

JANUARY 15, 2009

The Board of County Commissioners, Manatee County, Florida, met in SPECIAL SESSION in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, at 1:40 p.m.

Present were Commissioners:

Gwendolyn Y. Brown, Chairman
Carol Whitmore, First Vice-Chairman
Donna Hayes, Second Vice-Chairman
Lawrence E. Bustle, Jr., Third Vice-Chairman
John R. Chappie
Ron Getman
Joe McClash

Also present were:

William Clague, Assistant County Attorney
Quantana Acevedo, Deputy Clerk,
representing R. B. Shore, Clerk of Circuit Court

Invocation by Mrs. Hayes.

All witnesses and staff giving testimony were duly sworn.

AGENDA

Agenda of January 15, 2009, agenda update memorandum, and sign-in sheets. [BC20090115DOC001](#)

FOUR CORNERS MINE – DRI 5

Public hearings (Notices published) were held to consider

ORDINANCE 08-32 (fka 03-21, 05-25, and 07-50) MOSAIC FERTILIZER LLC/FOUR CORNERS MINE SUBSTANTIAL DEVIATION NORTHEAST TRACT ADDITION – PARCEL 4, DRI 5 (aka THE ALTMAN TRACT)

Request: Approval of a Substantial Deviation to the Four Corners Mine Development of Regional Impact to:

1. Amend Section 7 – Legal description for the addition of Parcel 4, 2,048 acres (also known as the Altman Tract) to this DRI;
2. Allow the mining of phosphate ore on the 2,048-acre addition to the mine;
3. Amend the D.O. to increase the rate of mining and number of acres to be mined or disturbed within Parcel 4;
4. Amend Sections 4 – Development Components, 5 – Definitions, and 6 – Development Conditions, to reflect the 2,048 acres to be added to this DRI, and to establish new or modified conditions of approval for mining within Parcel 4, and to ensure the Development Order will be internally consistent with all changes proposed by the applicant; and
5. Amend Map H to reflect the above changes.

The proposed addition (Parcel 4) to the Four Corners Phosphate Mine is north of S.R. 62, east of S.R. 37, and extending eastward to the Hardee County line. Parcel 4 is 2,048 acres. The existing Four Corners Phosphate Mine is located north of S.R. 62 and along both sides of S.R. 37 and C.R. 39, extending to the north into Hillsborough County.

ORDINANCE 08-32 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, RENDERING A DEVELOPMENT ORDER PURSUANT TO *CHAPTER 380, FLORIDA STATUTES*, ON AN APPLICATION FOR DEVELOPMENT APPROVAL (ADA) FOR A SUBSTANTIAL DEVIATION TO AN EXISTING DEVELOPMENT OF REGIONAL IMPACT (DRI) FILED BY MOSAIC FERTILIZER LLC FOR THE FOUR CORNERS MINE ALTMAN TRACT ADDITION DRI; PROVIDING FOR DEVELOPMENT RIGHTS, CONDITIONS, AND OBLIGATIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. [BC20090115DOC002](#)

and

Z-07-13 (fka Z-03-01) MOSAIC FERTILIZER LLC/FOUR CORNERS MINE NORTHEAST TRACT – PARCEL 4 (ALTMAN TRACT)

Request: Approval of a Zoning Ordinance of the County of Manatee, Florida, amending the Official Zoning Atlas of Manatee County (Ordinance 90-01, the Manatee County Land Development Code), relating to zoning within the unincorporated area of Manatee County; providing for the rezoning of certain land from **A**, **A/WP-P**, and **A/WP-P/ST** to **EX**; and providing an effective date. The proposed addition to the Four Corners Phosphate Mine is east in the northeast corner of Manatee County, north of S.R. 62, east of S.R. 37, and extending to the Manatee County/Hardee County line. The Altman parcel is 2,048 acres within Sections 11, 12, 13, 14, and 24, Township 33 South, Range 22 East.

Z-07-13 AN ORDINANCE OF MANATEE COUNTY, FLORIDA, REGARDING LAND DEVELOPMENT, AMENDING THE OFFICIAL ZONING ATLAS (ORDINANCE 90-01, THE MANATEE COUNTY LAND DEVELOPMENT CODE), RELATING TO ZONING WITHIN THE UNINCORPORATED AREA; PROVIDING FOR THE REZONING OF APPROXIMATELY 2,048 ACRES IN THE NORTHEAST CORNER, NORTH OF S.R. 62, EAST OF S.R. 37, AND EXTENDING TO THE MANATEE COUNTY/HARDEE LINE FROM **A** TO THE **EX** ZONING DISTRICT; SETTING FORTH FINDINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. [BC20090115DOC003](#)

Additional public comment letters/emails were submitted with the agenda update memorandum.

