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BOARD OF COUNTY COMMISSIONERS
SPECIAL CALL MEETING
DECEMBER 19, 2008

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December 19, 2008

SPECIAL CALL MEETING OF THE INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

CONSIDERATION OF AMENDMENTS TO MINING
REGULATIONS IN LDR CHAPTERS 934 AND 971

DECEMBER 19, 2008

The Board of County Commissioners of Indian River County, Florida, met in a Special Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Friday, December 19, 2008, to consider amendments to Mining Regulations in LDR Chapters 934 and 971. Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, Commissioners Peter D. O'Bryan, Bob Solari, and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird (joined at 9:02 a.m.); County Attorney William G. Collins II, and Deputy Clerk Maureen Gelfo.

CALL TO ORDER

Chairman Davis called the meeting to order at 9:00 a.m.

2. INVOCATION

Commissioner Wesley S. Davis, Chairman, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Commissioner Peter D. O'Bryan led the Pledge of Allegiance to the Flag.

4. PUBLIC ITEMS

4.A. PUBLIC HEARINGS

4.A.1. CONSIDERATION OF AMENDMENTS TO MINING REGULATIONS IN LDR CHAPTERS 934 AND 971

Planning Director Stan Boling announced that today's Hearing was a continuation of the December 8, 2008 Public Hearing, at which the Board made several decisions and reviewed over ten (10) pages of the proposed Ordinance. He reviewed the backup memorandum of December 1, 2008, to recap the following actions taken by the Board at the December 8, 2008 Hearing:

- Keep mining as Administrative Permit Use, with added provisions for public notice and requirement to conduct the Planning and Zoning Commission (PZC) meeting like a public hearing
- Apply the proposed regulations to the three mining applications in the pipeline
- Approve the hydrology report and expert review fee provision
- Approve the first 10 pages of the Ordinance and a portion of the top of page 11 of the Ordinance, up to, but not including, Section #4, Item (3)(d), and directed staff to revisit aspects of the littoral zone requirements.

Director Boling told the Board that prior to re-commencing review of the Ordinance, (subsequent to the portion approved on December 8, 2008), he would elaborate on two items found in the first ten (10) pages of the Ordinance, which had concerned the Board at the December 8, 2008 Public Hearing: (1) the littoral zone requirements, and (2) the \$10,000 expert review fee for the hydrology report. He thereafter presented staff's recommendation for the Board to adopt the Ordinance, adopt a fee Resolution, and terminate the Mining Moratorium, effective on the date of the adopted Ordinance.

Director Boling reviewed for the Board the following proposed change to Page 6 of the Ordinance, Section #3, Item (1)(d)(1):

“Along with the hydrology report, the applicant shall submit a \$10,000 deposit or such deposit amount established by Resolution of the Board of County Commissioners as may be amended from time to time to be used by the County to hire professional services to review and comment on the hydrology report.”

He noted that this (in conjunction with additional language regarding the \$10,000 deposit which was added to the proposed fee Resolution), would enable the Board to change the fee by Resolution, should it become necessary to do so in the future.

Director Boling informed the Board that staff had proposed an additional change to the proposed fee Resolution, that there be a \$200.00 mining project special notice fee, in addition to the applicable site plan review fee, to cover costs of additional notice requirements for administrative permit use. Director Boling asked for the Board's approval on the proposed Resolution, and on the change made to Section #3, Item (1)(d)(1).

Commissioner Wheeler wanted to add verbiage in Section #3, Item (1)(d)(1), to reflect that the required \$10,000 deposit (the hydrology report expert review fee) could be amended from time to time, to cover the cost to hire professional services to review and comment on the hydrology report.

Chairman Davis announced that, due to a conflict of interest, he would Chair the meeting and participate in the discussion, but would not vote on the LDR Amendments.

(Clerk's Note: Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers, is on file in the office of the Clerk to the Board.)

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, for discussion, to approve the revised fees associated with mining applications and permits; and to approve Section #3(1)(d)(1) of the Ordinance, with the addition of language stipulating that the applicant's deposit of \$10,000.00 would cover the cost of the County hiring professional services to review the hydrology report.

Director Boling detailed for Commissioner Solari the potential costs which would apply to certain and/or all mining applications, based upon changes that are in the proposed Ordinance (see Attachment 3, pages 20 & 21 of backup).

Director Boling clarified for the Board that the changes in the proposed fee Resolution included the \$200.00 mining project special notice fee, and a required deposit of \$10,000 for professional services to review and comment on the hydrology report. The proposed

change in the Ordinance would allow the \$10,000 fee to be increased by Resolution, without going through the Ordinance process.

The Chairman CALLED THE QUESTION and by a 4-0 vote (Chairman Davis recused himself), the Board approved: (1) **Resolution 2008-203**, establishing revised fees associated with mining applications and permits; and (2) Section #3 (1)(d)(1) of the Ordinance, with the addition of language stipulating that the applicant shall submit a \$10,000 deposit or such deposit amount as may be amended from time to time to be used by the county to cover the cost to hire professional services to review and comment on the hydrology report.

Director Boling then presented analysis on the two changes which have been proposed to Section #4(2) Littoral Zone and Water Management (pages 34 and 35 of backup), as follows:

- Under (2) (c) (1), amend the slope required from one (1) foot vertical to ten (10) feet horizontal to one (1) foot vertical to six (6) feet horizontal.
- Under Section 6, for mining projects that propose an agricultural use as part of the site restoration, to not require the littoral zone plantings until the site has been converted to a non-agricultural use.

Staff responded to the Board's questions regarding the grading of the slopes for the littoral zones.

The Chairman opened the Public Hearing.

