

JULY 9, 2002 – LAND USE HEARING

The Board of County Commissioners, Walton County, Florida, held a Land Use Hearing on Tuesday, July 9, 2002 at 12:00 noon in the Boardroom of the Tourist Development Council.

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, and Attorney Gary Vorbeck, Director of Legal Services, Attorney Lisa Minschew, attorney for the Plaintiff, and Attorney Steve Hall, Defendant's attorney, were also present.

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

Chairman Rees called the meeting to order and recognized Mr. Ronnie Bell, Emergency Response Director. Mr. Bell explained to the commissioners that the Emergency Management Division would be running a functional exercise called "Exercise Hurricane Opal". Mr. Bell asked the Board to adopt a resolution for exercise purposes, declaring a local state of emergency (Resolution 2002-34).

Motion by Commissioner Pauls, second by Commissioner Jones to adopt a resolution (2002-35) declaring a mock local state of emergency allowing the Emergency Management to run a functional exercise. Ayes 5, Nays 0. Pauls Aye, Jones Aye, Walker Aye, Rees Aye, Ryan Aye.

Chairman Rees called to order the quasi-judicial hearing to consider the S & S Materials project owned by Mr. Lamar Sikes.

Mr. Mike Lane, Sr. Planner, presented the commissioners with updated information relating to the project. The package included the following:

1. County staff report (3 pages dated March 26, revised June 4, 02)
2. Site plan by Buchanan and Harper Engineers (5 pages)
3. Landscape plan (1 page)
4. Question and Answer sheet
5. Issues raised by the Planning Commission
6. Figure 1 Aquifer for Recharge Map
7. Response letter from Buchanan and Harper (June 4, 2002)
8. Tom Patton's concerns regarding landscaping
9. Response letter from Buchanan and Harper (June 6)
10. BCC minutes dated February 8, 2000
11. Environmental Assessment

Mr. Lane gave an update on the issues relating to the project, which is located on Coochee Road. He also explained the land designations of the surrounding property. Mr. Lane advised that the outstanding items have now been received. Mr. Lane reviewed the question and answer sheet as presented by Attorney Hall. He advised that the Department of Environmental Protection has stated that they do not have any violations on record for this project.

Mr. Lane reviewed the issues raised by the Planning Commission. He explained that some of the reasoning used was due to the intercostals waterway being manmade by the Army Corp of Engineers; it is not a natural system. Mr. Lane advised that the Planning Department was incorrect because the DEP does interpret it as a natural surface water body and they do have jurisdiction over it.

Attorney Minshew requested to tender Mr. Lane as an expert witness. There were no objections and the Board accepted him as an expert witness. Ms. Minshew questioned Mr. Lane. He stated that it was staff's recommendation that this project be approved.

Attorney Minshew called Ms. Cindy Meadows. Ms. Meadows testified that the Planning Commission recommended denial of the S & S Materials project. She explained the following concerns listed by the Planning Commission as their reasons for denial: insufficient berm, impact on the safety and welfare of the community, impact on the integrity of the waterway; the plan would compromise the waterway, too intense of impact on the Bay. Sections from the Land Development Code were reviewed and inconsistencies were discussed. Deficiencies in buffers, noise, traffic, barge off-loading were also issues of concern. Ms. Meadows advised that the Planning Commission voted 4 to 1 to deny the project. Ms. Meadows stated her qualifications for the record.

Attorney Minshew questioned Mr. Lane regarding his attendance at the Planning Commission Meetings relating to this issue and if his professional opinion has been changed. Mr. Lane explained that he was present at the meetings and his opinion has not changed. She further questioned Mr. Lane regarding policy relating to shorelines, surrounding property uses and the use of the waterways. (Tape 1/side 2)

Attorney Hall and Attorney Minshew agreed to submit the following documents as exhibits:

1. Staff's Report
2. Planning Commission recommendation
3. Final and Standing Order by Judge Roger Vincent containing Attorney Minshew's motion to alter or amend the judgment
4. Color version of the Future Land Use Map showing the subject property
5. Color version of the existing/proposed site plan

Attorney Hall questioned Mr. Lane about exhibit 4 and the land classifications. Mr. Lane explained why he viewed this site as industrial. Mr. Hall questioned if this is the current, valid, land use designation for the property. Mr. Lane stated that it looks like the Neighborhood Planning series map and said that it is one of several that are used

when considering a project. Mr. Lane further explained that when given this project to review, it was his understanding that he was to review it as an industrial project.

