

DECEMBER 3, 2002 – LAND USE HEARING

The Board of County Commissioners, Walton County, Florida, held a Land Use Hearing on Tuesday, December 3, 2002 at 3:00 p.m. at the South Walton Courthouse Annex.

The following Board members were present: Larry Jones, Chair, Tim Pauls, Vice-Chair, Commissioner Lane Rees, Commissioner Kenneth Pridgen, and Commissioner Ro Cuchens. Mr. Michael Underwood, County Administrator, and Attorney Gary Vorbeck, Director of Legal Services, were also present. Commissioner Pauls was not present.

Chairman Jones led with prayer following the pledge of allegiance to the American Flag. He called the meeting to order to consider final plat approval for the Dunes of Seagrove.

Commissioner Rees recused himself from this issue based on his previous involvement with the South Walton Community Council on this issue.

Attorney Vorbeck swore those individuals in who would be participating.

Mr. Mike Lane, Planning Director, appeared before the commissioners stating that the Dunes of Seagrove project is a major development that was approved under two separate development orders. The original project was 15 single-family lots and 81 condominium units on 12.3 acres. The development order was originally issued in June 1999. A revision was made to the stormwater plan and then received a less than minor review in 2000 and granted approval in Feb 2001. The project is near completion. This request is for final plat approval.

Mr. Houston Lennard, adjacent property owner, presented his opening comments. Mr. Lennard stated that the first development order was approved by the Board in June 1999. The second one has never been presented to the commissioners for approval. He stated that the stormwater issue still exists on the property. He also commented that there are two sets of construction plans on file. Mr. Lennard stated that the Board never approved the second development order. He also said that there were no provisions in the second development order for any construction plans. One set of plans dated March 3, 1999, which he states was approved and the development order was issued in June while the Circuit Court case was pending. The plans were modified in a settlement agreement and made a part of the development order by order of the court. The second development order has site plans and is completely different than the approved plan. Mr. Lennard requested that the developer correct the deficiencies.

Judge Tom McGee, neighbor to the project, appeared in opposition and stated that he is in agreement with, and supports, Mr. Lennard.

Attorney David Theriaque appeared before the commissioners on behalf of the developer. He stated that one issue needing to be determined is if the plat reflects the operative development order and site plan approved by staff. He contended that evidence would show that staff approved the site plan in February 2001. A development order was issued pursuant to the site plan and that his client built according to that site plan. Secondly, Mr. Theriaque requested that focus be placed on any deviations that occurred from the 2001 plans are, if any.

Mr. Lennard stated that the development plan dated March 1999 is the set that authorized construction. This is the set presented to the Board of County Commissioners

for approval. The site plan shows three condominium buildings as staggered in the plans. He stated that this is the only plan submitted by the developer. The plans show no stairwell, swimming pool, or tennis courts. The development agreement also stipulated that no lights would be installed if tennis courts were built. Mr. Lennard stated that the tennis courts are not even shown on the site plans and are outside of the development order and approval of the Board. Mr. Lennard stated that the decision that must be made is if the site plan of March 3, 1999 is the approved site plan.

Attorney Theriaque stated that the settlement agreement was not executed until August 1999. He stated that the initial site plan, dated March 1999, could have never been reflected in the settlement agreement since that is what caused the lawsuit. There were subsequent site plans after the March 1999 plan. Mr. Theriaque stated that the settlement agreement was executed by Mr. Lennard in August 1999 and in December 1999 by the county.

Mr. Theriaque called Mr. Mike Lane, Planning Director, who presented a site plan dated January 22, 2001. Mr. Lane stated that this site plan is the latest plan in file and assumes that it is the plan that was tied to the development order that was approved in 2001. Mr. Theriaque questioned Mr. Lane about the development order dated October 2000 and asked if it was issued after the date of the site plan. Mr. Lane stated that the development order was dated approximately one month after the site plan. Mr. Lane stated that he assumes the January 2001 site plan is the most recent because he was not on staff at the time and has no reason not to believe so. The date of the site plans fit into sequence with the other documents.

