

**FLAGLER COUNTY
PLANNING AND DEVELOPMENT BOARD
REGULAR MEETING
Flagler County Government Services Building
Board Chambers
1769 East Moody Blvd., Bunnell, FL
MEETING MINUTES
Tuesday, September 10, 2019 at 6:00 PM**

Adopted December 10, 2019

1 **MEMBERS PRESENT:** Chair Michael Boyd, Jack Corbett, Lauren Kornel, Mark Langelo, and
2 Anthony Lombardo.

3

4 **MEMBERS EXCUSED:** Timothy Conner and Michael Goodman.

5

6 **STAFF PRESENT:** Adam Mengel, Planning Director; Gina Lemon, Development Review Planner III;
7 and Wendy Hickey, Planner

8

9 **BOARD COUNSEL:** Kate Stangle, with Nelson Mullins Broad and Cassel.

10

11 **Chair Boyd** called the meeting to order.

12

13 1. **Roll Call.**

14

15 Attendance was confirmed by Ms. Lemon and a quorum was present.

16

17 2. **Pledge of Allegiance.**

18

19 **Chair Boyd** led the Pledge of Allegiance to the Flag.

20

21 3. Quasi-judicial requiring disclosure of ex parte communication:

22

CONTINUED FROM THE AUGUST 13, 2019 REGULAR MEETING

23

Application #3179 - **APPLICATION FOR A SPECIAL EXCEPTION IN THE AC
(AGRICULTURE) DISTRICT** - request for a borrow pit in the AC (Agriculture) district. Parcel
24 Numbers: 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000; 14.79+/- acres. Owner:
25 Rayonier Atlantic Timber Company/Applicant: Matthews Design Group.

26

27 **Chair Boyd** asked for ex-parte disclosures; none were provided.

28

29
30 **Mr. Mengel** presented the staff report describing the property and explaining that the item had been
31 continued from the previous month and that additional maps were handed out to the Board as they were
32 received from the applicant via email prior to this meeting (attached to these minutes as Attachment
33 "A"). He continued with the staff report and gave the staff recommendation that the Planning and
34 Development Board find that all the special exception criteria as listed in the guidelines at the Land
35 Development Code Section 3.07.03.F have been met and therefore approves the Special Exception for
36 Soil Extraction (borrow pit) located on Parcels: #31-11-30-0000-01050-0000 and 32-11-30-0000-
37 02020-0000, subject to the following conditions:

38

1. the Special Exception runs with the land;

39

2. owner or contractor to obtain all permits prior to the commencement of work;

40

3. the use shall be limited to 7a.m. to 6 p.m. Monday through Saturday;

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- 1 4. the parcels shall remain under single ownership;
- 2 5. a minimum 50 foot wide perimeter buffer shall be maintained adjacent to the parcel boundary
- 3 lines within which no activity shall take place;
- 4 6. applicant shall obtain an Administrative Future Land Use Amendment (to correct the
- 5 Conservation Future Land Use designation) prior to commencement of any activity on the site;
- 6 7. applicant to provide necessary access improvements –consisting at a minimum of installation
- 7 of a paved driveway connection to County Road 13 and paved shoulder apron edge opposite
- 8 the driveway and along County Road 13, with other improvements as determined by the County
- 9 Development Engineer at the time of right-of-way permit application for the driveway
- 10 improvements- within the public right-of-way to ensure safe traffic movement on and off
- 11 County Road 13, with no damage to pavement and/or drainage flow; and
- 12 8. Any damage to County Road 13 directly resulting from and in close proximity to this use shall
- 13 be the responsibility of the owner/operator.

14 He then went on to also offer the alternative of denial and advised the Board the applicant is available
15 for questions.

16
17 **Chair Boyd** asked if the applicant would like to speak.

18
19 **Shannon Acevedo, Matthews Design Group, 7 Waldo Street, St. Augustine**, applicant discussed the
20 project along with options for the relocation of the access points for the excavation site.