Attorney Greg Stewart, attorney who handled the case on behalf of the county, advised the Board that the Judge ordered that the property shall be considered as industrial. The courts found that Mr. Sikes and S & S Materials constitutional rights were violated, requiring that the property immediately be considered as industrial for land use purposes.

Attorney Hall explained that the only way to amend the Comprehensive Plan is by following Florida Statutes, section 163.3184 in this case. Attorney Vorbeck stated that Mr. Hall wants to stipulate unprotected argument for the record. Attorney Stewart again reiterated that the Judge clearly defined the land use classification and nothing can change that, it takes precedence over any state statute. Ms. Minshew agreed with the stipulation for the record.

Attorney Hall stated that the Neighborhood Planning Area boundary still exists around this parcel, which has not been changed by the county. Ms. Minshew stated that the NPA is on record, but disagrees. She stated that Judge Vincent said that in the consideration of the estoppel argument that the county had told Mr. Sikes that the property was industrial. She stated that the court order clearly states the property shall be considered for heavy industrial purposes. Attorney Minshew then entered the Judge's first order dated July 24, 2001. **(Exhibit 6)**

Mr. Hall questioned Mr. Lane regarding an outstanding permit by the FDEP called the Non-Title IV Error Emissions Construction and Operations Permit. Mr. Lane agreed that the permit is still outstanding.

Mr. Hall questioned Mr. Lane regarding the type of asphalt plant that would be located on this site and further questioned how the materials would be off-loaded onto the site and questioned the safety features. Mr. Lane explained that a conveyor belt would be used to offload the materials, but would defer to the engineers regarding other aspects of operation and safety issues.

Mr. Hall questioned Mr. Lane regarding the road issues and why it was not classified as a connector road. Mr. Lane stated that the area was considered as a whole and the traffic volume would not meet the requirements.

Ms. Minshew cross-examined Mr. Lane regarding the status of the road. Mr. Lane stated that they have maps, which denote the different classifications of roads. She also questioned him regarding the FDEP Error Emissions Permit. He stated that this is a part of the Building Permit application process. Mr. Lane stated that the permit would be required to present to the county before any construction begins. She again questioned if DEP had any violations on record for either of the concrete plants operating next to the proposed S&S Materials site. Mr. Lane stated that they did not have any violations on record. (Tape 2)

Mr. Lane explained that he had discussion with the Department of Transportation and they advised that the intersections at Highway 98 are designed for residential, not industrial. He also answered questions from the commissioners regarding the air emissions permit. He stated that this would be part of the development order application, prior to approval of a building permit. Mr. Lane explained that he received a call from DEP who had advised him that the Governor's Office had contacted them instructing them to keep an eye on the project.

Attorney Minshew requested to enter into record the entire Planning file containing all permits, applications and other documents relating to the S&S Materials project. The commissioners accepted the file into the record. **(Exhibit 7)**

Chairman Rees also advised that several emails have been received regarding this project and they have been forwarded to Growth Management. Mr. Lane had copies of them and submitted them as a part of the record. **(Exhibit 8)** Each commissioner who received any correspondence stated that they are able to make a fair and objective decision in this case. Commissioner Walker and Commissioner Pauls stated that they did not receive any email regarding this case.

The commissioners recessed briefly.

The meeting reconvened with Attorney Minshew presenting her case on behalf of Mr. Lamar Sikes. She stated that the applicant has submitted a very complete application that has been thoroughly reviewed by staff, and they recommend approval.

Attorney Minshew called Mr. Mike Harper, Engineer from Buchanan and Harper. Ms. Minshew requested a stipulation that Mr. Harper is an expert in Civil Engineering. Mr. Harper was accepted with no objections.

Mr. Harper testified that he submitted the application to Walton County on behalf of Mr. Sikes. He further explained his experience in preparing applications stating that his company has been in business since 1962 providing engineering service since 1975. Mr. Harper stated that in his opinion, this application does meet the requirements of the Walton County codes.