[BC20090115DOC004](#)

Robert Pederson, Planning Department, submitted CDs and DVDs containing the record of the previous public hearings for these requests. Copies of these CDs and DVDs were also provided to Commissioners Chappie and Bustle, prior to this hearing, for their review. He also submitted additional public comment letters and e-mails. [BC20090115DOC005](#)

Mr. Pederson stated the Zoning Ordinance is substantially identical to the one considered on September 16, 2008. The Development Order is substantially in the same form and content, with the exception that provisions for a conditional no mine area within the Altman Tract have been removed and replaced with a series of provisions relating to the Texaco Tract. Wetlands within the Texaco Tract would be placed in a conservation easement and not mined until there was a successful demonstration that the wetlands within the Altman Tract could be mined and reclaimed in accordance with the County's mining code and reclamation standards. The company has also offered to provide or contribute to an environmental education center and assist in environmental education programs, up to \$75,000.

Mr. Pederson read Comprehensive Plan Policy 3.3.1.1:

"Prohibit removal, alteration, or encroachment within wetlands except in cases where no other practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit. Such determination will require completion of impact avoidance and minimization analyses which clearly demonstrate the necessity of the proposed impact."

Bill Clague, Assistant County Attorney, advised this matter was brought back pursuant to a settlement agreement (approved 12/16/08) entered into under the Bert Harris Act. The County Attorney's office stands by its recommendation to approve that settlement agreement and reconsider the decision the Board made to deny the two applications being considered this date. That recommendation was based on their view of the potential costs of litigation; the conclusion that Mosaic has made a viable Bert Harris Act claim, which could result in damages to the County; and their view of the difficulty of litigating issues that have already been resolved in the company's favor at the State level and may be resolved in their favor at the Federal level. He clarified the Board is not required to approve the applications. At the previous hearings, staff recommended denial based on Comprehensive Plan Policy 3.3.1.1, and staff's position on that issue has not changed. However, the Board could take a different interpretation of that Policy and approve the applications, because that Policy includes multiple factors that are not clear issues and require some interpretation by the decision makers. It comes down to the question of whether or not there is confidence Mosaic can replace the wetlands it intends to impact in this proceeding.

Mr. Chappie and Mr. Bustle each disclosed they had two meetings with Mosaic, one at Mosaic's mining operations where they were provided a tour, and the other meeting in the office of Mosaic's legal counsel, at which they were accompanied by a member of the County Attorney's office and provided a presentation by Dee Allen. These meetings took place prior to the negotiation and approval of the settlement agreement regarding the Altman Tract. They also noted they reviewed the written materials and videos of the testimony from previous hearings.

Mrs. Hayes disclosed a conversation with a Mosaic representative to put them in touch with a constituent who contacted her regarding a land purchase transaction.

Patricia Petruff, representing Mosaic, submitted a "Commissioner Notebook" containing: (1) [Letter](#) from Frank E. Matthews and D. Kent Safriet of Hopping Green & Sams, with Exhibits: A - Proposed Assurance Package; B - Memorandum (12/7/00) from Karen Collins-Fleming to Carol Clarke; and C - Recommended Order in the case of [Lee County and Sarasota County vs. Mosaic Fertilizer LLC and Department of Environmental Regulation](#); and (2) an [Electronic Document Index](#) including seven disks consisting of [Manatee County Application Documents](#), [Inventory/Listing of Relevant Permits and Approvals](#), [Revised FDEP Application and Documents](#), [Revised ACOE Application](#), [Other Supporting Reports and Documentation](#), [Transcripts](#), and [Presentations](#). She also submitted an [Altman Application Matrix](#) and recommended corrections to scrivener's errors in Ordinance 08-32, [Page 14](#) and [Page 11](#) (Revised Page 11 submitted later in the meeting), to remove references to a mining resolution that has not yet been approved. [BC20090115DOC006](#)

Dee Allen, Mosaic Fertilizer LLC, used a slide presentation to review the major commitments and requirements of these applications. The 529-acre preservation area, which represents the 25 percent of the site that has the highest ecological value and will be preserved from mining. The central marsh will serve as the headwaters of Horse Creek. The preservation area, plus a restored stream system north of the central marsh, will be put into a perpetual conservation easement that will interconnect the habitat quarter of Horse Creek and the Duette Preserve to the south. The central marsh will be further protected through the use of a 30-foot upland buffer adjacent to the wetland jurisdiction line, and there will be no mining or ditch and berm construction allowed within that 30 feet. She pointed out the remnant of a former stream system, which will be preserved and restored.

