

MINUTES
LAKE COUNTY PLANNING AND ZONING BOARD
April 24, 2013

The Lake County Planning and Zoning Board met on Wednesday, April 24, 2013 in County Commission Chambers on the second floor of the County Administration Building to consider petitions for Rezonings and Land Development Regulation amendments.

The recommendations of the Lake County Planning and Zoning Board will be transmitted to the Board of County Commissioners (BCC) for their public hearing to be held on Tuesday, May 21, 2013 at 9 a.m. in the County Commission Chambers on the second floor of the County Administration Building, Tavares, Florida.

Members Present:

Kathryn McKeeby	District 1
Ted DeWitt	District 2
Timothy Morris	District 3
Rick Gonzalez	District 4
Paul Bryan, Chairman	District 5
Kasey Kesselring, Vice Chairman	At-Large Representative

Members Not Present:

Debbie Stivender	School Board Representative
Donald Heaton	Ex-Officio Non-Voting Military Representative

Staff Present:

Amye King, AICP, Growth Management Director
Brian T. Sheahan, AICP, Planning Manager, Planning and Community Design Division
Steve Greene, AICP, Chief Planner, Planning and Community Design Division
Melving Isaac, Planner, Planning and Community Design Division
Donna Bohrer, Office Associate, Planning and Community Design Division
Erin Hartigan, Assistant County Attorney
Ross Pluta, Engineer III, Public Works
Scott Catusus, Environmental Specialist, Conservation and Compliance Department
Courtney Vincent, Clerk, Board Support

Chairman Paul Bryan called the meeting to order at 9:01 a.m. and noted that a quorum was present. He led the Pledge of Allegiance and Kasey Kesselring, Board Member, gave the invocation. Chairman Bryan confirmed that the meeting was properly noticed and explained the procedure for hearing cases on the consent and regular agendas, stating that they only hear the cases that are on the regular agenda individually. He stated that all exhibits presented at this meeting by staff, owners, applicants, and those in support or opposition must be submitted to the Recording Secretary prior to proceeding to the next case. He added that this Board is a recommending board only, and the Board of County Commissioners will be hearing these cases later this month when a final determination will be made.

TABLE OF CONTENTS

<u>TAB NO:</u>	<u>CASE NO:</u>	<u>OWNER/APPLICANT/AGENT/PROJECT</u>
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Agenda Updates

Consideration of Minutes April 3, 2013

CONSENT AGENDA

Tab 1	PH#11-13-1	Cirelli/Volsilla Property Rezoning
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REGULAR AGENDA

Tab 2	MCUP#13/5/1-4	Professional Dirt Services/Mining CUP
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Tab 3	LPA#13/3-3T	Green Swamp Rural Support Policy (Postponed until May 29, 2013)
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Tab 4	LDR Amendment	LDR Amendment Non-Conformities
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Tab 5	LDR Amendment	LDR Amendment Accessory and Temporary Structures and Uses
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Adjournment

MINUTES

MOTION by Tim Morris, **SECONDED** by Kathryn McKeeby to **APPROVE** the April 3, 2013 Lake County Planning and Zoning Board Public Hearing minutes, as submitted.

FOR: McKeeby, Morris, DeWitt, Gonzalez, Bryan, Kesselring

AGAINST: None

MOTION CARRIED: 6-0

AGENDA UPDATES

Mr. Brian Sheahan, Planning and Community Design Manager, stated that a 30-day continuance request had been received for Tab 3, LPA#13/3-3T, Green Swamp Rural Support Policy by the Applicant in order to work out specific details of the requested amendment. He announced that the agenda item would be brought back before the Board at the next Planning and Zoning Board meeting on Wednesday, May 29th, 2013, and staff supported the continuance request.

Mr. Bryan requested that Tabs 4 and 5, LDR Amendments for Non-Conformities and for Accessory and Temporary Structures and Uses, be moved to the Consent Agenda because no public speaker cards had been received for those two agenda items.

Mr. Morris mentioned that Page 8 of the proposed ordinance stated that a group home was limited to five people at any one time, and he asked whether this stipulation would affect group homes with more than five people.

Mr. Sheahan replied that the stipulation was based on the Florida Statute, and he explained if there were more than five people, then it became classified as a family residential home and required a higher level of approval under the County Zoning Codes. He noted that the addition was added to ensure future staff were provided clear guidance on these types of uses so that they were treated as single family residences as required by state law.