Mr. Harper continued by explaining that the asphalt plant is portable and would be delivered on trucks. The only concrete foundation would be for the silos. He stated

that they would be using a hot mix. Mr. Harper also explained that the aggregate materials would be brought in by barge and off-loaded by conveyor belts. A permanent dock was not part of the application. He spoke about the Air Emissions Permit and stated that the permit is normally done towards the end of the permitting process, but before the plant is actually located on site.

Ms. Minshew questioned Mr. Harper regarding the road issues relating to the intersection at Highway 98 and Old Ferry Road. Mr. Harper stated that every road is designed for a certain percentage of truck traffic. He contacted DOT who stated that auxiliary lanes were included in the design of the new road and therefore did not feel any further action was required in their plans. He stated that this project would not cause any negative impacts on the roads. Mr. Harper also testified that the depth of the containment berm is sufficient and that necessary permits were obtained from DEP.

Mr. Harper answered questions raised by Commission Pauls regarding the amount of additional traffic estimated from this project. He also stated that there is no impact to wetlands on this project. (Tape 2/side 2)

Attorney Hall cross-examined Mr. Harper regarding the process that will be used at this plant. Mr. Harper explained that it would be a hot asphalt production and gave details on how the asphalt is mixed, stored, and transported. He gave an estimate on the tons per hour and per day that would be produced. Mr. Hall questioned him regarding the types of chemicals that would be used during the cleaning process. Mr. Harper stated that LP Gas would be used for the plant and liquid asphalt and coating for the trucks. Attorney Hall presented a document sheet by DEP showing pollutant sources and the

typical chemicals used at these plants. Mr. Hall presented the Materials Fact Sheet as disbursed by the FDEP website. **(Exhibit 9)**

Mr. Hall stated that his clients are concerned with the smells and what will be produced into the air. Mr. Harper explained procedures that would be implemented to reduce emissions into the air.

Attorney Greg Stewart stated that the courts have made the determination that the site is classified as industrial. However, there are issues that go beyond the Land Development Code and the Board does have discretion to require additional buffers and requirements. He stated that the type of industrial is up to the applicant as long as it meets the criteria of the code.

Attorney Hall questioned Mr. Harper about the smells that would be omitted into the air, about the hours of operation, and the barge loading/unloading. He also raised questions regarding the noise levels created by various aspects of the operation and the cleaning process that would occur. Mr. Harper responded to each of these questions.

Discussion followed regarding compatibility with the Neighborhood Planning Area. Attorney Vorbeck stated that substantial competent evidence needs to be presented showing any incompatibility issues, if any exist, for the commissioners to base their decision on.

Attorney Minshew called Mr. Joe Schuster, Biologist and partner for Ecological Resource Consultants, Panama City Beach. He stated that he has owned the business for a period of five years and performs environmental assessments. Ms. Minshew tendered Mr. Schuster as an expert witness in wetlands and environmental issues. The Board recognized him as an expert with no objections. Mr. Schuster explained that he was hired

by S&S Electronics to perform an environmental assessment of this application. He stated that he did not see any impact on the environment caused by this project or the transfer of product from the barge to the site. (Tape 3)

Mr. Schuster explained what issues were evaluated as part of this project. He stated that he walked the site to perform the assessment.

Attorney Minshew called Ms. Susan McMurry, McKinnon and Harper, Landscape Specialist. Ms. McMurry was tendered as an expert witness. She stated that she prepared the landscape plan to meet the requirements of the Land Development Code. Buffers were designed based on the code and approved by the county. She further explained how the buffers were designed, their size, and what they consist of.

Attorney Hall questioned Ms. McMurry regarding her experience in designing buffers between non-compatible property uses.

Mr. Walter Humphree, Real Estate Appraiser, was called as the next witness and tendered as an expert witness by Attorney Minshew as a Real Estate Appraiser in compatibility. Attorney Hall disagreed with Mr. Humphree being classified as an expert in compatibility issues. Mr. Humphree gave a brief history on the intercoastal waterway and why it was constructed. Ms. Minshew questioned Mr. Humphree if he made any determination as to the compatibility of this project with neighboring properties. He determined that there were no compatibility problems because of the amount of unlimited noise from the existing industry, barge traffic, and air traffic.

