

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
May 8, 2007**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Gary Huttman**, at 9:00 a.m. in the County Council Meeting Room of the Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Florida. On roll call, the following members answered present, to-wit:

**GARY HUTTMANN, Chairman
DARLA LIPKE, Vice-Chairman
TAVER CORNETT, Secretary
STONY SIXMA
JOSEPH RUDOLPH
JEFF GOVE**

STAFF PRESENT

**MICHAEL DYER, Assistant County Attorney
MARY ROBINSON, Building and Zoning Director
SCOTT ASHLEY, Planning Manager
DAVID ZECHNOWITZ, Planner III
JOHN H. STOCKHAM, Planner III
CHRISTIAN NAGLE, Planner II
YOLANDA SOMERS, Zoning Secretary**

APPROVAL OF MINUTES

Approval of the April 10, 2007 Minutes

Member Lipke **MOVED** to **APPROVE** the minutes for April 10, 2007. Member Rudolph **SECONDED** the motion. Motion **CARRIED** unanimously.

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

Chairman Huttman explained the procedure for forwarding the Commission's decisions to the County Council and invited the public to speak for or against any of the cases being heard.

Michael Dyer, Assistant County Attorney, explained that decisions by this body on special exception cases and cases which rezone real property from one classification to another pursuant to the Zoning Ordinance are recommendations only to the County Council and do not constitute a final hearing. New evidence may be introduced at the County Council public hearing. Decisions on variances made by this body constitute final action, subject to an appeal to the County Council. What this means is that no new evidence may be presented at the time of the County Council public hearing on appeal. An aggrieved party that appeals such a decision is confined to the record made before this body. Hearings by this body on rezonings, special exceptions and variances are quasi-judicial in nature meaning that this body is acting more like a court and must take into account all oral, written or demonstrative evidence presented. Their decisions on these cases must be based on competent, substantial evidence in the record. Competent, substantial evidence has been defined, as that evidence a reasonable mind would accept to support a conclusion.

CONTINUED ITEMS

V-07-025 – Application of **James and Laura Williams, Owners**, requesting a **Variance** for a front yard setback on Beresford Avenue (5 ft. in lieu of the required 30 ft.) and a **variance** for an east side yard (5 in. in lieu of the required 10 ft.) to reconstruct a pole barn on I-1 (light Industrial) and RC (Resource Corridor) zoned property. The property is located on the north side of West Beresford Road, approximately 100 ft. northwest from its intersection with South Beresford Road, adjacent to the City of DeLand; ± 2.5 acres (Ashley)

Member Rudolph **MOVED** to continue case **V-07-025** for 30 days. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

CONSENT AGENDA

NONE

NEW BUSINESS

PUD-07-045 – Application of **Paul Katz, Law office of Katz & Green, Attorney for Owner, Tomoka Landings, LLC, Owner**, requesting an **Amendment** to Tomoka Landings Business Planned Unit Development (BPUD) Resolution No.: 98-29, to include, but not be limited to, changes to permitted land uses, building square footage, and dimensional standards for Lot 1 of the BPUD. The property is located on the south side of S.R. 40 (Granada Boulevard), at its intersection with Booth Road, across from the Halifax Hospital Medical Center, adjacent to the City of Ormond Beach; ± 6 acres (Stockham) **Tentatively scheduled for the June 21, 2007 County Council public hearing time certain 2:00 p.m.**

Gary Huttman announced he was recusing himself because his professional firm prepared an analysis for the applicant. (Conflict of Interest form filed)

John H. Stockham, Planner III, presented Staff Report. He stated the proposal is to amend an existing BPUD to increase the proposed building on Lot 1 to 23,000 sq. ft. as opposed to the current limit of 10,000 sq. ft., increase dimensional standards, such as height, and delete certain uses that were previously approved. Changes under this proposed BPUD amendment would be certain land uses being removed from the written development agreement, a building height standard for Lot 1 of 5 stories, off-street parking, overall site plan layout and phasing modifications. He continued by describing in detail the location of the subject property, on the SW corner of Granada Blvd. and Booth Rd. He stated the subject property is designated as Low-Impact Urban on the future land use map. The LIU category is the only urban land use category that is part of the Natural Resource Management Area (NRMA), which allows a wide range of urban uses, but requires a high level of environmental safeguard (protecting open space and higher wetland protection, more extensive upland buffers). He stated this property is designated LIU because of its association with the Tomoka River Basin. He stated there is an increase of the gross lease able area proposed by this amendment. Many of the uses listed in the revised PUD document are retail and commercial oriented. According to the definition of LIU, commercial uses within the LIU area are intended to be office, neighborhood convenience or other ancillary uses. More intensive commercial uses may be appropriate if not adjacent to the residential areas. The Comprehensive Planning Office is recommending that the retail uses be scaled back and that a cap be placed on the percentage of square footage of those retail uses. Mr. Stockham referred to the Staff Report list of LIU guidelines for non-residential development and the land-use location guidelines out of the Comprehensive Plan for commercial uses. A minimum of 30% of the site shall be covered by landscape planting materials as specified in the Zoning Ordinance and the city of Ormond Beach Gateway / Greenbelt Corridor requirements will be applicable. Mr. Stockham stated this request for the major amendment to the PUD is consistent with the Comprehensive Plan policies and these land-use location guidelines listed in the Staff Report. He stated Traffic Engineering has determined that SR 40 has adequate capacity to serve the anticipated 1,094 new trips that could be generated by the proposed amendment. All essential government services for this proposal are in place and agreements are being developed to annex this site into the city of Ormond Beach upon the issuance of a Certificate of Occupancy for the buildings. Mr.

