

OCTOBER 13, 2003 – WORKSHOP

The Board of County Commissioners, Walton County, Florida, held a Workshop on Monday, October 13, 2003 at 5:00 p.m. in the South Walton County Courthouse.

The following Board members were present: Tim Pauls, Vice-Chair, Commissioner Lane Rees, Commissioner Kenneth Pridgen, and Commissioner Rosier Cuchens. Mr. Michael Underwood, County Administrator, and Attorney Gary Vorbeck, Director of Legal Services, were also present.

Commissioner Rees led with prayer followed by the pledge of allegiance to the American Flag. Chairman Jones Called the meeting to order.

The purpose of the meeting was to consider establishing a “Special Master” to hear all Quasi-Judicial items currently being heard by Board and Commissions.

Mr. David Tucker, Miller, Canfield & Tucker, appeared before the Board and gave an overview of how they came up with this issue in Escambia County and how well it is working. The process was implemented around 1993/94. Rezoning was one of the major issues. There are some special exceptions and preliminary plat approvals that required some procedural fairness. He spoke about several zoning cases that were previously heard and the process that they went through, which caused quasi-judicial hearings began being heard directly by the courts. The next step was to work with the homebuilders to develop the hearing officer model and a fair way to hear the cases. The next step was to appoint hearing officers to hear the cases, beginning with rezoning issues. One concern that resulted from this was the commissioners felt that they had no control. Mr. Tucker explained that the complicated part is the finding of facts, which results from testimony. He stated that Escambia County’s use of a hearing officer works

well. He further explained that it did not matter whether a developer or an environmentalist won, it matters most winning in court. Mr. Tucker stated that the cases heard in Escambia County have always been upheld by the Circuit Court.

Attorney Vorbeck asked Mr. Tucker to explain how the process works practically. Mr. Tucker explained that public notice is given of the hearing. A court reporter is present at the county's expense. The hearing officer is there to hear the people's testimony. The hearing is heard and transcribed after which all evidence is presented. The officer then prepares the order, presenting the findings of facts and conclusion of law, which is supported by the information presented in the transcript. He explained that the commissioners then review the order and transcript, which can be very lengthy.

The commissioners spoke about the four boards that would fall under the Special Master concept. Mr. Tucker stated that the Board could implement the process with one board to try it out.

Commissioner Pauls questioned if it is only quasi-judicial cases that are heard. Mr. Tucker stated that is correct. He also questioned if the applicant would know prior to their case being heard, who would hear the case. Mr. Tucker stated that the applicant would not choose the hearing officer who would hear their case. He stated that much would depend on who the Board hired and how they chose to rotate the cases. Mr. Pauls also questioned about the hearing officer's knowledge of the code. Mr. Tucker stated that knowing the code is not necessary because the hearing officer makes the decision based on the information presented.

Mr. Tucker spoke about the Board of Adjustments in Escambia County and explained briefly about those issues considered as a quasi-judicial. He stated that a PUD is legislative, but has quasi-judicial elements to it.

Mr. Underwood questioned the cost of the hearing officer and if they are paid by the number of cases heard or how. Mr. Tucker stated that they are normally paid \$125.00 per hour and that the county absorbs a substantial amount of the cost. The county also has the option to waive fees for someone if they cannot afford it.

Commissioner Pauls asked if Escambia County has ever attempted to revert back to using the appointed boards. Mr. Tucker stated that they had not. Commissioner Rees asked Mr. Tucker if there are any negatives to the hearing officers. Mr. Tucker spoke about the right to address ones elected official. Another down side is that if the county follows its ordinance, then the people will sometimes be unhappy because they are not getting what they want. He commented that it takes about two to three years to get the process up and going.

Chairman Jones opened the floor for public comments.

Ms. Cindy Meadows questioned the cost to the county versus those who provides their services as volunteers. She also asked if anyone could speak at a hearing. She also asked about Escambia County Zoning Code and how it would work for Walton County because of not having zoning codes.

Mr. Richard Fowlkes stated that there could be many issues related to using a hearing officer. He questioned how someone would be chosen as the hearing officer. He spoke on the importance of being impartial. Chairmen Jones agreed.

Mr. Frank Hall, Zoning Board of Adjustments, questioned which method would be better. Mr. Hall pointed out several issues to consider would be: clarification of whose testimony could be heard and quality of decision. He questioned if the current system is working or not. He spoke about perception of the people and if the amount of pay would bring the quality of a hearing officer the county is looking for. He questioned if it would be better for a panel or one person to make the decision.

Chairman Jones spoke about the objectivity of the decision by the Board of Adjustment.

