

NOVEMBER 21, 2011

The Zoning Meeting of the Board of Lee County Commissioners was held this date with the following Commissioners present:

- John Manning, Chairman
- A. Brian Bigelow, Vice-Chairman
- Ray Judah
- Tammara Hall
- Frank B. Mann

The Chairman called the meeting to order at 9:30 a.m.

A COPY OF THE HEARING EXAMINER’S RECOMMENDATION IS ON FILE IN THE MINUTES OFFICE.

CASE NUMBER: DCI2010-00030

NAME: DANIELS PRESERVE MPD

REQUEST: Amend Zoning Resolution #Z-08-044, Daniels Preserve Mixed Use Planned Development (MPD) +/- 23.5 acres of property, to amend the schedule of uses, and to make changes to the master concept plan. No development blasting is requested. Any development will require connection to public potable water and public sanitary sewer services.

LOCATION: Property is located at 12801-821 Commerce Lakes Drive and Express Court, Address TBD, Gateway/Airport Planning Community, Lee County, Florida.

PROPERTY OWNER’S REPRESENTATIVE: Shellie Johnson, Ensite, Inc.
239-226-0024

Community Development Senior Planner Tony Palermo reviewed the request, noted that Staff and Hearing Examiner (HE) both recommended approval with conditions, and stated that a November 15, 2011 Memorandum had been provided to the Board recommending deletion of Conditions 12, 13, 14 and 20; and noted that the applicant is in agreement. He further noted there were no Participants of Record. Following brief Board discussion with Mr. Palermo responding to questions, Commissioner Mann moved approval to delete the conditions recommended by Staff, seconded by Commissioner Hall, called and carried.

RESOLUTION NO. Z-11-016

CASE NUMBER: DCI2008-00050

NAME: TROYER BROTHERS EXCAVATION

REQUEST: Rezone 1,803.5 acres from Agriculture District (AG-2) to Mine Excavation Planned Development (MEPD) to allow mining activities (construction materials mining operation) including administrative offices and rock crushing operations. A 110-foot maximum mine depth is proposed. The mine duration is 35 years. Maximum structure height is 90 feet. Blasting and dewatering are proposed.

LOCATION: Property is located at 14700 Troyer Brothers Road, Lehigh Acres Planning Community, Lee County, Florida.

PROPERTY OWNER’S REPRESENTATIVE: Dave Depew, AICP, Morris Depew Associates
239-337-3993

Community Development Senior Planner Tony Palermo reviewed the request, noted that the Hearing Examiner (HE) recommended denial and Staff recommended a much broader scope, and stated there were fifty eight (58) Participants of Record. Assistant County Attorney Michael Jacob pointed out a procedural issue noting that when reviewing the HE’s recommendation it was found that the HE implied the wrong legal standard for the burden of proof for the County’s position and the Board should not rely on the HE’s recommendation in this case. Board discussion ensued

on the HE's recommendation with Chief Assistant County Attorney Donna Marie Collins and Attorney Jeff Fridkin of the Law Firm of Grant, Fridkin, Pearson, Athan & Crown, PA (GFPAC) representing the applicant, responding to questions. Presentations were provided by: Development Review Senior Engineer Robert Price regarding Transportation, Environmental Sciences representative Susie Derheimer regarding Environmental issues, Natural Resources Director Roland Ottolini regarding Natural Resources, and Community Development Principal Planner Matt Noble regarding Planning. [Exhibits](#) were provided by the four (4) presenters (copies on file in the Minutes office). In summary, Mr. Palermo stated that the applicant did not meet the four (4) C's: Capacity, Conservation, Compatibility, and Consistency; and recommended that Board deny the case. Attorney Fridkin and Attorney Michael Traficante both of the Law Firm of GFPAC, representing the applicants, provided an overview of their [Strategic Mining Plan](#) and [rebuttal](#) to the HE's and Staff findings and recommendation for denial (copy on file in the Minutes office). The Chairman called on the Participants of Record, and the following citizens came forward:

Estero resident [Mary Abramson](#)
 Bonita Springs resident Theo Phil Begansky
 Audubon of Florida representative [Brad Cornell](#)
 Lighthouse Bay Community representative [Phil Douglas](#)
 Brooks Concerned Citizens & (ECCL) representative Marilyn Edwards
 Estero Council of Community Leaders (ECCL) Chair Don Eslick – ([handout](#))
 Estero resident Janice Hill
 Estero resident Kevin Hill
 Earthmark Southwest Florida Mitigation Bank representative James Hodge
 Bonita Springs resident Robert Lienesch
 Estero resident [Bill Lytell](#)
 Cape Coral Construction representative Heather Mazurkiewicz
 ECCL member Jane McNew
 Bonita Springs resident [Jack Meeker](#)
 Estero resident Darrell Mounts
 Honc Marine Construction owner David Mulicka
 Estero resident Neal Noethlich
 Estero resident Edward Paton
 Florida Wildlife Federation representative [Nancy Payton](#)
 Estero resident [Arvo Rahe](#)
 Lee Building Industry Association Executive Vice President Michael Reitmann
 Conservancy of Southwest Florida representative [Nicole Ryan Johnson](#)
 DR/GR Steering Committee member Peggy Schmidt (submitted CD)
 Responsible Growth Management Coalition (RGMC) life member [David Urich](#) ([handout a letter](#))
 Sierra Club and RGMC representative Carl Veaux on behalf of Ellen Peterson of Estero
 Sierra Club member and Estero resident Patty Whitehead
 Estero resident Leonard Wood III
 Attorney Matt Uhle with Knott, Consoer Law Firm, representing Bryan Zingel of Lehigh Acres

Commissioners Judah, Manning, Hall, and Mann left the meeting briefly during the Participant's comments. Following a short break, the Chairman called the meeting back to order with all Commissioners present.

At the request of Chairman Manning, Attorney Michael Traficante of the GFPAC Law Firm, representing the applicants, provided a summary of the reasons for the Board to recommend approval of the case. Commissioner Bigelow left the meeting briefly. Further Board discussion followed with Chief Assistant County Attorney Donna Marie Collins and Mr. Ottolini responding to questions. Following comments by Commissioner Judah on compelling evidence as indicated by Staff's recommendation and moved to deny the proposed rezoning request of the mining operation, seconded by Commissioner Mann. After response by Ms. Derheimer to questions from Commissioner Bigelow, the motion was called and carried.

[RESOLUTION NO. Z-10-037](#)

The Chairman adjourned the meeting at 1:25 p.m.

ATTEST:
 CHARLIE GREEN, CLERK

 Deputy Clerk

[Chairman, Lee County Commission](#)