21
22 **Mr. Langello** asked how many cubic yards are to be extracted.

23
24 **Ms. Acevedo**, responded 365,000 cubic yards with an average of 50 truckloads per day.

25
26 **Mr. Langello** stated based on his experience that would mean 26,000 truckloads and that is why
27 moving the entrance further south would be better for the community.

28
29 **Kenneth Rester, Business Development Manager, Rayonier Inc., 1 Rayonier Way, Yulee**,
30 representing the owner, stated they will do whatever they have to understanding that a neighbor had
31 concerns.

32
33 **Mr. Langello**, noted that there was one neighbor that came with concerns.

34
35 **Mr. Rester**, stated he has no problem moving the entrance farther south between the two wetlands.

36
37 **Chair Boyd** opened the Public Hearing, seeing no one he closed the Public Hearing and asked the
38 Board for a motion

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1 **Motion to approve with staff conditions made by Mr. Lombardo , seconded by Ms. Kornel.**
2 **Motion carried unanimously**

- 3
4 4. Quasi-judicial requiring disclosure of ex parte communication:
5 Application #3185 - APPLICATION FOR A SPECIAL EXCEPTION IN THE R/C
6 **(RESIDENTIAL / LIMITED COMMERCIAL) DISTRICT** - request for a veterinary office with no
7 boarding in the R/C (Residential/Limited Commercial) district. Parcel Number: 40-10-31-3250-00140-
8 0070; 0.21+/- acres. Owner/Applicant: Raic Cala Delarosa, LLC.

9
10 **Chair Boyd** asked for ex-parte disclosures; none were provided.

11
12 **Mr. Mengel** presented the staff report, giving a brief history of the property and details of the request.
13 Noting that the applicant had gone to the Scenic A1A Committee and their recommendation letter is
14 included within your packet. He proceeded to give the staff recommendation that the Planning and
15 Development Board finds that all special exception criteria as listed in the guidelines at Land
16 Development Code Section 3.07.03.F have been met and therefore approves the Special Exception for
17 a veterinary office with no boarding to be located at 5927 North Oceanshore Boulevard, Parcel #40-10-
18 31-3250-00140-0070, with the following conditions: (conditions added within the PowerPoint
19 presentation). He then went on to also offer the alternative of denial and advised the Board the applicant
20 is available for questions.

- 21
22 1. the Special Exception runs with the land;
23 2. owner or tenant to obtain all permits prior to issuance of a Business Tax Receipt (BTR);
24 and
25 3. the use shall be limited to a veterinary office without boarding.

26 He then went on to also offer the alternative of denial and advised the Board the applicant is available
27 for questions.

28
29 **Chair Boyd** asked if the applicant would like to speak.

30
31 **Patricia Hoskins, 94 Emerald Lake Drive, representing the applicant,** stated she was available if
32 there were any questions.

33
34 **Mr. Langelo** asked what will happen with the residence.

35
36 **Mr. Mengel** stated nothing, it is currently occupied.

37
38 **Chair Boyd** opened the Public Hearing, asking if anyone would like to speak.
39

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1 **Eric Reagan, 821 1st Avenue, Welaka**, owner of lot at 46 Seminole Avenue concerned about dogs
2 barking.

3
4 **Dennis Clark Chairman of Scenic A1A PRIDE Committee** the committee supports responsible
5 growth and we do support this project it is a needed service in the area. He also questioned if the
6 driveway would support incoming and outgoing traffic to the parking lot

7
8 **Mr. Mengel** responded that is not A1A's purview that is up to FDOT to make that determination.

9
10 **Chair Boyd** closed the Public Hearing and opened Board comments.

11
12 **Mr.Langelo** asked the applicant if there would be dogs staying overnight?

13
14 **Ms.Hoskins** responded there will be one doctor and 4 cages. The building is 896 square feet and there
15 may be an animal that stays because it is sick. This building is along A1A then there is the parking area
16 and then there is the residential area with the mobile home before the any other residential area.