Mr. Humphree answered questions by the commissioners stating that he would not normally consider industrial uses compatible with residential. He stated that it is not common that they are located near each other, but it does occur.

Attorney Minshew called Mr. Larmar Sikes to provide testimony regarding S&S Materials project. She stated that Mr. Sikes has provided all necessary documents required by the county. They played a video showing the process that would be used to unload the materials from the barges. Mr. Sikes showed how the materials would be off-loaded from the barge, by crane, and onto the site. Mr. Sikes stated that it is his intentions to comply with all codes. The application is for an asphalt plant. He stated that the noise level for an asphalt plant produces less noise than a concrete plant and there is minimal dust. Mr. Sikes also stated that he has already agreed to improve Coochee Road all the way to Old Ferry Road. Mr. Sikes stated that he would like to be a “good neighbor” and is willing to comply with other requirements the county might stipulate.

Chairman Rees questioned Mr. Sikes if he would be willing to comply with restricted hours of operation and the noise ordinance. Ms. Minshew stated that her client would be willing to consider any restrictions that are applied uniformly to all industry.

Commissioner Walker spoke about damage to the roads caused by heavy truck traffic and questioned if Mr. Sikes would be willing to repair any road damage caused by the trucks as the county is now asking other companies to make repairs caused by their heavy truck operations.

Commissioner Pauls voiced concern that the interior road should be a paved road. In addition, he voiced questions regarding connections onto Highway 98. He stated that he would like this to be a part of the conditions of development. (Tape 3/Side 2)

Mr. Sikes advised the commissioners that he does have additional property at this location that he would be leasing.

Commissioner Pauls questioned if Mr. Sikes if he is willing to participate in seeing that the connection road to Highway 98 becomes a proper industrial connection. Mr. Sikes stated that he would be place the road materials from Old Ferry Road and Coochee intersection on Highway 98 and let the county take care of the turn lanes.

The videotape was entered as **Exhibit 10**.

Attorney Hall questioned Mr. Sikes regarding other possible uses he has considered for the other out parcels. Mr. Sikes stated that he does not have any specific uses in mind. Mr. Hall also questioned Mr. Sikes regarding the possibility of him transferring his responsibilities of S&S Materials to other individuals. He stated that he has not ruled that out.

Attorney Hall called Mr. Kurt Liska, President of the Peach Creek Alliance, and resident since 1996. Mr. Hall stated that Ms. Minshew, on behalf of her client, has agreed to stipulate to the standing of Peach Creek Alliance, Inc. in terms of its standing to be a participant as a substantially affected party. Mr. Liska gave a brief history of the beginning operations of the existing concrete plant. He showed a map and the location of his property. He further explained how the site relates to adjacent neighborhoods and park areas. Mr. Hall displayed pictures of the road conditions. Mr. Liska continued his testimony speaking about operations of the Ewell and Couch Concrete Plants. Attorney Minshew objected to his testimony about the other plants.

Chairman Rees opened the floor for public comment from those individuals who were sworn in.

Mr. Earl Barrett stated that he has been a resident for 20 years. He spoke about the road conditions and voiced concern relating to the possibility of fires at the plant and not

being able to get water into the site. He also voiced concern with placing crushed concrete on the roads.

Mr. Larry Barrett stated that Mr. Sikes would not be affected; it is the people who live here. Mr. Barrett opposed the project.

Mr. Nathan Anderson and Ms. Luverne Hall voiced opposition to the project.

Ms. Rita Duncan, property owner at Peach Creek, requested the Board review the documents presented by the Planning Department before making their decision. (Tape 4)

Mr. Liska read a letter from Mr. Ed Barry that stated his reasoning for opposing the project. Mr. Barry was unable to attend this meeting. Mr. Barry along with a private donor would like to offer the county a pledge of \$100,000.00 to offset any loss of money the county would incur in the purchase of this land. Mr. Barry would like the county to purchase the land and resale it to a developer who would develop it within the guidelines of the NPA.