MOTION by Kasey Kesselring, **SECONDED** by Kathryn McKeeby to **APPROVE** the continuance request for Tab 3, LPA#13/3-3T for the Green Swamp Rural Support Policy.

FOR: Kesselring, McKeeby, DeWitt, Morris, Gonzalez, Bryan

AGAINST: None

MOTION CARRIED: 6-0

MOTION by Tim Morris, **SECONDED** by Ted Dewitt to move Tabs 4 and 5 to the Consent Agenda.

FOR: Morris, DeWitt, McKeeby, Gonzalez, Bryan, Kesselring

AGAINST: None

MOTION CARRIED: 6-0

CONSENT AGENDA

Mr. Bryan stated that Mr. Joseph Szymborski, a resident of the Woodlands Subdivision in Groveland adjacent to the subject property, had submitted a public speaker card in support of Tab 1, PH#11-13-1 for Cirelli/Volsilla Property Rezoning, but he did not wish to address the Board.

Tab 1	PH#11-13-1	Cirelli/Volsilla Property Rezoning
Tab 4	LDR Amendment	LDR Amendment Non-Conformities
Tab 5	LDR Amendment	LDR Amendment Accessory and Temporary Structures and Uses

MOTION by Kathryn McKeeby, SECONDED by Ted DeWitt to APPROVE the Consent Agenda, consisting of Tabs 1, 4, and 5.

FOR: McKeeby, DeWitt, Morris, Gonzalez, Bryan, Kesselring

AGAINST: None

MOTION CARRIED: 6-0

REGULAR AGENDA

Mr. Sheahan illustrated on the overhead monitor that all of the cases on the Agenda were properly advertised.

CASE NO: MCUP# 13/5/1-4 **TAB NO. 2**

OWNER: Professional Dirt Services, Inc.
APPLICANT: Kenneth R. "Ted" Wicks, P.E.
PROJECT NAME: Professional Dirt Services

Mr. Melving Isaac, Planner, Planning and Community Design Division, presented Case No. MCUP#13/5/1-4, Professional Dirt Services. He stated that the agriculturally zoned property was designated as Rural Future Land Use Category (FLUC), consisted of approximately 14 acres, and was located in the Eustis area northwest of the intersection of CR 439 and SR 44. He added that the property was located within the Wekiva-Ocala Rural Protection Area and Wekiva Study Area, but outside the Wekiva River Protection Area. He pointed out that the Comprehensive Plan and Land Development Regulations (LDR) allowed for mining activity in the Rural FLUC with the issuance of a Conditional Use Permit (CUP). He noted that a borrow pit had been started on the property in the 1960s, and Construction and Demolition (C&D) landfill operations began in the 1980s, but a 2002 Consent Agreement between the Applicant and the County required use of the borrow pit to cease until all permits were obtained, established limitations and conditions for the C&D Debris Disposal Facility to only allow C&D debris generated by Professional Dirt Service (PDS), and required limits and conditions as allowed under a Florida Department of Environmental Protection (FDEP) permit. He reported that the Applicant was requesting to begin excavation of the borrow pits and stated that

the proposed ordinance would only allow for disposal of C&D materials from PDS on the property and would require an operating plan, a reclamation plan, water monitoring plan, a noise study, a traffic study, and a traffic management plan. He added that the ordinance also imposed conditions, including what materials could be accepted for disposal, the inspection of trucks prior to disposal, and requirements for phasing, pile height, ground water level, air quality, and hours of operations. He mentioned that the LDR required a 200-foot setback from residentially zoned property and 100-foot setback from all other property lines, and the Applicant was requesting a waiver from those requirements and instead wished to maintain a 50-foot setback along all property lines, which was consistent with the approved 2012 FDEP permit. He specified that the 50-foot setback was supported pending approval by the Board of County Commissioners (BCC). He stated that the application request was consistent with the Comprehensive Plan and LDR, and staff recommended approval of the CUP request.

Mr. Bryan asked why the property was not required to have liners.

Mr. Isaac replied that the FDEP did not require liners because of the types of materials disposed of on the property. He added that the 50-foot setback had been approved by the FDEP since 2001.