Chuck Kramer, 10761 US 1, Sebastian, clarified that the St. John's River Water Management District (SJRWMD) does not require littoral zones on restored mines.

Mary McGuire-Smith, 6625 West 82nd Avenue, objected to the Board's decision on December 8, 2008, to keep mining under administrative permit use. She felt that the Board had been given a year's worth of data on the negative impacts of mining on neighboring residences, and ignored it, and that the neighbors may want to bring a class action suit for lost property values against the Board members and the County.

Dr. David Cox, 9495 Periwinkle Drive, presented detailed observations regarding the littoral zones, and reported that the Florida Department of Environmental Protection (FDEP) and the Water Districts are moving towards making requirements for littoral zones. He stated that there were a lot of benefits to littoral zones, and recommended that the Board retain the 1-10 (one foot vertical to ten feet horizontal) slope requirement that is currently in the LDR's, as the best approach to handling the shorelines of created ponds.

Bradley Morton, owner of property on 82nd Avenue, which is adjacent to the Sexton Ranch, was vehemently opposed to having a mine situated across from his property.

Jens Tripson, 2525 14th Street, representing Pelican Island Audubon Society, supported the 1 to 10 slope on the littoral zone, because there was less chance for erosion.

Director Boling responded to **Steve Smith's** question on whether the proposed littoral zone requirements would apply retroactively to his existing sand mine on 82nd Avenue.

Further discussion ensued among Commissioners, staff, and area residents regarding the intentions for having the littoral zones; enforcement of littoral zone regulations; time parameter for initiation of the requirements; and whether trees should be planted in the littoral zones.

Commissioner O'Bryan felt that the slope for a planted littoral zone could be 1-6; however, if the littoral zone was not going to be planted, there should be a provision for having the 1-10 slope.

Director Boling commented that whatever the degree of the slope, stabilization would have to be done at restoration. Chief of Environmental Planning Roland DeBlois added that the 1-10 slope would not be in conflict with SJRMWD's 1-6 threshold for the littoral zones.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, by a 3-1 vote (Commissioner Solari opposed; Chairman Davis recused himself), the Board approved under Section #4(2)(c)(1) that the slope for the planted littoral zone shall be no steeper than one (1) foot vertical to ten (10) feet horizontal.

Director Boling asked if Commissioner Wheeler's Motion included approval of Section #4, Item (2)(d)(6), for mining projects that proposed agricultural use as part of the site restoration, to not require the littoral zone plantings until the site has been converted to a non-agricultural use, and was advised by Attorney Collins that the Motion only included the slope.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to approve staff's recommendation under Section #4 (2)(d)(6) Littoral Zone and Water Management, with the addition of some wording to relate just to emergent plants, which would allow the requirement of the tree planting to still be part of the restoration.

Commissioner O'Bryan clarified that he was not sure "emergent" was the proper word, but his Motion was intended to make sure that the trees would still be planted.

Chief DeBlois stated that in the past staff had typically referred to the tree planting area as an extended littoral zone.

Director Boling and Attorney Collins responded to Chairman Davis's questions regarding how the Ordinance would apply if someone wanted to remove or replace a tree in the future.

Commissioner O'Bryan recapped, for the Chairman, that his Motion pertained to Section #4, Item (2)(d)(6) on page 35 of the proposed Ordinance, where staff has proposed to not require littoral zone plantings for mining projects that propose agricultural use as part of the site restoration plans, to change the wording to require the planting of the trees, but not the other littoral zone plants.

The Chairman CALLED THE QUESTION, and by a 3-1 vote (Vice Chairman Flescher opposed, Chairman Davis recused himself), the Board approved staff's

recommendation, Section #4 (2)(d)(6) Littoral Zone and Water Management, conditioned upon additional wording to still require the planting of the trees, but not the other littoral zone plants, until the site is converted to a non-agricultural use.

Director Boling began discussion on the areas of the proposed Ordinance which had not yet been approved or reviewed at the December 8, 2008 Public Hearing.

Director Boling acknowledged that Section #4, Item (3)(d), regarding setbacks from the excavation areas, had not yet been approved, and outlined the five setbacks, as presented on page 36 of the backup. He recalled that most of the December 8, 2008 discussion had involved Item (3)(d)(4), the proposed 300-foot setback to adjacent public conservation lands or conservation easements, with the argument being that Item (3)(d)(4) was not resource based, it was property ownership based, regardless of whether or not there was an environmentally sensitive resource right up to the property line.

Commissioner Solari could not figure out why a public conservation land or conservation easement deserves more protection than private property.

Vice Chairman Flescher discussed the County's obligation to Treasure Hammock Ranch, owned by the Sextons, and supported the 300 feet as being the most appropriate distance for the setbacks. He wanted to see language added to Item (3)(d)(3) "300 feet to known off-site jurisdictional wetlands or native uplands" to include "or improved pasture lands", and to delete Item (3)(d)(4), "300 feet to adjacent public conservation lands or conservation easements".

Commissioner O'Bryan wanted to see the setbacks extended to 900 feet, pursuant to a hydrology report received from Wild Turkey Mine which stated that drawdown could extend 900 feet.

Vice Chairman Flescher pointed out that his earlier suggestion for Item (3)(d)(3) was to have the 300 foot, and not the 900 foot, setbacks.

Shawn Sexton, 7880 37th Street, gave a slide presentation and distributed a handout (copy on file) to the Clerk regarding Treasure Hammock Ranch. He discussed his contractual obligation to the County to farm into perpetuity, and conveyed that this would be impossible if he loses his groundwater to neighboring mining operations. He asked the Board to adopt staff's recommendation of the proposed 300-foot setback.

Mr. Kramer wanted the Board to maintain the existing setbacks, stating that there have been no cases of drawdown problems in the County.

