

JUNE 30, 2008

The Hearing Officer, Manatee County, Florida, convened a REGULAR HEARING in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, Monday, June 30, 2008, at 1:30 p.m.

Presiding was: John Roe

Also present were:

Jason Henbest, 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

The agenda of June 30, 2008.

[HO20080630DOC001](#)

(Court Reporter, Penny Zuker, present)

VARIANCES

Public hearing (Notices published) was held to consider

VA-08-02 CROSLY CARRIAGE HOUSE

Request: A variance of approximately 3.8 feet to the minimum flood elevation requirements (LDC Section 718.6.1.7 C) to allow restoration of the Crosley Carriage House, where the existing floor is at elevation 10.2 feet in a Zone A 15 (Elevation 14 feet) Flood Zone (FIRM Map Community Panel Number 120153 0339 B). The site is zoned PDPI/HA. The Crosley Estate is at 8374 North Tamiami Trail, Sarasota (± 16.5 acres).

If approved, staff recommended 7 Stipulations.

Katie McLean, Planning Department, used a slide presentation to review the request.

Robert Pederson, Planning Department, submitted a draft Notice of Intent and a draft Final Order.

Public hearing (Notices published) was held to consider

VA-07-09 SINGH VARIANCE

Request: A variance to allow a 1-foot reduction in the required 8-foot side-yard setback for an existing single-family home in Waterlefe. The site is zoned PDR/CH zoning district at 1015 Rainbow Court, Bradenton (± .353 acres).

If approved, staff recommended 1 Stipulation.

Laurie Seuss, Planning Department, reviewed a slide presentation, and noted there will be no physical changes to the property. She noted the variance is due to a mutual mistake on the part of the builder and County staff.

Mr. Pederson submitted a draft Notice of Intent and a draft Final Order.

SPECIAL PERMIT

Public hearing (continued from 6/4/08 and Notices published) was held to consider

SP-07-03 4 STAR TOMATO, INC./4 STAR TOMATO BORROW PIT

Request: A Special Permit for major earthmoving in the A/NCO zoning district. The site is on the north side of C.R. 675, approximately 4½ miles east of U.S. 301 at 18650 C.R. 675, Parrish (± 649.22 acres total site; ± 179.8 acres project site).

If approved, staff recommended Stipulations.

Staff's recommended changes to **Stipulations 5 and 6** (A.5 and A.6) were submitted as follows:

A.5. Hours of operation shall be limited to between 7:00 a.m. and 4:00 p.m., Monday through Friday and 7:00 a.m. to 12:00 p.m. on Saturday. There shall be no truck traffic activity associated with the borrow pit on Sundays and Holidays.

A.6. The maximum number of haul trips shall be limited to ~~600~~ 400 trips per day.

Also submitted were: (1) correspondence from **Mike Pendley**, School Board representative; (2) Applicant Submittal No. 1; and (3) two letters of objection.

Mr. Roe stated he has read all the correspondence to the County Commissioners and the Planning Department, and drove through Foxbrook (adjacent subdivision). He intends to incorporate those observations as part of the record.

Erika Barrett, Planning Department, displayed slides and a site plan to review the request. She noted the road on the southern property line will be used as the haul road; the western edge of the excavation will be 1,481 feet from the property line shared with Foxbrook; and the nearest the excavation will come to adjacent properties, is 143 feet from the north property line.

Dan Lobeck, attorney for Foxbrook Homeowners' Association, submitted case law (Order on Petition for Writ of Certiorari, Sorrento Ranches Homeowners Association, Inc., Dr. Robert S. Burrus, Jr., Ph.D., and Dr. John J. Yuosjo, D.M.D., vs. The City of Venice, Florida, and the City Council of the City of Venice, Florida, Case 2008 CA 02051 NC) to indicate that a homeowners' association has standing in these proceedings, and he has the right to cross examine witnesses. He requested a right of rebuttal to follow the rebuttal of the petitioner. He also requested time to fully present their case.

Mr. Pederson pointed out four additional letters regarding the application were received and entered into the record today. Mr. Roe reviewed the letters and brought to Mr. Lobeck's attention, the letter from Manatee County School Board representative, Mike Pendley.