Mr. Lennard questioned Mr. Lane about the revised stormwater plan. Mr. Lane stated that the plan should have been presented to the commissioners for approval, but he was not aware of the previous process used by staff before he was hired. He agreed that a major development is required to be approved by the Board. Mr. Lennard asked if the LDC or the Comp Plan specifies what constitutes what is a less than minor development. Mr. Lane stated that the LDC distinguishes between major and minor. He further stated that a minor project is 3,500 square feet or less. Mr. Lennard questioned if the Code stipulates a method for bringing modifications to the Board. Mr. Lane stated that it does. He questioned if the plan met those requirements. Mr. Lane felt that it did not. Mr. McGee questioned if the second plan was ever approved. Mr. Lane stated that it was not according to his knowledge.

Mr. Theriaque presented the February 17, 1999 site plan and questioned what type of modifications occurred. Mr. Lane reviewed some of the changes, which included the relocation of a swimming pool, the number of lots decreased; the buildings were no longer staggered, and tennis courts were added. Discussion occurred regarding the placement of the tennis court and the staggered building. Mr. Theriaque also questioned Mr. Lane about the beachfront property located behind Mr. Lennard's home. Discussion also occurred regarding the amount of property Mr. Lennard owned at that time the plans were approved. Mr. Lane stated that the original property owned by Mr. Lennard was that portion above the elevator shaft. The portion on the gulf side was purchased later. Mr. Lane agreed that the elevator shaft was not located within 25' of the common property line between Mr. Lennard and the developer's property. Mr. Lennard stated that he owned the property prior to 1999; however, his attorney failed to file the deed.

Commissioner Cuchens questioned if these changes would have required it to come back before the Board. Mr. Lane stated that it would be at the discretion of the Director whether it was sent back before the Board or not.

Mr. Lennard presented his closing statements that related to the site plan issue. He stated that the site plan that was approved by the Board was the set dated March 3<sup>rd</sup>. The revised plan that was placed into the county's file was never approved and is of no value.

Mr. Theriaque stated that the settlement agreement is dated August 1999. The site plan was then revised to reflect the agreement. The development order was issued October 19, 2000, after the settlement agreement. He reminded the Board that evidence was presented that the latest revised plans were dated one month prior to the last development order and that his client built to the most recent set of plans.

Attorney Theriaque presented the following exhibits into the record:

- Exhibit 1 – Property Appraiser document  
(Parcel no. 19-3S-18-16080-000-0302)
- Exhibit 2 – Property Appraiser document  
(Parcel no. 19-3S-18-16080-000-0306)
- Exhibit 3 – Survey drawing
- Exhibit 4 – Color aerial photo

Mr. Lennard stated some of his concerns are the location of the dumpsters, the width of pavement on Chevis Lane, and lighting on the tennis courts. He stated that Chevis Lane is only 18 feet wide and county code requires 22 feet. Attorney Theriaque stated that the settlement agreement stipulates each of these issues and his client has abided by it.

Exhibit 5 – Declaration of Condominium was entered into the record

Mr. Lennard also stated that payment in the amount of \$1,000.00 has not yet been received. Mr. Tom McGee verbally requested that payment be submitted to the South

Walton Community Council in the amount of \$1,000.00. Mr. Theriaque agreed that payment would be made.

Attorney Theriaque called Mr. Lane to answer questions regarding the buffers. Mr. Lane testified that 100 percent buffering was not provided. Mr. Theriaque stated that the plants would require time to grow to create the visual buffer.

Mr. Lennard stated that the developer signed a statement on the development order saying that they will construct in accordance with the approved site plan, Land Development Code and Comprehensive Plan. He commented that the developer failed to provide building plans to the county. Mr. Lane stated that the plans could be in the file, but is unsure without further research.

Mr. Theriaque requested Mr. Lane to review the height issue. Mr. Lane stated that he feels the height is consistent with the code.

Exhibit 6 – Letter from Connelly & Wicker dated July 10, 2002 (with attachments totaling 5 pages)

Mr. Lennard also pointed out problems with landscape buffering. He stated that there have not been any trees planted between his property and the Dunes of Seagrove. Mr. Theriaque further stated that Mr. Lennard could have gone to court earlier if a code provision was missed, but stated that this is not the time to address this issue. Mr. Theriaque stated that Mr. Lennard had 30 days to take this issue to court. Mr. Lennard disagreed and stated that this is the proper time to make the developer comply with the code. Mr. Lane stated that this issue should have been discussed during the review process. He stated that during his review of the written proceedings, he did not see where the landscaping plans were addressed and approved. He stated that there were no landscaping plans in the January 2001 site plan, but probably existed in a previous set of

plans. Mr. Daryl Burgis, Emerald Coast Associates, stated that the landscape is deficient according to the settlement.

