

APRIL 24, 2002 – LAND USE HEARING

The Board of County Commissioners, Walton County, Florida, held a Land Use Meeting on Wednesday, April 24, 2002 at 4:00 p.m. in the meeting room at the Coastal Branch Library.

The following Board members were present: Commissioner Tim Pauls, Vice-Chairman Larry D. Jones, Commissioner Herman L. Walker, Chairman Lane Rees and Commissioner Gene Ryan. Mr. Michael Underwood, County Administrator, Attorney Gary Vorbeck, Director of Legal Services, were also present.

Commissioner Jones led with prayer following the Pledge of Allegiance to the American Flag led by Commissioner Ryan.

Attorney Ken Goldberg was present representing the opposition and Attorney David Theriaque was present representing Mr. Jay Odom, the developer of Grayton Grand.

Chairman Rees called the meeting to order.

Attorney Vorbeck announced that he has presented to both attorneys copies of all e-mail sent to the commissioners, correspondence sent to Growth Management and Administration.

Each commissioner publicly acknowledged that any email or correspondence received would not influence their ability to make a fair and objective decision regarding the proposed development of Grayton Grand.

Attorney Vorbeck administered the oath to all individuals who would be speaking on the Grayton Grand issue during this quasi-judicial hearing.

Attorney Theriaque asked the commissioners to base their decision upon the substantial competent evidence and proceeded with his opening statement.

Attorney Goldberg presented his opening statement and stated that he feels there is numerous violation with this project.

Attorney Theriaque called Jay Odom for questioning. Mr. Odom explained the site location and presented a map depicting the surrounding properties. Attorney Theriaque entered into record a map of the surrounding property ownership and project location – **Exhibit 1**. The exhibit was entered with no objections. Another map entitled Grayton Beach land use was entered with no objections – **Exhibit 2**. Attorney Theriaque presented a large aerial showing the site and entered it into record with no objections – **Exhibit 3**. Attorney Theriaque presented a map showing the Village Mixed Use land use study – **Exhibit 4**. The map was entered into record with no objections. Attorney Theriaque presented an excerpt of the county’s Comprehensive Plan showing the land use categories for the record. Attorney Theriaque presented the Grayton Grand preservation/landscape plan as designed by Connelly & Wicker, Inc. Consulting Engineers to be entered into record. Attorney Goldberg objected due to the fact that the site plan he received was different than this and he has not seen the changes on this plan. Attorney Theriaque stated that this is the plan presented to the Planning Commission, which they approved. The plan was accepted into evidence as **Exhibit 5**. A second preservation/landscape plan was presented. Attorney Theriaque explained that this plan was designed with no compact parking. Attorney Goldberg objected because he has not seen this plan. Attorney Theriaque explained that the revisions on this plan were made upon the recommendation of the Planning Committee and the reduction that the Corps of

Engineer requested. The preservation/landscape plan was entered into record as **Exhibit 6** with objections by Attorney Goldberg. Mr. Odom explained that he has been working with the Corps and DEP since 1998 regarding the wetland permitting process. The Corps has issued a letter of intent to grant approval. Attorney Theriaque presented the Grayton Grand Permitting Timeline for the U.S. Army Corps of Engineers, Florida Department of Environmental Protection and asked that it be entered into record. The Permitting Timeline was entered into record as **Exhibit 7** with objections by Attorney Goldberg. Attorney Theriaque presented a letter by the Department of the Army Corps of Engineers dated April 18, 2002 and signed by John Hall. The letter was entered into record as **Exhibit 8** with no objections.

Attorney Goldberg cross-examined Mr. Odom regarding the impact on the wetlands and uplands. Mr. Odom also explained the layout of the project and what would be contained on each floor. He explained how the density was calculated. Attorney Goldberg questioned how the floor area ratio was calculated and Mr. Odom explained that the FAR was calculated on the total site.

Attorney Theriaque called Mr. Adam Hoyles, Senior Scientist with Environmental Services. Mr. Hoyles gave an overview of his educational background and work experience. Attorney Theriaque entered Mr. Hoyles resume into the record as **Exhibit 9** with no objections. The commissioners tendered Mr. Hoyles as an expert witness upon request by Attorney Theriaque and no objections from Attorney Goldberg.