Following review of the letter from Mr. Pendley, Mr. Lobeck objected to the introduction of that testimony, as he would not have the opportunity to cross examine Mr. Pendley, and the statements are not under oath. He suggested the letter be inadmissible or not be given full weight.

Mr. Roe stated the letter is admissible; however, the weight given will be the same weight given to letters received from associations and individuals.

Jason Henbest, Assistant County Attorney, stated the case law provided by Mr. Lobeck indicates cross examination is warranted; however, he urged the Hearing Officer to conduct this hearing in the same manner as prior hearings, and to follow established procedures.

Mr. Roe determined it would be more orderly to allow cross examination on an individual basis. He advised Mr. Lobeck that he will be given every opportunity, within reason, to present his case. He also stated that, at the appropriate time, Mr. Lobeck would be given the opportunity to present rebuttal.

Mr. Henbest objected to the departure from established procedures.

Mr. Lobeck questioned Ms. Barrett regarding the trees displayed in her photograph (included in the slide presentation) and the portion of the property line shared with Foxbrook that is represented by that photograph. An aerial was displayed (not submitted for the record) to point out the property line, and Ms. Barrett was questioned regarding the length of the tree line, homes in Foxbrook backing up along the entire length of the border with the 4 Star Tomato property, and her knowledge of the extent of vegetation north of the trees illustrated in the photograph. Photographs were displayed (not submitted for the record) of trees along the Foxbrook property line to question Ms. Barrett regarding the buffer and the distance between the plantings.

Mr. Henbest objected to Mr. Lobeck's photographs, stating they have not been authenticated and there has been no evidence presented as to the location of the photographs.

Bill Orendorf, Southwest Florida Water Management District (SWFWMD), used a slide presentation to describe the FARMS (Facilitating Agriculture Resource Management Systems) Program, types of FARMS projects, agricultural reservoir projects, the 4 Star FARMS project, and approved and potential FARMS projects within the Manasota Basin Board. He stated the District supports the 4 Star FARMS project.

Mr. Henbest again objected to the way these proceedings were being conducted. He stated the Board of County Commissioners has established procedures for how a Hearing Officer is to conduct hearings. Those procedures more than adequately provide for Mr. Lobeck's, and his client's, procedural due process.

Mr. Roe overruled Mr. Henbest's objections.

Mr. Lobeck questioned Mr. Orendorf regarding the two other 4 Star Tomato parcels that are included in the FARMS project, and the capacity of the lakes that are to be created on this property.

Robert Bolt, representing 4 Star Tomato, Inc., also objected to the deviation from standard County policy.

Bruce Shakelford, 4 Star Tomato, Inc., provided an overview of the project, stating it is designed to take their farm off of groundwater and replace their permitted use to surface water retained in the SWFWMD approved reservoirs, which benefits both the aquifer and their operation. The FARMS program allows them to participate in a cost-share program that will not only save water on this farm, but also at their other locations in the County. The new system will allow them to grow produce on less water pumped from the ground by improving the water delivery and recovery systems. The project will take 1.36 million gallons per day off of groundwater and put it on surface water on this farm, and will reduce pumpage on other farms. This equates to a water savings of about one-half billion gallons per year of groundwater. Participation in this program will also allow for installation of better systems at their farms in Myakka City, which will reduce pumpage and runoff in the area of Flatford Swamp. He advised that the program is a contract with the State, which will continue using the system for a period of five to 20 years after the completion of the project; the project would have a positive impact on flood control along the Frye Canal and Gamble Creek as it is designed and approved for the 100-year flood standards; and it is to be built at ground level with additional berms surrounding the reservoirs. This site was chosen because of the location, as it is in the most impacted area as determined by SWFWMD – the coastal areas of Hillsborough and Manatee Counties, which have been identified as having the most risk of saltwater intrusion and, thus, an area that is a high priority for the reduction of groundwater pumpage. In addition, this site is close to areas that will use fill dirt removed for the reservoirs, and increase the likelihood that they can move all of the fill off the site. The hauling of dirt should be as close as possible from site to site; the closer the site is to the final user, the less impact there will be on traffic and roads. Fill dirt that is available closer to the final user will reduce the cost of fill for the user and make projects more viable in these hard economic times.