Mr. Lennard also addressed concerns with density bonuses. He stated that using 100 percent drought tolerance plants, three additional bonus points are earned. However, there are no drought tolerance plants used in this project. He stated that the number of allowable units would be 84. Today they have 96 units. Mr. Lane stated that at the present there is a density of 8 units per acre for Infill. Mr. Lennard stated that the development order was applied for at 7 units per acre.

Mr. Lennard stated that the developer completely cleared the land and there is not any native vegetation remaining. He also voiced concern with the site lighting, which is not turtle friendly. It was agreed upon in order to obtain the development order. Mr. Theriaque stated that there is no provision in the development order regarding turtle lighting. Mr. Lane addressed the issue regarding land clearing. He stated that in the past a fee was normally paid for either the landscaping or preservation issue, whichever one was lacking. He therefore assumed that they must have paid the fee for preservation since it was lacking.

Mr. Tom McGee stated that he was serving on the Planning Commission at the time this issue was presented. He stated that the original development was denied. The developers changed the development and a 7/0 vote by the Planning Commission occurred approving the project with the following three stipulations: turtle lighting, installation of a bike path, and inclusion of a beach access with parking. Mr. Theriaque asked Mr. McGee to read an excerpt from the March 18, 1999 Planning Commission's

minutes regarding the motion Mr. McGee referenced. There was no mention of any stipulations.

Commissioner Cuchens asked Mr. Theriaque if his client would be willing to bring the landscaping and buffers up to code. Mr. Theriaque stated that his client would comply if directed by the Board.

Chairman Jones restated the issues of concern being the landscaping/buffers, dumpster locations, and the stipulations addressed by the Planning Commission (turtle lighting, installation of a bike path, and inclusion of a beach access with parking).

Motion by Commissioner Cuchens, second by Commissioner Pridgen to approve the Dunes of Seagrove final plat contingent upon the client placing a fence around the dumpsters, bringing the landscaping/buffers into compliance with the code, to research and apply the issues addressed by the Planning Commission regarding turtle friendly lighting, the bike path, and beach access, if they were stipulated conditions. Ayes 3, Nays 0. Pridgen Aye, Jones Aye, Cuchens Aye.

The commissioners recessed briefly. The commissioners reconvened with Commissioner Rees and Commissioner Pauls present.

Motion by Commissioner Cuchens, second by Commissioner Pridgen to schedule a public hearing on December 28, 2002 to consider the Anderson Abandonment request. After further discussion, the motion was amended to hold the public hearing on February 4, 2003. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Attorney Colleen Coffield appeared before the commissioners to set a public hearing for the Fisher abandonment request and the Johnson abandonment request.

Motion by Commissioner Rees, second by Commissioner Cuchens to hold a public hearing on February 4, 2003 to consider the Fisher abandonment request. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Ms. Coffield requested approval to hold the public hearing on the Johnson abandonment prior to the end of the year. Attorney Vorbeck explained that Mr. Johnson is proposing to give a portion of property to the county in exchange for a road closure. Ms. Coffield stated that she would hold title in escrow for the county pending completion of all necessary documents. The deed would be transferred upon abandonment. Commissioner Cuchens questioned if the roadway is a government easement and if it is an access to the beach. Ms. Coffield explained that it is not being used as a public access.

Mr. Johnson explained the history of the property. He stated that the road on the north side of the property is unimproved. The access in question is directly east and adjacent to the proposed abandoned property. Mr. Johnson explained that he is proposing to exchange a 66-foot portion of property in return for the abandonment. He stated that he would deed a portion of property at the north end that would allow the county access to the adjacent easement, which leads to the beach.