Further discussion ensued as Commissioners, staff, and area residents made observations on the setbacks, and on dewatering impacts.

Suzon Franzke, 8190 37th Street, applauded Commissioner O'Bryan for wanting to establish the 900-foot setback.

Charles Bradshaw, property owner on 82nd Avenue, voiced deep opposition to mining in the area of the Sexton property, fearing that the mining would change the entire character of the area. He asked the Board to give additional thought before permitting mining in the area.

Robert Adair, Chairman of the Agricultural Advisory Committee, and Supervisor for the Soil and Water Conservation District, wanted the Board to evaluate what the economic impact of having mines would be to the community. To that purpose, he requested permission to allow a guest speaker, Dr. Richard Weiskoff, Ph.D., from the University of Miami, to speak on the economic impacts of mining.

There was a brief discussion as to whether or not to allow the guest speaker to proceed at this time. The Board CONSENSUS was to allow Dr. Weiskoff to speak after the impending break.

The Chairman called at recess at 10:32 a.m. and reconvened the meeting at 10:45, with Administrator Baird absent.

Dr. Richard Weiskoff, Ph.D., 17625 NE 8th Place; North Miami Beach, used a PowerPoint presentation (copy on file) to provide a detailed analysis of the regional economic impacts of mining on land values, and on various sectors of employment (including agriculture, forest, fish services, and citrus) in Indian River, St. Lucie, and Martin Counties. He thereafter suggested having the mine owners post a Bond for the total cost of restoration prior to the commencement of mining operations, to protect the Counties from being left with abandoned mines. He reported that the United States Department of Labor statistics show eight abandoned sand mines in the County.

Clerk's Note: Administrator Baird re-joined the meeting at 10:53 a.m.

Commissioner Solari felt that there was a flaw in Dr. Weiskoff's methodology relative to losing citrus lands to mining. He pointed out that 30-50% of citrus operations have been taken out by economics, greening, and canker, so a mining concern would not be taking an

operating grove out of citrus, but rather, using a parcel of land which was formerly citrus and which is now being invaded by exotic species, which are also a tremendous detriment to the community.

Mr. Adair made observations regarding the importance of agriculture to the County. He asked the Board to be conservative with the setback distances, which he felt should be 600 feet from the public water supply. He liked Vice Chairman Flescher's suggestion to add "improved pasture lands" to Section #4, Item (3)(d)(3), regarding setbacks to off-site jurisdictional wetlands or native uplands, and wanted to add "active agricultural lands."

Mike Ray, 440 Greystone Court, opined that the commercial agricultural interests were not present because they were not asking for all the extra regulations and restrictions the Board was trying to impose.

Commissioner Wheeler refuted Mr. Ray's statement, stating that there have been several agricultural people, including Shawn Sexton, who have expressed support for the Ordinance.

Herman Taube, 8203 SE Cumberland Circle, Hobe Sound, offered commentary on the models on which drawdown impacts are based, specifically regarding the report on Wild Turkey, which shows the 900-foot drawdown. He provided technical analysis of drawdown impacts, dewatering, canals, the setbacks, and water levels.

Redirecting discussion to the setback distances, Chairman Davis recapped the options which were discussed: whether the setback distance should be 300 feet to known off-site jurisdictional wetlands or native uplands; in addition to off-site jurisdictional wetlands or native uplands, include "improved pasture lands"; and consider a setback distance of 900 feet.

MOTION WAS MADE by Vice Chairman Flescher, SECONDED by Commissioner Solari, to approve staff's recommendation in Section #4, Item (3) *Groundwater and Environmental Protection*, on Items (3)(d)(1), (3)(d)(2), and (3)(d)(5), with an amendment to Item (3)(d)(3), "that the 300 feet to known off-site jurisdictional wetlands or native uplands" be expanded to include improved pasture lands; and with the amendment to strike Item (3)(d)(4).

Lengthy discussion regarding the impacts of mining on neighborhoods and livelihoods; whether to include "improved pasture lands" in the Ordinance; and what the appropriate distances should be for the setbacks; ensued between Commissioners, staff, and the following area residents and professionals:

Jorge LaTour, Vero Beach

Chuck Kramer, 10761 US 1

Mary McGuire-Smith, 6625 West 82nd Avenue

Jonathan Ferguson, Esquire, Ruden McClosky

Suzon Franzke, 8190 37th Street

Joseph Schulke, Schulke, Bittle, & Stoddard, 1717 Indian River Drive

Clyde Scent, 7980 37th Street

Charles Wilson, 1057 6th Avenue, felt it was incorrect to assume that thousands of agricultural jobs are lost just because a mine goes in, and asked the Board to allow business to operate in this County.

Mr. Sexton explained why the extra verbiage of “improved pasture land” would not be advantageous to his Ranch. He asked the Board to follow the recommendations of the PZC, as written.

Bob Ulevich, representing Sebastian River Improvement District and St. John’s River Improvement District, encouraged the Board to move on with a County-wide document and not have LDR’s targeted to a specific site or to specific landowners.

The Chairman CALLED THE QUESTION, and the Board, by a 4-0 vote (Chairman Davis recused himself), approved staff’s recommendation in Section #4, Item (3) *Groundwater and Environmental Protection*, Items (3)(d)(1), (3)(d)(2), and (3)(d)(5), with an amendment to Item (3)(d)(3), “that the 300 feet to known off-site jurisdictional wetlands or native uplands” be expanded to include improved pasture lands; and with the amendment to strike Item (3)(d)(4).

The Chairman called for a recess at 11:59 a.m. and reconvened the meeting at 12:36 p.m., with Commissioner Flescher absent.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner Wheeler, to approve everything from Section #4 of the Ordinance, *Groundwater and Environmental Protection*, Item (3)(d)(1) through Item (3)(h)(1).