Attorney Theriaque questioned Adam regarding the length of time he has been involved with the Grayton Grand project and about the process of permitting and the length of time it required to obtain permits for this project. Attorney Theriaque entered

into the record a map of Western Lake Watershed property ownership with no objections - **Exhibit 10**. Questions and answers continued regarding the watershed. Mr. Hoyles showed a map of the site and the drainage and explained that the agencies are requiring approximately 21.72 acres. The applicant is providing property in the Hogtown Bayou area for mitigation. Mr. Hoyles explained that DEP is waiting for the county to submit a written request for 5-acres of mitigation of secondary impact. Attorney Theriaque displayed a large-scale map showing the drainage on the property. The map was entered as **Exhibit 11** with no objections. Attorney Theriaque presented a copy of the draft letter to DEP requesting them to accept five-acres for mitigation. The letter was entered into record as **Exhibit 12** with no objections. Mr. Hoyles explained that minimization is defined by the Corp as causing the least amount of impact to the wetlands. Mitigation is designed to offset unavoidable impacts. An aerial map was presented showing the mitigation location in the Hogtown Bayou area, **Exhibit 13**, and entered with no objections. (Tape 2)

Attorney Goldberg cross-examined Mr. Hoyles regarding avoidance, mitigation and the ecosystem. He also asked about drainage into the lake. Adam explained that mitigation is not for fill, but for secondary impact, which is less harmful than fill. Attorney Goldberg showed Adam an Environmental Assessment he had prepared and questioned him regarding filling of the wetlands. Adam explained that a nationwide permit had previously been issued for .4 of an acre, which has been filled. He stated that there are 3.53 acres of wetlands currently on-site. Discussion followed regarding the amount of wetlands currently on site, uplands, the amount previously filled, and the amount of impact Grayton Grand would cause. Adam stated that there are no other

permits on record for fill on the property. He also explained that .74 acres are solely regulated by the Corps and 3.19 acres are regulated by the Corps and DEP.

Attorney Goldberg questioned Mr. Hoyles regarding his familiarity with protecting wetlands. Attorney Goldberg questioned Mr. Hoyles regarding the wetlands proposed for mitigation in the Hogtown Bayou area and if those wetlands are undisturbed. Mr. Hoyles explained that they have already been disturbed.

Attorney Theriaque questioned Mr. Hoyles regarding the WRAP. Mr. Hoyles explained that WRAP is the Wetlands Rapid Assessment Procedure developed by the South Florida Water Management District now adopted by the Corp of Engineer as method of evaluating wetland value and function.

Attorney Theriaque presented the acreage summary for Grayton Grand, **Exhibit 14**. The summary was entered into record with no objections.

The commissioner's recessed briefly.

Attorney Theriaque called Mr. John Lewis, Sr. Vice-President of Connelly & Wicker. Mr. Lewis gave a description of his duties and responsibilities. Mr. Lewis stated that he is a Licensed Professional Engineer in the State of Florida. Attorney Theriaque tendered Mr. Lewis as an expert witness. The Board accepted him as an expert witness with no objections. Attorney Theriaque questioned Mr. Lewis about the design, safety factors, and retention facilities of the project. Mr. Lewis explained the design of the storm water management system and how it was designed 10 times larger than required. He stated that it meets all of Walton County and DEP requirements.

Attorney Goldberg cross-examined Mr. Lewis and asked about run off. Mr. Lewis explained that it would run through a treated system, through the parking area and to an

outfall. Mr. Goldberg further questioned Mr. Lewis regarding the inspection process and scheduled maintenance.

Commissioner Pauls questioned Mr. Lewis regarding his involvement with the design of the site plan and how he arrived at this design. Mr. Lewis explained that the system was designed to minimize the impact on wetlands. He felt this design minimized the wetland impact to the greatest possible extent. (Tape 3)

Attorney Theriaque called Mr. Mark T. Llewellyn, P.E., Sr. Vice-President/Director of the Genesis Group. Mr. Llewellyn's resume was entered into the record as **Exhibit 15**. Mr. Llewellyn gave a summary of his experience and was tendered as an expert witness by the Board. Attorney Theriaque questioned him regarding shared parking. Mark explained shared parking and stated that his firm generated a Shared Parking Analysis for the Grayton Grand. Attorney Theriaque entered the Parking Analysis into record as **Exhibit 16** with no objections. Discussion followed regarding the parking in the Mixed Use Category of the Walton County Comprehensive Plan.