Stockham stated the surrounding area is growing and the medical facility across Booth Rd. is scheduled to undergo an expansion. Staff feels this subject property is ideal for office, professional services and limited retail because of the proximity to the interchange of I-95. The proposal should have positive effects on the area because a number of intensive and high-traffic-generator land uses will be deleted from the current list of PUD uses. Staff finds this request consistent with the Future Land Use Map designation and applicable Comprehensive Plan policies, particularly the requirements of the NRMA. Staff recommends **APPROVAL** for a major amendment to Resolution No. 98-29 in accordance with the staff recommended revised master development plan that includes the written development agreement and preliminary master plan and subject to the comments provided by the various County agencies. Mr. Stockham further commented Staff feels a 55 foot building height would be appropriate. There is allowance in the Zoning Ordinance for spires, cupolas and buildings to house elevator shafts (an additional 25 feet above the 55 feet). He then presented photos of surrounding buildings and aerial of the flood plain location in relation to the subject property.

Jeff Gove asked if the location map has the R-7C(1) listed on it.

Mr. Stockham replied that the proposal is not affecting any of the conservation area that at one time had the R-7C. A portion of it still is R-7C, the other part is RC.

Paul Katz, Law office of Katz & Green, Attorney for Owner, Tomoka Landings, LLC, Owner stated the out parcel is the DOT pond, not the storm water pond for this project. To have 9 foot ceilings with 2 foot chases; the applicant would like 65 ft. as allowed by the building code; they would accept the 55 ft. proposed. Ormond Beach has its own architectural standards. Existing Phase 1 is Mediterranean/Classic. He stated this building will be compatible and approved by the City.

Member Cornett **MOVED** to **FORWARD** case **PUD-07-045** to the County Council for **APPROVAL** as presented with the modification of the 5-story height to a maximum of 55 ft. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously. Chairman Huttman not voting.

PUD-07-054 – Application of **Mark Watts, Cobb & Cole, Attorney for Owner, David Strawn Lands, Inc, Owner**, requesting a **Rezoning** from the R-4 (Urban Single Family Residential) and B-4 (General Commercial) zoning classifications to the Strawn BPUD (Business Planned Unit Development) zoning classification. The property is located on the east U.S. Highway 17, between Webb Street and Broderick Street, adjacent the First Baptist Church of DeLeon Springs, in the rural community of DeLeon Springs; ± 1.55 acres (Ashley) **Tentatively scheduled for the June 21, 2007 County Council public hearing time certain 2:00 p.m.**

Scott Ashley, Planning Manager, presented staff report. The applicant proposes to develop this entire site for commercial purposes. The Comprehensive Plan requires commercial development in a rural community must be processed as a PUD application. He stated the applicant proposes a 9,000 sq. ft. commercial building. Staff proposed some changes within the Development Agreement to eliminate inappropriate uses in a rural community. Certain

limitations on commercial uses were proposed within the Comp Plan for this area as well as uses that we felt that realistically could not fit on the property at only 1-1/2 acres and certain uses require a much larger land area. Mr. Ashley described the property and surrounding area in detail. He stated along this corridor there is a mixture of vacant land, various commercial uses and residential uses. A County fire station is also located nearby to the north. Staff feels the proposed change of use to BPUD fits within the character of the corridor area, but staff has proposed to protect the residential area with recommended limitation to the intensity of the land uses as outlined in the document. Staff is also looking to address issues raised by Mr. Paradise in his planning memo and several comprehensive plan policies which are listed throughout the staff report. To minimize some of the commercial impact on the adjacent residential area staff recommends increasing the landscape buffer requirements and recommending one of the driveway connections be altered. Mr. Ashley presented the driveway connection on the overhead. Because this is primarily a residential street, Staff feels due to onsite vegetation and proposed location of the building perhaps Broderick Street to the south would be a more appropriate access point. Staff recommends **APPROVAL** subject to the three conditions listed on Page 8 of the staff report.

Member Cornett asked if a driveway curb cut on Broderick, that close to Hwy 17, would work.

Mr. Ashley replied that Traffic Engineering would look at the minimum driveway setback requirement prior to Council Meeting.

Chairman Huttman asked if the parking design was a concept, or would it be dealt with later in the process.

Mr. Ashley replied this is conceptual for a proposed 9,000 sq.ft. building. He stated the actual use of the building will determine the amount of required parking, loading space and driveway cut. The driveway cut may be relocated to better serve a flow to roads for commercial traffic.

Mark Watts, Attorney, Cobb & Cole, agreed with staff comments, including working out the driveway issue. He commented on the B-4 line being set years ago, leaving 50 feet of R-4 which didn't make a lot of sense, causing them to propose shifting to a BPUD. They feel they can deal with and resolve any Staff comments.

Member Rudolph asked if the driveway and turn-in locations have been addressed in the Development Agreement at this point in time, or will they be addressed later.

Mr. Watts replied that the plan would be changed but the Development Agreement has been modified.

Mr. Ashley stated that Page 9 of the Staff Report addresses this issue.

