

July 11, 2007

SPECIAL CALL MEETING
CONSIDERATION OF PROPOSED AMENDMENTS
TO THE LDR CHAPTER 911
TABLE OF USES FOR INDUSTRIAL DISTRICTS

The Board of County Commissioners of Indian River County, Florida, met in Special Session at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Wednesday, July 11, 2007 to consider the Proposed Amendments to the LDR Chapter 911, Table of Uses for Industrial Districts. Present were Chairman Gary C. Wheeler, Vice Chair Sandra L. Bowden, Commissioners Wesley S. Davis, and Peter D. O'Bryan. Commissioner Joseph E. Flescher was absent. Also present were County Administrator Joseph Baird, County Attorney William G. Collins II, and Recording Secretary Maureen Gelfo.

1. CALL TO ORDER

Chairman Wheeler called the meeting to order at 5:30 p.m.

2. INVOCATION

Commissioner Wesley S. Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner ~~Joseph E. Flescher~~ Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

4. PUBLIC HEARING

4.A. CONSIDERATION OF PROPOSED AMENDMENTS TO THE LDR CHAPTER 911 TABLE OF USES FOR INDUSTRIAL DISTRICTS

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

Planning Director Stan Boling announced that there would be an additional Public Hearing (the final one) on July 24, 2007 for this item, which had been initiated by the Board in March 2007. Director Boling explained that the Amendment would address the County's two industrial districts, Light Industrial (IL), which is for limited manufacturing and industrial uses, and General Industrial (IG), which allows for a broad range of activities. He advised that the industrial types of activities allowed in IL are all allowed in IG, but heavier industrial uses are only allowed in IG.

Through a PowerPoint presentation (copy on file), Director Boling briefed the Board and the Citizens on the locations in the County currently zoned for IL and IG designations. He declared that, although all of the existing concrete plants in the County are in the unincorporated area, this would not preclude them from being located in municipalities. He pointed out that the county has concrete batch plants, not cement factories, and noted that there are five existing concrete plants, most of which are located adjacent to the Florida East Coast (FEC) railroad and zoned IG.

Director Boling conveyed that the industrial uses are classified according to the North American Industrial Classification System (NAICS). He detailed how the Table of Uses is set up, and discussed the land uses that would be permitted only in the IG, and not in the IL, districts, if the Amendment were approved.

Director Boling presented some of the reasons for the proposed Amendment, as outlined in staff's report (pages 6 & 7 of the backup), and provided an analysis of industrial districts in

other jurisdictions (page 24 of the backup). He related that the Professional Services Advisory Committee (PSAC) had reviewed and moved along the proposed Amendment, but was considering whether the uses should be permitted only in the IG district, or if there might be special exception allowances. Director Boling stated that the Planning & Zoning Commission (P&Z) had voted 6-1 to recommend adoption of the Amendment, but concerns were expressed about fairness to those who have already applied, and suggestions made about stipulating that the Amendment would not apply to existing applications.

In conclusion, Director Boling asked the Board to: (1) consider the proposed LDR amendments to Section 911.11, Industrial Districts; (2) direct staff to make any necessary revisions to proposed Amendment; and (3) announce its intention to adopt the Amendment at the July 24 final hearing.

Commissioner O'Bryan wanted to know if the Amendment to the Ordinance would result in a shortage of IG properties, if there were any IL properties that could be rezoned as IG, and if it would be economically feasible to have sites not in proximity to the railway to accommodate the growth west of town. Director Boling conveyed that it could be appropriate to rezone some IL sites, and reported that Prestige Concrete had thought it economically feasible to locate their plant away from the railroad tracks.

The Chairman opened the Public Hearing.

Dale Simchick, Sebastian City Councilmember, felt that the proposed Amendment would serve to correct a planning error. Referring to a map showing the North County, she presented her concern, that without the Amendment, there would be a chance for "history to repeat itself" in the IL zone at the north end of Sebastian. Ms. Simchick entreated the Board to move forward with the Amendment, as per the June 14, 2007 and June 28, 2007 letters sent by the City of Sebastian to the P&Z and to the Commissioners, respectively (copies on file).