17
18 **Mr.Lombardo** asked if the cages were inside or outside the building.

19
20 **Ms. Hoskins** responded inside the building.

21
22 *Motion to approve with staff conditions outlined in Power Point presentation made by Mr.*
23 *Lombardo, seconded by Ms. Kornel.*

24 *Motion carried unanimously*

25
26
27 5. Quasi-judicial requiring disclosure of ex parte communication:

28 Application #3194 – **APPEAL OF THE PLANNING DIRECTOR DECISION IN THE C-2**
29 **(GENERAL COMMERCIAL AND SHOPPING CENTER) DISTRICT** – request for an appeal of
30 the Planning Director's decision that boat storage is a permitted use on a parcel previously approved by
31 the Board of County Commissioners for boat manufacturing. Applicant: Hammock Civic Community
32 Association

33
34 **Mr. Mengel** explained appeals don't happen too often and explained the basis for this request is to
35 appeal the Planning Directors decision that boat storage is a permitted use on a parcel previously
36 approved by the Board of County Commissioner action to allow boat manufacturing. He presented the
37 application stating the applicant's basis and additional information for the appeal along with his analysis
38 of the appeal. The recommendation to the Board is to receive the information related to the appeal
39 request and take action as appropriate.

40

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1 **Chair Boyd** asked if the applicant would like to speak.

2
3 **Dennis Bayer Esq. 109 South 5th Street, Flagler Beach, for the applicant**, provided a hand out to
4 the Board attached to these minutes as Attachment “B”. He presented the applicants case for the appeal
5 at times quoting excerpts of the Flagler County Land Development Code and referencing the handout
6 he provided.

7
8 **Mr. Mengel** asked Mr. Bayer if boat manufacturing was a conforming or non-conforming use?

9
10 **Mr. Bayer** responded it was approved by the Board.

11
12 **Mr. Mengel** so that would make it conforming.

13
14 **Ms. Kornel** asked if there was a special exception approved for the use

15
16 **Mr. Mengel** stated no but the approval was originally for two lots the additional lot was for a buffer.

17
18 **Mr. Langello** asked in what zoning district is boat storage allowed.

19
20 **Mr. Mengel** responded it is not specifically stated.

21
22 **Mr. Langello** so it is not allowed in industrial?

23
24 **Mr. Mengel**, no

25
26 **Mr. Bayer** it can be in a PUD (Planned Unit Development) like Sea Ray

27
28 **Mr. Langello** so are we here to approve the use or the just the decision previously made

29
30 **Mr. Mengel** you are to determine if the Planning Director had the authority to make the determination.

31
32 **Ms. Stangle** advised the board there are two questions here, does Mr. Mengel have the authority to
33 make the determination what is a similar use. Second if you determine he does have the authority was
34 he correct.

35
36 **Mr. Langello** quoted Sec. 1.09.02 of the Land Development Code as it relates to responsibility of
37 interpretation of the Code and how that responsibly is that of the Planning Director.

38
39 **Ms. Stangle** stated that when looking at statutes and regulations there is a concept that the more specific
40 prevails over the general. In this case the C-2 district does say if it is not listed as permitted use other

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1 uses may be considered and it goes on to say by the Planning Board. That is the argument before you
2 did he have the authority or was that within your purview.

3
4 **Mr. Langelo** asked if we determine that he didn't have the authority do we now then make the
5 determination tonight or is it that they have to reapply.

6
7 **Ms. Stangle** yes it would have to come back before you with the appropriate application. It would allow
8 for a thorough discussion about what the appropriate use is.

9
10 **Mr. Mengel** stated the problem with that you are restricted to the C-2 uses. In this case you do not have
11 that you have an exception by the Board, and determination by the Board that manufacturing is
12 appropriate here. So when the application comes in you cannot do anything with it because you are
13 making a determination of use based on what is similarly listed in the C-2 district and boat
14 manufacturing is not listed in C-2 so you are going to be trapped you will not be able to do anything.
15 The scenario becomes does this become a uniquely Board of County Commissioners decision. Because
16 it was a Board of County Commissioners decision that allowed for boat manufacturing.