Ms. Allen commented on the proposed public benefits, including the construction of the Duette Fire Station to be installed as part of a 70-acre site that will also include a park. Mosaic has agreed to provide the operational costs of the park for the first three years as well as the start up funding, amounting to \$319,000. Mosaic has also agreed to partner with the County in an educational program at Rye Preserve, including \$75,000 for funding for infrastructure improvements, as well as assistance with the development of educational programs.

In demonstrating their confidence to reclaim the wetlands, Ms. Allen advised that Mosaic has set aside 597 acres, of which 403 are high quality wetlands, on other Mosaic lands. By contract, they will not mine or disturb any of those lands until the herbaceous wetlands on the Altman Tract are successfully reclaimed by meeting or exceeding the requirements of the County's reclamation manual. The reclamation plan will be modeled after the existing land use by using a three-dimensional integrated surface and groundwater model to ensure the appropriate hydro periods and base flows are maintained in accordance with the pre-mining conditions. There will be 96 more acres of wetlands in the post condition than in the pre-mining condition. With respect to the rate of disturbance to maintain the wetland contribution within the Horse Creek Basin, they have agreed to maintain 75 percent of the onsite wetlands in service at all times. They have agreed to provide bonding in accordance with Ordinance 04-39, which means the surety bond will double and the reclamation bond will increase because of the complexity of the requirements in the County's reclamation manual. In addition to those requirements, an additional \$2 million will be added to the reclamation bond as surplus funds. [BC20090115DOC007](#)

John Garlanger, Ardaman & Associates, provided a hydrology overview. If the recharge systems are designed and operated as proposed, there will be no significant effect on groundwater outflow to Horse Creek or to water levels on adjacent property. He used a chart to point out the daily flow in Horse Creek at S.R. 64 versus the percentage of time that flow is exceeded, and a chart outlining the difference in the depth of water in the stream just upstream from where it passes beneath S.R. 64. He concluded that mining the Altman Tract will have no adverse impact on surface water or groundwater resources in Horse Creek, the Peace River, or Charlotte Harbor. [BC20090115DOC008](#)

John Kiefer, BCI Engineers & Scientists, also used a slide presentation while commenting on Mosaic's proposed wetland preservation and restoration plans for the Altman Tract. He stated the documented design approach, the company's experience in creating wetlands, and the company's commitments to meeting detailed and specific success criteria will result in a project meeting the performance standards for wetland reclamation most recently developed by Manatee County. [BC20090115DOC009](#)

Darren Stowe, Environmental Consulting Technology, reviewed the Comprehensive Plan and Land Development Code land use considerations. The mining of the Altman Tract is an extension of existing, ongoing mining activities in the area and will not require any public services, facilities, or infrastructure improvements. There will be no impact to population or development intensity in the surrounding area. There is no residential development in this area closer to the Altman Tract than to existing mining activities. There will be no adverse impacts to the public health, safety, and welfare.. A conservation easement will reserve 552 acres on site; a site specific survey revealed no on-site historic or archaeological resources. Mosaic has incorporated the proposed rezoning into existing mining activities in the area, and no new groundwater withdrawals, no additional outfalls, and no clay settling areas are required on site. Until mining occurs, agriculture use on the Altman Tract will continue and, after reclamation, will result in the same low-intensity agriculture use in compliance with the policy designating areas for long-term agriculture use. He also commented on Policy 3.3.1.1, stating phosphate cannot be extracted without impact to the land surface. On December 7, 2000, County staff issued a memorandum stating "overriding public benefit" was met based on *Florida Statute Section 378.202*, which indicates the extraction of phosphate is important to the continued economic wellbeing of the State and to the needs of society. In this case, the most valuable ecological system, the central marsh, has been preserved; the wetlands to be impacted have been demonstrated to be restorable; and the applicant has agreed to extraordinary mitigation efforts, including adherence to the most recent mining ordinance. The proposal to mine the Altman Tract complies with the Comprehensive Plan and is consistent with the applicable provisions of the Land Development Code. The Development Order conditions allow for the finding that the proposed mining of the Altman Tract is in compliance with the Comprehensive Plan, including Policy 3.3.1.1. [BC20090115DOC010](#)

Kent Safriet, representing Mosaic, responded to a question regarding the Texaco Tract escrow. As wetlands are released and successfully reclaimed on the Altman Tract, in at least 100-acre increments, that number of wetland acres will be released on the Texaco Tract under the provisions in the Texaco Tract contractual limitation.

