

SPECIAL PERMIT NO. SP-02-04
CLOVERDALE 4, LLC -- RESOURCE RECOVERY FACILITY

2002 DEC 30 AM 9:06
CLERK OF DISTRICT COURT
MANATEE CO., FLORIDA

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER SUSAN HARTMANN SWARTZ ON BEHALF OF MANATEE COUNTY, APPROVING SPECIAL PERMIT NO. SP-02-04 FOR A RESOURCE RECOVERY FACILITY AT 29150 STATE ROAD 70 EAST, IN THE A (GENERAL AGRICULTURE, 1 DWELLING UNIT PER ACRE) ZONING DISTRICT (\pm 26.28 ACRES); PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended (hereinafter "the Land Development Code"); and

WHEREAS, pursuant to the Land Development Code, as amended, a Hearing Officer has the authority to grant special permits; and

WHEREAS, Cloverdale 4, LLC has applied for a special permit for a resource recovery facility in the A (General Agriculture, 1 dwelling unit per acre) zoning district; and

WHEREAS, on November 20, 2002, Hearing Officer Susan Hartmann Swartz held a public hearing to receive the staff, applicant, and public comment and argument regarding the proposed special permit for Cloverdale 4, LLC; and

WHEREAS, on December 12, 2002, the aforementioned Hearing Officer issued a Notice of Intent and Draft Final Order herein; and

WHEREAS, after considering evidence, documentation, testimony, comment, argument, opinions, and the staff report presented, as well as all other matters presented at the above-referenced public hearing, and the timely post-hearing responses received by the Hearing Officer after issuance of the Notice of Intent and Draft Final Order, the Hearing Officer hereby makes the following Findings of Fact, Conclusions of Law, and Order.

NOW, THEREFORE, the Final Order regarding Special Permit No. SP-02-04 requested by Cloverdale 4, LLC, states as follows:

Section 1. Findings of Fact.

- A. This request is for a special permit for a resource recovery facility located on \pm 26.28 certain acres at 29150 State Road 70 East.
- B. The proposed project meets the Land Development Code's definition of a resource recovery center.
- C. The subject property currently is zoned A (General Agriculture, 1 dwelling unit per acre).
- D. The future land use designation of the property is Ag/R (Agricultural/Rural).
- E. To the north and south are agriculture and single-family residential uses zoned A. To the east and west are agriculture uses zoned A.

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- F. Resource recovery facilities are listed by name as a special permit use in the agricultural district. *See* Figure 6-1 (Land Development Code Supp. No. 20, page 425; community service uses authorized by special permit in the A Zoning District).
- G. Although there appears to be no existing definition of “agro-industrial,” the Planning Director has determined that so long as the use involves only organic yard waste and does not involve construction or demolition debris, the proposed use is consistent with the term “agro-industrial use” as set forth in Manatee County Comprehensive Plan Policy 2.2.1.8.2, for the Agricultural/Rural (Ag/R) future land use category.
- H. The proposed use complies with Manatee County Comprehensive Plan Policy 2.6.1.1, requiring compatibility of land uses, and the use of buffers and screening to mitigate impacts. The applicant is providing an eight-foot (8') high berm along the east, south, and west property lines to provide both visual and noise mitigation.
- I. The proposed use will not be detrimental or an endangerment to the public health, safety, or general welfare of the residents in the neighborhood, or county as a whole.
- J. Adequate ingress and egress are provided for this site by an existing driveway access onto State Road 70.
- K. As conditioned herein, the landscaping mitigates any potential adverse visual and noise impacts on the adjacent properties to the north.
- L. Extensive public opposition was expressed that the proposed resource recovery center is nothing more than a “dump.”
- M. Extensive public opposition was expressed regarding prospective concerns as to traffic and other matters.
- N. There was concern from homeowners that they had no notice when they purchased their relatively nearby residences, that the subject property could be used for a resource recovery center.
- O. There was a great deal of speculative apprehension concerning the future effects of the proposed project.
- P. However, there was no competent substantial evidence that the requested special permit does not meet the required standards of Land Development Code Sections 704.64 and 505 and in particular, 505.2; or that it is adverse to the public interest.

Section 2. Conclusions of Law.

- A. Pursuant to the Land Development Code, the Hearing Officer has jurisdiction over the parties and subject matter in this proceeding.

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- B. The applicant has the burden of proving entitlement to the special permit it seeks. *See Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla. 1986); *Florida Department of Transportation v. J.W.C. Company, Inc.*, 396 So.2d 778 (Fla. 1st DCA 1981).
- C. Once the applicant has met this burden, the burden shifts to the opposing party to demonstrate by competent substantial evidence that the special permit does not meet the required standards and is adverse to the public interest. *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla. 1986); *see also Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089, 1091-92 (Fla.2000); *Florida Min. & Materials Corp. v. City of Port Orange*, 518 So.2d 311 (Fla. 5th DCA 1987).
- D. As conditioned herein, this request complies with the criteria set forth in Land Development Code, Sections 505 and in particular, 505.2; and 704.64.
- E. The Hearing Officer is cognizant of the concerns voiced by the public. However, this request is for a special permit. It is not for a rezoning. The decision to approve a special permit cannot be based on a popularity poll. The opinions of neighbors by themselves are insufficient to support a denial of a proposed development. *BML Investments v. City of Casselberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. den.*, 486 So.2d 595 (Fla.1986); *Conetta v. City of Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981).
- F. A resource recovery facility on the subject property has been preapproved by ordinance as a specially permitted use. Any issue is with the ordinance, not with the applicant's request for the special permit.
- G. In light of the evidence presented, there is no legally permissible basis upon which to deny the requested special permit. Hence, denial thereof would be unreasonable, arbitrary, and capricious.