17
18 **Chair Boyd** asked then why wouldn't it go straight to the Board of County Commissioners

19
20 **Mr. Mengel** because we do not have a mechanism for that.

21
22 **Chair Boyd** If we don't have the authority and we are trapped as a Board I don't see the reason.

23
24 **Mr. Langelo** clarified with Ms. Stangel we are her to first determine if Mr. Mengel had the authority
25 to make the decision and if he has the right we go to the next question. If he doesn't have the right we
26 do go to the next question which is if his decision is correct.

27
28 **Ms. Stangle** if you were to determine that the determination is within your purview and it doesn't fall
29 under the general provisions of the Sec. 1.09. that would be the end of this item by approving the appeal.

30
31 **Mr. Mengel** added that commercial warehousing which generates truck traffic and mini-warehouses
32 were both prohibited uses within the scenic A1A corridor he then went to read into the record the a
33 portion of Sec. 3.03.17 B Permitted principal uses and structure. In the C-2 shopping center district no
34 premises shall be used except for the following uses and their customary accessory uses and structures.
35 What comes into play here is the assumption of acreage the section we are laboring over is 3.03.17 B
36 22 "Other commercial uses of nature similar to those listed may be permitted upon determination by
37 the planning board that such uses are appropriate in the C-2 district. The standard industrial
38 classification manual will be used as a reference for these determinations." Then 23 goes on to state
39 "Other commercial areas" then the first listed is all uses permitted in the shopping center district. He
40 continued pointing out the confusing nature of the listing in the code as it pertains to the C-2 general

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1 commercial and shopping center district. He added that this is not something we cannot overcome,
2 this is a problem here this is a spot zoning It is a C-2 I would get the preamble of the purpose and the
3 intent section when this issue has come up before this does not meet the C-2 requirement.
4

5 **Chair Boyd** stated he thought General Commercial would be much different than a Shopping Center
6 District.
7

8 **Mr. Bayer** stated a Veterinary Office in the A1A corridor would have to get a special exception but
9 something as intense as this would only have to go to the TRC (Technical Review Committee). The
10 previous contractor whom stored their equipment on the property had to come this Board for a special
11 exception.
12

13 **Mr. Mengel** responded Veterinary Clinics are a permitted use in the A1A Corridor in the C-2 zoning
14 district. The Veterinary Clinic was in the R/C (residential Limited Commercial) district. This is a C-2
15 zoning.
16

17 **Ms. Kornel** asked about a policy about compatibility with residential.
18

19 **Mr. Bayer** there is a 40 foot buffer that is zoned R-1 (Rural Residential) district that was a required
20 part of part of this property for the C-2 zoning.
21

22 **Ms. Kornel** commented that many codes refer that boat storage is frowned upon against residential.
23 Noting that she has been a Certified Planner for 18 years, she stated that she was not sure if she would
24 have not thought that boat storage was not a similar use to boat manufacturing. But noting that she
25 would have taken it to the Board for their decision because it is a kind of grey area. There is that
26 provision that you can go to the Planning Board for their determination.
27

28 **Chair Boyd** noted that there are a couple of options we as a Board can determine; if Mr. Mengel had
29 the authority to make that determination or we can table this to do some research.
30

31 **Mr. Langelo** stated that out of respect to the people that are here and the property owner, to let them
32 speak.
33

34 **Chair Boyd** responded this is a technical decision.
35

36 **Mr. Langelo** I thought we should hear from the person most affected by it.
37

38 **Chair Boyd** opened Public Comments. He explained that this is not a discussion on if you like this
39 project specifically, this is strictly to determine if the Planning Director has the authority to make the

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1 determination. We are not here to discuss the emotional aspects of neighbors, we are here for the
2 technical aspects of the appeal.

3
4 **Ms. Stangle** add we are not here to talk about the substance of the pending site development plan or
5 the attributes of the project.

