

AUGUST 6, 1998

The Hearing Officer, Manatee County, Florida, convened a REGULAR HEARING in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, August 6, 1998, at 3:15 p.m.

Presiding was: James Paulmann

Also present were:

Mark P. Barnebey, Assistant County Attorney  
Susan G. Romine, Board Records Supervisor,  
representing R. B. Shore, Clerk of Circuit Court

All witnesses and staff giving testimony were duly sworn.

MINUTES FOR APPROVAL

The Hearing Officer approved the minutes dated June 17, 1998.

(Julie Haley, court reporter, was present.)

SPECIAL PERMITS

Public hearing (Notice in the *Bradenton Herald* 7/24/98) was held to consider

SP-98-04 MARK A. SHEPARD/TEMPTATIONS

Request: Special Permit to allow a 4-COP Alcoholic Beverage License in conjunction with the existing Adult Entertainment Establishment in the GC zoning district on 1.39 acres, located at the southwest corner of U.S. 41 and Mendoza Road at 3824 U.S. Highway 41 North, Palmetto.

If approved, staff recommended the following stipulations:

1. This Special Permit will not be effective until it has been recorded in the Public Records of Manatee County, Florida, by the applicant, and a copy of the recorded Order is received by the Planning Department.
2. The Plot Plan submitted with this application shall be part of this approval.
3. This Special Permit for a 4-COP Alcoholic Beverage License shall be an accessory to the existing Adult Entertainment Establishment.
4. This Special Permit shall automatically terminate if it is determined, after hearing by the Code Enforcement Board, or a court of competent jurisdiction that there is a violation of Section 2-2.5-72; of the Manatee County Code of Laws. Section 2-2.5-72 reads as follows: "No portion of the human genital or pubic region, the cleavage of the human buttocks, or the areola of the human female breast shall be displayed or exposed on a licensed premises where alcoholic beverages are sold, dispensed, permitted, or consumed."
5. The consumption of alcoholic beverages shall be limited to the area inside the building.

Erika Barrett, Planning Department, outlined the location of the subject property, the surrounding area, and the zoning.

She stated that the adult entertainment use on this site is considered nonconforming; however, by considering the liquor license a separate use, not accessory, staff is able to recommend approval of this request and not consider it an intensification, enlargement, or expansion of the nonconformity. She submitted a revised staff report with amended stipulation:

3. If the characteristics of operation of the establishment change (e.g. live band performances), an amendment of the Special Permit shall be required.

She advised that this request is found to be generally compatible with the community character of the immediate neighborhood, and that no objections have been received from surrounding property owners.

Ms. Barrett advised that one concern is that approval of this 4-COP license could change the character of the operation and negatively impact adjacent residential development by increased noise or traffic. Stipulations have been created to mitigate these concerns.

AUGUST 6, 1998

(Continued)

She reported on access to the site, and screening and landscaping.

Discussion: How long operation has been at this location; Stipulation 3 regarding live bands and whether noise would affect residential area; no record of Code Enforcement complaints.

Mark Barnebey, Chief Assistant County Attorney, reported that the 4-COP license could remain with the property if the adult entertainment use ceases. He noted there have been instances in the County where the noise and vibrations from like facilities have caused significant adverse impact to the neighborhood.

**Jim Powell**, representing the applicant, stated that this adult entertainment establishment is regulated by ordinance; that drinking and entertaining are conducted inside the premises; and that they meet the general standards of Section 505.2 (Special Permits), of the Land Development Code (LDC). He objected to Stipulations 3 and 4.

He advised that the serving of drinks in this establishment is ancillary to the adult entertainment use and that if it were to become a bar, it would be regulated by zoning ordinances.

Mr. Barnebey spoke regarding Stipulation 4 and Section 2-2.5-72 of the Code of Laws relating to the sale of alcoholic beverages, etc., and stated Stipulation 3 could be reworded, however, restrictions regarding operation need to be included.

Mr. Paulmann suggested additional language could be submitted to all parties during the next 21 days, which he would consider, and which may forego continuing the public hearing. The County and applicant agreed.

He stated he will issue a written report within 21 calendar days indicating findings of facts, conclusions of law and recommendations regarding approval or denial of this request, and that a transcript was not needed.

Public hearing (Notice in the *Bradenton Herald* 7/24/98) was held to consider

**SP-98-03 FLORIDA POWER & LIGHT COMPANY/HERON HEIGHTS SUBDIVISION**

Request: Special Permit to reduce the parcel size from approximately 9 acres to .25 acre associated with an existing 150-foot-tall, self-supporting antenna structure in the RSF-6 zoning district, located on the west side of 86th Street West, approximately 1,000 feet south of Cortez Road West, at 4700 86th Street West, Bradenton.

