

FILED FOR RECORD
R. B. SHORE

SPECIAL PERMIT NO. SP-07-03

2008 JUL 28 PM 2:00

4 STAR TOMATO INC. / 4 STAR TOMATO BORROW PIT DTS #20070148

CLERK OF DISTRICT COURT
MANATEE CO. FLORIDA

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER JOHN ROE ON BEHALF OF MANATEE COUNTY GRANTING A SPECIAL PERMIT NO. SP-07-03 FOR MAJOR EARTHMOVING IN THE A/NCO (GENERAL AGRICULTURE/NORTH CENTRAL OVERLAY) ZONING DISTRICT ON THE NORTH SIDE OF CR 675, APPROXIMATELY 4 ½ MILES EAST OF US 301 AT 18650 CR 675, PARRISH (± 649.22 ACRES TOTAL SITE; ± 179.8 ACRES PROJECT SITE); 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; and

WHEREAS, pursuant to the Land Development Code, Manatee County Ordinance 90-01, as amended, the Hearing Officer has the authority to grant Special Permits; and

WHEREAS, 4 Star Tomato Inc. requested a Special Permit for major earthmoving in the A/NCO (General Agriculture/North Central Overlay) zoning district; and

WHEREAS, on April 16, 2008 this matter was continued to June 4, 2008, and on June 4, 2008 this matter was continued to June 30, 2008 and on June 30, 2008 the aforementioned Hearing Officer held a public hearing to receive staff, applicant, and public comment and argument regarding the proposed Special Permit for major earthmoving.

NOW, THEREFORE, after consideration of the application for Special Permit No. SP-07-03 requested by 4 Star Tomato, Inc. the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues the Final Order as follows:

Section 1. Findings of Fact. The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation and staff report presented, as well as all other matters presented at the public hearings above referenced, hereby makes the following Findings of Fact:

- A. This site is currently used for agricultural cultivation of row crops. (General Agriculture, 1 dwelling unit per 5 acres).
- B. Proposed earthmoving operations are temporary in nature and will ultimately result in the creation of two lakes on this site, once reclamation is completed.

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MANATEE COUNTY CLERK COURT
7 PAGES(S)
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- C. This property is zoned A/NCO (General Agriculture/North Central Overlay) which allows major earthmoving with approval of a Special Permit pursuant to Section 708.3.3, of the Land Development Code.
- D. The property is in the AG/R (Agricultural) Future Land Use Classification and the range of potential uses for this Future Land Use Classification include mining-related use. A borrow pit is considered a mining-related use which may be limited in intensity by the application of other goals, objectives, or policies in the Comprehensive Plan or by other applicable development regulations. (Policies 2.2.1.8.2 and 2.2.1.8.4, Comprehensive Plan).
- E. The site has a long term agricultural character and is adjacent to other agricultural areas as well as a rural residential area and is located primarily east of the Future Development Areas Boundary and is compatible as a short term agricultural use.
- F. The establishment, maintenance, and operation of the use will not endanger the public health, safety, or general welfare. This site is a SWFWMD and FSACS cooperatively funded project for the excavation of two irrigation reservoirs which will provide surface water for irrigating 256 acres of row crops. This will result in a 1,346,500 gallon per day reduction in the groundwater withdrawn from the Floridian Aquifer.
- G. The establishment of the use will not impede the normal and orderly development and improvement of surrounding properties for uses permitted in the zoning district subject to the conditions in Section 3 herein. Adequate setbacks from the borrow pit and Foxbrook subdivision are provided.
- H. The applicant has complied with the requirements for Level of Service review as set forth in Section 3 herein.
- I. The fifty foot radius at the apron of the entrance to CR 675 as well as the conditions in Section 3 herein will minimize traffic congestion on CR 675.
- J. Given the temporary nature of the use, setbacks from property lines, and the agricultural character of the surrounding area, the use is found to be consistent with the character of the immediate vicinity.
- K. Subject to the conditions set forth in Section 3 herein, the design of the borrow pit minimizes adverse affects, including visual impacts, of the proposed use upon adjacent properties.
- L. Subject to the conditions set forth in Section 3 herein, there are adequate provisions for buffers, landscaping, and open space.

- M. The site is in compliance with all provisions of the Manatee County Land Development Code including Section 732.4, which addresses standards for major earthmoving uses. A reclamation plan in accordance with Section 732.4.3.16 has been provided. Upon approval of the Special Permit the applicant is required to apply for an operating permit prior to the commencement of operations and demonstrate that criteria have been met for issuance of the operating permit.
- N. A public hearing of approximately 5 hours in duration was conducted regarding this matter. Evidence was presented by the Manatee County Planning staff, the applicant and its witnesses, counsel for the Foxbrook Homeowners Association expert witnesses, the Southwest Florida Water Management District, and residents of Foxbrook. Exhibits made part of the record documentary evidence made part of the record and arguments of counsel and the applicant were considered and evaluated by the Hearing Officer.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, and a review of the applicable provisions of the Manatee County Comprehensive Plan and Manatee County Land Development Code, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the Land Development Code.
- B. The applicant has the burden of proving entitlement to the Special Permit it seeks. 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. The proposal is compatible with the area and can be found to be consistent with the Comprehensive Plan and AG/R (Agricultural) Future Land Use Category subject to the conditions in Section 3 herein.
- D. The applicant has met present requirements of the Manatee County Comprehensive Plan and present requirements for the issuance of a Special Permit pursuant to the Manatee County Land Development Code, Section 505.2 and Section 732.4, LDC (Standards for Major Earthmoving).
- E. The applicant has met its burden of proof by confident evidence and is entitled to the Special Permit.

