

SPECIAL PERMIT NO. SP-99-02
A & W HOLDINGS, INC./BUCKEYE BORROW PIT

SEP 27 1 24 PM '99

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER JAMES A. PAULMANN ON BEHALF OF MANATEE COUNTY GRANTING SPECIAL PERMIT NO. SP-99-02, TO ALLOW EXPANSION OF A MAJOR EARTHMOVING OPERATION IN THE A-1 (SUBURBAN AGRICULTURE, 1 DU/ACRE) ZONING DISTRICT, LOCATED APPROXIMATELY ONE (1) MILE EAST OF U.S. 41 AT THE SOUTHEAST CORNER OF BUCKEYE ROAD AND BUD RHODEN ROAD (± 238.81 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; 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, A & W Holdings, Inc. has requested a Special Permit to allow expansion of a major earthmoving operation located approximately one (1) mile east of U.S. 41 at the southeast corner of Buckeye Road and Bud Rhoden Road in the A-1 (Suburban Agriculture, 1 du/acre) zoning district (± 238.81 acres); and

WHEREAS, on September 2, 1999 the aforementioned Hearing Officer held a public hearing to receive the staff, applicant and public comment and argument regarding the proposed Special Permit for A & W Holdings, Inc.

NOW, THEREFORE, the Final Order regarding Special Permit No. SP-99-02 requested by A & W Holdings, Inc. states 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 Hearing above referenced, hereby makes the following Findings of Fact:

A. This request is for a Special Permit to allow expansion of a major earthmoving operation.

B. The site is located approximately one (1) mile east of U.S. 41 at the southeast corner of Buckeye Road and Bud Rhoden Road on property zoned A-1 (Suburban Agriculture, 1 du/acre), with a Future Land Use Designation of IL (Industrial - Light).

C. The property to the north is zoned A (General Agriculture) where there is an existing agricultural use, and HM (Heavy Manufacturing) where there is an existing phosphate settling pond. The property to the east is zoned A and the current use is agricultural/residential. The property to the south is agricultural and is zoned A-1 (Suburban Agriculture, 1 du/acre) and PDMU (Planned Development Mixed Use). The property to the west is agricultural and is zoned A-1

E. There is currently a 132 acre existing borrow pit on site to which the applicant is proposing to add 40 acres. The remainder of the site is covered by citrus.

BK 1619 PG 7984 DKT # 1313447 1 of 5

F. The maximum depth of the borrow pit will be 35 feet. There will be no aggregate, sorting, screening or washing, or asphalt processing or aggregate recycling associated with this request.

G. An Operating Permit, pursuant to Section 732.5 of the Land Development Code, is required before commencing any earthmoving activities.

H. Upon completion of excavation, the borrow pit will be reclaimed as a lake, in accordance with the requirements of Section 732.4.3.16.2 of the Land Development Code.

I. No new buildings are being proposed on this site.

J. The maximum number of haul trips, for any 24 hour period, is estimated to be 180.

K. Pursuant to Policy 2.4.1.3 of the Comprehensive Plan, Application for Certificate of Level of Service Compliance has been approved.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, the above referenced Hearing Officer hereby makes the following Findings 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 proposed use is consistent with Policy 2.2.1.18.2 of the Manatee County Comprehensive Plan as the site is designated IL, which lists short term agricultural uses within the range of potential land uses and earthmoving is considered a short term agricultural use.

D. The proposed use is consistent with Policy 2.6.1.1 of the Manatee County Comprehensive Plan, which requires the provision of undeveloped and landscaped buffers between land uses that differ in use, intensity, density or height, to assist in the mitigation of any potential incompatibility between adjacent land uses, as the request is located on Buckeye Road and is approximately 1/4 mile away from the closest existing residential land use, which is east of this existing borrow pit, on the north side of Buckeye Road.

E. The proposed use is not detrimental to, nor will it endanger, the public health, safety, or general welfare.

F. 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.

G. The proposed use is consistent with the community character of the immediate neighborhood, given the temporary nature of the use, and the agricultural character of the vicinity.

H. The excavation area will be approximately 1/4 mile away from the closest approved residential land use within Gateway North. Given the temporary nature of the use, adequate open space is available.

I. The site is in compliance with all provisions of the Manatee County Land Development Code, particularly Section 732.4, which addresses standards for major earthmoving uses.

Section 3. Order. Based upon the foregoing, a Special Permit is hereby approved and issued to A & W Holdings, Inc./Buckeye Borrow Pit for the property located approximately one (1) mile east of U.S. 41 at the southeast corner of Buckeye Road and Bud Rhoden Road, and more particularly described in Exhibit "A" attached hereto and incorporated herein, for a Special Permit to allow expansion of a major earthmoving operation, subject to the following conditions:

A. This Special Permit shall 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.

B. The site plan submitted with this application shall be part of this approval.

C. If the applicant elects to establish an access point on Bud Rhoden Road, then prior to utilizing Bud Rhoden Road, the applicant shall construct Bud Rhoden Road to county standards, from the access point on Bud Rhoden Road north to Buckeye Road.

D. Prior to the commencement of the earthmoving operation, 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.

E. Upon completion of construction of the mitigation area, protective bollards spaced three (3) feet O.C. shall be installed along the northern wetland buffer boundary of the proposed mitigation area to protect the mitigation area from on-site traffic.

F. The maximum number of haul trips, for any 24 hour period, shall be limited to 180. The haul route shall be as follows:

All trucks will exit westbound onto Buckeye Road toward U.S. 41. Trucks will proceed north or south on U.S. 41 to their destination.

G. All earthmoving activities, including all excavation and reclamation, shall be completed by January 31, 2005.

H. If the existing vegetation is removed, the landscape buffer along the south property lines shall be increased to a minimum of 30 feet wide to allow for construction of a 3-4' high berm. This berm shall be planted with one (1) canopy tree meeting the minimum specifications of Section 715, every 25 feet on center. Hedges and shrubs shall be planted, which together with the berm will achieve 60 percent opacity at a height of five (5) feet.

I. Prior to Operating Permit issuance, the engineer of record shall demonstrate an

BK 1619 PG 7996 3 of 5

acceptable method of maintaining the hydroperiod of existing wetlands to both the County and SWFSMD.

J. Prior to Operating Permit issuance, a revised cost estimate for the mitigation area which includes an additional amount for plants not installed, and which reflects current construction, maintenance and monitoring costs shall be submitted to the EMD for review and approval. Mitigation Security in the amount of 115% of the approved cost estimate is required by the LDC. A revised Security Agreement for wetland mitigation, site reclamation, and haul route restoration shall be posted prior to Operating Permit issuance.

K. Prior to Operating Permit issuance, the existing EMD approved Water Quality Monitoring Program shall be updated to address the expansion area.

L. Off-site discharges shall not be authorized with the expansion of this mining operation.


Section 4. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by courts 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 27 day of Sept, 1999.

MANATEE COUNTY, FLORIDA

BY:



James A. Paulmann, as
Hearing Officer for Manatee County

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



BK 1619 PG 7987 4 of 5

EXHIBIT "A"

LEGAL DESCRIPTION:

The SE 1/4 and the East 1/2 of the SW 1/4 in Section 8, Township 33 South, Range 18 East, Manatee County, Florida.

EXHIBIT "B"

SITE PLAN SUBMITTED WITH APPLICATION

DN 1619 PG 79000 FILED AND RECORDED 12/29/99 11:15:41 AM 5 of 5
R.B. SHORE CLERK OF CIRCUIT COURT MANATEE COUNTY FL.