

**BOARD OF COUNTY COMMISSIONERS**

**APRIL 2, 2007**

The second public hearing of the Board of County Commissioners was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Cummings, Commissioner Duffy, and Commissioner Moore. Also in attendance were Assistant County Attorney Browne, Executive Assistant Bonnie Stoner, and Minutes Supervisor Nice. The Public Hearing was called to order at **9:00 AM**. The following member was absent: Commissioner D'Aprile.

A.1. Public Hearing - Review and Adopt the Amendments to Article XXIII, Excavation and Earthmoving in accordance with Article VIII, Florida Constitution of 1968, Sections 125.01(h), (t), and (w) Florida Statutes.

James Dossett explained this is the second public hearing, 33 applications exist today for mining and excavation permits, the Board discussed this topic at the Retreat on February 6, 2007 and directed staff to bring back recommendations, the first public hearing was held on March 20, 2007 on the Temporary Restriction ordinance and staff and stakeholders were instructed to identify options to avoid restrictive action, reviewed the outcome of several meetings held between March 23 and 29, 2007; stated two options exist to (1) adopt the Temporary Restrictions as written or (2) maintain the status quo; asked that fees not be enacted today; and staff will bring back fee recommendations next month.

**Commissioner Duffy** requested an explanation of the Emergency Power Act. Mr. Dossett explained vesting and the hearing examiner will determine how far along in the process applications should be for vesting purposes. Attorney Browne stated there is no emergency existing today. Mr. Dossett recalled stakeholders suggested an emergency ordinance be enacted today but staff does not feel changing a fee is an emergency; and a change in fees will only have a minimal impact on the number of trucks and locations. Attorney Browne reiterated there is no emergency.

Mr. Dossett requested a moratorium to allow staff more time for review and consideration and stated it may not take a year for staff to bring back an ordinance.

**Chairman Loftus** announced public input procedures.

Attorney Robert H. Berntsson requested time over the five minutes allotted per person, referenced the email sent to Board Members over the weekend, and distributed Draft Proposed Amendments to Excavation Ordinance 2003-003 and Fees 2003-024. **(Board consensus for additional time.)** Attorney Berntsson explained the stakeholder group agreed that adoption of an emergency ordinance would go along way to resolving the issues; reviewed the draft amendments proposed by stakeholders pertaining to scales; off-site haul routes; deleting changes proposed by staff and leaving the current language regarding Group I vs. Group II vs. Group III intent; deleting the proposed change on TDU Credits for Mined Land Area; deleting the change pertaining to Groundwater Quality; Review Fees; Loss of Natural Resources; deleting changes on Adjacent Uses; Traffic Characteristics; Future Disposition of Property and Maintenance Entity; and the Farms Program.

Attorney Berntsson explained meetings held by stakeholders resulted in agreement on proposed revisions to the ordinance and read excerpts from the email sent to Board Members; the stakeholders group put a lot of work into the proposed amendments; the Board has the discretion to adopt an emergency ordinance; and stated if a moratorium is to be enacted, it is important enough for an emergency ordinance. **Chairman Loftus** expressed appreciation to Attorney Berntsson, the stakeholders, and staff for all of their efforts.

**Commissioner Moore** requested an explanation of the stakeholders' recommendation. Attorney Berntsson stated an alternative to a moratorium would be to enact an emergency ordinance on 4:5 vote without a second public hearing on the changes; everyone would be subject to the ordinance upon enactment; staff is recommending a moratorium for up to a year but that is not necessary; and there are very few applications ready for final hearing e.g. there is only one application that has had notice published of the hearing.

**Commissioner Moore** stated he probably would not have done this on an emergency basis and concluded that staff has requested up to a year to review issues while enacting a moratorium versus enacting of an emergency ordinance. **Commissioner Duffy** asked for the definition of a deceleration lane. Attorney Berntsson explained deceleration prior to making turns. **Commissioner Duffy** requested an alternative. Attorney Berntsson advised that Florida Department of Transportation (FDOT) will not permit acceleration lanes on State roads.