(Clerk's Note: The Ordinance was approved up to and including Section #4, Item (3)(c) at the December 8, 2008 Special Call Meeting).

Commissioner O'Bryan wanted to add "native uplands" and "improved pasture lands" to the verbiage in Section #4, Item (3)(e), Groundwater and Environmental Protection.

Commissioner Solari did not wish to amend his Motion.

Clerk's Note: Commissioner Flescher rejoined the meeting at 12:38 p.m.

After further discussion among Commissioners and Dr. Cox regarding Commissioner O'Bryan's suggestion, the Board took the following action:

The Chairman CALLED THE QUESTION, and the Board, by a 3-1 vote (Commissioner O'Bryan opposed, Chairman Davis recused himself), approved everything from Section #4 of the Ordinance, *Groundwater and Environmental Protection*, Item (3)(d)(1) through Item (3)(h)(1).

Thereafter, Director Boling presented for the Board's approval, Section 4, *Traffic and Nuisance Mitigation*, Items (4)(a) through (4)(d). There were no concerns or questions.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, the Board, by a 4-0 vote (Chairman Davis recused himself), approved staff's recommendation on Section #4, Item (4) *Traffic and Nuisance Mitigation*, Items (4)(a) up to and including Item (4)(d).

Director Boling introduced Items (4)(e)(1) – (3), regarding the unpaved haul route standards.

Public Works Director Chris Mora responded to the Board's questions regarding trip thresholds on the unpaved haul routes.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, to approve staff's recommendation on Section #4, Item 4, *Traffic and Nuisance Mitigation*, Items (4)(e)(1) through (4)(e)(3).

Mr. Schulke, P.E., 1717 Indian River Blvd., presented data regarding the number of truck trips which could be accommodated on the haul route that would be built to Wild Turkey Mines' specifications. He stated that truck traffic capacity could be increased by having a minimum gradable base of twelve (12) inches of suitable road base material, plus an additional twelve (12) inches of coquina.

Extended discussion ensued between Commissioners, staff, area residents, and area professionals, regarding matters pertaining to the trip capacity of the unpaved haul routes.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Chairman Davis recused himself), the Board approved staff's recommendation on Section #4, Item (4) *Traffic and Nuisance Mitigation*, Item (4)(e)(1) through (4)(e)(3).

Director Boling presented Section #4 (4) *Traffic and Nuisance Mitigation*, Item (4)(f), which establishes that haul routes or haul route segments which are shared by mines, must be paved if the truck trip ends per day exceed 500, which would be 250 loads out of one mine.

Commissioner O'Bryan was concerned about using an average of 500 truck trip ends, because truck trips would vary on a daily basis, and Director Mora outlined the process for arriving at that figure.

Commissioner O'Bryan reiterated his opposition to using average numbers for the truck trips, and felt that full-time traffic monitoring should be done on any haul route.

Extended discussion ensued as Commissioners, staff, area residents, and area professionals offered further commentary and suggestions relative to the 500 truck trip end average on the unpaved haul routes.

MOTION WAS MADE by Commissioner Solari to amend staff's recommendation on Section #4, Item (4) *Traffic and Nuisance Mitigation*, on Item (4)(e)(1), to add a second level of twelve (12) inches of suitable material on top of the twelve (12) inch suitable road base material, and on Item (4)(f), to increase the threshold for tripping the paved road section to 1200 trips. MOTION DIED FOR LACK OF A SECOND.

Mr. Ulevich asked the Board to make sure the amended LDR's reference the fact that the Improvement and Water Control Districts also have permitting requirements associated with unpaved haul routes, and that those Boards have the prerogative to put conditions on a permit above and beyond the County's requirements.

Vice Chairman Flescher recapped that various amounts of truck trip ends had been proposed, and he believed that all of the numbers had value.

MOTION WAS MADE by Vice Chairman Flescher to approve Section #4, Item (4)(e) with the amendment to add twelve (12) inches of sub grade roadway material; and to approve Section #4, Item (4)(f), conditioned upon an increase in the total truck trip ends per day to 1,000, before requiring roadway improvement. MOTION DIED FOR LACK OF A SECOND.

MOTION WAS MADE BY Commissioner Wheeler, SECONDED by Commissioner O'Bryan, to approve Section #4, Item (4), *Traffic and Nuisance Mitigation*, Item (4)(f) as written.

The following residents offered commentary on the requirements for paving the haul routes:

Suzon Franzke, 8190 37th Street

Chuck Kramer, 10761 US 1

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners Flescher and Solari opposed; Chairman Davis recused himself), the MOTION FAILED.

MOTION WAS MADE BY Commissioner Solari, SECONDED by Vice Chairman Flescher, to reconfigure Section #4, Item (4)(e)(1), and to insert a subcategory (a) for the minimum gradable base of twelve (12) inches of suitable road base material, and a subcategory (b) for the twelve-inch sub base and twelve (12) inches of coquina road base; and to tie those requirements into Section 4(f), with an increase in the paving trip threshold to 1,000 trips.

Staff provided technical information on how the increased road materials would increase the load-bearing ratio (LBR) of the haul route and the number of truck trip ends.

Ms. McGuire-Smith voiced concerns regarding the 1,000 truck trip threshold, and urged the Board to keep the truck trips down to 500.

Commissioner O'Bryan also objected to the 1,000 trips per day, fearing it would engender a parade of trucks along the route.

Further discussion ensued among Commissioners, staff, and area residents and professionals, regarding the road materials and the trip truck end thresholds.