Staff recommends approval, with the following stipulations:

1. This Special Permit will not be effective until it has been recorded in the Public Records of Manatee County, Florida, by the applicant, and a copy of the recorded Order is received by the Planning Department.
2. The Site Plan submitted with this application shall be part of this approval.
3. The tower site is currently served by a driveway off 86th Street West. This driveway shall remain until the new access, as shown on the plan, is established. This existing driveway, off 86th Street West, shall be removed within 90 days of completion of the new access driveway.
4. The applicant shall convey the 150-foot radius falldown easement, which surrounds this antenna tower as it is shown on the site plan associated with this request, to Manatee County and all future property owners within the Heron Heights Subdivision prior to Final Plat approval of the proposed subdivision. Any changes to this easement will require the approval of the Planning Director.
5. The required screening buffer, which must meet the standards in Section 715.5.2 of the LDC, shall be shown on the final site plan prior to sign-off, and shall be installed on the west and south property lines of the new lease parcel within ninety days of approval date of the Final Order.

6. Prior to Final Site Plan sign-off, applicants shall provide, to the Environmental Management Department, a site plan which delineates all existing wells, with the well size indicated or a narrative which indicates there are no wells on site.
7. Prior to issuance of a building permit for attachment of any new antennas to this tower, applicant will provide an engineer's certification confirming the structural integrity of this tower and its ability to support the proposed antenna.

Erika Barrett, Planning Department, outlined this request, the zoning and location of the site, and the surrounding area. She noted future plans for a single-family subdivision on the site and advised of staff's concern over the impact the tower may have on the future residential use.

She advised that Florida Power & Light (FP&L) no longer needs this site; however, they want to retain the telecommunications tower. She advised of the plans for the existing structures and the pavement on the site.

The main concern is to ensure that this tower provides a separation equal to the height of the tower from any residential lot line. The applicant is proposing an easement which has a 150-foot radius to maintain the separation.

She addressed buffering requirements and planned changes to access of the property.

She presented revised Stipulations 4 and 5 as follows:

4. If any portion of the parent parcel, described in Exhibit "C", attached hereto and incorporated herein, is sold or conveyed to an entity other than the entity which owns the property upon which the tower itself is located, a recorded easement covering the 150-foot falldown radius in a form acceptable to the County Attorney's office, shall be conveyed to and retained by the entity which owns the property upon which the tower is located, said easement restricting the use of the easement property to non-habitable structures.
5. The required screening buffer, which must meet the standards in Section 715.5.2 of the LDC, shall be shown on the final site plan prior to sign-off, and shall be installed on the north, west, and south property lines of the new lease parcel within one hundred twenty days of approval date of the Final Order.

**Jim Dye**, representing Quality Land Development (buyer), and for purposes of this hearing, Florida Power & Light, advised that a preliminary plat is on file with the County. Approval of this special permit will reduce the size of the current parcel controlled by Special Permit SP-87-57.

He pointed out the safety benefit of the new requirement for tower recertification as provided by Stipulation 7. Regarding the tower's impact on future development, he stated that much of the residential development in the area came after the tower was built.

He advised that they are in agreement with all the stipulations, including revised Stipulations 4 and 5.

**Steve Byers**, FP&L representative, addressed the need for the tower in this area.

#### Recess/Reconvene.

Mr. Barnebey added the following language to the end of revised Stipulation 4: ...or single-family lots (stormwater retention ponds and/or common open space uses are allowed within the easement area).

Mr. Barnebey presented a draft recommended Order, and the revised Stipulation language.

AUGUST 6, 1998

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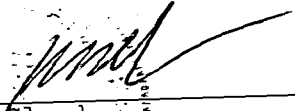
Mr. Paulmann stated he will issue a written report within 21 calendar days indicating findings of facts, conclusions of law and recommendations regarding approval or denial. He stated that a transcript of this hearing was not needed.

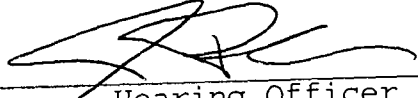
HEARING ADJOURNED

There being no further business, the hearing was adjourned.

Attest:

APPROVED:

  
 Clerk  
 Adj: 4:30 p.m.  
 /apm

  
 Hearing Officer