Member Rudolph **MOVED** to **FORWARD** case **PUD-07-054** to the County Council for **APPROVAL** with the conditions recommended by Staff. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

OLD BUSINESS

Z-07-026 – Application of **Jean Clinton and Scott Numbers, Applicants, Jean Clinton, Owner**, requesting a **Rezoning** from the MH-3 (Rural Mobile Home) zoning classification to the MH-4 (Rural Mobile Home) zoning classification. The property is located on the east side of Beacon Light Road, approximately 900 feet from its intersection with Volco Road in the community of Edgewater; ± 2.96 acres (Stockham) **Tentatively scheduled for the June 21, 2007 County Council public hearing time certain 2:00 p.m.**

John Stockham, Planner III, presented staff report. He described subject property (two non-conforming parcels) in detail. He mentioned an extensive resource corridor that stretches around the site. Most parcels in the area are at least 5 acres. Subject parcels were at one time under one ownership. The northern parcel is currently developed with one mobile home. Section 600.01 of the Zoning Ordinance requires the common owner of two non-conforming parcels to maintain the parcels as a single lot. Because Ms. Clinton deeded a portion of an already non-conforming parcel to Mr. Numbers they were unable to provide an acceptable non-conforming lot letter. Mr. Stockham described the background of the surrounding area and the requests for re-zoning from A-3 to MH-3, which have been approved. He referred to Case No. Z-88-046. Staff felt at that time that having consistent zoning patterns in the area was a more important goal. Since that time the ownerships of the two subject parcels have been transferred at least three times through Quit Claim Deeds. The current MH-3 classification requires a lot size of 5 acres and the requested MH-4 requires a minimum 1-acre lot size. Both parcels are at least 1.5 acres in size. The rezoning to MH-4 would enable both parcels to become conforming. With regard to rural future land use, Mr. Stockham pointed out the Comprehensive Plan policies of the 5 acre preferred size. Rural does allow re-zoning to 1-acre. However, there is more scrutiny on the surrounding lotting pattern and with preserving and protecting natural resources. Mr. Stockham continued to point out comments from the Comprehensive Planning Office that the existing development pattern in the vicinity is mostly 5-acre or larger parcels. He stated that the nearby wetland drainage corridor may limit development of the subject property. He again referenced Ron Paradise's memo. The Environmental Management Division agrees there could be upland buffer issues on the southeastern portion of the subject property. The applicant would be required to comply with any Environmental provisions at the time of any future building permit applications, per the EMD staff memo. This request would have no impact on school mitigation requirements per the Facilities Service Office of the School Board's review. Staff finds this request not entirely compatible with the future land use element of Rural and the Comprehensive Plan and in light of no apparent mistakes in the 1988 re-zoning recommends **DENIAL** of this application for rezoning. Mr. Stockham mentioned that if this request is denied by County Council, the applicant would be asked to apply through Land Development for the two parcels to be combined into a single parcel.

Mr. Dyer wanted to make it clear that there are no conditional rezonings, therefore if application was granted there would be no requirements for rezoning imposed by the Commission or the Council.

Member Lipke asked if the MH-4 to the north had existing development.

Mr. Stockham replied based on his site visit, he believes there are mainly mobile homes on those parcels.

Scott Numbers, 37 Alamander Dr., Ormond Beach, Applicant., spoke to the history of the subject parcels and presented photos for the overhead. He is not in agreement with the Staff report. He mentioned the 1988 re-zoning, the Quit Claim Deeds, the property tax increases and the present personal situation with his mother. He feels the property is zoned incorrectly. He appealed to the mercy of the Commission.

Member Rudolph asked the applicant to speak to the recent clearing of the property and asked if permits were obtained because there is concern that the clearing may have encroached into designated wetland area.

Mr. Numbers stated it had been cleared years ago. Recent clearing was to remove fallen trees and some orange trees were removed, but wetlands were not cleared.

Mr. Stockham referenced the memo from Environmental Management to clarify the issue, stating possible encroachment into the 50' upland buffer only.

Mr. Numbers stated he wasn't aware of the requirements and left it up to the land clearing person years ago.

Chairman Huttman asked what options the applicants have if the re-zoning is not granted.

Mr. Stockham replied they could combine the parcels outside the context of this hearing.

Chairman Huttman asked for clarification.

Mary Robinson stated the deeding back-and-forth and previous splitting of the parcel have complicated the issue. If they re-combine it, under one ownership, they would have 3 acres on which they could build.

Mr. Dyer pointed out that would be a Land Development issue outside the Zoning context and the applicant would go through the appropriate process. That separate issue would not be one of the criteria for granting re-zoning.

Chairman Huttman asked if withdrawal of the request would be appropriate.

Mr. Dyer replied it is the burden of the applicant.

Mr. Numbers stated his frustrations with this long process.

Mr. Dyer reminded the applicant today's issue was the re-zoning request.

Member Gove asked when the property was split.

Mr. Numbers replied approximately 40 years ago.

Member Gove asked the possibility of a discrepancy be readdressed.

Mr. Stockham put a survey on the overhead to clarify and discussed the lot history. He further commented on Staff recommendations that were made to the applicants regarding re-zoning or possible combination of lots through Land Development.

Member Lipke asked the applicant for clarification on the possible mistake made in 1988.

Mr. Numbers replied the application paperwork says MH-4, then crossed out and replaced with MH-3. He is unclear on why. He further stated he has cleaned the area of automobiles and debris. He commented that the mobile home is actually on the other half of the property. He feels there are several mistakes.

Scott Ashley, Planning Manager stated at that time Staff recommended the change to MH-3, it was agreed to by the applicant and approved by County Council. The property was already non-conforming. It would remain non-conforming, under one ownership at that time. It is before the Commission today as two parcels, two owners. He stated it is not appropriate to rezone one parcel and leave the other parcel in limbo. He reiterated that we are here today to discuss getting both parcels rezoned.

Member Lipke re-asked for more clarification on why the document was hand-corrected from MH-4 to MH-3.

Mr. Ashley replied it was zoned A-3. The application in 1988 was for MH-4, but never approved as MH-4. During the process of application it was changed to MH-3. That is why it was crossed out on the Staff Report of 1988.

Mr. Numbers stated he never knew why and will continue to question the change.

Member Rudolph asked for more clarification on the non-conforming properties of the parcels.

Mr. Ashley replied the property has been made even more non-conforming by subdividing the ownership.

Member Rudolph continued by asking where the applicant stands with the County if the rezoning is not approved today. He asked how they can use the property currently and if there is still an issue.