Jon Bednerik, Charlotte/DeSoto Building Industry Association Executive Officer, stated a moratorium would send a message to staff that they have an additional year to work on these issues; encouraged the Board delay a vote on the moratorium; and requested staff be directed to work with stakeholders during the next 60 days to resolve all possible issues. Mr. Bednerik explained hours of operation are set out in the permits, fees may be addressed at a later time, and urged the Board to make a reasonable decision.

Attorney Steve Hartsell, stated he did not participate in the stakeholders meetings although he did make an effort to meet with Mr. Dossett; agreed with many statements of the prior speakers; a moratorium is the wrong way to address this problem; urged the Board give direction to staff to meet with stakeholders in a public forum to address the issues; vesting provisions in a moratorium do not address the applications on file or the issues before the Board; the hearing examiner would need to identify the status and time frames for the applications; and if the Board enacts a moratorium, 60 or 90 days should be established in lieu of 12 months.

Attorney Matthew Lee, appeared on behalf of the Farabee Fill Pit that filed an application on February 2, 2007; explained the public hearing is to be held on April 6, 2007 and staff's recommendation is for approval; and asked that his client be exempt from a moratorium, if enacted by the Board.

Art Dagg, Wilderness Camp Director, stated the Farabee Pit has agreed to give the land to the Camp after completion of the excavation; explained the Camp is a private organization that accepts boys who have problems; currently 10 boys are in the program and when the program is in full operation, there will

be space for 40 boys; expenses are paid through private donations instead of taxpayer dollars; the Camp needs the land from Farabee Pit as a buffer; and requested the Pit be exempt from any moratorium.

Frank Furco, a business operator on Kings Highway, stated he is in favor of a 12-month moratorium to protect the health and safety of the community.

Steven Brown, Conservancy of Southwest Florida appeared on behalf of Charlotte County members, asked to be included in any meetings on this topic relative to environmental issues.

Eric C. DeHaven, Southwest Florida Water Management District, stated a moratorium would upset the Farms Programs in particular on two specific projects; recalled a prior request to exempt the Farms Program or establishing the Program as a fourth category; and requested more time.

Todd Rebol, Banks Engineering, explained the exclusion of the acceleration lanes; staff has recognized numerous issues dealing with mining and excavations; suggested staff be given the tools to work with the stakeholders and environmental representatives on an expedited basis.

Ron Manhan, works with citrus growers, asked the Board to consider the real need for a moratorium; the beginning of the crises was established at a workshop last year bases on increases in the applications, mainly from the Farms Program; and a moratorium is not required.

Roy Jones commented in support of a moratorium, stated the mines significantly increase traffic impacts and safety hazards; and a lot of materials are exported outside of Charlotte County.

Jon Finstrom stated he was proud to have been a participant in the stakeholder meetings and the reasonable compromised achieved; the mines coming on line now are under the latest ordinance; corrected a statement that the Planning and Zoning Board (P&Z) recommended denial of a moratorium; encouraged the Board to make good judgment during the permitting process; probably most of the applications will go by the way side during the permitting process; and encouraged the Board to vote against

a moratorium. **Commissioner Duffy** asked if the consensus of the group was to accept the recommended revisions. Mr. Finstrom stated there was a definite consensus and the fees could be raised without vesting since the current ordinance addresses it.

Al Cheatham, Agricultural and Natural Resources Advisory Committee Chairman, stated he spoke with **Commissioner D'Aprile** and Mr. Dossett regarding concerns on groundwater quality issues; a representative was selected in February to participate in the stakeholder process; and pointed out the Committee has not had an opportunity to discuss this problem.

Randy Keeling, Johnson Engineering, stated he has worked in the County for some 30 years; based on experience in other counties, the current Charlotte County ordinance is one of the best excavation ordinances; the ordinance has provisions to take care of the problems; thought most of the issues had been resolved; expressed opposition to a moratorium; but if a moratorium is enacted, vesting must be clarified since two applications have been in the process for two years or more; and mechanisms are already in place in the current ordinance without establishing a moratorium.