6
7 **Mr. Lombardo** commented, I believe Adam has the authority to make the decision but since it is such
8 a gray area I think you got stuck with a really hard one.

9
10 **Kathy Viehe 5676 N. Oceanshore Boulevard**, wants a public process and would like to see it codified.

11
12 **Stephen Hatcher 85 Ocean Oaks Lane**, thinks there should have an attorney opinion for their
13 decision.

14
15 **Jan Sullivan, 35 Nantucket Drive**, questioned the statement the proposed use is less intense than the
16 current allowable use.

17
18 **Dennis Clark, 5784 N. Oceanshore Boulevard**, feels the use is not the same.

19
20 **Robert Million, representing the property owner Hammock Harbour LLC, 5658 N. Oceanshore**
21 **Boulevard** stated that the concern has been about the intensity. This property is zoned C-2 and you are
22 allowed a certain amount of floor coverage and a certain number of uses for example a 300 seat
23 restaurant is an approved use we would just build it. The most intense use on this parcel is the restaurant
24 not the boat storage, it has very little traffic and very little noise. So we are talking about intensity
25 something that would need 120 parking spaces they are allowed by code the size of the building is
26 allowed by code. I'm not just talking about boat storage, so not being able to have a building and not
27 being able to have parking spaces is not correct. You should not consider the parking and the building
28 size that is for the site plan.

29
30 **Gary Roberge 27 Las Palmas Way**, claims boat storage of this size is an intense use. If the building
31 size stayed the same that would be different.

32
33 **Jody Bollinger 5648 N. Oceanshore Boulevard**, feels this is not consistent with the Flagler County
34 Comprehensive Plan and that boat storage would reduce property values in the area.

35
36 **Chair Boyd** closed the public comments and opened Board comments.

37
38 **Mr. Langello** stated he has been here over 40 years and he believes that property existed prior to our
39 zoning regulations and there wasn't a lot out there at the time. There was always talk of something
40 eventually happening out there, always a lot of talk. My question is why didn't they just zone it industrial?

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1 Boat manufacturing is industrial with C- 2 you can have a lot of traffic, I understand the concerns. He
2 added that he did not hear testimony that the boat manufacturing was only one boat. If you are not going
3 to put it in a boat manufacturing facility where else are you going to put it.
4

5 **Ms. Kornel** stated there definitely should be a place for boat storage, but doesn't feel it should be
6 abutting residential. She also added the Planning Director has the authority to make a decision but
7 should have brought it before the Board.
8

9 **Mr. Corbett** stated that Adam made the best decision in a very grey area.
10

11 *Motion to deny the appeal made by Mr. Langelo, seconded by Mr. Corbett.*
12

13 *Motion passed 4/1 with Ms. Kornel dissenting.*
14

15 **6. Staff Comments**

16 None.
17
18

19 **7. Board Comments**

20 None.
21
22

23 **8. Public Comments** - Each speaker will be allowed up to three minutes to address the Planning and
24 Development Board on any item or topic not on the agenda.
25

26 **Joyce Skaff 5648 N. Oceanshore Boulevard** the serenity of area will be gone because of
27 allowing this in a residential area.
28

29 **Mr. Langelo** stated he lives in the area, has for 40 years and is across the street from a C-2 zoned
30 property that currently has a restaurant that has music, outdoor music into the night. I understand but it
31 is not only the neighbors right but the property owner also has rights we have to consider. I made the
32 motion because I believed it was the right thing to do. You have the right to go to the Board of County
33 Commissioners which I think this is where this is going, they are the elected officials.
34

35 **9. Adjournment**
36

37 *Meeting adjourned at 7:38 p.m.*
38

39 Prepared by: Wendy Hickey
40 Reviewed by: Adam Mengel



-  Alternate Route
-  Borrow Pit

Ross Pit Alternate Route

2019 09 10 - PDB Minutes Attachment "A",
Pg 1 of 2



