

PLANNING AND ZONING BOARD  
REGULAR MEETING/PUBLIC HEARING

April 04, 2013, 6:00 P.M.

Hardee County Board of County Commissioners Board Room  
412 W. Orange Street, Courthouse Annex, Room 102, Wauchula, FL 33873

**MINUTES**

**Planning and Zoning Board**

Ralph Arce, present  
Don Chancey, present  
Roger Conley, Vice Chairperson, excused  
John Deer, present  
Shawna Lambert, excused  
Gordon Norris, present  
Oscar Ortiz, present

**Staff**

Kevin Denny, AICP, Planning/Develop. Director  
present  
Joshua Cheney, AICP, Planner III, present  
BJ Haney, present  
West Palmer, Mining Coordinator, present  
  
No News Media identified

In the absence of a Chairman and Vice Chairman, MOTION by Board Member Chancey, second by Board Member Deer to appoint Board Member Gordon Norris as Acting Chairman.

Acting Chairman called the Regular Meeting to order at 6:05 P.M.; a quorum was present.

Attendees pledged allegiance to the American Flag followed with prayer by Norris.

The Board was advised that the Public Notice for the Regular Meeting/Public Hearing was published in The Herald-Advocate on 03/14/13 with Affidavit of Publication on file and that advertisements/public notices were properly posted.

Notary Public Haney administered Oath to those wishing to offer testimony.

MOTION by Board Member Arce, second by Board Member Ortiz to approve Minutes of 11/01/12 Regular Meeting/Public Hearing as printed and mailed. Motion carried unanimously.

MOTION by Arce, second Ortiz to approve Minutes of 12/06/12 Regular Meeting/Public Hearing as printed and mailed. Motion carried unanimously.

Board's agenda advised there were no items for a January, February and March, 2013 regular P/Z meeting/public hearing.

Board's agenda advised the P/Z Board and Board of County Commissioners met in a Joint Meeting on 02/07/13 for the Mosaic Fertilizer LLC 2010-2011 and 2011-2012 Annual Reports, and those minutes are not ready.

Planning/Development Director Denny advised of Planning/Development Department's receipt of the resignation dated 04/04/13 of Board Member Shawna Lambert effective immediately; Board accepted resignation.

MOTION by Chancey, second by Arce to elect Norris as the P/Z Board Chairman for the ensuing year. Motion carried unanimously.

MOTION by Board Member Deer, second by Chancey to elect Board Member Conley as P/Z Board Vice Chairman for the ensuing year. Motion carried unanimously.

Agenda No. 13-01

Chairman advised of a request from the Board of County Commissioners by and through the Authorized Representative for approval to amend Article 02 and Article 03 of the Hardee County Unified Land Development Code, as amended to add land Excavation/Borrow Pit category to Table 2.29.02(B)—*Table of Land Uses*, and to create Section 3.23.00—Land Excavation to establish regulations governing all land excavation and borrow pit activities in the unincorporated areas of Hardee County, and to provide for applicability, severability and for an effective date as **ORDINANCE NO. 2013-07**.

Board and County Staff were provided with a copy of the application, Staff Report including, staff conclusion, and staff recommendation together with a copy of the draft **Ordinance No. 2013-07** prior to the 04/04/13 public hearing.

Planning/Development Planner III Cheney being sworn advised:

- currently all new borrow pits and land excavation activities that are proposed are required to be reviewed, regulated, permitted and monitored in the same way that phosphate mining activities are under Section 3.14.00--Performance Standards of the Unified Land Development Code (ULDC);
- the text amendment for a new section (3.23.00—Land Excavation) is proposed so that more appropriate regulations governing land excavation activities (mainly borrow pits) can be in place for future projects;
- as part of this process, the Land Excavation/Borrow Pit category will be added as a Major Special Exception (MSE) use to Table 2.29.02(B), ULDC and only allowed within the A-1-zoning district;
- the new section will establish more simple standards for the review and regulations of the location and operation of land excavation activities for the types of materials that are uses to meet the demands of road widening and improvements projects in the region;
- the application fees shall include an Operating Permit Fee of \$500 plus \$10 for each acre over 100 acres and an Annual Progress Report Fee of \$300; the Mining Department will be responsible for the review of all applications including the required monitoring of the project sites;
- financial security is required per the new Section 3.23.00; however, all land excavations authorized by SWFWMD or FDEP for the purpose of agricultural irrigation (including cattle ponds) shall be exempt from the financial security for reclamation requirements;
- a surety in the amount to be established by the BoCC shall be deposited into a restricted escrow account or a performance bond in that amount shall be secured; the amount will be based on quantities mined in relation to the acres reclaimed and evaluated on an annual basis;
- the surety for reclamation must be for 18 months or the length of the permit plus six months, whichever is less; it shall be in a form that is acceptable to the Mining Coordinator, the County Engineer, the Board Attorney subject to final acceptance by the BoCC;
- the surety for reclamation will require renewal on an annual basis until the permitted mining operation is completed, and, at the time of renewal, the amount of the surety will be adjusted for reclamation performed and any changes in quantity to be mined;
- the proposed Section 3.23.00 will also address—Reuse of Property Excavated, Reclamation of Excavated area, Surrounding Land Use, Transportation Concerns, Environmentally-Sensitive Areas, Water Quality and Quantity, Drainage, Public Safety, Fugitive Dust attenuation and Noise Levels;
- the proposed Section 3.23.00 will be used in conjunction with the provisions for an MSE Use permit; therefore, like any other MSE application of request, any newly-proposed land excavation or borrow pit projects that come before the BoCC may also be approved with additional conditions of approval in order to address compatibility or any other potential off-site impacts.

Cheney advised that in addition to the new section, the staff also recommends that Land Excavation be clearly defined in Article 9 of the ULDC as the removal of sand, dirt or any other earthen material from one location to be used or sold for fill in another location resulting in an excavation pit which may also be known as a 'borrow pit'.

The Staff Report cited the staff's recommendation that Land Excavation be clearly defined in Article 09—Definitions of the Code as . . . . *the removal of sand, dirt or any other earthen material from one location to be used or sold for fill in another location, resulting in an excavation pit which may also be known as a 'borrow pit'.*

Draft ordinance was discussed.

Chancey spoke to paragraph five, page one of the Staff Report requesting that the language there and in the proposed ordinance ensure that cattle ponds and agriculture are exempt from the Major Special Exception process . . . . no permits or financial security to be required if the excavated material is not taken off site.

Cheney read the Staff's recommendation for approval into the record, to-wit:

The Planning and Development Department, based on the information provided, finds that the proposed text amendment request is consistent with the Hardee County Unified Land Development Code and is consistent with the Hardee County Comprehensive Plan; therefore Staff recommends the Planning/Zoning Board recommend approval of Agenda No. ULDC-13-01 as Ordinance No. 2013-07 to the BoCC; entered the Staff Report and his testimony into the record; no objections were presented.

Chairman called for public input; none received.

MOTION by Chancey second by Arce to **RECOMMEND APPROVAL** to the Board of County Commissioners for Agenda No. 13-01 to amend Article 02 and Article 03 of the Hardee County Unified Land Development Code, as amended to add land Excavation/Borrow Pit category to Table 2.29.02(B)—*Table of Land Uses*, and to create Section 3.23.00—Land Excavation to establish regulations governing all land excavation and borrow pit activities in the unincorporated areas of Hardee County, and to provide for applicability, severability and for an effective date as **ORDINANCE NO. 2013-07** with the Board's proposed changes regarding the exemption of agriculture based on the Staff Report and recommendation for approval, and based on the testimony presented, and the evidence received in the public hearing. Motion carried unanimously.

Chairman advised that BoCC to hold a first public hearing and receive a recommendation from the Planning/Zoning Board on Thursday, April 18, 2013, 6:05 P.M. or as soon thereafter, and a second public hearing for adoption on Thursday, May 02, 2013, 8:35 A.M. or as soon thereafter.

#### Agenda No. 13-02

Chairman advised of a request from the Board of County Commissioners by and through the Authorized Representative for approval of an Amendment to Article 07 of the Hardee County Unified Land Development Code, as amended to create a new zoning process entitled Mining—Major Special Exception as Section 7.17.00 and to provide for applicability, severability and for an effective date as **ORDINANCE NO. 2013-08**.

Board and County Staff were provided with a copy of the application, Staff Summary from the Hardee County Mining Department including staff request and a copy of the draft **ORDINANCE NO. 2013-08** prior to the 04/04/13 public hearing.