Mr. Ashley replied we still have an issue with the lot split and a residential unit that does not comply with the setbacks. It met setbacks as a combined parcel. Split, it doesn't comply, and there are non-conforming issues.

Member Rudolph asked if life could go on under the present situation.

Mary Robinson replied they cannot expand, but they would not be cited for splitting the lots.

Mr. Numbers restated the lot was split when his grandmother owned it in 1980.

Jean Clinton, 4311 Beacon Light Rd, Edgewater, Applicant/Owner, spoke about her mother having two tax bills forty years ago.

Member Rudolph questioned the importance of when the lot was split.

Mr. Ashley stated that common ownership is the issue with the non-conforming lot.

Member Lipke asked the applicant if rezoning was approved would the upland buffer be an issue in terms of house placement.

Mr. Numbers replied no, to the best of his knowledge. He referred to the overhead drawings.

Mary Robinson, Director, pointed out that would be addressed during the building permit review process, but it did appear to be do-able. She recommended the applicant contact County Environmental Dept. for more information on wetland buffers.

Member Rudolph **MOVED** to **FORWARD** case **Z-07-026** to the County Council for **DENIAL** as it is not consistent with the surrounding area. Member Cornett **SECONDED** the motion.

Member Lipke questioned the impact on the RC if other folks with adjoining properties apply with the same type of request.

Mr. Stockham replied regardless they would still have to follow a 50' upland buffer and work very closely with Environmental Management. Yes, other MH-4 requests and 1-acre patterns would have a potential impact upon the drainage corridor.

Motion **CARRIED** with a vote of 5 to 1. **Member Lipke** in opposition.

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

V-07-043 – Application of **Henry C. Kelley, Owner**, requesting for a **Variance** for a front yard setback (40 ft. in lieu of the required 50 ft.) and a **Variance** for a waterfront setback (33 ft. in lieu of the required 50 ft.) to construct a single-family dwelling on A-2 (Rural Agriculture) zoned property. The property is located on the east side of an unnamed private driveway/easement ± 650 feet south of its intersection with Eels Grove Road adjacent to the City of Edgewater; ± 6.2 acres (Nagle)

Christian Nagle, Planner II presented the staff report. He stated the two variances are being requested because the applicant wants to construct a single family dwelling on the A-2 portion of the property. Overheads were presented to show how the property is split between A-2 and RC. According to GIS staff, the proposed home site and existing improvements on the property are located on the A-2 portion, which is 2.6 acres. He continued to describe the proposed home location, the driveway that leads to the site, the existing mobile home, and accessory storage buildings. He then pointed out the front yard and waterfront setbacks on the overheads, along with the two man-made ponds on the property. During review, Staff discovered according to the FEMA Flood Insurance Map and a USGS Quad Sheet for the area, the property is not mapped as being Flood Zone; however the applicant has stated that the property is flood-prone. Mr. Nagle referred to a photograph in the staff report, submitted by the applicant, dated September 2004. It showed partial flooding of the property away from the proposed home site. He stated the applicant is concerned with the expense of constructing a single family home elsewhere on the property without the granting of the variances. Staff also found that granting the variances would be consistent with the Comprehensive Plan Policy 1.2.2.8 because that would minimize the amount of additional fill to be placed on the property. He called attention to the photographs in the Staff Report showing the fill pile on the property in preparation for building the proposed home. He stated the property is large enough to accommodate the proposed dwelling consistent with Environmental protection policies of the Comprehensive Plan 12.2.11 and 12.2.14 without granting the requested variances. Environmental Management also concurs that a single family dwelling can be constructed without impacting the wetlands or buffers without the granting of the requested variances. Zoning Staff is of the opinion there are special circumstances and conditions peculiar to the land since the property is legally non-conforming due to its size and because the applicant believes the property to be flood-prone. These actions are not the actions of the applicant. However, he stated the applicant is responsible for the design and placement of the proposed single family dwelling, and for the man-made ponds on the property. It is Staff's opinion that the A-2 part of the property is large enough to construct the single-family home without the requested variances and for that reason not all the criteria are being met for the granting of the requested variances. Therefore, Staff recommends **DENIAL** of these variance requests.

Member Cornett questioned if it would make more sense to shift the proposed dwelling clockwise.

Mr. Nagle answered that the applicant wants to maintain the mobile home on the property during construction so shifting would not be an option. He stated that to meet the setback requirements and to avoid further impact to the wetlands at the rear of the property, the single family home would need to be located to the south side of the accessory structures.

Member Cornett asked if that was a cleared area.

Mr. Nagle replied yes, but it appears to be at a lower elevation.

Henry Clayton Kelley, Owner, presented photos. He stated the property has been in his family since 1967. He spoke about the improvements and the privacy of the driveway. He stated rotating the proposed home puts it on the existing drain field and moving the mobile

home out before construction presents a hardship. He called attention to the photos of the flooded areas and expressed concern about placing the proposed home there. Moving the proposed home to the rear of the property would put the accessory structures in his front yard.

Member Rudolph asked if the existing mobile home was gone, could he place the home so that it would meet the setback requirements.

Mr. Kelley replied he still couldn't get far enough off the easement/driveway which is 10 feet wide in some spots. He spoke about how Cow Creek was diverted to create the only high, dry spot on the property during the 2004 hurricanes, where the existing mobile home sits. He stated the current flood maps are wrong and it's only common sense to build on the higher land.

Further discussion ensued between **Member Rudolph** and **Mr. Kelley** regarding alternative locations for the proposed dwelling. Upon further review of the site plan Mr. Kelley agreed that placing the new dwelling over the existing septic location would be doable, but undesirable because of the additional expense in relocating the septic and drain field.

Mr. Kelley elaborated on the driveway being private property and his neighbor's easement, pointing out his photographs.

