

FEBRUARY 5, 2009

The Board of County Commissioners, Manatee County, Florida, met in SPECIAL SESSION in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, at 1:33 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 (entered during the meeting)

Also present were:

William Clague, Assistant County Attorney
Susan G. Romine, Board Records Manager,
representing R. B. Shore, Clerk of Circuit Court

All witnesses and staff giving testimony were duly sworn.

AGENDA

Agenda of February 5, 2009, and sign-in sheets.

[BC20090205DOC023](#)

MOSAIC FERTILIZER LLC – ALTMAN TRACT

Public hearings (Notices published) were held to consider

RESOLUTION R-09-010 – MASTER MINE PLAN

R-09-010 A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, GRANTING MOSAIC FERTILIZER LLC'S APPLICATION FOR A MASTER MINING PLAN FOR THE ALTMAN TRACT (2,048 ACRES); AUTHORIZING MINING AND RECLAMATION OF THE ALTMAN TRACT; ESTABLISHING NEW CONDITIONS OF APPROVAL FOR MINING WITHIN THE ALTMAN TRACT TO INSURE THE MASTER MINING AND RECLAMATION PLAN WILL BE CONSISTENT WITH THE DRI DEVELOPMENT ORDER FOR THIS PROJECT INCLUDING, BUT NOT LIMITED TO, FINANCIAL ASSURANCE AND FINANCIAL RESPONSIBILITY, MINING AND RECLAMATION SCHEDULES, AND ENFORCEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

[BC20090205DOC024](#)

and

RESOLUTION R-09-011 – OPERATING PERMIT

R-09-011 A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, GRANTING TO MOSAIC FERTILIZER LLC AN OPERATING PERMIT FOR THE ALTMAN TRACT (2,048 ACRES) AUTHORIZING MINING AND RECLAMATION OF THE ALTMAN TRACT, ESTABLISHING NEW CONDITIONS OF APPROVALS FOR MINING OF THE ALTMAN TRACT, AUTHORIZING MINING IN ACCORDANCE WITH THE APPROVED MASTER MINING AND RECLAMATION PLAN, ESTABLISHING CONDITIONS OF APPROVAL FOR THE MINING INCLUDING, BUT NOT LIMITED TO, FINANCIAL ASSURANCE AND FINANCIAL RESPONSIBILITY, MINING AND RECLAMATION SCHEDULES MONITORING, AND ENFORCEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

(Enter Mr. McClash)

[BC20090205DOC025](#)

Rob Brown, Natural Resources Department, submitted public comment e-mails.

[BC20090205DOC026](#)

Patricia Petruff, representing the applicant, advised the purpose of the Master Mining Plan and the Operating Permit is to assure the conditions contained in the Development Order (adopted 1/15/09) are properly implemented. The County's Mining Ordinance (Ordinance 81-22) contains specific information required to be submitted to support those documents. She submitted: (1) Review of the Manatee County Comprehensive Plan Master Mining Plan by Darren L. Stowe; (2) Standards for Master Mining Plan Approval, which address the specific criteria in Ordinance 81-22; and (3) the public notice and advertising required for this hearing. Inasmuch as information in the Development Order documents also supports the Master Mining Plan and Operating Permit, Ms. Petruff requested the record from those [public hearings](#) (1/15/09) be included in the record of these public hearings.

[BC20090205DOC027](#)

Darren Stowe, Environmental Consulting and Technology, Inc., used a slide presentation to summarize his opinion regarding the compatibility of the Master Mining Plan with the Comprehensive Plan, and its consistency with Ordinance 81-22. He reaffirmed his prior presentations to the Planning Commission and this Board. Included in the slide presentation were the seven criteria for approval of a Master Mining Plan, the property vicinity map, a map of the conservation easement area, wildlife program approvals, and a reclaimed land use map.

[BC20090205DOC028](#)

Mr. Stowe stated Mosaic will adhere to the wetland reclamation criteria of Ordinance 04-39, and will use a three-dimensional hydrological model to ensure the hydrology of those wetlands conform to the pre-mining hydro periods. Until mining occurs, agriculture use of the Altman Tract will continue; after reclamation, the same low-intensity agricultural use will be on site, in compliance with the policy designating areas for long-term agriculture use. Post-reclamation conditions will support all potential uses allowed in the agricultural/rural land use designation. In accordance with final criteria of the applicable mining ordinance, a site-specific survey demonstrates the Altman Tract is located outside the Lake Manatee Watershed Overlay District. The proposal to mine the Altman Tract complies with the Comprehensive Plan, and the Master Mining Plan meets the criteria of Ordinance 81-22.