William Cox, River Run Drive, provided a fact sheet on particle pollution to the Board (copy on file), and made observations about how these particulates negatively impact the population's health. He applauded P&Z for their good work, and supported the Board's approval of the Amendment.

Cy Carlson, Roseland, discussed her concerns that pollution emanating from the plant would spell disaster for the Indian River Lagoon.

Kelly Mather, Sebastian, pointed out that there was a precedent for the location of heavy industries in IG designated zones, and supported the County's adoption of the Amendment.

Rex Nelson, Sebastian, reviewed the handout he had presented to the Commissioners (copy on file), detailing his reasons for the Board to support the Amendment and to apply it to any existing site plant applicants.

Don Wright, Sebastian, believed that an error had been made when the IL and IG zoning designations were originally adopted, and supported the Board's approval of the Amendment.

Craig Munson, Sebastian, asked the Board to approve staff's recommendation, but to grandfather-in Ocean Concrete, Inc.

Bob Nyberg, 110th Street, Sebastian, aired his concerns regarding the safe disposal of the concrete residue found in the trucks, and had fears that Ocean Concrete, Inc. would negatively impact the Pelican Island Wildlife Preserve, the Indian River Lagoon, property values, and traffic. He was in favor of the Board passing the Amendment.

Clerk's Note: Court Reporter Patricia L. Nelson was present on behalf of Attorney Geoffrey Smith.

Geoffrey Smith, Esq., Smith & Associates, Tallahassee, representing Ocean Concrete, Inc., and the Principal George Maib, voiced his dismay that tonight's meeting seemed to be focused on opposition to Ocean Concrete, Inc., rather than on establishing future land use development regulations. He felt as if the County was trying to alter the zoning so Ocean Concrete could not receive their permit, and wanted the Board to hold further workshop meetings relative to LDR's.

Chairman Wheeler stated, for the record, that he believed only two people had mentioned Ocean Concrete, the others talked about the plan and the industrial areas to the north, including Ocean Concrete's application site. He made it clear that tonight's meeting was to discuss the County's Land Use Regulations as applicable to the entire County and asked the citizens to refrain from directing comments specifically towards Ocean Concrete.

Attorney Smith opined that a concrete batch plant was a negligible source of pollution, and noted that there were some experts present who could provide feedback on the plant's environmental impact. He mentioned that the report he had submitted to the Commission (copy on file) contained a memo on equitable estoppel. He asked the Board to apply the Amendment, if it is approved, prospectively. Attorney Smith suggested that the Board look at future land availability to meet the County's growth needs, and to consider the use of alternatives such as buffering, to address quality of life issues. In conclusion, he asked the Board to: (1) take a detailed look at this type of far reaching change to LDR, and (2) make the exception that the ordinance would only apply prospectively.

Richard Marco, Sebastian, discussed an Illinois town that had been impacted negatively by a concrete plant (many years ago). He supported staff's recommendation to take the heavy industry out of IL zoning.

Wayne A. Rilko, University of Florida Engineering Associate, representing Ocean Concrete, through a PowerPoint presentation (copy on file), discussed concrete batching and described how concrete differs from cement. He talked about the permitting process, and delineated some methods that are used by batching plants to comply with Florida Department of Environmental Protection (FDEP) regulations. Mr. Smith pointed out that proximity to the railway would result in less pollution (reduced truck traffic). He questioned why it would not be a good fit to locate a properly designed plant in current IL zoning with railway siting.

Commissioner O'Bryan asked whether the FDEP required ongoing air quality or any other on-site monitoring under the general permit, to which Mr. Rilko replied, "Not on a specific basis."

Art Krieger, Vero Beach, State Certified General Contractor and Real Estate Broker, proposed to the Commissioners that they visit the new Russell Concrete Plant so that a more thorough understanding of concrete plant operations could be obtained. He questioned the fairness and legality of giving the concrete plant prior approval, only to "have the rug pulled out from under the owner."

Dart Morales, Chief Executive Officer, Grove Scientific and Engineering, had been retained to assist Mr. Maib in the planning stages of his plant. He reported that under the general permit there are ongoing inspections which are recorded, and noted that during the permit life, the plant would be inspected unannounced by a FDEP contractor.