Mr. Shakelford stated the request is not for a zoning or Comprehensive Plan change, it is for a permit; Manatee County will only allow a borrow pit on agricultural property; east of I-75 is now, and has always been, an agricultural area of Manatee County; and there have been more residential communities built on lands that, for decades, were farms. Due to residential development on their borders, farms have had to deal with changes, dust on their crops, increased traffic, and all the problems that usually arise when people used to urban lifestyles buy homes in a rural farming area. There are unfounded concerns over chemicals, fertilizers, equipment, noise, etc; the average golf course uses more chemicals and fertilizers per acre than a farm; raising food crops is a highly regulated profession and Federal and State regulations dictate approved fertilizer use for each crop. He stated the costs of fuel, fertilizer, and most everything used is out of control and farms that are generations old are shutting down. Farms must become more efficient in the current economic environment, and farmers are requesting to continue farming with a new and better system that will benefit both the environment and the citizens of Manatee County.

Mr. Henbest reiterated the County's objection to the procedure relative to cross examination. He clarified that the rules do allow for cross examination, but not by the procedure the Hearing Officer has elected to follow.

Mr. Lobeck questioned Mr. Shackelford regarding a disclaimer each purchaser in Foxbrook received about his farming operation, not a mining operation; the length of time this property has been farmed; use of fertilizers and pesticides; growing of tomatoes on this property; and soil testing.

Mr. Bolt reviewed Applicant Submittal No. 1 (submitted earlier), outlining stipulations requested by the Foxbrook Association, and the applicant's response. All requirements for this application have been met or exceeded, and approval is requested on the basis of the staff report, the evidence presented, and Section 505 of the Land Development Code. He read from the staff report, stating the site is in compliance with all provisions of the Land Development Code, particularly Section 732.4, which addresses standards for major earthmoving uses. This request is about water conservation and the major earthmoving application is necessary in order to move the borrow (dirt) from the project area, to an area of receipt. The water conservation will improve water quality by increasing irrigation efficiency in the watersheds of Gamble Creek and Manatee River, along with Flatford Swamp; it will restore the hydrology and ecology of the Flatford Swamp watershed; it will reduce flooding along Gamble Creek by retaining runoff from a 100-year storm; and it will reduce Floridan Aquifer withdrawals in the SWFWMD Southern Water Use Caution Area by 1,500,000 gallons per day. That 1,500,000 gallons per day represents the equivalent of drinking water and water supply to 10,000 County residents per day.

Mr. Lobeck questioned Mr. Holt regarding the number of trucks per day, the hours of operation, the time trucks may be on the road in the morning hours, the proximity of, and impacts to, an archeologically sensitive area/area of historical concern on the property, and soil testing. He displayed a photograph (submitted later in the meeting) of a barbed wire fence while questioning Mr. Bolt about Foxbrook's request for a security fence.

Mr. Bolt advised they have no objections to the stipulations presented (and modified) by staff.

Recess/Reconvene.

James Thielen, Foxbrook resident, submitted and reviewed a letter outlining his concerns with regard to the potential risk of airborne pathogens released from this operation, increased noise levels, a reduction in housing values of surrounding properties, and a deterioration of the road systems within the Parrish area. He also voiced his concern regarding the number of trucks needed to haul the dirt from this property, and the safety of the residents.

Chris Brown (who spoke from the audience and did not state whether he was sworn in) voiced his concerns with the number of trucks and vehicles.

Leslie Wells, Foxbrook developer, summarized three points: (1) safety, including the amount of traffic on the roadway and the dangers at the Rye Road intersection; (2) berm and landscaping, noting the shared common line is approximately 5,200 feet and the area with the thick cedar trees is approximately 1,500 feet long; and (3) the term "temporary" and that a traffic study was not required because this is temporary.