Section 3. Order. Based upon the foregoing, a special permit is hereby approved and issued to Cloverdale 4, LLC for the property located at 29150 State Road 70 East, more particularly described in Exhibit "A" attached hereto and incorporated herein, for a resource recovery center in the A (General Agriculture, 1 dwelling unit per acre) zoning district, subject to the following conditions:

- A. This special permit shall not be effective until it has been recorded by the applicant in the Public Records of Manatee County, Florida and a copy of the recorded Order is received by the Planning, Permitting and Inspections Department.
- B. No operation of equipment or machinery will be allowed before 8 a.m. or after 5 p.m. each day.
- C. The 8-foot (8') berms shall be covered with a living ground cover, details of which shall be submitted with the Final Site Plan. The berms shall also contain thirty-three (33) shrubs per one hundred (100) linear feet and be fully irrigated. The ground cover on the berm shall be established prior to operation of the facility. Alternatively, a two-foot (2') berm and six-foot (6') high solid opaque fence shall be installed.

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- D. During the first year of operation the applicant shall submit quarterly noise studies to Manatee County that indicate the baseline, pre-construction noise generation, and post-construction a.m. and p.m. noise generation. Operation of the facility shall meet all County noise standards.
- E. The Final Site Plan shall show complete vehicle stacking information for the scale queuing lanes.
- F. No outdoor speakers shall be used in conjunction with this operation.
- G. Permanent fugitive dust abatement systems approved by the Environmental Management Department with the Final Site Plan, shall be installed in the stockpile area to prevent dust and other airborne irritants created by the grinding and chipping processes and their final products from leaving the site.
- H. The parking lot shall meet all Manatee County Code standards for space size, landscaping, and irrigation, which shall be shown on the Final Site Plan.
- I. No shell may be used for any drive aisle, parking area, storage area, or other use on the site.
- J. Final engineering drainage design must be approved prior to Final Site Plan approval.
- K. The maximum height of the stockpiles shall be twenty (20) feet and they shall remain on site no longer than ninety (90) days.
- L. A fifty-foot (50') roadway buffer including an eight-foot (8') high landscaped berm with a maximum slope of 3:1, shall be installed along the State Road 70 frontage, and shown on the Final Site Plan. As an alternative to the eight-foot (8') high landscaped berm, landscaping materials, including trees and hedge materials, as approved by Manatee County, may be installed within the fifty-foot (50') landscaped buffer. Full landscaping and irrigation information for all buffers shall be provided with the Final Site Plan.
- M. The contents of the resource recovery facility shall be limited to organic yard waste only.
- N. All residential units located on the site shall be removed prior to issuance of any certificate of occupancy for the project, with the exception of the ranch manager's residence.

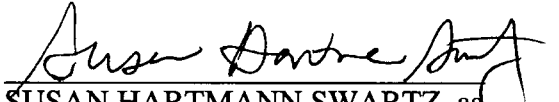
Section 4. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the special permit, which shall remain in full force and effect.

Section 5. Effective Date. The effective date of this special permit shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office

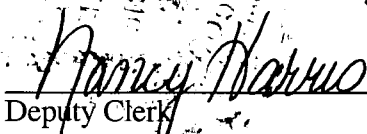
of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY, this 30TH day of December, 2002.

MANATEE COUNTY, FLORIDA


SUSAN HARTMANN SWARTZ, as
Manatee County Hearing Officer

ATTEST: R. B. SHORE
Clerk of the Circuit Court


Deputy Clerk

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EXHIBIT "A"

LEGAL DESCRIPTION:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 35 SOUTH, RANGE 21 EAST, MANATEE COUNTY, FLORIDA; THENCE N 88E 34' 08" E, ALONG THE SOUTH LINE OF SAID SECTION 31, A DISTANCE OF 172.87 FEET TO THE POINT OF BEGINNING; THENCE N 00E 00' 00" E, A DISTANCE OF 115.43 FEET; THENCE S 90E 00' 00" E, A DISTANCE OF 365.04 FEET; THENCE N 00E 00' 00" E, A DISTANCE OF 1383.76 FEET TO AN INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD NO. 70; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) N 88E 57' 22" E, A DISTANCE OF 133.03 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1288.21 FEET; (2) EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05E 31' 24" , A DISTANCE OF 124.19 FEET; THENCE S 00E 00' 00" W, A DISTANCE OF 621.03 FEET; THENCE S 90E 00' 00" E, A DISTANCE OF 243.23 FEET; THENCE S 00E00' 00" W, A DISTANCE OF 1458.72 FEET; THENCE N 90E00' 00" W, A DISTANCE OF 865.36 FEET; THENCE N 00E 00' 00" E, A DISTANCE OF 581.86 FEET TO THE POINT OF BEGINNING, LYING AND BEING IN SECTION 31, TOWNSHIP 35 SOUTH, RANGE 21 EAST, AND SECTION 6, TOWNSHIP 36 SOUTH, RANGE 21 EAST, MANATEE COUNTY, FLORIDA.

SUBJECT TO PERTINENT EASEMENTS, RIGHTS OF WAY, AND RESTRICTIONS OF RECORD.

CONTAINING 26.28 ACRES, MORE OR LESS

EXHIBIT "B"

SITE PLAN SUBMITTED WITH APPLICATION