Chairman Huttman questioned whether the proposed dwelling is setting back from property Mr. Kelley owns.

Mr. Nagle answered correct, from his private driveway/easement, not Eels Grove Rd. According to the site plan, the front yard set back for his new home is measured from the edge of his easement and is properly done. According to the Zoning Ordinance, his new home does need to be 50 feet back from the edge of the easement. The applicant's argument is that the easement is only usable by himself and one other property owner.

Mr. Kelley stated that the easement is not usable even by the other property owner. He has the easement to cross his neighbor's property. Aerials of the property were reviewed on the overhead projector.

Mr. Nagle pointed out that the applicant's driveway/easement ends at the south boundary of his property.

Member Cornett asked if a new septic system was planned for the new dwelling.

Mr. Kelley responded yes.

Member Cornett stated since a new system is required, is it possible to put the system in now, attach it to the current mobile home, abandon the old one, and then when the home construction is finished disconnect from the mobile home and connect to the new structure.

Mr. Kelley replied that could work, but nothing would be gained as far as getting away from the driveway. He had worked with several setback scenarios. He expressed further concern over

the flood-prone areas and reiterated that the high, dry location improved over the years by him, and his parents before him, is the only logical location for the new structure.

Member Rudolph reminded the applicant that he had agreed Mr. Cornett's suggestion may work, but wondered if the house location was moved would it encroach on where the mobile home is now.

Mr. Kelley replied yes, but he'd have to move the mobile home out and repeated that he still couldn't get far enough away from the driveway/easement. He also pointed out the wet hammock area right behind the existing mobile home which limits his options.

Member Gove asked for clarification on the setback requirements for private roads and driveways vs. public-maintained roads to which **Mr. Nagle** responded.

Member Gove pointed out the driveway is exclusively the applicant's.

Member Rudolph stated it's marked on the site plan as a utility easement but it seems to be an access easement.

Mr. Kelley replied it is the only way to get to his mobile home and the only way to get power to his home. The power lines do not continue past his home.

Member Cornett **MOVED** to **APPROVE** case V-07-043 as there are special circumstances related to this property and will not cause harm to the surrounding properties. Member Lipke **SECONDED**.

Mr. Kelley asked for clarification on making any changes to this variance request. The limitations of this hearing and the approved variances were explained to him by Christian Nagle.

Motion **CARRIED** unanimously.

S-07-048 – Application of **Basyle Tchividjian, Law office of Landis, Graham, & French, Attorney for Owner, 495 Pell Road, LLC, Owner**, requesting a **Special Exception** for Communication towers exceeding 70 feet in height above ground level (500-foot) on A-1 (Prime Agriculture) zoned property. The property is located at the east side of Pell Road approximately 2,000 feet north of its intersection with Ranch House east of the community of Osteen; ± 10 acres (Ashley) **Tentatively scheduled for the June 21, 2007 County Council public hearing time certain 2:30 p.m.**

Scott Ashley, Planning Manager, presented the staff report. He stated subject tower is intended to serve an FM radio station located out of Titusville. There is a need for a waiver to a single family home approximately 750 feet to the south. According to the FAA determination, the subject tower will not be an obstruction or hazard to air traffic within the area. Setback requirements, anchoring and need for lighting will be met. The area is rural agricultural,

primarily vacant. Other homes to the south are over 1000 feet from the subject property. Staff feels this request does comply with the Ordinance, Comprehensive Plan and does meet the standards for the Special Exception and recommends **APPROVAL** subject to the nine conditions outlined on Pages 4 and 5 in the Staff Report.

Basyle Tchividjian, Law office of Landis, Graham, & French, Attorney for Owner, 495 Pell Road, LLC, Owner, stated he represents Pell Road LLC which represents WNUE, a Hispanic radio station out of Titusville, which currently has a tower in Oak Hill. The applicant has found in the subject property a tower location more conducive to reaching a growing Hispanic population. The applicant agrees to the conditions presented by Staff. The manufactured home on the subject property has already been removed he stated. He further stated the advantage of this site is that the surrounding properties will remain agricultural and cannot be developed.

James Morris, Attorney, Storch, Morris, Harris, LLC, 420 S. Nova Rd., Daytona Beach, representing Miami Corporation. Joel Ivey distributed maps showing the boundaries of the Miami Corporation property which surrounds three sides of the subject property. Mr. Morris stated Miami Corp. feels this request is not consistent with their property uses and surroundings land uses that are not owned by Miami Corp. There is a long history of agricultural use and preservation of this area consistent with A-1. He expressed concern over the guy wires and the height of the proposed tower (500 feet). Comparable buildings within Volusia County are at best ½ the size of this tower. He made various comments on a marked up version of a Mr. William Sullivan report, viewed on the overhead projector. Miami Corp. also objects to the waiver request for spacing from residential properties. Waiver request is based on existing structures but not future structures. He pointed out this is a rural area, but is surrounded by 10-acre home sites and Miami Corp. feels this request does not meet the Special Exception criteria, in particular Section 1104.00(h)(1) and 1104.00(h)(8), because it does not promote the purpose of the A-1 Zoning Ordinance and the affect on the surrounding areas. He further stated this project will adversely affect the natural resources and scenic beauty of the area. He concluded by stating Section 817.00(w) of the Land Development code requirement is not being met regarding evidence of a lack of co-location opportunities. Applicant's request is urban use for an urban area being requested to be serviced in a rural community. It is not appropriate and he requested denial of the application.

Chairman Huttman asked for clarification and discussion regarding the waiver and the mobile home that has been removed.

Mr. Ashley referred to the aerials and pointed out the mobile home within 750 feet. The mobile home on the property at the time of the application has since been removed he stated. The structure across the street is a storage barn. Discussion ensued about future structures and the reason for the waiver.

