

PLANNING AND ZONING COMMISSION

There was a meeting of the Indian River County (IRC) Planning and Zoning Commission (P&Z) on Thursday, October 8, 2009 at 7:00 p.m. in the Commission Chambers of the County Administration Building, 1801 27th Street, Vero Beach, Florida. You may hear an audio of the meeting; review the meeting agenda, backup material and the minutes on Indian River County website www.ircgov.com/Boards/PZC/2009.

Present were members: Chairman **George Hamner**, Member-at-Large; **Donna Keys**, District 1 Appointee; **Sam Zimmerman**, District 2 Appointee; **Jens Tripson**, District 3 Appointee; **Greg Smith**, District 4 Appointee; **Pilar Turner**, District 5 Appointee; **Dr. David Cox**, Member-at-Large and **Carol Johnson**, non-voting School Board Liaison.

Also present was IRC staff: George Glenn, Assistant County Attorney; Bob Keating, Community Development Director; Stan Boling, Planning Director; Sasan Rohani, Chief of Long Range Planning; John McCoy, Senior Planner; and Reta Smith, Recording Secretary.

Call to Order and Pledge of Allegiance (6:05:30)

Chairman Hamner called the meeting to order and led all in the Pledge of Allegiance.

Approval of Minutes (6:06:05)

ON MOTION BY Ms. Keys, SECONDED BY Mr. Zimmerman, the members voted unanimously (7-0) to approve the minutes of the meeting of September 24, 2009, as presented.

Public Hearing (6:06:26)

Chairman Hamner read the following into the record:

- A. TABLED from September 24, 2009 meeting:** SR60 Vero LLC. Request to Rezone 19.98 acres from RM-6 to RM-8. Located south of SR60 and approximately 1,350 feet west of 58th Avenue. (RZON 98010178-64390)[**Quasi-Judicial**]

The secretary administered the testimonial oath to those present who wished to speak on this quasi-judicial item.

Mr. Sasan Rohani, IRC Chief of Long Range Planning (6:07:13), gave a PowerPoint presentation and reviewed information contained in his memorandum dated August 27, 2009, copies of which are on file in the County Commission Office.

Ms. Keys asked Mr. Rohani to give a brief recap of what rezoning the subject property had already been through. Mr. Rohani advised it was originally zoned A-1 but the land use designation had been M-1 since 1990. He explained the site had maintained A-1 zoning until someone asked for a change, and a few years ago an applicant requested it be zoned RM-6. Mr. Bob Keating, IRC Community Development Director, clarified a multi-family project had been approved and the site was cleared; however the applicant had never gone to vertical construction or put in horizontal improvements.

Chairman Hamner opened the public hearing at 7:08 p.m. and since no one wished to speak, the public hearing was closed.

6:14:43

ON MOTION BY Dr. Cox, SECONDED BY Ms. Turner, the members voted unanimously (7-0) to approve staff's recommendation.

Item Not on Consent (6:15:04)

Chairman Hamner read the following into the record:

- A. TABLED from September 24, 2009 meeting: Wild Turkey Mine:** Request for major site plan and administrative permit use approval for a sand/coquina mine. Wild Turkey Estates of Vero Beach LLC's, Owner. Schulke, Bittle, & Stoddard, LLC, Agent. Located on the west side of 82nd Avenue between 37th Street and 53rd Street. Zoning Classification: A-1, Agricultural (up to 1 unit per 5 acres). Land Use Designation: AG-1, Agricultural (up to 1 unit per 5 acres). [SP-MA-07-10-34/2004120019-59695] **(Quasi-Judicial)**

The secretary administered the testimonial oath to those present who wished to speak on this quasi-judicial item.

Attorney George Glenn, IRC Assistant County Attorney (6:16:33), advised this application required an administrative permit, which was by definition a conditional use. He clarified administrative permit approval was required for certain activities which because of their scale, duration or nature would not generally have an adverse effect on their surroundings when regulated in accordance with the standards set forth in the chapter of administrative permit approvals. Attorney Glenn continued the P&Z may attach to its approval any reasonable conditions, limitations or requirements which in its judgment were found necessary to effectuate the purposes of the section and to carry out the spirit and purpose of the chapter. He stated once the petitioner met the initial burden of showing his application met the statutory criteria for granting such exceptions, the burden was on the P&Z to demonstrate by competent substantial evidence presented at the hearing and made part of the record, that the conditional use requested by the applicant did not meet such standards and was in fact adverse to the public interest.

