

MINUTES
LAKE COUNTY MINING COMMITTEE
April 19, 2012

The Lake County Mining Committee met on Thursday, April 19, 2012 in the Commission Chambers on the second floor of the County Administration Building.

Members Present:

Tracy Mouncey, Chairman
Nancy H. Fullerton
Kraig McLane
J. Michael O'Berry
Douglas Dufresne, P.G.
Steve Adams
Commissioner Welton G. Cadwell, Liaison

Staff Present:

Brian T. Sheahan, AICP, Planning Manager, Planning and Community Design Division
Scott Catusus, Environmental Specialist
Erin Hartigan, Assistant County Attorney
Anita Greiner, Chief Planner, Planning & Community Design Division

Outside Agency Staff:

Rebecca Jetton, Administrator of the Areas of Critical State Concern Program,
Department of Economic Opportunity

Chairman Tracy Mouncey called the meeting to order at 9:31 a.m. and led the Pledge of Allegiance.

MINUTES

MOTION by Nancy Fullerton, **SECONDED** by Steve Adams to **APPROVE** the March 8, 2012 Lake County Mining Committee minutes, as submitted.

FOR: Mouncey, Fullerton, McLane, O'Berry, Dufresne, Adams

AGAINST: None

NOT PRESENT: None

MOTION CARRIED: 6-0

OPENING REMARKS

Brian T. Sheahan, Planning Manager, introduced staff and stated that a brief summary was created for each major objective and issue, copies of which were provided to the Committee. He stated that the Committee will be determining if the objectives and issues are sufficiently addressed in County policies and regulations or by other agencies; or, will additional regulations be necessary to protect the resources in the Green Swamp. Mr. Sheahan also stated that staff initiated changes to the current mining regulations in the Land Development Regulations (LDRs) for consistency with the 2030 Comprehensive Plan.

OBJECTIVES AND ISSUES REVIEW

Nancy Fullerton, Committee member, stated that Alliance for the Protection of Water Resources (APWR) is concerned and feels that sand mining should be prohibited within the Green Swamp and that expansion of existing sand mines is questionable. She asked if the County can make more stringent laws to protect the Green Swamp.

Mr. Sheahan stated that the County can adopt more stringent rules unless they are pre-empted by the State. Ms. Fullerton added that the Committee needs to make sure protective laws remain in the Code.

Tracy Mouncey, Committee member, stated that mines are regulated by the Water Management Districts and the County and there are safeguards in place. She asked what scientific data is used as the basis to prohibit mining in the Green Swamp, or is the issue the use of the land after the mining is completed. She commented that this is two separate issues and that development of the site, after mining is completed, is regulated in another section.

Mr. Sheahan commented that mining has several aspects; zoning, site plan, operation and reclamation.

Ms. Mouncey asked if the use of the property, after the mining is complete, is under the purview of this Committee. Ms. Fullerton responded that she feels it is a big part of what the Committee should be looking at. She pointed out that the protection comes after the reclamation is complete.

Mr. Sheahan informed the Committee that their tasks are noted at the top of the Agenda; he added that they are tasked with evaluating whether additional protections from mining are necessary for new or expanded mines within the Green Swamp.

Ms. Mouncey pointed out that the post development use of the land is under someone else's purview. Commissioner Cadwell explained that post development is a land use issue that is decided by the Board.

Ms. Mouncey noted that the Committee should be addressing the Land Development Regulations to ensure they are adequate.

Ms. Fullerton asked if the Committee's job is to protect the Green Swamp from events that would affect life after mining is complete. Mr. Sheahan responded that the Committee's objectives, provided by the Board, are to see if additional protections are necessary for new or expanded mines in the Green Swamp. Ms. Fullerton indicated that the Committee is here to protect the Green Swamp for the future. Commissioner Cadwell explained that some of the protections can be addressed in the Land Development Regulations under the reclamation plans and standards, but it would not extend to land use changes.

Mr. Sheahan reminded the Committee that he went through general land use questions at the last meeting, regarding open space, the use of property and impervious surface ratios. He noted that all of these items are addressed in the Comprehensive Plan and were not put forth for this committee to address.

J. Michael O'Berry, Committee member, explained that he felt there could be an issue when an operator/landowner has a desire to transition to full-scale development of the project, following

the mining of the site. He gave an example of such activity that happened in South Florida; during the last cycle of the mine a major home developer proposed a housing development. He commented that transitioning of the site should be focused on what the local government has in place, usually taking the property back to its natural state. Any type of post development of the site is under the purview of the local government and has to be approved by the Board of County Commissioners.

Rebecca Jetton, Administrator of the Areas of Critical State Concern Program, Department of Economic Opportunity, asked if the Committee was going to review the LDRs and discuss what they require. Mr. Sheahan responded that the Committee should review the LDRs because they pertain to the Green Swamp. He noted that staff initiated some changes to the mining chapter in the LDRs and the review of the regulations would be within the Committee's purview as they pertain to mining in the Green Swamp. Ms. Jetton added that when they start the process of reviewing the LDRs, it will lead to answers about the need for further regulations.