Gary Bayne, Southwest Engineering, stated he thought everything was taken care of in the stakeholder meetings; reviewed changes proposed regarding items 3 and 8; and asked for staff direction to work with stakeholders in the next six weeks.

Bill McDaniel, one of the original five invitees requested by staff to work on this topic, he has three mining operations in Charlotte County, and has three or four of the 33 applications in the mill; he was side swipe when he saw staff's recommendation for a moratorium; stated a lot of special interest representatives participated in the stakeholders meetings; a lot of miss-information was given to Board Members at the workshop on mining operations in other municipalities; requested the Board not to implement a moratorium since a mechanism already exists.

Michael Whitt stated the stakeholder group did not declare anything when they met with staff; the stakeholders did not tell staff that it was inappropriate to address the 11 items on their list; the items were addressed in numerous meetings; it was not

a basis to support a moratorium; there is no crisis; miss-information has caused this panic; information from staff that Charlotte County is being overrun by the applications e.g. Collier County has probably 1,000 applications not 7 and there are 90 Group II and Group III excavation applications on file in Collier County; referenced the report he handed out previously e.g. the Lee County Mega Complex will be played out in 7 years; there are Bills pending in the Legislature that will prevent local governments from approving mining permits; and the moratorium is not necessary and would be counter productive.

**COMMISSIONER MOORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DUFFY.**

**Motion Carried 5:0.**

**Commissioner Cummings** recalled various concerns made by the public about a moratorium; his first inclination was to ask if the time frame could be shortened in the ordinance without holding another hearing but the Board has discretion to establish and terminate a moratorium; if the ordinance is approved, there would be an incentive to create greater restrictions; the conservative approach would be to enact the moratorium today and encourage stakeholders and staff to work together to address outstanding issues. **Commissioner Moore** requested verification that the moratorium might be less than 12 months and noted a typographical error in the proposed ordinance. Attorney Browne responded affirmatively.

**Commissioner Duffy** acknowledged the difference in interpretations between the stakeholders and staff concerning the results of the meetings; opposed establishing a moratorium; opined the Farabee Pit application hearing should go forward on April 6, 2007; expressed a willingness to address all 11 issues with the probable outcome of resolving 9 issues except the TDU and adjacent uses issues. **Commissioner Duffy** requested the alternative to a moratorium. Attorney Browne stated the proposed ordinance is the only item on the agenda, the Board has discretion to declare an emergency, and reiterated the legal opinion is that no emergency exists today. **Commissioner Duffy** indicated that a moratorium warrants an emergency ordinance.

**Chairman Loftus** commented on the Farms Program and pre-emption of the County by pending Bills before the Legislature; requested

staff and stakeholders meet in a public forum in Room 119 in the next 60 days; and stated a moratorium is not necessary. **Commissioner Cummings** pointed out an additional 30 days would be necessary to allow staff time to bring back another ordinance after the initial 60 days. Attorney Browne suggested 30 to 60 days to bring back another ordinance. **Commissioner Cummings** concluded approximately four months and suggested the ordinance be changed to reflect 4 or 6 months; applications already vested should move forward; the Legislature has not ever made significant policy changes based on what Charlotte County has done; and agreed with **Commissioner Moore's** suggestion for 6 months. **Chairman Loftus** reiterated 60 days e.g. 45 days for the stakeholders and staff to resolve issues and bring it back to the P&Z within 60 days. **Commissioner Moore** requested the format to be brought back. **Chairman Loftus** stated issues relative to the proposed amendments would be addressed. **Commissioner Duffy** asked what would occur if differences in interpretations between staff and stakeholders are not resolved. County Administrator Loucks stated the Board would need to make a policy decision.

**RECESS: 10:50 AM - 11:00 AM**

**Commissioner Moore** stated he is not comfortable with the emergency ordinance and expressed a preference to allow staff 90 days to bring back another ordinance. **Commissioner Duffy** indicated a preference for 60 days or less, pointed out the next subsequent P&Z meeting would be in May, and fees can be addressed later. **Commissioner Cummings** stated this whole issue did not start with the workshop, recalled issues existed when fill was brought in for FEMA Village, acknowledged there is an urgency based on the increase of applications, and agreed with **Commissioner's Moore** suggestion for 90 days. **Chairman Loftus** stated time is money and the issues need to be addressed on an expedited basis e.g. 60 days.