Attorney Glenn related pursuant to County code for mining applications the P&Z shall conduct its consideration of the administrative permit request like a public hearing allowing public comment; however conditional permits were governed by the law of quasi-judicial proceedings which invoked due process protections for the applicant, and he explained what this meant.

Mr. John McCoy, IRC Senior Planner (6:18:48), gave a PowerPoint presentation and reviewed information contained in his memorandum dated September 10, 2009, copies of which are on file in the County Commission Office.

Mr. McCoy noted the applicant needed to obtain permits from the Army Corps of Engineers (ACOE), St. Johns River Water Management District (SJRWMD) and other agencies prior to the issuance of a mining permit, and work could not be initiated without the other permits being approved.

Ms. Keys observed there were 12 phases involved in the proposal and inquired if it meant ten years for each phase, or ten years to complete all 12 phases. Mr. McCoy responded it was ten years to complete the entire operation. Mr. Stan Boling, IRC Planning Director (6:40:34) clarified the ordinance allowed for extensions being granted by the Board of County Commissioners (BCC) if the mine had to shut down for a period due to economic circumstances; however to date this had not happened with any mining operation in the County.

Reclamation, restoration and bonding requirements were discussed.

Dr. Cox noted staff's report said the estimated maximum volume of material to be excavated from the subject site was approximately ten million cubic yards, and asked what was a realistic expectation of how much material could be actually be removed from the mine per year. Mr. Boling did not know if that much would be done over the life of the mine; however staff had analyzed all of the impacts and requirements for the maximum or "worst-case" scenario.

Adverse impacts were discussed.

Attorney Jonathan Ferguson, representing the applicant (6:52:59), stated for the record he had a slight disagreement with Attorney Glenn as to what the procedure was. He pointed out as the mining regulations were being reviewed, a decision had been made for it to require an administrative use permit and not a public hearing; however there was a provision allowing for public comment but not rising to the level of a public hearing. It was his position the P&Z was to look at the standards in the code and at evidence in the staff report that the applicant had met those standards, and what the public had to say was not evidence because this was not a public hearing.

Mr. Joseph Schulke, Project Engineer, Schulke, Bittle & Stoddard, LLC (6:57:00), discussed the stormwater design for the project.

Chairman Hamner opened the meeting for public comment at 8:00 p.m.

Mr. Victor Knight, 3295 Ranch Road, Vero Beach (7:07:23), read a letter he had received from the ACOE. He felt deteriorating property values would be a severe adverse impact for the neighbors and said if a permit was issued on a County level when the State level superseded the County, it would be inappropriate and premature for the County's permit to be issued prior to the ACOE and the other agencies final evaluation. He asked the P&Z to table the application and let the rest of the agencies evaluate the project first.

Ms. Amy Banov, 69th Street, Vero Beach (7:14:02), spoke against the size of the proposed mine and agreed the issue should be tabled.

Ms. Mary McGuire Smith, 6625 West 82nd Avenue (7:15:49), outlined the adverse impacts of the project and expressed concern about drawdown on the water supply.

Ms. Susan Boyd, 8025 24th Street (7:18:26), voiced her concerns about the project and urged the members to table this and wait until the other agencies evaluated it.

Mr. Russell Herman, 586 Redwood Court, Sebastian, representing the Friends of St. Sebastian River (7:21:39), asked for this matter be tabled.

Mr. Gary Doyle, 6170 69th Street (7:23:08), listed the reasons he was in favor of the project moving forward.

Mr. Brian Carmen, Indian River Neighborhood Association (7:26:08), requested the permit be denied.

Ms. Honey Minuse, Indian River Neighborhood Association (7:27:37), was not in favor of a mining operation in this particular location and asked the P&Z to postpone any action until review by the other agencies.