Attorney Ken Goldberg stated that using a hearing officer make the process very cold. The equity issues don't come into play using a hearing officer, which makes it more fair in using a hearing officer because it becomes black and white. He explained that the only way to review the record is to review the entire case. Another concern is who the hearing officer is, because of the need for prior experience. He spoke about the hiring process and the costs. He commented that it would be a good test if the county chose to use it.

Commissioner Pauls questioned if there is a difference in the time for an applicant when using a hearing officer versus going before the Board. Mr. Goldberg explained that it would be considerably longer than if the board heard the case. Mr. Vorbeck quoted Florida Statute that could determine the time frame if the Board of County Commissioners hear the case. Mr. Tucker stated that it didn't make the process longer. He also commented that the discovery issue could be used as a delay tactic.

Mr. Thomas Stein, Code Enforcement Board, commented on the experience of the Board that a hearing officer would not have. He also commented on the ability of being

hearing by ones own peers, rather than a hearing officer. He stated that he would rather present a case to a board, not one individual.

Ms. Bonnie McQuiston questioned if the commissioners rehear the case and if all the evidence is presented again. Mr. Tucker explained that at the point it is presented to the commissioners, all they are suppose to do is argue if the hearing officer correctly applied the law or not.

Mr. Steve Peterson, Planning Commission, stated that there are seven people on the Planning Commission and he voiced concern of one person hearing the cases in the case that one person could not be present for some reason. He also commented on the importance of community involvement. Mr. Peterson also suggested that policy be adopted stating that one could not be heard by the Board of County Commissioners before being heard by the Planning Commission.

Ms. Phyllis Bleweis commented on democracy between the people and the elected officials. She also commented on the pay and only one person making the decision rather than an entire board. She was opposed to this process.

Ms. Mary Neilson commented on keeping the current system, but making some notable changes including better notification. She also questioned who monitors the Master and whom does he report to. Mr. Tucker responded that the Special Master is a contract position and could be removed according to contract. He is monitored by the overall outcome of the hearings, which could take a year or two.

Mr. Tom Patton, Planning Commission, commented on the amount of evidence presented that is actually quasi-judicial. He voiced opposition to the hearing officer procedure.

Mr. Brian Bruns questioned when the hearings are heard. Mr. Tucker stated that the hearings could be heard as set forth by the Board, either in the evening or during the day.

Commissioner Rees commented that most of the comments are from people serving on various boards. He stated that he was also interested in hearing comments from others not serving on the boards as to their thoughts on a hearing officer/special master.

Ms. Anita Paige spoke about controversies and stated that she is more in favor of the boards rather than a Special Master because of having to review the evidence before hearing a case, after the Special Master has heard it. She also commented that it is much more intimidating for the individual presents their case.

Sally Merrifield, Planning Commission, commented on the current process and how many of the problems are resolved between the developers and the neighbors before the project is brought before the Planning Commission.

Ms. McQuiston commented on appointed positions by the Board and felt that a Special Master would take the politics out of many of the decisions made by the Board.

Mr. Tom Terrell, Planning Commission, asked if procedures could be established to keep individuals from going directly to the Board before the Planning Commission. Mr. Terrell commented that a Special Master could be a resident of the county and would not have to be an attorney. He did feel the necessity for the Board to be available to hear the people.

Mr. Jimmy Carter, Variance Board of Adjustments, commented on the importance of listening to the public. He felt that the current system is working well and much thought should be given to this issue.

Mr. Ed Moracy, private citizen, spoke in favor of keeping the system as it is currently.

Ms. Meadows questioned if this change is being considered because the county is loosing lawsuits and why. Mr. Vorbeck stated that Walton County has not been loosing their cases. Mr. Jones explained that this is only an idea and for consideration to determine if it would provide fairness and equity for the public. Is it a way of making it better.

Mr. Albert Paris, Planning Commission, commented on the good job that staff is doing in presenting the information. He stated that much work and research has gone into the process by staff, which makes the process easier for the Boards that hear the cases. He also stated that he would rather be heard by a Board than one individual.

Commissioner Pauls spoke on the importance of this discussion, which has focused on several issues; one being Notification. He also commented on hearing rights and evidence that is sometimes presented to the commissioners, but never presented at the Planning Commission hearing. Mr. Pauls spoke on the process of cleaning up the Comprehensive Plan and the Land Development Code. He stated that time is very important for an applicant and felt that it should not be unreasonably prolonged. Also, quality decision-making is important and should be based on policies and law that the commissioners abide by. He thanked those board members serving on the various boards for the great job they have done.

There being no further business the meeting was adjourned at 7:05 p.m.

APPROVED: _____
Larry D. Jones, Chairman

ATTEST: _____
Martha Ingle, Clerk of Court