Randy Ten Hoeve, Foxbrook resident, submitted a letter outlining his questions, concerns, and observations regarding the staff report on the subject project. He commented on the Stipulation regarding hours of operation; a request for a berm to be at the boundary of the borrow pit, not at the property line between Foxbrook and the farm; earlier comments regarding the benefit to the drinking water supply; and the lack of any reference in the staff report to Fish and Wildlife Commission and protection of endangered species.

Joycene Harwood, Foxbrook resident, stated a traffic study should be conducted and questioned the impact of truck traffic at U.S. 301, on Spencer Parrish Road, and on Rye Road.

Robert Grace, Foxbrook resident, also speaking on behalf of other Foxbrook residents, submitted a [package of materials](#) for the Hearing Officer. He stated surface mining of agricultural lands, where pesticides have been applied for decades, is detrimental to public health. The applicant's attorney assured them that "dirt has no cooties in it of any nature"; however, this is not the

opinion shared by Federal and State experts. Mr. Grace stated he has corresponded with Solomon Pollard, U.S. Environmental Protection Agency, who explained that many pesticides, now banned, remain toxic and persist for decades. A number of other experts at the State level, have informed that the excavation of soils containing unknown pesticides of unknown toxicity and unknown persistence should only proceed after extensive soil testing and lab analysis is completed.

Following comment by Mr. Henbest regarding the materials submitted by Mr. Grace, Mr. Roe stated they will be given the weight to which they are entitled. The same standard will be applied to the School Board letter, as is anything related to dealing with experts.

Susan Powell, Foxbrook resident, expressed concerns with truck traffic on C.R. 675, health issues, the need for a soil study, dangers with pesticides used on tomato fields, and economic issues, etc. She stated a decision should not be made on this request without a consult with the Board of County Commissioners. The need for bond requirements was questioned to pay for any structural damages to homes due to this operation; and if County taxpayers would be responsible for fixing damages to C.R. 675 created by the trucks, or how long residents would have to wait for repairs to be completed.

Mr. Lobeck submitted a resume (professional record), list of mining permit experience, and the written presentation of **Ryan Carter**, Natural Resource Consultants LLC.

Mr. Carter reviewed his written presentation on environmental and archaeological issues. He submitted a letter, with attached maps, from the State Division of Historical Resources regarding an archaeological site on this property and responded to questions by Mr. Lobeck, who pointed out the area of archaeological concern (mound) and its proximity to the north borrow pit. It is possible that borrow pit mining operations will have an impact on that site and those impacts could not be quantified until the limits of the mound have been quantified. Mr. Carter also pointed out an area of gopher tortoise burrows. He responded to questions by Mr. Lobeck regarding the location and height of a requested berm, and the reduction of impacts by use of a berm.

Mr. Lobeck questioned Mr. Carter about a wheel wash while displaying a design for the wheel wash device (not submitted for the record), and a schematic of a soil tracking prevention device.

Following questioning by Mr. Roe as to Mr. Carter's suggestion for the length of the berm, Mr. Carter stated the berm could be the boundary of the western limits of the proposed boundary of construction. He used the site plan to point out the approximate area and distance of the berm. He stated they are suggesting the berm not be on the property line, but closer to the borrow pits.

Upon question by Mr. Lobeck, Mr. Carter stated the design of the construction entrance and exit complies with the accepted industry standards for the construction of such a facility. He stated, however, that it has been his experience that a sediment pit should be depicted.

Following further comments/questions regarding a berm, Mr. Bolt stated the berm on the plans is the necessary design for a 100-year floodplain storm. It is the completed project berm that is directly around the rim of the excavation.

Robert Pederson, Planning Department, questioned Mr. Carter regarding his experience/training in archaeology and/or the placement of items on the Florida Master File Site List or listing items on the National Register of Historic Places. He also questioned Mr. Carter regarding the Sections of the Land Development Code he testified would require the Historic Preservation Board to review a Certificate of Appropriateness for this site.

Upon question by Mr. Henbest, Mr. Carter stated a few of the borrow pits he previously worked on were adjacent to residential uses. It is possible for borrow pits and residential uses to be compatible if measures are taken as testified.