Motion by Commissioner Pauls, second by Commissioner Rees to hold a public hearing on December 20, 2002 to consider the Johnson abandonment. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Mr. Lane presented the Shepherd petition for abandonment. James and Kathleen Shepherd, owners of lots 9 and 10, Crescent Caye Subdivision, are requesting the abandonment of the utility and drainage easement. The Planning Committee recommended approval contingent upon no sewer service being interrupted to Mr. Hunt's

restaurant and that the abandonment is not recorded until the sewer line is moved and passes inspection by the utility company with the relocation expenses paid by the applicant. (Exhibit 7 – planning recommendations)

Mr. Jack Rhodes, representing the applicant, appeared before the board and explained the relocation request. He stated that there would not be any interruption in service. (Exhibit 8 – letter by Regional Utilities; Exhibit 9 – letter by Thomas Stein Inc.; Exhibit 10 – letter by Regional Utilities) He stated that his client would not have any objections to the abandonment not being recorded until the sewer line has been move to assure that it meets the standards.

Mr. Derrick Flores appeared before the commissioners on behalf of Mr. Gary Hunt. (Exhibit 11 – letter by Mr. Hunt)

Motion by Commissioner Pauls, second by Commissioner Cuchens to approve the Shepherd abandonment contingent upon not recording the abandonment until the sewer line is moved and passes inspection by the utility company with the relocation expenses paid by the applicant. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Commissioner Pauls recused himself from the Carasso small-scale amendment due to his real estate office being the listing agent for the Carasso's.

Mr. Lane presented the Planning Commission's recommendation to approve the Carasso small-scale amendment. Nicholas and Eva Carasso are proposing an amendment on 3.63 acres located on Mack Bayou Road currently zoned Conservation Residential 2:1. They are seeking a change to Village Mixed Use Center. (Exhibit 12 – Planning recommendations)

Mr. Russ Aldrich, representing the applicants, appeared before the Board and displayed maps and explained the project and surrounding property classifications.

Mr. Charles Reed, adjacent property owner, stated that there is a pond and wetlands on the property. He stated that the individual who subdivided Monarch Subdivision is also opposed to the small-scale amendment. Mr. Reed stated that according to code, the property should be a minimum of five acres to be able to rezone; however, this property is only 3.63 acres.

Mr. Charles Rigdon, property owner to the east of this parcel, stated that there is already an adequate amount of Village Mixed Use property designations in this area.

Mr. Bill Bard read a letter into the record that he previously wrote to each of the commissioners. He stated that he is opposed to the amendment.

Mr. Tom McGee spoke on behalf of the South Walton Community Council and stated that they also had concerns with the possible land use change.

Mr. David Kramer stated that this is a growing community and felt that the land classification should be changed to help accommodate the growth.

Mr. Aldrich explained that other property in the area has also been changed. He also stated that although this property is only 3.63 acres, it is contiguous with other VMU properties and therefore allowed to be changed.

Mr. Steve Peterson, Planning Commission, reviewed the Planning Commission recommendations and stated that they approved the amendment. However, they felt that the results of the Mac Bayou Study should be taken into consideration first.

Mr. Lane reminded the commissioners that any type of development on this property would have to come back before the Board for approval unless it is a minor

development of less than 3,500 square feet. He also stated that the county would be notified by DEP of any development activity that would require filling of the wetlands.

Motion by Commissioner Rees to accept the Planning Commission's recommendation and approve the Carasso small-scale amendment. The motion died for the lack of a second.

Motion by Commissioner Cuchens, second by Commissioner Pridgen to deny the Carasso small-scale amendment. Ayes 2, Nays 2. Rees Naye, Pridgen Aye, Jones Naye, Cuchens Aye. Motion failed due to a tie vote.

Motion by Commissioner Cuchens, second by Commissioner Pridgen to continue the Carasso small-scale amendment until January 7, 2003. Ayes 4, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye. Commissioner Cuchens requested to see the issue relating to the buffer and pond area resolved between the landowners.

Mr. Lane presented the Planning Commission's recommendation to approve the Jones small-scale amendment. Richard and Judith Jones are requesting a change on a one-acre parcel from Residential Preservation Area to Infill. Mr. Lane reminded the commissioners that this project was previously presented during the large-scale amendments. Staff also recommended approval. (Exhibit 13 – Planning recommendations)

Ms. Nancy James stated that if the requested change is adopted then the property would be 8 units per acre. She stated that this is in her neighborhood and has concerns regarding the future use of the property if the zoning is changed. She also questioned if this is spot zoning.