Mr. Kesselring asked who was responsible for monitoring the conditions of the property and if there was a clear definition of what constituted construction debris.

Mr. Isaac replied that the property would be monitored by FDEP in conjunction with County Code Enforcement personnel. He also noted that the proposed ordinance contained specifications for both the inspection requirements and the definition of construction and demolition debris.

Mr. DeWitt asked how the County would enforce the correction of a Code violation by the Applicant.

Mr. Scott Catusus, Environmental Specialist, Conservation and Compliance Department, replied that a Notice of Violation would be issued if there was a violation, providing the party at fault a set amount of time to correct the violation before fines were imposed and the issue was brought before a special magistrate of the Code Enforcement Board and/or the CUP was revoked. He added that a lien would be put on the property to ensure the party at fault would pay the fines. He explained that if the State required the property to be bonded, the County would allow a different method of credit to avoid the property being double-bonded.

Mr. Gonzalez asked if PDS had had any Code Enforcement violations.

Mr. Catusus replied that they had not had a violation since he had begun working for the County, but there might have been a violation in the past.

Mr. Gonzalez asked why the proposed ordinance prohibited the disposal of gypsum wallboard at the PDS landfill.

Mr. Isaac replied that the neighboring property owners had requested a provision prohibiting gypsum wallboard during one of the public hearings, and the Applicant had agreed.

Mr. Jim Crawford, an attorney representing PDS, addressed the earlier question regarding the 50-foot setback, explaining that the 50-foot setback had been in the original settlement agreement and had been included in the FDEP permits since that point and only applied to the C&D landfill. He mentioned that a previous request to go before the Board had been to open the landfill to outside

C&D waste as well as to create a borrow pit, but there had been so much opposition to the request that the application had been withdrawn. He stated that the current request was only for the borrow pit, and the Applicant was not requesting any changes to the status of the current C&D operations. He pointed out that there had been a borrow pit onsite until it was forced to close in 2002 and stated that the Applicant wished to open the borrow pit in order to sell dirt to public works projects within or near the Wekiva basin and mitigate the impact of the poor economy that necessitated the addition income such a venture would generate. He mentioned that the Applicant had agreed to the conditions in the ordinance that posed restrictions on the C&D operations in an effort to address the concerns of the neighboring property owners, and he clarified that there were currently no such County-mandated restrictions in place. He commented that the water monitoring plan had been an important issue with the neighboring property owners, and he stressed that the FDEP regulations ensured that the materials allowed in the landfill would not contaminate the groundwater. He informed the Board that PDS had a trained licensed spotter who inspected every load of C&D debris coming into the landfill, and that there were seven permanent wells installed for the purpose of monitoring the water. He reported that PDS had never had a water quality violation, though there had been elevated levels of nitrates upstream from the property and there were elevated levels of iron and aluminum both upstream and downstream that were determined by FDEP to be naturally occurring.

Mr. DeWitt asked how many yards of fill would be hauled offsite and how many yards of C&D were being brought in to the landfill.

Mr. Crawford replied that approximately between 400,000 and 500,000 yards of fill would be hauled offsite. He explained that because they were only allowed to bring in C&D debris from PDS job sites, the intake amount was sporadic.

Mr. Dan Cordle, owner and President of PDS, added that it depended on the scope of the jobs that PDS was currently working on, so the amount could vary from as little as 200 yards a month or as much as 3,000 yards, but they would eventually bring in enough to replace the dirt being removed from the borrow pit.

Mr. Crawford mentioned that a plan had also been prepared to bring in approximately the same amount of C&D to the landfill without removing the dirt from the site.

Mr. DeWitt asked if the current C&D landfill on the property was active.

Mr. Crawford replied that it was fully permitted, active, and was inspected monthly by the County and FDEP.

Mr. Bryan asked how long the FDEP permit was good for.

Mr. Cordle replied that it was good for five years.

Mr. Gonzalez asked what the conditions were that lead to the 2002 consent agreement.

Mr. Crawford replied that the consent agreement was in response to complaints of illegal mining, because Mr. Cordle had believed that he had the ability to continue to take dirt offsite for his own projects based on a grandfathered borrow pit, but was informed by the County that there was no legal authority to grandfather the borrow pit.