Mr. Donald Simon, 8080 24th Street (7:29:18), expressed concern about traffic and incompatibility with the neighborhood, and wanted the issue to be tabled.

Mr. Sean Sexton, 7880 37th Street (7:30:58), said a hydrologist he hired to review the plans of the mine found issues with the hydrology plan and her input had been submitted to the County and SJRWMD. He was worried about how monitoring would be done regarding drawdown on water levels on neighboring properties.

Mr. Boling (7:34:28) reviewed the various conditions for groundwater monitoring.

Discussion ensued.

Mr. Smith (7:40:59) inquired if the P&Z could require the applicant to provide independent monitoring on adjacent properties. Mr. Boling did not think you could require an applicant to go on another property and do monitoring. He pointed out in this particular case the monitoring wells

would be located in the best possible position between the dewatering activity and the adjacent Sexton ranch.

Ms. Keys (7:44:17) wondered how long it would take to know there was a drawdown. Mr. Lee Weissman, the County's hydrological consultant, responded it would probably be evident in a week because the level would be depressed very quickly.

Mr. Glen Rahm, 13299 North Indian River Drive (7:45:13), said if the project was located in the correct zoning and met all the requirements he did not understand how it could be denied.

Mr. Clyde Scent, 7980 37th Street (7:46:56), wanted the P&Z to table this issue.

Mr. George Latour, 2332 Vero Beach Avenue (7:50:13), asked that this matter be tabled.

Ms. Mary McGuire Smith (7:52:56) observed there was a problem with enforcement for mines currently operating in the County and she felt it would only get worse if the new mine was put in.

Mr. Al Videri, 2230 80th Court (7:54:19), spoke about adverse conditions he felt the project would create.

Attorney Ferguson (7:55:34) stated the applicant was not in favor of tabling the issue, and reiterated there was no harm in the County approving the project tonight because the site plan would not get released until all the agency permits were in hand.

Chairman Hamner closed the public comment period at 8:50 p.m.

7:59:26

**ON MOTION BY Ms. Turner, SECONDED BY
Ms. Keys, to approve staff's recommendation.**

Under discussion, Doctor Cox noted staff's report on endangered species identified the kestrel and the caracara but did not mention wood storks, and it turned out wood storks had recently emerged as a problem as a result of the applicant's reapplication to the ACOE. He speculated new information might emerge that could better inform the members if the other agencies permits were already approved.

Ms. Keys recalled the P&Z had recommended to the BCC it be one of the requirements to have all the permits before coming to the County; however the BCC had disagreed.

Mr. Tripson felt the same way about having the permits in hand and said he had seen nothing to prove dewatering would not occur. He noted some neighboring properties had no other ingress and egress other than 82nd Avenue, and he thought those people would be adversely affected.

Mr. Zimmerman observed it had been 27 months since this issue was first brought to the P&Z, during which time there had been a moratorium in order to reconsider the Land Development Regulations pertaining to mines. As part of the process there was public input and vigorous debate and as a result numerous restrictive new regulations had been put in place. He related if this was approved tonight the applicant would still have to jump through a lot of hoops and spend a lot of money to get other permits, and P&Z approval would do no more than set the minimum standards because all the additional agencies were likely to require even more.

Mr. Smith said the BCC had directed the members to make a decision based on staff's information, and while he had compassion for area residents it was zoned agricultural and mining was allowed.

Chairman Hamner did not see any way to table this item, and while he thought the truck traffic would be a concern to everyone he believed the mine had been scaled down considerably and mining 20 acres at a time was not a lot different than what was currently in the County.

8:11:05

ON MOTION BY Ms. Turner, SECONDED BY Ms. Keys, the members voted unanimously (7-0) to approve staff's recommendation.

Commissioners Matters (8:11:49)

None.

Planning Matters (8:11:57)

Mr. Boling discussed the results of the landscape workshop held on September 30, 2009, and updated the members on items that would be presented to the BCC on October 13, 2009.

Attorney's Matters (8:13:21)

None.

There being no further business, the meeting was adjourned at 9:07 p.m.

George Hamner, Chairman

Date

Reta Smith, Recording Secretary

Date