Mr. Carter also responded to questions regarding the necessity of a berm for light impacts, assuming if an excavator was on site, a light pole may be needed.

Mr. Lobeck submitted a resume (professional record) and the written statements of **Chris Callegari**, LAN Associates, Inc.

Mr. Callegari reviewed his written statements regarding environmental issues, including the localized drawdown of water from the shallow aquifer and potential impacts to soil and/or groundwater by pesticides and herbicides. A letter was submitted from the U.S. Environmental Protection Agency (EPA) to Robert Grace, relative to concerns regarding past tomato crop pesticide usage and potential soil-based dispersion with surface mining operations.

(NOTE: The attachments listed in the letter from the EPA were not included)

Mr. Lobeck used a photograph (not submitted for the record) to question Mr. Callegari regarding the vegetative buffer. Mr. Callegari stated the trees are spaced on approximate 25-foot centers and the average tree size is represented by the photograph, but are not an adequate buffer against air-borne pollutants that could potentially be in the soil. Following further questions regarding the fill material, Mr. Callegari stated the end use of that material would be determined based on the chemical constituents in the fill.

Mr. Lobeck submitted an Argument in Opposition by the Foxbrook Homeowners Association, Inc. He also displayed and submitted photographs of trees planted along Foxbrook's property line, as well as a photograph of the barbed wire fence on the 4 Star Tomato property. He stated the Foxbrook developer was required to construct a three-foot berm for that development. He reviewed a section of the Argument pertaining to incompatibility with adjacent uses. He also commented on the truck traffic, berm construction, and impacts to Foxbrook residents.

A letter from **Russell Sexton**, in which concern was expressed with the time period the borrow pit would be in operation, was submitted into the record.

Recess/Reconvene.

Mr. Roe overruled Mr. Henbest's objection to rebuttal comments by Mr. Lobeck.

Upon question by Mr. Lobeck, Mr. Callegari submitted a statement requesting surface soil samples be collected by an independent environmental consultant. This statement would cover a first cut, baseline sampling regime to make determinations on potential engineering controls or any additional testing necessary to properly characterize the site.

Doug Means, Planning Department, stated this is a two-part application, a Special Permit and an Operating Permit. The Operating Permit stage is when issues such as wetlands protection, drawdown of aquifers, construction techniques, etc., would be reviewed. If this project moves forward, a State Environmental Resources Permit would be required. Regarding gopher tortoise analysis, staff looked at the area of operation and the habitat value of the farm land that has been trucked for decades, as very minimal. Off-site there are some wetland areas and some upland habitat areas; however, this project does not propose to impact those areas directly. Secondary impacts can be addressed as part of the Environmental Resources Permit. In addition, Manatee County has not had soil testing as described by Mr. Callegari. Any dust leaving the site must be curtailed, and that is addressed through the Operating Permit and through enforcement.

Mr. Means submitted two aerial photographs depicting the tree canopy along the roadway and along the boundary with Foxbrook. He pointed out the areas in which the double row of trees ends, where the trees on Foxbrook properties are planted one tree per 25 feet, and where the operation on the 4 Star Tomato property would take place.

Mr. Henbest renewed his objection for purposes of rebuttal.

Mr. Lobeck used a site plan (not submitted for the record) to point out the tree buffer area as mentioned by Mr. Means. A larger site plan was used (not submitted for the record), to question Mr. Means as to the locations of the south and north irrigation reservoirs.

Harry Mendenhall, Public Works Department, responded to traffic concerns. He advised that this project was issued a Certificate of Level of Service (CLOS) and, because of the restrictions on the hours of operation, it does not impact the normal peak hours of operations on the roadways, which are generally considered to be from 4:00 to 6:00 p.m. He agreed with Mr. Henbest's clarification that the applicant has received preliminary approval of concurrency operations and that, assuming the Special Permit is issued, the concurrency CLOS would be issued at that time.