Hardee County Mining Coordinator Palmer being sworn explained the change in the DRI (Development of Regional Impact) stating that due to fairly recent legislative changes, phosphate mining projects are no longer required to complete and submit an Application for Development Approval through the DRI process; as a result of this change, County Staff has incorporated all relevant questions from the DRI process into a mining specific permit that will be called the Mining Major Special Exception Use Permit (MMSE); each company proposing a new project to extract phosphate or make substantial changes (criteria for substantial changes are located in the MMSE) to an existing project within Hardee County will be required to complete this application and submit to the County for review and approval.

Palmer advised that the Board has a copy of the Staff Summary and draft use permit (as contained in the draft Ordinance No. 2013-08).

Palmer advised that staff recommends approval of Ordinance No. 2013-08; entered the Staff Summary and his testimony into the record; no objections were presented.

Chairman called for public input; none received.

MOTION by Chancey second by Board Member Ortiz to **RECOMMEND APPROVAL** to the Board of County Commissioners for Agenda No. 13-02 for approval of an Amendment to Article 07 of the Hardee County Unified Land Development Code, as amended to create a new zoning process entitled Mining—Major Special Exception as Section 7.17.00 and to provide for applicability, severability and for an effective date as **ORDINANCE NO. 2013-08** based on the Staff Summary and request for approval, and based on the testimony presented, and the evidence received in the public hearing. Motion carried unanimously.

Chairman advised that the BoCC to hold a first public hearing and receive a recommendation from the Planning/Zoning Board on Thursday, April 18, 2013, 6:05 P.M. or as soon thereafter, and a second public hearing for adoption on Thursday, May 02, 2013, 8:35 A.M. or as soon thereafter.

#### Agenda No. 13-03

Chairman advised of a request from the Board of County Commissioners by and through the Authorized Representative for approval of an Amendment to the Hardee County Unified Land Development Code, as amended to add language prohibiting the use of Simulated Gambling Devices in the unincorporated areas of Hardee County and to provide for Definitions, applicability, severability and for an effective date as **ORDINANCE NO. 2013-09**.

Board and County Staff were provided with a copy of the application, Staff Memorandum of Findings including Definitions and Staff recommendation, together with a copy of a Florida Attorney General Advisory Legal Opinion dated 07/19/2011, and a copy of the draft **ORDINANCE NO. 2013-09** prior to the 04/04/13 public hearing.

Denny being sworn advised that:

- internet or sweepstakes cafes have multiplied across Florida;
- the BoCC has issued two moratoriums prohibiting internet or sweepstakes cafes;
- the State House of Representatives has voted to prohibit the use of simulated gambling devices, the State Senate is voting today;
- Hardee County is following Seminole County's lead where that County enacted local laws to clearly prohibit simulated gambling in their Land Development Codes (LDRs); Seminole County was challenged and they won their legal battle.

Denny stated that simulated gambling device means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee.

Denny entered the Staff Memorandum of Findings, Definitions and Recommendation into the record stating that staff recommends the addition of the use of Simulated Gambling Devices as a prohibited use in Table 2.29.02(B) of the ULDC, and recommends the addition to Article 09, ULDC of the definitions as cited in the Staff Memorandum.

Denny entered his testimony into the record; no objections were presented.

Chairman called for public input; none presented.

Board discussed simulated gambling devices and the contents of Ordinance No. 2013-09; discussed bingo games and lottery games.

MOTION by Arce second by Chancey to **RECOMMEND APPROVAL** to the Board of County Commissioners for Agenda No. 13-03 for approval of an Amendment to the Hardee County Unified Land Development Code, as amended to add language prohibiting the use of Simulated Gambling Devices in the unincorporated areas of Hardee County and to provide for Definitions, applicability, severability and for an effective date as **ORDINANCE NO. 2013-09**. and based on the testimony presented, and the evidence received in the public hearing. Motion carried unanimously.

Chairman advised that BoCC to hold a first public hearing and receive a recommendation from the Planning/Zoning Board on Thursday, April 18, 2013, 6:05 P.M. or as soon thereafter, and a second public hearing for adoption on Thursday, May 02, 2013, 8:35 A.M. or as soon thereafter.

Board was advised of next REGULAR P/Z MEETING/PUBLIC HEARING, Thursday, May 02, 2013, 6:00 P.M.

With no further business, Board adjourned at 6:48 P.M.

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B.J. Haney, Acting Recording Secretary