Dee Allen, Mosaic Fertilizer LLC, used slides to provide an overview of the Operating Permit conditions. The Operating Permit requires compliance, not only with the County conditions, but with the conditions in any other permit for the site. A violation of any permit would be a violation of the Operating Permit. Included in the slides were reclamation bond requirements, operating permit requirements, a map depicting water monitoring locations, best management practices, setbacks, maps of right-of-way setbacks, a photograph of a typical perimeter berm, a radiation monitoring map, the time period the operating permit will be in effect, and maps depicting the mining and reclamation sequence over an eight-year period. There is a requirement that at least 75 percent of the wetlands are always in service in order to ensure the reclamation is being timely completed. [BC20090205DOC029](#)

Mr. Brown used a slide presentation to review the request for the Master Mining Plan. The permit application was filed prior to the adoption of the most recent mining regulations, Ordinance 04-39; therefore, it is regulated under Ordinance 81-22. However, the developer has committed to comply with certain requirements in Ordinance 04-39, specifically the insurance and bonding, the wetland reclamation standards, and the radiation standards. He noted the staff report contains a synopsis of staff's evaluation of the standards for a master mining plan approval and how the information provided with this application meets those standards. [BC20090205DOC030](#)

Neal Parker, Natural Resources Department, continued the slide presentation to review the Operating Permit. He stated the Operating Permit is issued for a five-year term and is renewable. In addition to being in compliance with the Master Mining Plan, the Operating Permit, and the Development Order, the applicant must also be in compliance with federal, state, and regional permits. He commented on information that must be included in the annual reports, as well as required inspections and enforcement, required bonds, etc. [BC20090205DOC031](#)

Discussion: Installation of recharge wells if the ditch and berm system is not working; Mosaic has obtained the permit for the recharge wells in the event they are needed; controlled burns will be used to maintain the central marsh enhancement; requirement for a new sampling location for shallow groundwater quality/monitoring program, if a new site is necessary (Exhibit C, Section 4.1.1); Mosaic has four years of background data; County staff will be looking at the data, at least annually; etc.

Speaking in opposition to the requests were: **Sarah Hollenhorst; Barbara Hines; John Korvick; Patty Murray; John Rehill; Cheryl Burke; Sandra Ripberger**, representing the Sierra Club; **Patience Sharp; Cris Costello**, representing the National Sierra Club; **Barbara Angelucci; Linda Jones; Gerry Swarmstedt; Lois Congdon; Bev Griffiths**, Tampa Bay Sierra Club; and **Betsy Gullet-Johnson**. Concerns included: Evidence offered by science-based groups wishing to protect the Peace River Watershed has been ignored; not in the best interest of the region; the Board chose to use a settlement in a court case to undo a previous action; staff, the Planning Commission, and expert testimony have been ignored; no paper trail regarding any land exchange; land touched by strip mining is scarred for life; exposure to adverse effects; dispersed wildlife; every ounce of dirt taken out will add to a clay settling area; drinking water; should not allow the removal of all the phosphate at this time; resource is almost gone in Florida; cannot restore what gets destroyed; meetings/tours Commissioners had with Mosaic representatives (disclosed 1/15/09); private flights over the property; *Bradenton Herald* article (Mosaic talk rankles green groups, 1/24/09); the bonds will not cover a catastrophe from a hurricane; destruction of 400 acres of pristine wetlands; contrary to the Comprehensive Plan; no overriding public interest great enough to jeopardize the environment to this extent; lack of evidence of successful restoration; need to protect the Horse Creek area and the Peace River Watershed; water quality; *Sarasota Herald Tribune* article (2/5/09) regarding the worsening drought and a State regulator expected to declare an "extreme water shortage" in Southwest Florida; no permits should be given to any organization that may damage the dwindling water supply; any guaranty to allow mining at the time of a land exchange would have constituted illegal contract zoning; why were environmental groups not given the same opportunity to give Commissioners a tour and/or presentations of their positions/facts; public records requests have been ignored; settlement agreement (12/16/08); already facing drought conditions, problems in the Peace River, and a closer link to the damaging effects of phosphate; *St. Petersburg Times* article (From state mines to dead zone, 2/2/09); granting this permit is another insult to nature; preserving the wetlands on the Texaco Tract does not replace the wetland functions lost on the Altman Tract; appears Mosaic already has vested mining rights for the wetlands on the Texaco Tract once they have reclaimed the Altman Tract; Mosaic has not been meeting their reclamation deadlines, because they do not have enough sand; Mosaic was granted ten-year variances for 36 areas in various stages of reclamation in Polk, Hardee, and Manatee counties; Mosaic has not lived up to the claims they have made on reclamation; need to strike a clause in the settlement agreement that Manatee County will not help any other counties or municipalities in lawsuits against Mosaic; mining brings total devastation of the landscape and impacts neighboring properties; public benefit has not been adequately proven; mining impacts the flow of underground water and displaces water; affects of the mining operation on neighboring people; etc.