Commissioner Wheeler opined that the Board was losing sight of the problem, which is heavy mining in AG-1. He felt that the Board should be very restrictive on what is allowed in AG-1, because it is more heavily populated than AG-2 or AG-3.

Vice Chairman Flescher pointed out that the County is advancing a restrictive tool of enforcement that would correct past years' errant ways and the reason for the Mining Moratorium.

Area residents **Suzon Franzke** and **Mary McGuire-Smith** adamantly opposed the Board's proposed increase in the truck trip threshold.

Commissioner Solari announced that he wanted to amend his Motion, to drop the trips from 1,000 to 750.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Vice Chairman Flescher, to reconfigure Section #4, Item (4)(e)(1), to insert an additional subcategory (a) for the minimum gradable base of twelve (12) inches of suitable road base material; and a subcategory (b) for the twelve (12) inch sub base and twelve (12) inches of coquina road base; and to tie those requirements into Section 4(f), with the paving trip threshold at 750 trips.

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners O'Bryan and Wheeler opposed, Chairman Davis recused himself), the Motion FAILED.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to approve staff's recommendation on Section #4, Item (4)(f), with the addition of a subsection between (4)(e) and (4)(f) stating that with the

additional twelve (12) inches of coquina rock provided, the trip end threshold would be up to 1,000 truck trip ends per day, applying only to AG-2 and AG-3 land use designations.

Commissioner O'Bryan clarified for **Ms. McGuire-Smith** that his Motion would be to approve staff's recommendation of the 500 truck trip ends per day for AG-1, but to increase the truck trip ends for AG-2 and AG-3 to 1,000, with the addition of the 12 inches of coquina rock to the road base.

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners Flescher and Solari opposed, Chairman Davis recused himself), the Motion FAILED.

Attorney Collins advised that since no Consensus could be reached on the paving threshold presented in Section #4, Item (4)(f), the Board would be left at this point with Section #4, Item (4)(e).

Director Boling provided details on Item (4)(G), the level of service (LOS) evaluation that would apply to significantly impacted intersections and links of the haul route itself.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to approve staff's recommendation on Section #4, Item (4) *Traffic and Nuisance Mitigation*, Item (4)(G).

Director Mora responded to questions from **Mr. Scent** about a problematic intersection on 82nd Avenue, and from **Jens Tripson** about truck trips.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Chairman Davis recused himself), the Board approved staff's recommendation on Section #4, Subcategory (4) *Traffic and Nuisance Mitigation* Item (4) (G).

Director Boling next reviewed Section 4, Item (4) *Traffic and Nuisance Mitigation*, Item (4)(h)(1) through (4)(h)(3), which deal with truck frequency standards.

Commissioner O'Bryan wanted to eliminate the proposed 240 trip ends per hour in Item (4)(h)(2), and to keep the trip ends to 120. He suggested changing staff's wording, by: (1) changing the 240 trip ends specified in Item (4)(h)(2) to 120 trip ends; and (2) eliminating verbiage from Item (4)(h)(1), and deleting and inserting the amended Item (4)(h)(2) into Item (4)(h)(1), as follows:

“A mining operator shall limit the frequency of haul truck trips to and from his mining operation on two-lane roads to no more than 120 trip ends per hour, with trip ends as defined in Section (f)...” The beginning of Item (4)(h)(1) would become: “Along a two-lane haul route segment, cumulative haul truck trips shall not exceed 120 trips ends per hour, with trip ends as defined...” (in an appropriate section).

Attorney Collins stated that the references to trip ends in Section (4)(f), which was not approved, must be removed from Items (4)(h)(1) and (4)(h)(2).

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to approve, with the above amendments, Section #4, Item (4)(h).

Attorney Ferguson suggested that the truck trip end threshold be based on an average over the entire working day, rather than on a per hour basis. He also required clarification on the haul truck log information, which was provided by Director Mora.

Staff addressed comments and questions posed by **Mr. Kramer** and **Mr. Schulke**, respectively, regarding the haul truck trips.

Ms. Smith chided the Board for not just approving staff's recommendation, Version 1, on December 8, 2008.

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners Flescher and Solari opposed, Chairman Davis recused himself), the Motion FAILED.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to approve staff's recommendation on Section items (4)(h)(1) through (4)(h)(3), as written.

Commissioner O'Bryan objected to the amount of truck traffic which would be generated, with staff's recommendation proposing 240 trip ends per hour.

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners Flescher and Solari opposed, Chairman Davis recused himself), the Motion to approve staff's recommendation on Items (4)(h)(1) through (4)(h)(3) FAILED.

Director Boling confirmed with the Chairman that Item (4)(h) had been deleted, and presented Item (4)(i) regarding mining operators having an option for a shared maintenance plan for the haul routes.

ON MOTION BY Commissioner Solari, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Chairman Davis recused himself), the Board approved staff's recommendation on Section #4, Item (4)(i) as written.

The Chairman called a recess at 2:21 p.m. and reconvened the meeting at 2:29 p.m., with all members present.

Vice Chairman Flescher sought and received permission from Chairman Davis to revisit Section #4, Item (4)(h).

ON MOTION by Commissioner Wheeler, SECONDED by Commissioner Solari, by a 4-0 vote (Chairman Davis recused himself), the Board approved staff's recommendation on Section #4, Item (4)(h)(1) up to and including (4)(h)(3), as written.

Director Boling acknowledged that Section #4, Item (4)(h) has been put back into the Ordinance, and that staff would make any required adjustments where there are references to Section #4, Item (4)(f), which was not approved.

Director Boling next presented Section #5, Items (1) – (5)(e), which relates to updating some of the mining permit regulations and site plan requirements. He specifically presented the highlights of Items (3)(a) and (3)(f), found on page 40 of the backup; and Item (3)(k), found on page 41 of the backup.