Mr. Tim Trott, concerned citizen, addressed the Board in opposition to the CUP request and played a

short movie expressing the concerns of some of the neighboring property owners, including Ms. Jenny Boyd and Mr. Jeff Freeman, regarding issues with water quality, erosion, traffic, and road maintenance resulting from the activities of PDS.

Ms. Jenny Boyd, a property owner neighboring PDS, asked the Board to deny the CUP request. She stated that an application for permit from FDEP made by PDS in 1990 had indicated that the planned active life of the facility would be between three and five years, but it had been open for 23 years. She mentioned that PDS had received three letters of noncompliance in the last year and a half from FDEP which addressed issues such as not having a trained operator available onsite for the disposal of a load of waste, not having a load of waste inspected by a trained spotter, having unauthorized vehicles dispose of C&D waste, no personnel onsite at time of inspection, and not installing berms and proper signage. She opined that the operational practices of PDS were disturbing and posed the question that if such mismanagement currently exists, how can PDS be expected to honor the conditions imposed in the proposed ordinance. She then displayed photographs she had taken on June 18, 2012 of a PDS truck leaving the property and hauling the dirt to a construction site where a driveway was being built, and of two different PDS trucks leaving PDS with their beds filled with dirt and then returning empty later. She noted that she had turned the photos and a video she had taken of the trucks into County Code Enforcement but had not followed up with the complaint. She mentioned she had spoken with Mr. Catusus regarding the complaint, and he had informed her that PDS was not authorized to remove dirt from their property. She stressed that there would be negative environmental impacts and the public would be at risk if PDS was allowed to continue operations. She stated a plan needed to be created that would include a closure date for the site.

Mr. Ken LaRoe, a property owner neighboring PDS, addressed the Board in opposition to the CUP request. He emphasized that PDS had been before the Board and BCC numerous times without success, and each time PDS returned, those in opposition had to take time off of work and many of them had spent thousands of dollars over the years fighting these CUP requests. He stressed that PDS was a chronic violator of any restrictions placed upon them and had no regard for the community. He opined that it did not matter how many jobs they provided the County or how long they had been in operation because they lived off of the community instead of in the community. He remarked that the argument Mr. Crawford made that removing the dirt would allow the pit to close quicker was the opposite of the argument made for the previous CUP request when it was stated that taking in outside C&D would close the pit sooner, and he stated that removing the dirt would not close the pit sooner. He commented on the dangers the increased truck traffic would pose on the narrow County-maintained road, and noted that currently the trucks began making trips as early as 5:00 a.m. and could run as late as 7:00 p.m. because there were no hours of operation in place at this time. He implored the Board to deny the CUP request.

Mr. Crawford stated that the materials that Ms. Boyd had photographed leaving PDS were asphalt millings, and he clarified that PDS was allowed to use recycled materials from the property. He stressed that PDS had not removed any dirt from the property since 2001. He stated that there were currently no limitations to hours of operations in the FDEP permit, but the proposed ordinance required the hours of operations be limited to between 7:00 a.m. to 7:00 p.m. Monday through Friday, with 7:00 a.m. to noon hours on Saturday and no hours on Sunday. He opined that the limitations of the proposed ordinance would be better for their neighbors because right now PDS could operate early in the morning. He stated that the monitoring wells have never shown a violation in the 13 years that they have been in operation, and he explained that in regards to the operations of the facility, the FDEP Notice of Noncompliance was not the same as a violation. He also mentioned that the proposed ordinance required a traffic management plan that would help address the concerns that neighbors had stated. He explained that PDS had to show legal ability to move the dirt from the property before they could put in a bid with the primary contractors on the SR

429 project, and this prevented PDS from providing a start and end date for the project as well as any other specifics for the proposed borrow pit at this time. He added that the proposed ordinance required PDS to go before the BCC to gain approval for the project and the traffic management plan. He surmised that the project would probably be out within two and a half months once their contribution to the SR 429 project began.

Ms. Boyd asked if there was a time frame for the removal of the asphalt millings.

Mr. Wicks replied that the FDEP permit included a required recycling component, so if materials that could be recycled were received, it was collected in a container and then hauled offsite. He explained that Mr. Cordle had accepted some millings that he thought he could store onsite before recycling it back into the job market, but it was determined that the millings fell outside the parameters of the settlement agreement. He noted that the large stockpile of millings was gradually being taken back out into the job market and disposed of. He also mentioned that PDS also brought in mixed-use soil material from job sites that might have broken asphalt or concrete in it, separated the debris from the soil, and then recycled the soil at another job site. He stressed that the trucks were not hauling native dirt from the site, but rather recycled soil from other areas. He estimated that the pile of recycled asphalt millings would be removed within the next six months.