Ms. Murray submitted two CDs containing slides/aerial photographs. Ms. Costello submitted a packet of documents, including copies of newspaper articles; e-mail correspondence; a notice of permit suspension from the Army Corps of Engineers (Corps) to Mosaic Fertilizer LLC; Complaint for Declaratory and Injunctive Relief, Sierra Club, Inc., et al., versus U.S. Army Corps of Engineers, et al.; letters from the U.S. Environmental Protection Agency to the Corps; and letters from Earthjustice to the County Attorney and Commissioners. Ms. Swarmstedt submitted two reports from the Bureau of Mine Reclamation: Rate of Reclamation Report, July 1, 1975, through December 31, 2007; and Financial Responsibility Report. [BC20090205DOC032](#)

Discussion: Not helping neighboring communities was not addressed in The Master Mine Plan; tours of the mine; Mosaic has not proven they can mine this land without permanent damage to the wetlands; the high quality wetlands makes this property different from any other piece of property; the Board made it clear at the time of the land swap that there were no rights to mining this piece of property; quasi-judicial process; no air quality monitors in that area; no guaranty in the permit that the identical wetland will be evaluated and then put back in a similar way; reclamation schedule for existing property to be reclaimed in this County, under previous permits; overriding public benefit has not been established; mining of 397 acres of wetlands; headwaters of Horse Creek; etc.

Ms. Allen displayed two maps depicting the reclamation progress and clay settling areas on the Jameson and Northeast Tracts at Four Corners Mine. She stated they are in compliance with their reclamation rates. There is a condition in the Operating Permit that they update the sand balance on an annual basis. [BC20090205DOC033](#)

In response to concerns regarding the settlement agreement and language that the County cannot help neighboring communities, Mr. Clague stated there is general language in the agreement that the County will not challenge Mosaic on this project if it is approved. That does not apply to other projects.

Ms. Allen responded to a question regarding air quality monitoring, stating re-grassing is the key to keeping dust down following high winds that cause particulate matter to blow onto other properties. No monitor is in place, because the reclamation areas move from place to place where grassing is not complete.

In rebuttal to comments by the applicant, Ms. Burke stated Mosaic does not maintain their landscape with grass, nor do they maintain the dusty areas. Mr. Korvick rebutted comments regarding air quality. Ms. Costello attempted to respond to questions regarding language in the settlement agreement.

Ms. Allen explained the area closest to the neighbors has been recently reclaimed; the grassing is out; and the grass will be re-seeded if necessary. She encouraged the neighbors to contact them if they have any problems.

Mr. Clague commented on the process of quasi-judicial hearings. The right to express views should not be confused with evidence required by the courts. He also stated the County Attorney's advice regarding ex parte communications has been consistent, and staff has responded to all the public records requests they have received.

Mr. Bustle and Mr. Chappie confirmed the disclosures they made during the January 15, 2009, hearing are correct. Mr. Clague requested those disclosures be incorporated into the record of this hearing:

"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 the previous hearings."

Motion – R-09-010

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, Manatee County Ordinance 81-22 (The Manatee County Mining and Reclamation Ordinance), and the Four Corners Mine Development Order (Ordinance 08-32), Mr. Bustle moved to ADOPT Resolution **R-09-010**. The motion was seconded by Mrs. Hayes and carried 5 to 2, with Mr. Getman and Mr. McClash voting nay.

[BC20090205DOC034](#)

Motion – R-09-011

Based on the staff report, evidence presented, comments made at the public hearing, and finding the request to be consistent with the Manatee County Comprehensive Plan, the Manatee County Land Development Code, Manatee County Ordinance 81-22 (The Manatee County Mining and Reclamation Ordinance), Four Corners Mine Development Order (Ordinance 08-32), and the Master Mining Plan Resolution (R-09-010), Mr. Bustle moved to ADOPT Resolution **R-09-011**. The motion was seconded by Mrs. Hayes and carried 5 to 2, with Mr. Getman and Mr. McClash voting nay. [BC20090205DOC035](#)

Further discussion: Request Mosaic listen to the citizens concerns and meet with them if they have issues; the citizens can contact the Commissioners if their issues are not being resolved; etc.

MEETING ADJOURNED

There being no further business, the meeting was adjourned.

Adj: 3:22 p.m.
/dev

Minutes Approved: March 5, 2009