Attorney Theriaque presented **Exhibit 17**, Urban Land Institute Shared Parking Study and entered it into the record. The study is the methodology for determining shared parking. Mr. Llewellyn explained each step shown on the study.

Attorney Theriaque presented a composite of six (6) graphs, **Exhibit 18**, consisting of the Representative Hourly Parking Accumulation by Percentage of Peak Hour. Mr. Llewellyn stated that the proposed 229 parking spaces would meet the requirements and more than adequately serve the parking needs. Commissioner Ryan questioned how employee parking was factored in. Mr. Llewellyn answered by the

number of rooms. He also reminded the Board that parking is to service the facilities, not beach goers.

Attorney Goldberg questioned Mr. Llewellyn regarding off-street parking requirements and presented section 5.02.02 of the chart for the record. Attorney Goldberg entered the Off Street Parking Chart as **Exhibit 19**. He further questioned Mr. Llewellyn about parking uses, joint uses and the analysis he performed.

Questions were raised regarding the number of bedrooms in each condominium. Attorney Theriaque stated that his client would stipulate that each condo would contain only 1 bedroom. Attorney Goldberg stated that the plans are short 379 parking spaces for the size of this development. Attorney Theriaque cross-examined Mr. Llewellyn regarding the method he used for determining the amount of parking.

The commissioner's recessed briefly.

Attorney Theriaque called Ms. Gail Easley, President of the Gail Easley Company, a consulting service. Ms. Easley explained her professional experience, awards and the boards that she is a member of. Attorney Theriaque tendered Ms. Easley as an expert witness and the Board accepted her as an expert witness. Attorney Theriaque questioned her about the provisions allowing the disturbance of wetlands and presented the Planning Report, **Exhibit 20**.

Ms. Easley spoke about buffers and stated that a buffer is not required because the property adjoins state owned land. Attorney Theriaque questioned her regarding mixed use and shared parking. She stated that shared parking could be used in this development.

Attorney Goldberg cross-examined Ms. Easley regarding the restrictions on the development and the allowances for commercial and industrial development in wetlands.

Attorney Goldberg called Celeste Cobena, Beach To Bay, whose function is to protect public lands and water. She stated that Beach To Bay is concerned that Western Lake will be impacted and feels that this project violates the LDC and Comp Plan.

Attorney Goldberg presented a list of Walton County Comprehensive Plan policies and Land Development Code provisions violated by the proposed Grayton Grand Development. Attorney Theriaque objected stating that Celeste is not an expert witness. The list was entered into record as **Exhibit 21**. The commissioner's requested Ms. Cobena present her presentation into record in order to proceed with the expert witnesses. Ms. Cobena's written comments were entered in the record as **Exhibit 22** with objections by Attorney Theriaque.

Attorney Goldberg called Mr. Dan Garlick, Wetlands Scientist with Garlick Environmental Associates, Inc. Mr. Garlick was tendered as an expert witness with no objections. Mr. Garlick stated that he conducted an environmental assessment and it is his opinion that that this wetland area is of a higher quality. He also stated that these wetlands are connected to Western Lake. Mr. Garlick explained that the DEP and Corps also have to consider the secondary impact as well. He explained that this project would have an off-site impact as well. Attorney Goldberg presented the Garlick Report showing his findings. Attorney Theriaque objected. The report was entered into the record as **Exhibit 23** with objections.

Attorney Theriaque questioned Mr. Garlick regarding comments he previously made about flaws with the storm water system. Mr. Garlick stated that the system is manmade and can fail. Attorney Theriaque stated that is to Mr. Garlick's opinion.

Attorney Goldberg called Mr. Robert Nations, Professional Land Surveyor with Wilson Miller, Inc., Panama City. Mr. Nations was accepted as an expert witness. Mr. Nations explained the procedure he used to perform the survey. Attorney Goldberg presented the Grayton Grand Floodplain Determination Report - **Exhibit 24**.

The commissioner's recessed briefly. (Tape 4)

Exhibit 25, a large-scale map of the floodplain, was entered into record and reviewed by Attorney Goldberg. A Boundary Survey performed by Daryl Burgis was also presented and entered into record as **Exhibit 26**. Mr. Nations stated that his staff prepared the flood plain map from work he presented to them.

Attorney Goldberg called Mr. Robert Pennock, Planning Consultant. Mr. Pennock explained his work experience; he was accepted as an expert witness. Mr. Pennock prepared a Consistency Report for Grayton Grand, which was entered into the record as **Exhibit 27**. Mr. Pennock also showed ten (10) reasons why the proposed development is inconsistent with the comprehensive plan and LDC. Attorney Theriaque cross-examined Mr. Pennock regarding the inconsistencies he listed.