Joe Mott, Sebastian, urged the Board, when deciding on the Amendment, to examine the impact a concrete plant would have on roads and groundwater, and to consider the compatibility of a concrete plant with the surrounding areas.

Mr. Charbonneau, Sebastian, voiced concerns about a slowdown of emergency services due to traffic tie-ups, and with declining property values, and urged the Board to vote for staff's recommendation.

Clerk's Note: The Chairman called a recess at 6:57 p.m. and reconvened the meeting at 7:09 p.m. with all members present.

Lynn Brown, Sebastian, noted that the "Russell Plant" was not a fair choice for comparison with the proposed plant, as: (1) it was much further from the Indian River Lagoon; and (2) the tall tower looked much higher than the 45' height preferred in Indian River County.

Todd Smith, Ford Engineer, and Professional Services Advisory Committee member, discussed why the PSAC had not presented a recommendation to the Board. He declared that although the Amendment to the Ordinance proposed restricting thirty-one uses from the IL District, the majority of supporting items specifically targeted the concrete industry. Through a PowerPoint presentation (copy on file), he discussed the lack of comprehensive and uniform criteria defining IL and IG categories; addressed compatibility issues, such as air quality, between industry and nearby communities; and asked the Board about the availability of existing IG parcels to accommodate future growth. Concluding, Mr. Smith voiced that more information should be gathered, but if the Board felt that they had sufficient data to approve the Amendment, they should honor pending industry applications; otherwise, future developers will be reluctant to build in Indian River County.

William McCain, W.F. McCain and Associates, Support Engineer for Ocean Concrete, believed that it was inappropriate for the County to “make a change in midstream”, and cautioned that making this Amendment effective retroactively would send a negative message to future developers.

Robert Wiggin, Sebastian, related that no Motion for approval of existing applications had been passed at the last P&Z meeting.

Ray Halloran, Sebastian, supported the Amendment to the Ordinance.

Chris Pontello, W.F. McCain & Associates, addressed some of the environmental concerns presented by earlier speakers. He wanted the Board to garner more information through workshop meetings, and if they proceeded with the Amendment, to grandfather-in any pending applications.

Katie Boswood, Sebastian, addressed the issue of equitable estoppel as related to Ocean Concrete’s pending application, and informed the Board that both sides of an issue must be examined when research is done on a legal issue.

Commissioner Davis commented that such a legal opinion had been included in the backup.

Carol Barry, Sebastian, shared her fears that heavy industry would harm the City of Sebastian, and opposed grandfathering-in the concrete plant’s pending application.

Bill Stickles, Sebastian, asked the Board not to implement a policy that would place any type of large industry in an inappropriate location.

Jay Bumpers, Developer, was opposed to the Board changing the LDR Ordinance midstream.

George Maib, Sebastian, Principal of Ocean Concrete, read a statement detailing the acquisition, design and permitting phases for his proposed company, all of which had been done in accordance with existing County ordinances and per staff's guidance. Now that the project is ready for final approval, he is concerned that it would be rendered completely unbuildable if the County passes the proposed Amendment without addressing the issue of vested rights. Mr. Maib admonished the Board to consider what message they would be sending to future investors if the Amendment is passed without grandfathering pending applications. He asked the Board to follow the recommendation made by some of the P&Z members to apply the Amendment prospectively.

William Sandy, Sebastian, read a statement explaining why he was opposed to the proposed concrete plant.

There were no additional speakers and the Chairman closed the Public Hearing.

Commissioner Davis apologized to the residents of Sebastian because this meeting had been inadvertently scheduled on the same night as the Sebastian City Council meeting.

Chairman Wheeler thanked everyone for their courtesy, and announced that the next public hearing on this topic would be held at the regular Board of County Commissioners meeting on July 24, 2007.

5. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 7:52 p.m.

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES

ATTEST:

Jeffrey K. Barton, Clerk

Gary C. Wheeler, Chairman

Minutes Approved: _____

BCC/MG/2007Minutes