Commissioner Cadwell explained that the Committee could recommend language that says reclamation plans and standards should result in the property meeting the existing land use, which would not preclude anyone from requesting a rezoning, but it would require them to reclaim the property to meet the existing land use.

Mr. O'Berry noted that the mining companies have been able to operate within Lake County and abide by the regulations that are in place. He noted further that he believes the regulations, for the most part, are clear and can be complied with. He expressed concern with some language in the Comprehensive Plan, like the term restored; restored means to put back as is, where is and in the same like, which is not possible. They would have to turn the site into a recipient site for a large volume of soil to enable them to turn it into what it was before. He explained that in the Green Swamp, a large part of the sites are not in their natural state because they were previously used as a pasture or citrus grove; the only parts that are in their natural state are the wetlands, which they avoid and do not mine. He suggested that the term "restored" in the Comprehensive Plan should be reworded so the site is returned to an acceptable and beneficial post land use, which is what the term "reclamation" means. The operator has to meet the requirements of water quality and water quantity impacts, before the mine is permitted. He wants to make sure the regulations are fair and appropriate; Lake County's rules recognize the value of and protect the environment better than most other counties and have been used as a model elsewhere. He feels the regulations are good, but they could be better with clarifications.

Ms. Mouncey agreed that their task is to determine where the regulations can be made better.

Mr. O'Berry commented that, in the State of Florida, the permitting process is convoluted with agency rules overlapping.

Ms. Fullerton asked Mr. O'Berry if he felt the second objective (eliminating overlapping or duplicative review) was an issue that needed to be reviewed. Mr. O'Berry responded that, at the local level, there needs to be recognition of who governs and controls which aspects of the mining operation. Commissioner Cadwell explained that it is the County's job to regulate the impact on large pieces of land and impacts on the natural resources. Water issues are under the purview of Water Management Districts or the Department of Environmental Protection. Mr. O'Berry agreed that some issues should be under the purview of the local government.

Ms. Mouncey pointed out that the County does not have the resources or staff to provide the reviews as required, like water monitoring. Water monitoring is being done by the state agencies

and the local government could defer to the State for monitoring, until such time they have the available staff. She noted that the County does not have a hydrologist or geologist on staff and the requirements for water monitoring are duplicative with the State.

Mr. O'Berry mentioned that there is a possibility that the State could take control of mining and remove it from the hands of local governments. He noted that doing so would not change local government zoning regulations. He explained that over-regulations and limited availability of some resources in Florida could move the State to becoming a net importer of the resources needed to build infrastructure, which would increase the cost of construction.

Steve Adams, Committee member, expressed that he would like to make sure the terms "restoration" and "reclamation" are used in the right context in the existing regulations. He explained that the reviews were initially placed in the ordinance to ensure adequate scientific information was submitted to allow the Board to make an informed decision when determining whether a mine should be placed on the property; the emphasis was on protecting the environment. He noted that he is concerned because the County does not have the staff needed to review the data submitted and provide staff reports to the Planning & Zoning Board and the Board of County Commissioners so they can make an informed decision on the technical merits of the plan and whether the environment would be protected. A lot of the information that is provided during the mining site plan (MSP) process is the same type of information that is provided to the Water Management District and the Department of Environmental Protection (DEP) on their permitting efforts; the mining industry would still have to submit the information, the only difference would be when it is submitted. He noted that he does not want the decision to go back to an emotional decision; he wants the decisions to continue to be based on scientific data. He indicated that he is comfortable with the rules in place now; noting that the local land use has to be approved first, if that is not in place, they cannot move forward even, if they receive state permits. He would like to make sure the terms are clear and appropriate; he feels that the staff-initiated revisions, that he has looked at, make sense and they are a good start. He clarified, in regards to post mining land use that the land use goes back to what it was, they only have a Conditional Use Permit (CUP) over the underlying zoning, so that zoning still exists on the property and any changes to that zoning or land use would have to be taken before the Board of County Commissioners for their approval.

Commissioner Cadwell asked Mr. Adams if there is a requirement that you have to have the local land use in effect first, before obtaining other permits. Mr. Adams responded that it is an economical issue. Mr. O'Berry added that in certain circumstances timeframes are placed on the project, by the operator or owner, and you run the risk of losing money in the event of a local denial. Sometimes they start local approvals at the same time as other phases of approvals, because of the timeframes; the typical permitting process used to take, on average, three years. He stated that they prefer to obtain local approvals first, because it is a political process. Mr. Adams added that a lot of the times it is a parallel course, you are collecting scientific data to satisfy the MSP requirements, which is the same data you use to satisfy DEP and the Water Management Districts. The strategy is to obtain the local land use approval first.

Mr. Sheahan explained that when any development application is submitted, it has to be developed under a certain set of design guidelines. He gave an example of guidelines for development of a site. He stated that 100 percent of the property is not developed; there are very high open space requirements in the Green Swamp. He also noted that we currently do not have a hydrologist or geologist on staff; applications are being reviewed by consulting engineers, when necessary.