Speaking in opposition to the requests were: **John Korvick**; **Marilyn Stasica**; **Jack Taylor**; **John Rehill**, representing a group of citizens and homeowners; **Katie Pierola**; **Frank Kirkland**; **Arlene Flisik**; **Peggy Simone**; **Cris Costello**, National Sierra Club; **Gerry Swormstedt**; **Eric Jones**; **Frances Brathwaite**; **Glenn Compton**, representing ManaSota 88; **Sarah Hollenhorst**; **Cheryl Burke**; **Connie McManus**; **Paul Valenz**, Federation of Manatee County Community Associations; **Valerie Fisher**, League of Women Voters of Manatee; **Sandra Ripberger**, Sierra Club; **Barbara Angelucci**; and **Mary Sheppard**.

Concerns/comments included: Avoidance of the wetlands; staff has recommended denial for eight years; not supposed to use loss or gain as a criteria for approval or denial of a request; if phosphate companies were sincere in doing as little damage to Florida as possible, they would forfeit the Altman Tract to a conservation easement and keep it preserved; possibility of catastrophes/complications during phosphate mining; discussions between Commissioners and Mosaic representatives (disclosed earlier in meeting); there are no more wetlands; Mosaic has not proven they can restore the wetlands; lawsuit; economic development; many articles on the internet against Mosaic; problems with the Ft. Meade mine; berms will not protect the waterways; reclamation; Operating Permit being discussed February 5, 2009; the Altman Tract and the Four Corners Mine should be considered separately; are there any statistics of the quality and quantity of water coming off the Four Corners Mine property; the conditional no mine area being transferred from this site to the Texaco Tract is a

step backwards; Texaco Tract is within a different watershed; provisions of the Bert Harris Act should not override the Board's zoning powers; should not consider an economic threat through a lawsuit; displacement of animal and plant habitat; cannot replace what mother nature has put into place; approval will lead people to suspect motives; approval will amount to selling the rezoning decision; the public has incurred a expense in hiring experts; Sierra Club was denied a request to meet with Commissioners; Mosaic has not shown an extraordinary reason for the zoning to be changed; protection of the waters from the aquifer and the wildlife in the wetlands; number of wildlife and humans that would be affected; Board is to determine compliance with the Comprehensive Plan; wetland avoidances have not occurred; applicant has confused the issue by offering a fire station, a park, and an environmental education center; difference between a public benefit and an overriding public benefit; Board previously decided that wetland impacts are separate from possible deficiencies; opinion by the County Attorney's office on a proposal by Ringhaver (Ringhaver Wetland Policy Interpretation, 10/9/07) with regard to setting a precedent for impacting wetlands under the "no practical alternative" requirement; Mosaic has an interest in over 44,000 acres of land in Manatee County; there is no scarcity of land for phosphate mining in Florida; trading of infrastructure deficiencies for wetland impacts; the Texaco Tract provision to set aside 597 acres of wetlands is nothing more than temporary and a request will ultimately come to mine those wetlands; what is and is not allowable in the conservation easement; the amount of phosphate mining severance taxes collected by the State of Florida is not adequate to fund the operations of the community park; mining will result in permanent changes to the land and will have a negative affect on the watershed; affect on the water supply, the saltwater fishing industry, the recharge of the water table, and on ecotourism in the region during the mining period; disturbance to the hydrology of the region; a park was promised in 2005 or 2006; problems with wells; radon; have to watchdog the phosphate industry; approving this mine expansion could set a precedent for future mining projects in rural and environmentally sensitive areas; consider requiring Mosaic to provide the lakes created by the mining operation to be used by the County to store potable water, if it can be done safely; preservation of the physical, chemical, and biological integrity of the eco-system with maximum protection of the public health and the environment; management of land as a finite resource, not as a commodity; mining the Altman Tract threatens water quality and quantity of Horse Creek; approval will pave the way for additional litigation threats from developers seeking other land use changes; violation of the Comprehensive Plan; if the rezone is denied, the Bert Harris claim has no merit because the land is still open to reasonable use; Manatee County's vision to be known as a green county; 55 percent of phosphate is exported; what will happen if applicant leaves the State; reclamation has been poor in Manatee County; radium can cause cancer if inhaled or ingested over a long period; support green business, not business that destroys the land; overriding public benefit most people are worried about is clean drinking water; water is a finite resource; depletion of groundwater; etc.

Mr. Korvick displayed a photograph depicting a "dusty" atmosphere in the area of the mine. Mr. Rehill submitted a letter from Applied Environmental Services LLC regarding destruction of the Manatee River, Duette Preserve, and other public lands; a press release from Governor Crist regarding the Neal Preserve acquisition; aerial maps of central Florida; and a photograph of the pond on his property. Ms. Costello submitted a letter confirming her affiliation with the National Sierra Club. Mr. Compton submitted a letter outlining ManaSota 88's recommendation for denial. Mr. Valenz read and submitted a letter from Ernest "Sandy" Marshall outlining the Federation's position. [BC20090115DOC011](#)

Speaking in favor of the requests were: **Leonard Horak** and **Al Robinson**.