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner O’Bryan, to approve staff’s recommendations on Section #5, on mining permit regulations, as written.

Attorney Ferguson wanted to know if a landscape berm could be added to the “fences, access, control, and other security methods” presented in the safety/security plan outlined in Item (3)(c).

Director Boling acknowledged that there might be some situations where the landscape berm would provide security, and there would be no need for a fence. He added that staff had no problem with the addition.

Jens Tripson expressed his views on using the landscape berm as a security measure, which triggered further discussion on this topic between Commissioners, staff, **Mr. Tripson, and Mr. Kramer.**

Director Boling responded to Attorney Ferguson's concerns regarding Item (4)(d), the deadlines for permit renewal.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Commissioner O'Bryan, to amend Section #5, Item (3)(c) to add berms to the safety/security plan.

Director Boling directed the Board's attention to the top of page 43, Section #5, Item (4)(d), where staff wanted to add an additional submission requirement, for the operator to submit with his mining permit renewal request, "an updated site sketch of current conditions."

It was the Board's Consensus to add Director Boling's above request to the Motion.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Chairman Davis recused himself), the Board approved to amend Section #5, Item (3)(c) to add "berms" to the safety/security plan, and to add another submission requirement to Item (4)(d), for the operator to submit with his mining permit renewal request, "an updated site sketch of current conditions."

Director Boling presented Section #6, Items (1) through (5), highlighting Item (3)(a), which sets a time frame for pulling and using the road maintenance bond on unpaved roads for road maintenance work.

MOTION WAS MADE by Commissioner Solari,
SECONDED by Vice Chairman Flescher, to approve Section
#6.

Attorney Ferguson felt that the provision in Section #6, Item (3)(a), to tap the entire security amount each time maintenance work is performed, was a bit unreasonable. Rather, the security should pay for actual costs incurred.

After further analysis by staff, Commissioners, and Attorney Ferguson regarding the security requirements for road maintenance, Attorney Collins suggested adding the following language to Section #6, Item (3)(a) of the Ordinance: The unexpended balance of the security would be returned to the mining owner/operator or applied to the newly posted security.

MOTION WAS AMENDED by Commissioner Solari,
SECONDED by Vice Chairman Flescher, to approve Section
#6, with the addition to Item (6)(3)(a) of the following
verbiage: The unexpended balance of the security would be
returned to the mining owner/operator or applied to the newly
posted security.

The Chairman CALLED THE QUESTION, and by a 4-0
vote (Chairman Davis recused himself), the Motion carried
unanimously. The Board approved, with the above
amendment, Section #6.

Director Boling next presented the highlights of Section #7, Items (1)(a) through (1)(d), regarding Compliance and Enforcement. He provided details regarding the Progressive

Penalty Process, under Item (1)(c), which would require an operator or owner with one (1) formal unresolved violation, or five (5) or more formal resolved violations within one year, to attend a Penalty Hearing before the Board of County Commissioners. Director Boling further related that if there have been moving violations by the haul route truck drivers, Item (1)(d), Traffic Law Enforcement, would provide the Board with the ability to assess a mine operator/owner the cost to hire additional contract traffic law enforcement.

Commissioner O'Bryan wanted to have a specific limit to the number of times a mine operator/owner could take voluntary compliance actions, and questioned whether the time period for compliance was defined in Section #7. He also suggested that the five (5) formal resolved violations triggering a Penalty Hearing should be dropped, perhaps to three (3).

Director Boling addressed Commissioner O'Bryan's comments, and further discussion ensued between staff, Commissioners, and area residents, regarding haul route violations, and the proposed enforcement methods.

(Clerk's Note: Administrator Baird rejoined the meeting at 2:53 p.m.)

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Commissioner Wheeler, to approve Section
#7, as presented.

Attorney Ferguson expressed concerns regarding Section #7 as follows: (1) he felt that the process of determining a formal unresolved violation was unfair to the mining operator; (2) he questioned the Board's legal ability to impose the [up to] \$25,000 forfeiture penalty without some standards identifying how the figure is arrived at; (3) he questioned the

Board's ability to go after security which is posted for very specific items, and (4) he did not see where "security" was defined.

Pursuant to Chairman Davis's query, Director Boling supplied details on the types of security which would be accepted.

Attorney Ferguson suggested that the Ordinance not mix up the security for the specific action required for the permit, with the penalties.

Attorney Collins saw Attorney Ferguson's point. He remarked that if a mine was out of compliance, or in non-conformance with the road maintenance, forfeiture of the compliance and road maintenance securities, respectively, might be appropriate, but it would not be appropriate to take all three types of security, particularly the restoration security which would not be implicated in a violation during site development.

Attorney Ferguson had further issues with Item (1)(d), under Section #7, Traffic Law Enforcement. He felt that the Board could not hold mine operators responsible for the actions of an independent third party, the truck driver.

Commissioners, staff, and Attorney Ferguson continued to discuss what the responsibility of the mine owners would be for the actions of the truck drivers. Attorney Ferguson requested that staff do additional work on the enforcement provisions.

Returning to the proposed requirement regarding forfeiture of all security, Attorney Collins suggested amending Section #7(c)(4), page 47, as follows: "...the Board of County Commissioners is authorized to impose forfeiture of all posted security (related to

compliance, road maintenance, restoration), as appropriate, and terminate the project mining permit...” This would allow the forfeiture of security to be tied to a specific violation.

Attorney Ferguson maintained that there is a potential problem for mixing up a penalty provision with the forfeiture of security. He believed the security must be tied to the actual expenses.