Member Cornett requested the tower plot chart for the County but it was not available.

Mr. Ashley discussed existing tower locations from memory.

Mr. Morris interjected that is why the co-location issue is important; along with the small size of the site should the tower fall.

Mr. Tchividjian stated it is inappropriate to compare a 500 foot tower with a building since the tower is only 48 inches around and repeated the applicant's case for approval. He stated the tower would not fall at its full height. He stated that would be impossible with the way they are built.

Member Sixma requested Section 817.00(w)(4) on the overhead and asked the applicant to speak to the issue Mr. Morris raised about the applicant's burden to demonstrate there are no other alternatives available.

William Sullivan, Director of Engineering for Mega Communications stated an extensive study was done regarding where to locate in Volusia County. In order to reach the applicant's desired improvement and meet the FCC's spacing requirements, the solution was narrowed down to the subject property. He explained there are no alternative towers to co-locate on.

Mr. Morris asked for Mr. Sullivan's credentials.

Mr. Sullivan replied he has been involved in radio and broadcasting as Chief Engineer for over 30 years, the Director of Engineering for Mega since 2000. He received his electronics training with the US Navy.

Mr. Morris asked Mr. Sullivan to explain "short spacing".

Mr. Sullivan explained the FCC has minimum spacing requirements between transmitters on the same or adjacent frequencies. This case involves stations that are second and third adjacent.

Mr. Morris asked if it was related to the power of the frequencies.

Mr. Sullivan replied yes, the power and the frequency. We would be short-spaced without invoking the contour protection rule of the FCC.

Mr. Morris inquired if short spacing would mean at another location they would overlap another station's service area.

Mr. Sullivan replied essentially yes.

Mr. Morris asked if you combine power and frequency you could decrease radius by decreasing power.

Mr. Sullivan replied yes.

Member Sixma asked if anyone knew the height of the tower at the Chevrolet dealership in Orange City.

A discussion ensued about the possible height of the tower at the Chevrolet dealership in Orange City.

Mr. Morris stated he feels this is a service area question and almost a self-created hardship from a variance prospective. He reiterated his point about other available locations.

Member Rudolph **MOVED** to **FORWARD** case S-07-048 to County Council with a recommendation of **APPROVAL** based on the report presented by Staff, including the nine conditions and testimony presented by the applicant. Member Cornett **SECONDED**.

Member Rudolph stated he feels the proposed tower is in the right place. There are other taller stronger towers within more residential areas than this and it is one of those things that no one wants one, but you have to have them.

Member Lipke questioned the concern of the adjacent owner and wondered where else that was coming from. Obviously not the scenic issues. She asked what would the other concerns of a private, adjacent owner be.

Member Rudolph queried other than Miami.

Member Lipke replied yes, or Miami. There must be something else driving this that is unspoken.

Member Cornett asked if she's been reading the newspaper lately. He mentioned information about creating a new city within the center of the County. He stated uncertainty about whether this parcel is part of that.

Member Lipke stated that helps.

Motion **CARRIED** with a vote of 4 to 2. Members Gove and Lipke in opposition.

V-07-049 – Application of **William and Jaime Raulerson, Owners**, requesting a **Variance** for a west side yard setback (13.6 ft. in lieu of the required 50 ft.) for an addition to a single-family dwelling on A-1 (Prime Agriculture) zoned property. The property is located on the south side of Spring Garden Ranch Road, approximately 1000 feet west from its intersection with New Jersey Avenue, in the community of DeLeon Springs; ± 13,000 sq.ft (Nagle)

Christian Nagle, Planner II, presented staff report. He stated there are some single family dwellings and a mobile home in the area of subject property. The proposed 462 ft. addition includes an enlarged living room and a new bedroom. Subject property is non-conforming at 13,000 sq. ft. and only 100' wide. He reported the A-1 classification has 10-acre minimum lot area, 150 ft. minimum lot width, and a minimum 100 ft. front yard and minimum 50 ft. side yard and rear yard requirements. Construction of the existing home, much less the proposed addition to the side, is not possible without granting of the variance due to the A-1 requirements. Construction of the proposed addition to the rear or the east side is not feasible based on information from the property survey and from Randall Hutchinson, the applicants'

contractor. Mr. Hutchinson has stated that granting the requested variance is appropriate due to poor planned building construction and septic tank constraints. Further, Mr. Hutchinson had stated the proposed location could not be located at the rear because of the existing septic and proposed new septic system. The applicant noted that the existing home was built in 1958 and they were not responsible for construction of the original home. In review of the criteria in Section 1003.01, Staff found that the applicants can meet all five conditions listed in the Ordinance. He stated the property has special circumstances and conditions peculiar to the land because of its small size and because of the A-1 classification requirements. The applicants are responsible for the proposed addition, but the property and existing home have physical and practical constraints which limit where the proposed addition may be built. Construction of the proposed addition is not possible without granting the variance. Staff finds that literal interpretation of the Zoning Ordinance requirements would deprive the applicants of rights commonly enjoyed by other properties in the same classification. For these reasons and because Staff found the request consistent with the purpose and intent of the Zoning Ordinance and consistent with the Comprehensive Plan and based on the applicants' information should not be injurious to the area involved, Staff recommends **APPROVAL** of the requested west side yard variance.

Chairman Huttman asked if the applicant understood and agreed with the staff report.

William Raulerson, 1024 Spring Garden Ranch Rd., DeLeon Springs, Owner, replied yes.

Chairman Huttman asked the applicant if he understood and agreed with the staff report has presented.

Mr. Raulerson replied that he did.

Member Rudolph **MOVED** to **APPROVE** case **V-07-049** as recommended by Staff. Member Cornett **SECONDED** the motion.

Member Gove brought up the proposed well site right on the front property line next to the right-of-way.

