

JANUARY 12, 2011

The Hearing Officer, Manatee County, Florida, convened a REGULAR HEARING in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, at 9:00 a.m.

Presiding was: H. Hamilton "Chip" Rice, Jr.

Also present were:

William E. Clague, Deputy County Attorney
Susan Romine, Board Records Senior Manager,
representing R. B. Shore, Clerk of Circuit Court

All witnesses and staff giving testimony were duly sworn.

AGENDA

The agenda of January 12, 2011.

[HO20110112DOC001](#)

VARIANCE

Public hearing (Notices published) was held to consider

VA-10-02 EXECUTIVE VIEW, INC./LOT 13 HARBOUR LANDINGS

Request: A variance to allow an existing pool screen cage to remain 3.2 feet from the required 5-foot side yard setback for an existing accessory structure to a single-family home in Harbour Landings Subdivision. The site is zoned PD-R/CH and is at 12622 Safe Harbour Drive, Bradenton (0.266± acres).

Staff recommended APPROVAL.

Doug Means, Planning Department, submitted a revised staff report and noted a change in staff recommendation to approval. The change relates to incorrect information regarding the permit which was issued by the County, and the attachments indicate deletion of an adjacent neighbor letter of support, which was not received prior to the hearing.

Barney Salmon, Planning Department, referred to a slide presentation to review the site and the 1.8-foot setback impact of the pool and pool screen cage. The building permit was issued by the County in 2007, a Certificate of Completion in 2009, and the setback inspection was conducted by County staff. The site plan showed a 5-foot setback for the pool and enclosure but, the pool was incorrectly constructed within the setback.

Paul Olah, attorney representing the applicant, noted this is the one remaining home for sale in the development. A survey for the potential buyer indicated a 1.8-foot encroachment into the 5-foot side yard setback, and the title company requested a variance in order to issue title insurance. He submitted a supplemental memorandum for review and indicated the applicant meets the standards for approval of the variance.

Discussion: Developer still owns the house; house has been vacant for 15 months; contractor would have to incur the price for the incorrect construction; variances for pools cannot continue; no known objections in the application process; etc.

Mr. Means explained the County performed the final inspection and also issued the Certificate of Completion.

H. Hamilton Rice, Hearing Officer, closed the public hearing and stated he would issue a Final Order of approval of VA-10-02. He accepted a Draft Final Order from Planning Department staff.

SPECIAL PERMIT

Public hearing (continued from 12/15/10) was held to consider

SP-09-03 PALM AIRE CC AT SARASOTA, FLORIDA – 5081 CELL TOWER

Request: A Special Permit to allow an unmanned unoccupied 150-foot Unipole-type Personal Wireless Service Facility (PWSF). The site is in the RSF-4.5/WP-E/ST (Residential Single Family 4.5 dwelling units per gross acres/Evers Watershed Protection Overlay District Reservoir/Special Treatment Overlay District) zoning district. The site is located at 5625 Whitfield Avenue, Sarasota, Florida (38.62± acres).

Staff recommended DENIAL.

Mr. Rice noted public comment regarding this matter has been closed. He acknowledged review of the supplemental information furnished at the last public hearing, as well as previously submitted records.

Lauralee Westine, attorney representing the applicant, stated the Comprehensive Plan establishes goals, objectives, and policies, but those types of matters are then implemented by specific regulations set forth in the Land Development Code (LDC). To look at the Comprehensive Plan without recognizing that the LDC provides methods of minimizing intrusiveness and ways to make towers more acceptable and compatible with the surrounding area is to eliminate any meaning the LDC has in its specific provisions. Regarding Section 704.59 of the LDC that applies to communication towers, this tower, by staff admission in the staff report, meets the specific objective criteria, as well as the Federal requirements of the FCC and FAA. The only waiver requested by Vertex was for the existing landscaping to act as the landscape buffer; however, this request was withdrawn at the last hearing with an offer to add landscaping on all four sides; thus all objective criteria within Section 704.59 have been met.

Regarding compatibility, Ms. Westine addressed a unipole tower, with an existing maintenance facility, at a golf course maintenance area where large machinery is stored and repaired, fertilizer is stored, and an existing guide tower is located. The unipole was proposed because the antennas and coaxial is internal to limit visual impact, and it is more narrow than a tree-type tower. The compound is proposed to be surrounded by the landscaping requirements set forth in the LDC. The south side of the tower is screened by the buildings (Exhibit C1-2). She suggested compliance with the Siting Preference as per Section 704.59.3.13.12 language, which requires review of property within the carriers search area. Vertex and T-Mobile have gone outside of that requirement and reviewed all properties the opposition had suggested, which was well outside the search area (Exhibit B). Regarding the use of the mono-cross tower located at the green triangle shown on Exhibit Q1, T-Mobile has applied to co-locate on that tower and increase the tower height. With the mono-cross tower on the periphery, a tower within Palm Aire is required. She requested review of *Florida Statute 365.172(11)(b)1* and 3, which protects the carriers design service, not what a county expert says is acceptable service, and specifically prohibits a local government from getting involved in what is and is not acceptable service. The LDC was rewritten to indicate residential areas are the sites of last resort, and this site meets the code. She suggested review of (Exhibit BB1) an aerial depicting all the rooftops and indicated there is no other location to place a tower. The only way to provide design service in this area is to place a tower in the community itself.

William Clague, Deputy County Attorney, stated it is not productive to revisit and restate all arguments made by staff at the last hearing as the staff report has been provided, as well as testimony. It comes down to a difference of opinion between the applicant's expert and the County's expert as to whether they have demonstrated that they really need to put this tower in this location in order to provide service to the area. He submitted a copy of an order (1/3/11) of the Middle District of Florida regarding another case in Manatee County. The order summarizes what the Middle District Judge concluded the County had, in the way of discretion, in applying its planning and land development standards to cell tower applications. There is a dispute with the applicant's view of the law. The industry has always taken an aggressive and broad reading

of the law and has, at times, been supported in decisional case law; however, the Middle District order provides decisional case law that is not supportive of the industry. [HO20110112DOC002](#)

Ms. Westine urged consideration of the Comprehensive Plan and the LDC for decision.

Discussion: Case law is informational only; information is substantive in the sense of providing legal authority as to what can and cannot be looked at and what a decision can be based on and is completely relevant; etc.

Mary Solik, co-counsel for Vertex and the appeal case lawyer, stated the appeal period for the Middle District Order has not yet passed; therefore, the finality of that decision has not been reached.

Mr. Rice closed the public hearing and stated he would issue a Notice of Intent and an Order thereafter. He accepted a Draft Notice of Intent and Final Order from Planning Department staff. [HO20110112DOC003](#)

HEARING ADJOURNED

There being no further business, the hearing was adjourned.

Adj: 9:28 a.m.
/njh

Minutes Approved: February 2, 2011