Chairman Davis asked if time should be spent re-working this section of the Ordinance, and Attorney Collins voiced that he did not want to leave penalty provisions out of the Ordinance.

Commissioner O’Bryan suggested that Section 7(c)(4) be amended, beginning with verbiage on the fourth line, as follows: “...the Board of County Commissioners is authorized to ~~impose forfeiture of all posted security (compliance, road maintenance, restoration) and terminate the project mining permit as a penalty~~ terminate the project mining permit as a penalty, and to impose forfeiture of all posted security if needed.

Attorney Collins felt that Commissioner O’Bryan’s suggestion was good, and stated that staff could work with Mr. Ferguson if there were some issues on the penalties.

MOTION WAS AMENDED by Commissioner O’Bryan, SECONDED by Commissioner Wheeler, to approve Section #7, with the following amendment to Item 7(c)(4): “...the Board of County Commissioners is authorized to ~~impose forfeiture of all posted security (compliance, road maintenance, restoration) and terminate the project mining permit as a penalty~~ to terminate the project mining permit as

a penalty, and to impose forfeiture of all posted security as needed.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Chairman Davis recused himself), the Motion carried unanimously. The Board approved Section #7, as amended.

Director Boling next presented Section #8, Items (1) through (4), which pertains to the requirements to display on the permitted site, the mining permit and related permits, and the approved site plan.

MOTION WAS MADE by Commissioner Wheeler, SECONDED by Commissioner O'Bryan, to approve Section #8, as written.

Director Boling responded to Commissioner Solari's question on whether the permit information was easily accessible electronically.

The Chairman CALLED THE QUESTION, and the Motion, by a 4-0 vote (Chairman Davis recused himself), carried unanimously. The Board approved Section #8, as written.

Director Boling provided details regarding Section #9, which pertains to the rights of pre-existing mining operations, and outlined two changes which needed to be made.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Chairman Davis recused himself), the Board approved Section #9, with the following amendments:

Under Section 934.11, page 48, the date of December 9, 2008 should be changed to December 19, 2008; and under Section #9, Item (3), page 49, the citation referring to section 934.07(k) should read 934.07(3)(k).

Director Boling next presented Section #10, an update on how the mining permit fees are structured.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, by a 4-0 vote (Chairman Davis recused himself), the Board unanimously approved staff's recommendation of Section #10.

Director Boling presented next the highlights of Section #11, which deals with specific land use criteria. He pointed out that Item (1)(b)(4) proposes that a mining operation could use collector or arterial roads as designated on the Comprehensive Plan as its haul route, or a local road, if it does not serve a residence which is not on a mining site itself. He related that Item (7) deals with the notice-to-owner requirements; Item (7)(a) deals with the requirement for PZC to conduct its considerations like a public hearing; and Item 8 contains the provision to waive the fee charged by the County to appeal a PZC decision.

In response to Commissioner Solari's question regarding road designations, Director Boling provided an aerial projection of the road grid, showing the layout of collector

and arterial roads. He stated that the question going forward is whether the Board wants to have haul truck traffic on local roads or not, if those local roads are used by residents (other than the mining operator).

The Commissioners and staff continued to discuss existing and potential scenarios regarding the mines and access roads.

Chairman Davis required further information on how the potential requirement had been arrived at.

Director Keating provided background history on this item, and noted that the current wording is subject to interpretation, because it refers to "...a local road that only serves nonresidential uses (or properties designated for non-residential uses) in an area designated for nonresidential uses." He stated that what is subject to interpretation is whether the agricultural district was structured for residential or non-residential uses, and observed that the wording needs to be clarified, so that it is not subject to interpretation.

Director Keating responded to **Mr. Tripson's** question regarding whether the County had jurisdiction over any private roads.

Attorney Collins provided background on haul route issues experienced by James Godfrey, owner of a sand mine adjacent to Babcock Road, and discussed how the proposed update under Section #11, Item (b)(4) could negatively impact Mr. Godfrey. He felt that the proposed regulations might pose a "Catch-22", but that the old language (proposed to be stricken), could provide an option to use a local road, if it is determined to serve an area designated for nonresidential use. Attorney Collins therefore suggested leaving in the stricken language and removing staff's proposed updated language.

Staff responded to **Ray Scent's** questions regarding the 82nd Avenue access route to Wild Turkey Mines.

Director Boling felt, given Attorney Collins' opinion, and since mines were only going to be allowed in the agriculturally designated areas, that Item (4) should perhaps be deleted from Section #11 of the Ordinance.

Chairman Davis sought the opinion of Attorney Collins, who had historical knowledge of the Godfrey Mines situation, and learned that Attorney Collins would not want to repeat the situation with Godfrey Mines again. He then sought staff's preference, and Director Boling advised that the existing section of the Ordinance was unclear, and he would rather not have Item (4).

Attorney Collins added that if Item 4 was removed, a mine owner would be restricted to operations in the agricultural areas, but could access local collector or arterial roadways, and it would eliminate all of the interpretation questions.

Susan Boyd, 8025 25th Street, required clarification on the proposed change.

Attorney Collins explained that the proposed change would allow access only onto arterial or collector roads from a mine. As the Ordinance currently exists, a mine can also access local roads, if it is in an area designated for non-residential uses, such as the agricultural designations. He discussed Mr. Godfrey's case, where because another provision in the Code mandates a 300-foot separation from any adjacent occupied structure, Mr. Godfrey was not able to access the collector road. He noted that Mr. Godfrey had been able to access the local road, to

which he had made improvements benefitting the residents who travelled it. He reiterated that the language in Section #11, Item (1)(4) of the Ordinance was confusing, and should be deleted.