Mr. Raulerson explained he was just meeting drain field distance requirements.

Motion **CARRIED** unanimously.

Member Cornett removed himself from the Commission (conflict of interest form on file) Member Darla Lipke reads the next case into the record.

V-07-050 – Application of **Taver and Joan Cornett, Owners**, requesting a **Variance** for a front yard setback (24 feet in lieu of the required 30 ft.) to reconstruct single-family dwelling on R-3 (Urban Single-Family Residential) zoned property. The property is located on the south side of Branchwater Bend, approximately 500 ft. north from its intersection with Flowing Well Road, in the Hontoon Study Area, near DeLand; ± 16,060 sq.ft. (Ashley)

Scott Ashley, Planning Manager, presented the staff report. He described the subject property location in the Hontoon Island area and current zoning requirements. The original home was constructed in the early 1970's and was substantially damaged by the February 2007 tornado. He stated the applicant is requesting the single-family home be rebuilt in the same location using the same foundation location. Shifting the home further back towards the canal could cause impact to wetland buffer requirements. The subject property is at the end of Branchwater Bend. This narrow roadway only serves three homes within the subdivision. The request would not have an impact on any adjacent properties as it has been an existing condition for over 30 years. Staff feels there are special circumstances due to the narrowness of the lot and allowing the variance would not be injurious to the surrounding property owners and therefore recommends **APPROVAL** of the variance.

Taver Cornett, 2613 Branchwater Bend, DeLand, Owner with his wife, Joan stated he has recused himself and filed a conflict of interest form.

Member Rudolph asked if the rebuilt home would be on the exact same spot as the former home was before the F3 tornado.

Mr. Cornett replied the front will be the same. There may be some minor changes to the side width, but they would remain within the setbacks.

Member Rudolph **MOVED** to **APPROVE** case V-07-050 as recommended as Staff. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

V-07-052 – Application of **Paul Walker, Agent for Owner, Robert Niedzwiecki, Owner**, requesting a **Variance** for a front yard setback on (25 ft. in lieu of the required 100 ft.); a **variance** for a west waterfront yard setback (25 ft. in lieu of the required 50 ft.); a **variance** for a south waterfront yard setback (35 ft. in lieu of the required 50 ft.); and a **variance** for an north side yard setback (25 ft. in lieu of the required 50 ft.) on A-1 (Prime Agriculture) zoned property. The property is located on the west side of Baxter Point South Road in the Rural Recreational area of Baxter Point, near the Volusia-Brevard County line; ± 15,566 sq.ft. (Stockham)

John H. Stockham, Planner III, presented staff report with photos of the site. He stated subject property is in a remote, rural area originally built as a fish camp. The other lots in the vicinity are mostly developed with mobile homes and manufactured homes, along with single-family homes that have setbacks that do not correlate with those required in the A-1 classification. The site is currently occupied with at least two shed structures, a floating dock and boathouse and a recreational vehicle that appears to have been inhabited. However, there are no permits on record for any of these items or structures. The applicant is proposing to install a doublewide mobile home dwelling on the subject property. The A-1 classification requires much greater setbacks than would be possible within the size of the existing lot. A-1 properties have a required 10-acre minimum lot size, 150 ft. minimum lot width, minimum setbacks of 100 feet front yard and 50 feet for rear, side and waterfront yards. The subject lot is nonconforming at 0.35 acres in size and 135 ft. wide along the road frontage. He reported

Environmental Management has noted that wetland impacts require a 50 ft. wetland buffer and would also require a Wetland Alteration Permit at the time of the building permit application. Also, at that time, a certified wetland determination would be required from an environmental consultant or from the DEP. The Environmental Office has also found that the application poses minimal new environmental impact, however any future permitting shall address the previous clearing of the wetland buffer. The Health Dept. confirmed that construction permits have been received for the potable well and septic system. However, if these variances are not granted, the applicant's septic system construction permit will be considered invalid. He further stated special conditions and circumstances do exist with regard to the size of the lot and the location of the proposed septic system, based upon Health Dept. requirements, with the home being adjusted accordingly. He stated it becomes difficult to meet all the setback requirements, the subject property is too small. The setbacks proposed more closely match what would normally occur for a parcel of about this size and shape. He then presented aerials, photographs and a floor plan of the approximately 1,248 sq.ft. proposed home. He discussed the location on the river channel, the existing RV and other existing structures on the subject property. The applicant has indicated the RV will be removed upon installation of the double-wide mobile home. Therefore staff recommends **APPROVAL** of the subject request based upon the above criteria and subject to the condition that all existing improvements on the subject property shall require applicable permits or be removed.

Applicant was not present.

Member Rudolph questioned the applicant's absence. No one was able to respond with a reason.

Member Rudolph **MOVED** to **APPROVE** case V-07-052 as recommended by Staff and without the testimony of the applicant. Member Lipke **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-055 – Application of **Sheryl Denan, TBCOM Properties, Agent for Owner, Mariculture Technologies, Int'l, Owner**, requesting a **Special Exception** for a monopole communication tower exceeding 70 feet in height (170 ft. in height above ground level) and a waiver to Section 817.00(w)(5)(e) *Communication towers. Setbacks and separation* (750 ft. in lieu of the required 1000 ft.) from the residence to the northwest, on A-2 (Rural Agriculture) zoned property. The property is located on the west side of U.S. Highway 1, at the highway overpass of the FEC railroad tracks, approximately $\frac{3}{4}$ of a mile south of Fullerton Grove Road, south of the City of Oak Hill; \pm 10 acres (Zechnowitz) **Tentatively scheduled for the June 21, 2007 County Council public hearing time certain 2:30 p.m.**