Mr. Lobeck questioned Mr. Mendenhall regarding the possibility of trucks on the roadway prior to 7:00 a.m., and whether a traffic study was done to show if the adopted Levels of Service would be maintained during the hours of operation. Mr. Mendenhall stated a concurrency traffic study was done for the hours of 7:00 a.m. to 4:00 p.m. Only with the inclusion of reserved trips would the level of service on C.R. 675 reach Level of Service "F".

Following questions by Mr. Henbest, Mr. Mendenhall agreed the numbers were based on trips that were reserved and existing during the p.m. peak hour. This project will have no trips during the p.m. peak hour so the impacts of this project, when a failure would occur, are zero. On that basis a CLOS could be obtained.

Mr. Bolt responded to comments made/concerns raised during this hearing, stating: the traffic Level of Service and the hours of operation were reduced to 7:00 a.m. to 4:00 p.m.; the truck traffic will cease at 4:00 p.m.; because this is a farming operation, dirt cannot be stockpiled on the property; the purpose of this is to have an irrigation project that will work hand in hand with the ongoing agricultural operation; Mr. Grace's comments regarding the applicant's attorney assuring them there are no "cooties" in the soil is in error as their attorney has never been contacted about the quality of the dirt; the applicant is sensitive to health and value depreciation concerns; the applicant did have an additional soil evaluation for radon content performed by a soils engineer, and that will be submitted at the time the operating permit is considered; and no vibrating equipment will be used. Mr. Bolt clarified an earlier comment regarding the Sheriff's Office being contacted because of noise on the property prior to 7:00 a.m., stating the applicant also contacted the Sheriff's Office to explain the noise was part of the agricultural operation and the applicant was told to disregard the order by the Sheriff's deputy, to cease and desist.

Mr. Callegari responded to questions by Mr. Bolt pertaining to whether concerns would be the same if this request was to develop a subdivision. He advises his clients to do the testing as the baseline for their project, to make sure it is feasible to move forward as to the validity of the quality of the fill.

Following question by Mr. Lobeck as to the relevance of Mr. Bolt's questions, Mr. Henbest stated the testimony is relevant with respect to the removal of the dirt. The placement of the dirt on this site is something that is, at this point, allowed on the 4 Star Tomato property. The fact that it is going to be trucked off-site is just one added element. There would not be a Special Permit, but for the fact, that hauling is to occur. The series of questions does go to the question, would there be a difference in how this application should be handled if the dirt were not to be moved off site.

Mr. Bolt reiterated his question as to whether the dirt would still be of concern if this was a subdivision and lakes were being sculpted and the dirt utilized on the property.

Mr. Callegari stated that if this mythical development was to be already constructed, that the review board would fail, at the county and water management district level, if it allowed potentially contaminated soil to be moved without prior testing.

Mr. Bolt also responded to comments regarding the tree line (buffer) adjacent to the Foxbrook property, stating the applicant would entertain the idea of planting something to buffer the tree line.

Upon question by Mr. Lobeck, Mr. Bolt stated a Stipulation is included that would prohibit the movement of trucks onto the public right-of-way after 4:00 p.m.

Mr. Roe stated it was his understanding that Stipulation (A.5) says the trucks move in and out from 7:00 to 4:00, no more, no less. Comments that trucks line up at 6:15 a.m. are not part of the stipulation.

Mr. Pederson concurred with Mr. Roe's statement.

Mr. Lobeck requested specificity.

Mr. Shackelford informed this property has been farmed for many years within the rules and regulations of the State. He questioned the concerns regarding his property when the playground on the neighboring property is made from dirt that was farmed for 30 or 40 years.

Mr. Callegari noted that, until testing is conducted, the trees offered to be planted may or may not be adequate to control dust or other pollutants.

Mr. Bolt stated when they embarked on this endeavor they thought 25,000 proposed homes in the north and west Parrish area would need dirt and farms were going to need to save water. The applicant has done everything required and requested by the County. He requested they not be held to a higher standard than what was required of them during the application and review process.

Mr. Roe accepted the draft Notice of Intent and the draft Final Order.

HEARING ADJOURNED

There being no further business, the hearing was adjourned.

Adj: 6:03 p.m.
/dev

Minutes Approved: August 8, 2008