Comments included: Mining in the area has not affected anyone's health; the fire station will benefit everyone; Mosaic has met County and State requirements; mining industry has changed over the years; reap tax dollars; etc.

Recess/Reconvene. All members present.

Others speaking in opposition were: **Dennis Mader**, People for Protecting Peace River, Inc.; **Linda Jones**; and **James Leps**.

Concerns included: Water of Horse Creek; cannot re-vegetate with native vegetation; no Federal permits for the Altman, South Ft. Meade, or Ona tracts; EPA (Environmental Protection Agency) has recommended there be no mining without a cumulative impact study in the Peace River Watershed; there are thousands of acres left to mine so the wetlands should be left alone; extended periods of drought; investigate a tax on phosphate being shipped from the Port; water; reclamation; etc.

Mr. Mader displayed slides depicting a photograph of machinery Mosaic would use at the Altman Tract, aerial photographs of active phosphate mines, and topography maps of the South Ft. Meade mine (Hardee County). [BC20090115DOC012](#)

Following questions regarding techniques to mine without impacting the surface of the land, Ms. Allen stated bore hole mining has not proven to be viable. To mine phosphate, the surface of the land must be disturbed. In response to a question regarding a scoring index for the quality of wetlands referred to in the Recommended Order (in book submitted earlier by Patricia Petruff; Page 12, Paragraph 9), Ms. Allen advised the comments are a statement of fact that in that case, the riparian stream corridors were proposed to be preserved. The riparian corridor and central marsh on the Altman Tract are also proposed to be preserved.

Discussion: Protection of high quality wetlands; health issues with air borne particulates; permanent changes to the wetlands; no evidence presented that reclamation of the wetlands would bring them back to existing conditions; no temporary uses when talking about wetlands; applicant already has the right to mine the property, absent a few differences; Board's previous decision should stand; Texaco Tract is not approved for mining; no overriding public benefit; there are other properties that could be mined in this area; statement by applicant, in a previous hearing, that there are other reasonable uses of this property; this is a property rights issue and there is a value placed on property rights; there is an overriding public benefit; there is a need for a fire station, a park, and educational training; phosphate is needed in this country; economic benefit to Manatee County; many businesses are dependent on phosphate; Board has to consider a potential lawsuit; cannot use phosphate mining severance taxes to pay for litigation, therefore, that would have to come from general funds; there is an overriding public benefit that the County will receive 597 acres containing 403 acres of high quality wetlands; a fire department meets the standards for fire safety; Mosaic can restore the wetlands; land exchange outlined in Ordinance 08-32 (last Whereas clause on Page 1); applicant has demonstrated they were going to mine the lands and that is a Bert Harris issue; etc.

Mr. Safriet submitted Revised Page 11 (of Ordinance 08-32), on which the scrivener's errors referenced earlier by Ms. Petruff have been removed. The Recommended Order was included to demonstrate Mosaic has the ability to reclaim wetlands, and has reclaimed wetlands at various sites throughout the State, as demonstrated in Paragraphs 71, 73, 119, 120, 121, 122, 123, 124, 125, and 137 of that Order. He also stated Mosaic has presented evidence and testimony that clearly establishes the Land Development Code criteria and Comprehensive Plan Policy 3.3.1.1 have been met.

[BC20090115DOC013](#)

Motion – Ordinance 08-32

Based on the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be consistent with the Manatee County Comprehensive Plan, the Manatee County Land Development Code, *Chapter 380, Florida Statutes*, and Rule 9J-2.025, F.A.C., subject to the conditions established in the Development Order, Mrs. Hayes moved to approve the Substantial Deviation to DRI 5 and ADOPT **Ordinance 08-32**, with the revisions to Pages 11 and 14. The motion was seconded by Ms. Whitmore and carried 5 to 2, with Mr. Getman and Mr. McClash voting nay.

[BC20090115DOC014](#)

Motion – Z-07-13

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be consistent with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, Mrs. Hayes moved to APPROVE Manatee County Zoning Ordinance **Z-07-13**. The motion was seconded by Mr. Bustle and carried 5 to 2, with Mr. Getman and Mr. McClash voting nay.

[BC20090115DOC015](#)

MEETING ADJOURNED

There being no further business, the meeting was adjourned.

Adj: 4:28 p.m.
/dev

Minutes Approved: February 24, 2009