not recommend approval. Does that make sense?

RONNIE MILLS:

Yes it does. Being able to get to where you want to drive the car to, without giving a complete roadmap.

SPEAKER:

Almost all of these conditions are appropriate to ensure compatibility or to make sure they get their permits. Or whatever it is that they need to be doing.

RONNIE MILLS:

This board would still have the opportunity to say they do not like it.

SPEAKER:

You can put more conditions on. Exactly.

RONNIE MILLS:

And also still be able to approve the variance that need to be. Without they meet the criteria. How you get to where you get? Say that we went to a code change, we would say they need to meet a majority or four of the five. Whatever this board would prefer. That is what we would do it. Or leave it as it is if you're most comfortable with that.

RONNIE MILLS:

I think you should have some latitude. We can tell in presentations and 10 of where you want to go with that. We have to do that because it does not meet the specific criteria.

SPEAKER:

I just have a question of Mr Possin. When you went to this session this is fall in line with some of the jurisdictions just have to quality. It seems like the five qualification seem to be there but does anybody have anything of both edges of curiosity?

SPEAKER:

What struck me is that is very by the book. So, she was saying they are all basically tied to this particular book the way the code is written. Together from this meeting, all the once over there pretty much follow what we do accounting. This is the handbook. This is directly out of that handbook. I can see where you put the blinders on. And see where it has to get. Box 125 it does not fit that I take it out. That's when it comes to us. Some of those items that is why I brought this up originally, it does not meet all five. For a lot of it does not need to come to us.

SPEAKER:

That is another ordinance. That is

SPEAKER:

SPEAKER:

as far as this concern, the way we currently conduct business, until that power is given to you I personally rely heavily on you. I look at all the reasons you denied. I make my own determination of whether it is reasonable issues and look at your recommendations. To make sure they are conduction. Hence, today's recommendation had nothing to do with the variances. I put an X through the chicken coop and I do not know how much time is spent through -- talking about chickens. It was not even on the table. I think it is things that could be done before comes to us and clean it up give us your recommendations we are going to make our own decisions how the optics are on our end. But I do put a lot of weight on your recommendations at the -- in those reports.

RONNIE MILLS:

I think what is Miss Jackson and is the recommendation is based on the five criteria. She can put recommendations in the staff report that would rectify those criteria.

SPEAKER:

Approved with these conditions?

RONNIE MILLS:

That is what she saying.

SPEAKER:

I do not have a problem with that because if we do not agree with you that obviously you will no.

SPEAKER:

I thought that went that way anyway.? If we approve. If you decide to prove that these conditions.

SPEAKER:

I thought it was our job to do is. I have not seen a problem. Or am I looking at that wrong?

SPEAKER:

I think you should be able to put in their we recommend approval staff recommended conditions.

SPEAKER:

Subject to the conditions.

SPEAKER:

The only approvals we get our blanket. There are no conditions.

SPEAKER:

Recommending things.

SPEAKER:

I would support that.

SPEAKER:

Are hearing... Fortify minority comeback we would have to come back and revise that cope with an ordinance and bring it forward to you.

RONNIE MILLS:

Anybody want to make a motion?

SPEAKER:

We need to have counsel direction problem?

SPEAKER:

Ultimately it is an ordinance we cannot put in a discussion with this animation because they are the ones who have to deal with this issue. On a monthly basis. We can express that... One of the things the optics of having all of the staff recommends denials and looking at what the commission is done with all of the approvals, we want to make sure that we are protecting both the commission and staff. There is not really what side that hates the other. If you just sit in one of these meetings, staff is taking a very literal application of it. That is their job.

I think we can write the staff report is such that reminding the commission that ultimately they are the finders of fact. Their decisions based on the extent was presented to staff at the time. Just to make sure that your decisions are protected both on an appeal basis and from an arbitrary and capricious attack.

SPEAKER:

I would make the motion to direct staff... I don't know if I am the majority or the 4/5, I would almost say that at this point I would feel a majority would work for it. I still feel that it is in our hands. My motion is to direct staff to change the variance criteria to account for the majority, and also putting in the recommendations as well.

SPEAKER:

OK.

SPEAKER:

And to bring it to us for review at some point.

SPEAKER:

I have a second?

SPEAKER:

I will second.

RONNIE MILLS:

I have a motion stated fourth and a second from Mr Costa. Any discussion on the motion? All those in favour, signified by saying aye. Any opposed? Motion carries and unanimously. Any staff comments?

SPEAKER:

I have a comment. Where is our speakers in the back every now and then? I couldn't hear what was going on upfront. What happened to the speakers?

SPEAKER:

I don't know, but we will work with...

SPEAKER:

It used to be in the hallway and bathroom I could hear you talking.

SPEAKER:

The volume control in the break room, I turned it up when I was making coffee. There is a knob in the wall on the break room that you can turn the speaker up.

SPEAKER:

You turned it up? It wasn't there midway through the meeting.

SPEAKER:

The coffee room.

SPEAKER:

I am talking about this room and the hallway.

SPEAKER:

I would guess there is a control knob out here.

SPEAKER:

We will investigate.

SPEAKER:

I didn't hear it back there by the restroom and the hallway.

RONNIE MILLS:

Do we have any other commission comments? What about press and citizen comments? This meeting is adjourned.