**COMMISSIONER DUFFY MOVED TO DIRECT STAFF AND STAKEHOLDERS TO BRING BACK FINAL RECOMMENDATIONS WITHIN 60 DAYS OR FOLLOWING THE NEXT APPROPRIATE P&Z MEETING, SECONDED BY CHAIRMAN LOFTUS.**

**Commissioner Cummings** requested clarification if the motion is relative to the proposed ordinance. Attorney Browne stated the Board need not act on the proposed ordinance today and the vesting issue may be addressed later.

**Commissioner Cummings** concluded that all applications on file will come under the existing ordinance vs. adopting the proposed ordinance today with changes to be brought back within a specified time period. **Commissioner Duffy** recalled stakeholders have agreed that vesting is not an issue since consensus was achieved by the group. Attorney Browne stated 33 applications are on file, the applicants are aware of the potential for rate increases, and each application may be addressed on a case-by-case basis. Attorney Berntsson explained the consensus made in good faith was to adopt the emergency ordinance and changes would be brought back within 60 or 90 days as set by the Board. **Commissioner Cummings** reiterated the emergency ordinance or a moratorium would be enacted today and vesting would be addressed on the current applications. Attorney Berntsson reiterated the stakeholders worked in good faith but staff did not agree; once the staff report become public, the influx of applications were filed last Friday; and everyone he has spoken to has indicated a willingness to work on an expedited basis to resolve issues.

**Commissioner Cummings** stated good faith efforts work two ways and he is done debating the issue. **Chairman Loftus** requested the Board to consider what the stakeholders have accomplished and allow an additional 60 days with public forum meetings to resolve the issues with staff.

**Commissioner Moore** acknowledged the need to do something but 60 days might not be sufficient for staff to bring it back to the Board. **Commissioner Cummings** stated the motion does not actually do anything and the ordinance should be enacted for 60 or 90 days. **Chairman Loftus** recognized the efforts expended during the last two weeks and clarified the 60 days would be for staff to bring something back to the P&Z. Attorney Browne stated the motion is a direction to staff and applications may still be filed. **Commissioner Cummings** stated that is his point. **Commissioner Duffy** concluded a moratorium would stop applications. **Commissioner Duffy** requested the requirements for public notice of P&Z hearings. Assistant County Attorney Aleksandr Boksner outlined 15 days for publication of the hearing notice before P&Z and another 15 days to draft and edit an ordinance for approximately 30 days and another 30 to 45 days to bring it back to the Board. **Chairman Loftus** recalled

P&Z heard this application the day before the Board's first public hearing. Attorney Boksner advised one notice may be published for both hearings. **Commissioner Duffy** questioned the feasibility of staff presenting an ordinance at the May P&Z meeting. Mr. Loucks stated 60 days for an ordinance to be brought back to the P&Z would be more feasible e.g. 15 days notice and 45 days for staff and stakeholders to meet and resolve issues and publication of the hearing notice. **Commissioner Duffy** agreed.

**CHAIRMAN LOFTUS CLARIFIED THE MOTION IS TO DIRECT STAFF TO WORK WITH STAKEHOLDERS IN PUBLIC FORUMS HELD IN ROOM 119 AND BRING AN ORDINANCE BACK TO P&Z WITHIN 60 DAYS.**

**Motion Carried 3:1. Commissioner Cummings opposing.**  
**ABSENT: Commissioner Aprile.**

**ADJOURNED: 11:30 AM**

Signature on file in Commission Minutes  
Chairman

**ATTEST:**

**BARBARA T. SCOTT, CLERK  
OF THE CIRCUIT COURT AND  
EX-OFFICIO TO THE BOARD  
OF COUNTY COMMISSIONERS**

**By: Signature on file in Commission Minutes  
Deputy Clerk**

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