A brief discussion among staff was prompted by Susan Boyd's question regarding whether any restrictions would remain. Attorney Collins stated that, pursuant to Section #5(3)(b)(1) of the Ordinance (page 40), there would still have to be a 300-foot separation from any residence, whatever type of road was used.

James K. Godfrey, 13515 101 Street, recounted prior difficulties (pertaining to his haul route), which he had experienced, while trying to obtain a mining permit for his sand mine. He asked the Board to not add the new language to Section #11, Item (1)(b)(4), of the Ordinance.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Commissioner Wheeler, to approve Section #11, with the deletion of Item (1)(b)(4), and to approve Section #12, Section #13, Section #14, and Section #15.

Commissioner Solari was supportive of Commissioner O'Bryan's Motion, with the exception of the language in Item 8 of Section #11, wherein it states, "...no fee shall be charged by the County for any such appeal." He felt that the fee waiver might occasion some frivolous lawsuits, and that the County would no longer have a level playing field. If the Commissioners wanted to leave the appeal fee waiver in, he suggested the addition of the following language: "...no fee shall be charged by the County for any such appeal; however, after any such appeal, provided that the appellant not prevail, the appellant shall bear all the costs of the appeal, including staff time, expert's time, and attorney fees, of the opposing party."

The following citizens were in favor of retaining the appeal fee:

Chuck Kramer, 10761 US 1

Attorney Ferguson, Ruden McClosky

The following citizen opposed having the appeal fee:

Susan Boyd, 8025 25th Street

Director Boling provided for Commissioner Wheeler further information on the appeal process.

Commissioner Wheeler noted that staff had been directed by the Commissioners (minus Commissioner Solari) to add the provision regarding the waiver of the fee for appealing a PZC decision.

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Vice Chairman Flescher and Commissioner Solari opposed, Chairman Davis recused himself,), the Motion to approve Section #11, Item (1)(b)(4), and to approve Sections #12, #13, #14, and #15 FAILED.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, by a 4-0 vote (Chairman Davis recused himself), the Board unanimously approved to delete from Section #11, Item (1)(b)(4).

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to approve Section #11, Items 1-7(a), excluding Item (1)(b)(4), which was already approved, and Item 8.

Attorney Collins clarified that the Board had unanimously approved deletion of Item (1)(b)(4), in Section #11, and that Commissioner Solari's Motion was to approve the balance of Section #11, excluding Item (8) from the above Motion.

Commissioner Solari clarified for Commissioner Wheeler that he was eliminating Item (8) in the above Motion, but that discussion would still ensue on Item (8).

The Chairman CALLED THE QUESTION, and by a 3-1 vote (Commissioner O'Bryan opposed, Chairman Davis recused himself), the Motion carried. The Board approved Section #11, Items 1-7(a), excluding Item (8).

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Chairman Davis recused himself), the Board unanimously approved Sections #12, #13, #14, and #15.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to approve Section #11, Item 8, with the striking of the fee waiver language, as follows: "Any appeal of the Planning & Zoning Commission decision on the mining administrative permit request shall

follow the regulations of Chapter 902; ~~however, no fee shall be charged by the County for any such appeal~~'.

Commissioners Wheeler and O'Bryan presented arguments, in succession, supporting the appeal fee waiver, as presented in Item (8).

Staff and Commissioners addressed questions and remarks posed by the following residents:

Susan Boyd, 8025 25th Street

Chuck Kramer, 10761 US 1

The Chairman CALLED THE QUESTION, and by a 2-2 vote (Commissioners O'Bryan and Wheeler opposed, Chairman Davis recused himself), the Motion to strike the appeal fee waiver FAILED.

The Chairman announced that the standard appeal process would apply.

Mr. Taube made observations regarding the Board's decision on December 8, 2008, to have its own expert review of the hydro-geological report.

Further discussion ensued among Commissioners, staff, Director Boling, and area residents and professionals, relative to the hydrology report requirements.

Mr. Kramer expressed his appreciation to staff, and thanked the Board for the time allowing him to work on the project.

Commissioner O'Bryan stated that since the Board had approved the 240 cumulative trip truck ends in Section Item (4)(h)(2), he wanted to re-examine Section #4, Item (4)(f) on page 37, regarding the number of cumulative truck trip ends which could be taken by haul route truck traffic. He asked Commissioner Solari if he wanted to repeat his earlier Motion, regarding increasing the paving threshold to 1,000 trips, and which Motion was to be tied into amending Section #4, Item (4)(e), to include, in the requirements for improving and maintaining haul routes, an additional twelve (12) inches of suitable road base material, in addition to the minimum sub-base of twelve (12) inches, which would be suitably compacted to meet LBR (load bearing ratio) 100 standards.

Commissioner Solari stated that he would make the Motion to reflect 750 truck trip ends.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, by a 4-0 vote (Vice Chairman Davis recused himself), the Board approved: (1) to amend Section #4, Item (4)(e), to include in the requirements for improving and maintaining haul routes, an additional twelve (12) inches of suitable road base material, in addition to the minimum sub-base of twelve (12) inches, which would be suitably compacted to meet LBR (load bearing ratio) 100 standards; and (2) Section #4, Item (4)(f), with the amendment that the cumulative paving trip threshold would be in excess of 750 trip ends per day.

Director Boling confirmed that the Board had approved the Revised Ordinance and the Fee Resolution, and asked Attorney Collins if a Motion was needed to terminate the Moratorium.

Attorney Collins advised that no further Board action was necessary, and that as soon as the Ordinance becomes effective, it would terminate the Moratorium.

5. ADJOURNMENT

There being no further business, the Chairman declared the Meeting adjourned at 4:12 p.m.

ATTEST:

Mary Louise Scheidt, Clerk, *Ad Interim*

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC Special Call Mining/MG/2008