Ms. Mouncey reiterated that there is a huge system of checks and balances in place now, through the County and the State. She noted that there is a local requirement that you have to obtain the State permits before you obtain County approvals. Mr. O'Berry responded that a change by Legislation may preclude requiring state permits before approvals. Erin Hartigan, Assistant County Attorney, stated that the Legislative change would be effective July 1st; she explained that State permits could be required prior to development, but not as a condition of approval.

Mr. Adams explained that the process in Lake County, after you receive the permit approval, is to submit an operating plan, which consists of all permits received and the monitoring plan. He added that having the ability to outsource the reviews is good; other counties do this as well.

Ms. Mouncey reviewed the bullet points listed on the Agenda. She asked what the concern is for the adequacy of existing policies and regulations. Mr. O'Berry responded that he would make small changes to the regulations, as he stated earlier, to clarify and cross reference.

Mr. Sheahan put the Code on the screen for everyone to see; he stated that the term restored is used in the Code, but there are qualifiers.

Mr. O'Berry read a portion of Policy III-3.5.2 "mining shall be prohibited in environmentally sensitive areas of Lake County that cannot be restored". He indicated that the term restored would be understood to mean, to be put back exactly as it was before, as opposed to the terms of reclamation, reforestation or re-vegetation, that are used in the State rules. The context would need to be clarified where the term restored is being used in that instance. Ms. Mouncey responded that the goal is to be clear and concise so that the regulations cannot be misconstrued.

Ms. Fullerton suggested that the terminology "to the greatest extent feasible", which is used in some policies, should be removed.

Ms. Mouncey noted that the Committee discussed objectives 4, 5 and 6, and felt rules that ensure that water quality and quantity are maintained and approved are addressed in the LDRs and Comprehensive Plan. She asked if there was anything in the LDRs or Comprehensive Plan that the Committee felt was inadequate. Ms. Fullerton responded that she would like to see sand mining in the Green Swamp go away. She informed the Committee that she cannot say that objective #6 is adequate, because she has not read 62 C, F.A.C. Ms. Mouncey noted that the objective concerning restoration (#6) can be placed on the agenda for the May meeting for further discussion.

Mr. Sheahan suggested that the Committee could start with deciding if they felt objective item #3 (Ensuring Sand Mining is not prohibited in the Green Swamp) should be allowed or not. The Committee could move forward after that determination; if the Committee decides sand mining should be prohibited, the Committee would make that recommendation to the Board. If the Committee decides sand mining should be allowed in the Green Swamp, they could move forward with reviewing and making recommended changes or additions to the regulations.

Ms. Mouncey opened the discussion on whether sand mining should be prohibited in the Green Swamp. She stated that she felt sand mining should not be prohibited, because she has not been provided any scientific data supporting prohibition of mining in the Green Swamp.

Kraig McLane, Committee member, explained that he would remain neutral on this subject primarily because the Water Management District basis decisions on environmental standards and they do not look at land use compatibility standards.

Douglas Dufresne, Committee member, stated that he did not feel it should be prohibited.

MOTION by Tracy Mouncey, SECONDED by Steve Adams to allow sand mining within the Green Swamp.

FOR: Mouncey, O’Berry, Dufresne, Adams

AGAINST: Fullerton

ABSTAIN: McLane

MOTION CARRIED: 4-1

Ms. Mouncey asked if anyone had anything specific in the Comp Plan that is not adequate or is duplicative that they want to address. She also asked why the Green Swamp is broken down into three areas. Mr. Sheahan responded there are different natural systems within the Green Swamp and the Future Land Uses are based on those systems. He noted that the areas are the Ridge, Wetlands, Uplands and the Core, which consists mostly of wetland soils. Ms. Jetton responded that the Core area is the most ecologically intact. Mr. Sheahan further noted that the Core area is the most sensitive area and it is tiered down through land uses from there; the Ridge area is generally located along the 27 corridor, which is already highly impacted and is where the least protection is necessary.

Ms. Mouncey pointed out that mining is allowed in two of the areas of the Green Swamp, but in one area mining is not allowed. Ms. Jetton responded that mining is not allowed within the Ridge area, because the Ridge area is primarily developed with subdivisions. Ms. Fullerton commented that the Ridge area allows more development than the other areas, allowing a density of four dwelling units per acre; the other areas allow mining.

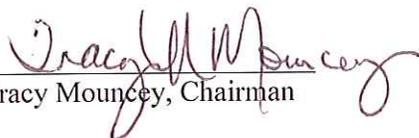
Ms. Mouncey suggested that everyone take time to review the LDRs and the Comp Plan and return next month so they can go through it section by section.

Commissioner Cadwell suggested to everyone if they have issues with any regulation or have suggestions, to submit them to Mr. Sheahan before the next meeting, so he can have them ready to show on the screens. Ms. Mouncey asked the Committee to review the Comp Plan and the LDRs and forward any questions or issues to Mr. Sheahan.

ADJOURNMENT

There being no further business, the meeting was adjourned at 10:53 a.m.

Respectfully submitted,


Tracy Mouncey, Chairman