Section 3. Order. Based upon the foregoing, a Special Permit is hereby approved and issued to 4 Star Tomato, Inc. for property on the north side of CR 675, approximately 4 ½ miles east of US 301 at 18650 CR 675, Parrish, and more particularly described in Exhibit "A" attached hereto and incorporated herein, for major earthmoving, subject to the following conditions:

A. DESIGN AND LAND USE CONDITIONS:

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 Earthmoving site plan submitted with this application shall be part of this approval.
3. Prior to the commencement of earthmoving operations, an Operating Permit shall be applied for and issued, pursuant to Section 732.5.1 of the Land Development Code. The Operating Permit shall be issued for a term not to exceed five (5) years.
4. All earthmoving activities, including all excavation and reclamation, shall be completed by July 2013.
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. Applicant will be required to provide a flagman at the entrance to the premises where the service road and CR 675 intersect from 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 4:00 p.m. Monday – Friday whose duties are to include ingress/egress control. The flagman shall not be required on days where there are no trucks entering or leaving the premises. The gate regulating truck traffic to and from the premises shall close at 4:00 p.m. Monday – Friday and 12:00 p.m. on Saturday.
6. The maximum number of haul trips shall be limited to 400 per day.
7. The earthmoving project shall be setback a minimum of 143 feet from the north, 305 feet from the south, 1,481 feet from the west, and 255 feet from the east property lines.
8. Dewatering pumps may be operated after hours full time or on an as-needed basis to maintain groundwater levels in accordance with safe mining practices. The dewatering pumps shall be acoustically isolated by the use of hay bales, earthen berms or other acceptable enclosures that will prevent sound in excess of current county noise ordinance criteria from reaching surrounding properties. Applicant will be required to use electric pumps.
9. The maximum depth of the borrow pit shall be 30 feet. There shall be no aggregate, sorting, screening, or washing, or aggregate recycling associated with this request.
10. Applicant shall be required to provide a contiguous growing windbreak along the entire boundary line of its premises with Foxbrook subdivision. The windbreak shall consist of high density trees of similar height within an initial minimum height of 15 feet. This shall be completed prior to commencement of activities authorized by this Special Permit.
11. No operating permit shall be issued until satisfactory evidence is received by Manatee County Planning Department from the appropriate governmental agency that there are no unresolved issues relating to archaeological, historical, or protected species if required by law.

12. Prior to approval of the Operating Permit, the Engineer of Record shall demonstrate compliance with Adverse Impact Performance Standards of the Land Development Code.

B. STORMWATER CONDITIONS:

1. This project shall be required to reduce the calculated pre-development flow rate by a full fifty percent (50%) for all stormwater outfall flow directly or indirectly into Gamble Creek. Modeling shall be used to determine pre- and post- development flows.
2. The Developer shall provide a second 14x23 elliptical pipe under the driveway entrance on CR 675 to help alleviate flooding.
3. The Drainage Model and Construction Plan shall demonstrate that no adverse impacts will be created to neighboring residents surrounding the site in respect to drainage routing, grading, and runoff.

C. ENVIRONMENTAL CONDITIONS:

1. Existing wells shall be kept in a watertight manner and be protected during all construction activities.
2. Any wells discovered during land clearing shall be protected or abandoned in accordance with SWFWMD Rule Chapter 40D.
3. Underground or aboveground pollutant storage tank installation or removal must conform to the requirements of Chapters 62-761, Florida Administrative Code.
4. Please be advised Planning Department staff may require modifications to the Erosion & Sediment Control Plan at any time, should approved best management practices fail because of unforeseen environmental conditions or other circumstances.

D. TRANSPORTATION CONDITIONS:

1. Applicant shall dedicate an additional 25 feet of Right-of-Way along C.R. 675.

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 decisions 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 28th day of July, 2008.

MANATEE COUNTY, FLORIDA

BY: [Signature], as
Hearing Officer for Manatee County

ATTEST: R. B. Shore,
Clerk of the Circuit Court

BY: [Signature]
Deputy Clerk

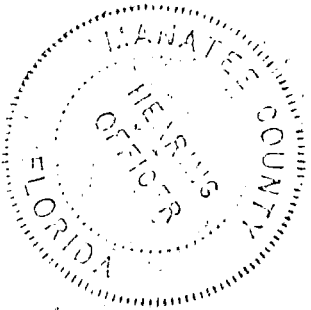


EXHIBIT "A"

LEGAL DESCRIPTION:

That part of Section 6, Township 34 South, Range 20 East, lying North of the Northeasterly right-of-way line of Rutland Road (also known as State Road No. 675), Manatee County, Florida.

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EXHIBIT "B"

(Site Plan Submitted with Application)