Attorney Goldberg advised that several members of the audience were present who were opposed to the project.

Mr. Van Ness Butler addressed the commissioners regarding the proposed project. He stated that he was the previous owner of the proposed site and further explained that he had proposed a commercial development for that site. Due to the site, he was not successful. Attorney Goldberg asked Mr. Butler if he knew what Mr. Odom's intentions were for the property when he purchased it. Attorney Theriaque objected to the question stating that it is not relevant. The commissioners allowed the question to be answered.

Mr. Butler stated that he opposed the project because of over development of the parcel. Mr. Butler felt that Mr. Odom could develop something less intense which would still be economical. Mr. Butler presented a site plan map of the property. The map was entered into the record as **Exhibit 28**. Mr. Butler stated that the code does not allow commercial in wetlands.

Mr. Arthur presented the Planning Department's Final Recommendation of approval, **Exhibit 29**.

Mr. Odom addressed the commissioners and stated that with respect to Mr. Butler, he would like the opportunity to meet with him regarding the development and therefore requested a continuance. Attorney Goldberg objected stating it would be unfair and asked the Board to make their decision. Attorney Theriaque stated that Mr. Odom is asking for an opportunity to work out a win/win situation for everyone. Commissioner Pauls agreed that he would like to see it worked out, however, he stated that not everyone would be satisfied. Commissioner Ryan stated that the main objection is the wetland issue and the size of the project and would like to see Mr. Odom have the opportunity to work out a solution. Mr. Butler stated that he does not feel he can work it out.

Attorney Theriaque called Dean Burgis, Vice-President of Emerald Coast Associates. Mr. Burgis spoke about the survey he performed and also spoke about the flood plain issue.

Mr. Guy Clark, Chairman of the Destin Planning Commission, spoke about Mr. Odom's qualities and expressed what a good reputation he has.

Both Mr. and Mrs. Eyer spoke in opposition to the proposed project. Mrs. Eyer stated that she lives in south Walton and has put up with many projects. She stated that

many projects on CR30A do not have proper parking and the vehicles tear up the bike path. Ms. Eyer stated that they only want to protect the beauty of the area.

Ms. Nancy James, representing the 500 plus members of the South Walton Community Council, stated that she is speaking for 90-95% of the council members who are asking the Board to consider the future of south Walton.

Mr. John King recommended that Mr. Odom develop a different project.

In closing, Attorney Theriaque stated that staff and the Planning Commission recommended approval and the project meets the code and therefore asked for approval.

(Tape 5)

Attorney Goldberg presented his closing arguments as well asking for denial of the Grayton Grand development because of many inconsistencies with the Comp Plan.

Commissioner Pauls believed that much substantial competent evidence has been presented showing the discrepancies between the proposal and what is allowed by the code.

Motion by Commissioner Pauls to deny the Grayton Grand development based on testimony of the experts and evidence as presented, second by Commissioner Walker.

Commissioner Pauls commented that he believes the property is sufficient for development and believes that the land use classification clearly allows for development and hopes that Mr. Odom will plan a different development. Commissioner Walker asked if it would be possible for the Board to grant an extension of time and waive further development fees for this property. Mr. Arthur stated that he would have to begin the process over again. **Commissioner Walker read a portion from the Land Development Code which states that the county should do all within its power to**

ensure the protection, conservation, and appropriate use of the wetlands. Commercial/Industrial development shall not be located within a wetland. All new or redevelopment shall be designed to avoid impacts on wetlands. The site plan approval process the county will ensure that wetlands are avoided to the maximum extent practical. As far as such impacts to permit mitigation of impacts only as a last resort. Therefore, I call for the question.*

There being no further discussion, Chairman Rees called for a vote on the motion to deny Grayton Grand. Ayes 5, Nays 0. Pauls Aye, Jones Aye, Walker Aye, Rees Aye, Ryan Aye.

There being no further business, the meeting was adjourned at 10:55 p.m.

APPROVED: _____
Lane Rees, Chairman

ATTEST: _____
Martha Ingle, Clerk of Court

***Amended by motion of the Board on July 23, 2002 – regular session. Amended by a 4/0 vote. (Commissioner Ryan was not present)**