Mr. Crawford addressed Mr. LaRoe's question regarding shortening the life of the C&D facility, stating that he had misspoken. He clarified that he did not believe that removal of the dirt would lengthen the life of the mine, but the only way to shorten the life of the mine would be to open it up to outside C&D. He stated that PDS was not asking to open the C&D to outside sources at this time, and there was no telling just how long the landfill would remain open since the C&D had to trickle in from PDS job sites.

Mr. Bryan asked whether Mr. Crawford had estimated that 400,000 to 500,000 yards of dirt would be removed over the period of several months once the contract was obtained.

Mr. Cordle replied that anywhere from 2,500 to 4,000 yards of dirt could be removed per day in that suggested time frame.

Mr. Crawford added that by those estimates, it would take closer to 100 days for the dirt to be completely removed.

Mr. Cordle explained that they could not provide a start date for when the dirt would be removed, because they needed the permit in order to sell the dirt. He estimated that if PDS won the bids he hoped to get, which were being bid in June, the dirt could be removed before the end of the year.

Mr. Crawford added that the proposed ordinance required PDS to receive BCC approval for each of the dirt-hauling projects.

Mr. Bryan asked if PDS would be held responsible for any damages to the roads.

Mr. Ross Pluta, Engineer III, Public Works, replied that CR 439 operates at about 20 to 30 percent of capacity and SR 44 operates at about 60 percent capacity, so the roads could accommodate the additional traffic. He also stated that those roads were designed for commerce and could handle the weight of the trucks.

Mr. Gonzalez asked if iron and aluminum that had been found in elevated levels in the water monitoring wells were present in both the upstream and downstream wells.

Mr. Wicks replied that the seven wells had been monitored twice a year for nearly 14 years, and even though there has been the occasional time when the level for one of the aforementioned contaminants was above the maximum contamination level, those elevated levels were determined to be natural occurrences. He added that the cases of elevated nitrate levels had been documented in the upstream well, which indicated that the contamination was either natural or from another source than PDS. He stated that PDS was currently in compliance with the drinking water standards for both their shallow and deep wells, and he specified that the FDEP permit required PDS to monitor the wells twice a year and to conduct an annual trend analysis of the findings. He mentioned that their landfill was required to remain a minimum of five feet above the estimated seasonal high water table under the property. He also mentioned that a geotechnical study performed in 1996 determined that there was a confining layer of clay beneath the property that acted in a similar function as a liner, and it was because of this that FDEP did not require PDS to have a liner for their landfill.

Mr. Bryan asked how the proposed ordinance would strengthen the requirements for water monitoring beyond what the FDEP permit already required.

Mr. Crawford replied that the proposed ordinance gave the County more local control and enforcement power over the water monitoring.

Mr. DeWitt asked how long the C&D landfill would be in operation and whether the removal of the remaining fill would create more volume for the C&D landfill. He also asked about the grading levels of the finished landfill.

Mr. Crawford replied that there was still a large volume of space to fill, and the closing date could not be estimated at this time with the sporadic intake of C&D debris. He stressed that the requested CUP would not extend the life or increase the volume of the C&D landfill. He also stated that the grading was limited by the FDEP permit and was consistent with the local surrounding grade.

Mr. Gonzalez remarked that a previously displayed copy of an FDEP permit for PDS from 1990 mentioned the planned active life of the facility to be between three and five years.

Mr. Crawford explained that Mr. Cordle's original plan had been to open a commercial C&D landfill to outside interest and drastically shorten the life of the mine, but that plan had never come to fruition.

Mr. LaRoe questioned whether allowing the nonconforming use of the property would be a violation of the County's LDR.

Mr. Wicks replied that it was not considered mining unless the materials were taken offsite.

Mr. Crawford added that borrow pits were separate from mines and allowed in the Comprehensive Plan and LDR.

Mr. Sheahan noted that borrow pits were specifically allowed by the Comprehensive Plan and the mining ordinance, so there was no issue of nonconformity.

The Chairman closed the public hearing and reserved comment to the Board.