Attorney Hall presented his closing arguments stating that he feels the courts did not instruct the county to approve any project that is requested. The courts did not say that an application could not be scrutinized for additional protection of the neighborhood. He stated that if this project is not denied then his clients would like the opportunity to participate in the amendment process along with the county to develop a reasonable land use plan. He explained the importance of his client's opinion being heard. He suggested to the Board that they require the applicant to seek the air emissions operating permit. He also urged the commissioners to consider how to address the compatibility and buffering issues. He stated that evidence shows that there are best management practices that could be utilized better, that buffering could be enhanced, and that the roadways will not handle

the truck traffic. Mr. Hall asked for denial of the project; however, if it is not denied then he asked that staff work to provide more protection for the neighborhood than just the minimum requirements.

Attorney Minshew presented her closing arguments. She stated that Mr. Sikes has complied with all the requirements of the county. Ms. Minshew reminded the board that the courts stated that the county has violated Mr. Sikes' federal constitutional rights and it is time to allow Mr. Sikes to proceed. She stated that the only substantial competent evidence in which they can base a decision on is in favor. She stated that there is nothing to base a denial on. Ms. Minshew requested approval and stated that her client is willing to discuss any further conditions that might be suggested.

Chairman Rees closed the hearing from further public discussion.

Commissioner Walker commented on statements made by the public that the commissioners have not listened to their concerns. He stated that he has devoted much time and consideration, especially to this project.

Commissioner Jones agreed that he has given much time and effort to this matter. He agreed that the land use is not an issue, as the courts decided that aspect, and compatibility may be questionable. He felt that three options were available; to approve the project, deny the project, or approve it with conditions to address concerns that were raised such as buffering, secondary containment, air emissions permit, and the road issue.

Commissioner Pauls spoke about property rights versus a developer's rights, which are governed by code. He spoke about the importance of following the code. He also stated that there are additional issues that need to be addressed if the project is approved. He felt the road should be paved and the connection to Highway 98 should

meet the industrial standard of D.O.T. Mr. Pauls also voiced concern with the hours of operation and other compatibility issues. Therefore, he stated that he would like to see conditions placed on the approval of the request to help mitigate the problems.

Chairman Rees read a quote from the Land Development Code, which states that development is to aid in the harmonious, orderly, aesthetically pleasing, and socially beneficial development of the county. He agreed that the designation has already been made and now the use of the property needs to be considered.

Commissioner Ryan stated that the court has decided that the zoning on this property is Industrial and the county cannot change that, therefore, if controls are going to be placed on it then it must be done according to the code. Mr. Ryan stated that he has not heard any testimony showing that Mr. Sikes has not complied. He stated that he is willing to approve this project, but would also be in favor of placing some caveats on it.

Commissioner Jones recommended delaying a decision to allow each party to this proceeding to bring their recommendations, along with Planning Staff, to make this a “friendly project”, as stated by Mr. Sikes.

Commissioner Walker stated that there are currently two other developments operating in that area and voiced concern with placing stipulations on this project that may not apply to the other businesses. He also agreed to delay a decision to further review the information presented.

Attorney Minshew agreed to work with staff, but asked that no further evidence be presented. The commissioners asked to be able to review the transcript from the Planning Commission meeting. Ms. Minshew further asked for the specific issues of concern from the commissioners.

The commissioners reiterated that the issues of concern is the road being paved from Highway 98 to the site, FDOT approval of the intersection as industrial/decel lane on Highway 98, buffers, and hours of operation. He also stated that he would like to see approval of the project made subject to the forthcoming noise ordinance.

The commissioners requested that Attorney Minshew, Attorney Hall, Mr. Jack Arthur work together with staff to bring back a final development order for consideration at the Land Use Hearing on August 6, 2002. The final order will include the findings of fact, conclusion of law, and conditions. Attorney Hall stated that he would be willing to work with staff on this issue.

Motion by Commissioner Walker, second by Commissioner Ryan to instruct staff to prepare a development order, pursuant to Walton County Ordinance, providing finding of facts, conclusion of law, and conditions for approval at the August 6, 2002 Land Use Hearing. Ayes 5, Nays 0. Pauls Aye, Jones Aye, Walker Aye, Rees Aye, Ryan Aye.

There being no further business, this portion of the meeting was adjourned.

APPROVED: _____
Lane Rees, Chairman

ATTEST: _____
Martha Ingle, Clerk of Court