Motion by Commissioner Rees, second by Commissioner Cuchens to accept the Planning Commission's recommendation and approve the Jones small-scale amendment. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye. (Ordinance 2002-20)

Chairman Jones called to order the quasi-judicial hearings and Attorney Vorbeck administered the oath to those who would be presenting testimony.

Mr. Lane presented the Planning Commission's recommendation to approve Casual Creations, a proposed development. Mr. Fred Cochran is proposing the development that consists of demolishing some existing structures with the new construction to be 18,595 square foot of retail, showroom and inventory storage on 1.25 acres designated Coastal Center. Staff also recommended approval. (Exhibit 14 – Planning recommendations)

Commissioner Pauls questioned if the traffic is de minimus and what the threshold is to be considered as de minimus. Mr. Lane stated that it is de minimus and staff does not feel this to be an issue. He stated that staff discussed referring this issue to Tipton and Associates for review, but stated that the project is out of the study area. Mr. Don Brock, Regional Engineering, further explained the project.

Motion by Commissioner Pauls, second by Commissioner Rees to accept the recommendation to approve Casual Creations proposed development. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Mr. Lane presented the Planning Commission's recommendation to approve the proposed development of Seclusion Bay Subdivision, a major development. Staff also

recommended approval. Handy Storage Development Company is proposing 53 single-family residential lots. (Exhibit 15 – Planning recommendations)

Mr. Dean Burgis, Emerald Coast Associates, appeared before the Board stating that he concurs with the proposed project. Commissioner Pauls questioned why the proposed development is concurrent by exemption. Mr. Burgis stated that the distance of the proposed project exceeds the one-half mile radius from Highway 98. He also stated that they would contribute to the sidewalk fund.

Motion by Commissioner Pauls, second by Commissioner Cuchens to approve the proposed development of Seclusion Bay Subdivision as recommended. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Mr. Lane presented the Planning recommendations for approval of the proposed development of Sherwin Williams. The proposed development is to be located at CR 283 and CR 30A in Grayton Beach. The proposed project consists of one 8,000 square foot building for tenant lease, one 5,000 square foot suite and one 3,000 square foot suite. The parcel is designated Village Mixed Use. (Exhibit 16 – Planning recommendations)

Mr. Lloyd Blue, adjacent property owner, advised the commissioners of existing problems regarding road improvements on the road adjacent to the proposed development. He stated that the underlying title continues to remain in the persons name that subdivided the property. He explained that the Property Appraiser's Office assigned a Tax ID to the property and someone now owns the road. Commissioner Pauls stated that he has received calls regarding access problems to commercial projects abutting paved roads. He stated that the county needs to work with property owners to come up

with a solution. Mr. Kramer suggested contacting the property owner and paying her for the tax deed, which he felt should have never been issued.

Motion by Commissioner Rees, second by Commissioner Cuchens to accept the Planning recommendations and approve the proposed development of Sherwin Williams. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Mr. Lane presented the Planning recommendation for approval for the Watersound PUD proposed amendment. St. Joe/Arvida is requesting to amend their development order for the Watersound Planned Unit Development, phase 3 and phase 4. (Exhibit 17 – Planning recommendations)

Mr. Nick Cassala, Arvida, appeared before the commissioners and presented the history of the project. He stated that there would be a reduction in the amount of traffic due to the changes and would therefore not be a negative impact.

Motion by Commissioner Cuchens, second by Commissioner Pauls to accept the Planning recommendation to approve Watersound PUD amendments. Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

Mr. Lane presented a request on behalf of the Good News United Methodist Church. They are requesting to utilize commercial trailers as classrooms behind the existing building. Pastor Don Kirsch stated that they anticipate using the buildings for a period of less than three years, pending construction of their new facility. Commissioner Rees thanked Pastor Kirsch for the services they provided to the community during the recent fires in south Walton.

Motion by Commissioner Rees, second by Commissioner Pauls to grant approval to the Good New United Methodist Church to utilize commercial trailers as requested.

Ayes 5, Nays 0. Rees Aye, Pridgen Aye, Jones Aye, Cuchens Aye, Pauls Aye.

There being no further business, the meeting was adjourned at 7:10 p.m..

APPROVED: \_\_\_\_\_  
Lane Rees, Chairman

ATTEST: \_\_\_\_\_  
Martha Ingle, Clerk of Court