Mr. DeWitt asked whether the traffic study would require turn lanes in and out of the pit to be added to the existing road.

Mr. Pluta replied the traffic study would determine the number of trips the trucks would take, but would not determine whether or not a turn lane was needed. He specified that the traffic management plan would determine whether turn lanes would be justified, whether to have a Sheriff's deputy onsite to direct traffic, or whether a different option would be more appropriate since the project was estimated to last only a few months.

Mr. Kesselring asked whether the Applicant could continue to operate the C&D landfill.

Mr. Sheahan replied that PDS could continue to operate the C&D landfill subject to the requirements of the FDEP permit and settlement agreement. He clarified that if the proposed ordinance was approved, then PDS would be regulated by the conditions of the Mining CUP, which required stricter regulations than what was currently in place.

Mr. Gonzalez opined that there was an irrational fear of water contamination from the neighboring property owners and that the borrow pit would not affect that situation one way or another.

MOTION by Rick Gonzalez, SECONDED by Kathryn McKeeby to APPROVE rezoning request No. MCUP#13/5/1-4 for a Mining Conditional Use Permit for Professional Dirt Services.

FOR: Gonzales, McKeeby, Bryan

AGAINST: DeWitt, Morris, Kesselring

ABSENT: Stivender

MOTION FAILED: 3-3

The Chairman asked whether there was another motion or if the Board wanted to send the case to the BCC without a recommendation.

Ms. Hartigan also stated that the vote could be treated as a denial because the motion failed to pass.

Mr. Kesselring moved to send the case before the BCC without a recommendation from the Board.

Ms. McKeeby seconded the motion.

Mr. Bryan stated that he would vote against this motion because it was the purpose of the Board to make a recommendation to the BCC.

Mr. Kesselring rescinded his previous motion and moved to deny the Mining CUP request.

Mr. Bryan stated that he would be voting against this motion because there was a favorable recommendation from staff, there was no evidence that there would be any further contamination on the site, and the County would have great control of the site with the proposed ordinance.

Mr. DeWitt opined that there were traffic issues from the layout of the roads that needed to be addressed.

Mr. Bryan replied that the traffic issue would be addressed with the traffic study.

MOTION by Kasey Kesselring, SECONDED by Tim Morris to DENY rezoning request No. MCUP#13/5/1-4 for a Mining Conditional Use Permit for Professional Dirt Services.

FOR: Kesselring, Morris, Dewitt

AGAINST: McKeeby, Gonzales, Bryan

ABSENT: Stivender

MOTION FAILED: 3-3

The Chairman stated that because of the two failed motions, the case would go to the BCC as a failed motion.

Mr. Crawford requested that the Board members state the reasons behind their vote for the record.

Mr. Kesselring expressed his concern regarding how the property had been handled to date and opined that there were not enough standards in place at the County level for monitoring such things as the type of debris being dumped on the site. He remarked that there had been some reasonable concerns regarding violations, even if the violations had not required PDS to be shut down. He opined that it was good for a business to demonstrate that it was capable of handling its current operations before requesting more when that business came before a recommending body. He stated that he would have been more comfortable moving forward with the approval if PDS had demonstrated a greater history for properly managing its existing operations.

Mr. Morris expressed his concern regarding the lack of an end date for the project.

Ms. McKeeby stated that she was in support of approving the CUP request because the proposed ordinance would provide the County with greater control over the entire project instead of just one section. She opined the same problems would continue without approval of the proposed ordinance.

Mr. Gonzalez opined that many of the accusations made during the hearing were unfounded and that there was an irrational fear of water contamination expressed by neighboring property owners to PDS. He stated that if the proposed ordinance had been passed, it would have created more jobs, imposed greater oversight of the operations, and would have been beneficial to both sides.

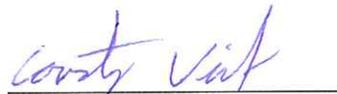
OTHER BUSINESS

There was no other business to be addressed.

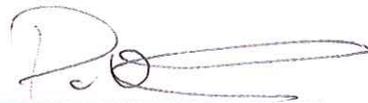
ADJOURNMENT

There being no further business, the meeting was adjourned at 10:38 a.m.

Respectfully submitted,



Courtney Vincent
Clerk, Board Support



Paul Bryan
Chairman