Dave Zechnowitz, Planner III, presented the staff report. The subject property is 10 acres in a rural area, developed with a fish farm and an orange grove. The proposed 170 ft. monopole telecommunication tower will support five antennae for co-location purposes. The 5500 sq. ft. lease parcel will be fenced and surrounded by a 15 ft-wide planted landscape buffer. There are no towers within 1200 feet of the site (minimum separation distance). He reported the closest

tower is over a mile away to the southeast and not available for co-location. The subject tower will be setback half of its height (85 ft.) from the closest property line and is designed to collapse on itself in an extreme wind event. The applicant is also requesting a waiver of the 1000 ft. separation distance from a residence to allow a 750 ft. setback from an existing single-family dwelling to the northwest. The adjacent FEC Railroad tracks and existing natural vegetation, along with the planted buffer, will help to visually screen the tower from view. Staff believes the applicant submitted sufficient evidence and documentation demonstrating there is a need for this tower in this location and therefore recommends **APPROVAL** of the request, including the waiver to allow the 750 ft. separation, subject to the conditions outlined in the staff report.

Sheryl Denan, 606 Barcelona Ct., Satellite Beach, Agent for Owner pointed out two gentlemen with her to answer any questions. She stated that she had just received information from Sprint/Nextel that they are also interested in co-locating on the subject tower. Metro PCS would be the anchor tenant and then Sprint/Nextel would be the second carrier.

Member Gove asked if an attempt was made to locate on another tower.

Ms. Denan replied yes, to the tower to the southeast owned by NASA, but they were unresponsive. It worked from an RF standpoint for location but they never got far enough to do their due diligence so see if it was structurally feasible, plus they couldn't obtain a lease.

Member Gove asked how far from the US 1 and FEC right-of-way is it.

Ms. Denan replied approximately 85 feet from US 1 and assumed 85 feet from FEC.

Member Gove stated it's designed to fall on itself, but if it did go over it doesn't look like it would fall on the parent parcel.

Ms. Denan interrupted to say that as one of the conditions a certified fall-zone letter would be submitted during the building permit process to insure that in the unlikely event it collapses it would collapse within the parent parcel. It won't affect either right-of-way.

Member Cornett **MOVED** to **FORWARD** case S-07-055 to County Council for **APPROVAL** with conditions as presented by staff. Member Sixma **SECONDED**. Motion **CARRIED** unanimously.

S-07-056 – Application of **Sheryl Denan, TBCOM Properties, Agent for Owner, Gary Willis, Owner**, requesting an **Amendment** to an existing Special Exception for a monopole communication tower (165 ft. in height above ground level) and a waiver to Section 817.00(w)(5)(e) *Communication towers. Setbacks and separation* (763 ft. in lieu of the required 1000 ft.) from the residence to the northwest; and (628 ft. in lieu of the required 1000 ft.) from the residence to the south and a waiver to Section 817.00(w)(8) *Communication towers. Landscaping* on A-2 (Rural Agriculture) zoned property. The property is located on the west side of Hyder Avenue, approximately one mile southwest of the intersection of Howland Boulevard and Elkcam Boulevard, adjacent to the municipal limits of the City of Deltona; ± 10

acres (Zechnowitz) **Tentatively scheduled for the June 21, 2007 County Council public hearing time certain 2:30 p.m.**

Dave Zechnowitz, Planner III, presented the staff report. He stated that on January 11 Volusia County Council upheld the PLDRC recommendation to approve Case No. S-06-142 (Special Exception for a 165 foot monopole tower on the subject site). Condition #3 of the approval includes a requirement that no wetlands or buffers shall be impacted. At the time of filing, the applicants relied on a surveyor's delineation of wetlands which indicated the tower could be built without disturbing wetlands or buffers. When the applicants hired a biologist for an accurate wetland survey for site plan review, it was discovered that the entire property is considered wetlands. Therefore Condition #3 has the effect of preventing the property from being developed as a telecommunication tower site. For that reason, the applicant is requesting to amend Condition #3 by deleting two sentences as noted in the staff report. Those sentences were then presented on the overhead projector. Development of the parcel shall be subject to submittal of a conceptual site plan to the Land Development Division for review and approval prior to building permit application. The site plan must comply with applicable Zoning Ordinance and Land Development Code requirements. The subject parcel shall be developed in accordance with the site plan as may be modified by these conditions and/or modified by further County review and/or modified by the FAA/FCC and/or other permitting requirements. Section 11.07.01 of the Land Development Code will allow mitigation for wetland impacts if they cannot be avoided and will require minimization of the impact to the greatest extent possible. He further stated that due to a scrivener's error the applicants are requesting to modify Condition #9 to change the word "lease" to "parent" in that if the tower fails due to a catastrophic wind event, it will fall within the parent parcel, not the leased parcel as was inadvertently stated. Staff recommends **APPROVAL** of both changes because the amended request continues to meet the expressed requirements of the zoning ordinance. He pointed out this request is a major **amendment to modify changes only**, Condition #3 and #9 as mentioned.

Sheryl Denan, 606 Barcelona Ct., Satellite Beach, Agent for Owner discussed the applicant's error with the wetland delineation and mentioned a meeting set up with St. Johns River Water Management District to talk about wetland mitigation. They have also been talking with County's Environmental Management Dept.

Member Gove asked about the plans showing sub-lease areas. He wondered if it's a trend.

Ms. Denan answered the code requires that a certain height tower be built for so many carriers. They are showing through the site plan process that, yes, there is adequate space for future carriers to come in.

Member Rudolph asked staff about Condition #10 and if the word "leased" is correct or should it be changed as requested in Condition # 9.

Mr. Zechnowitz replied that Condition #10 is correct.

Michael Dyer, Assistant County Attorney, clarified that if this amendment were approved it is not representing that the property could be developed as the owner wishes, just that it's removing the condition that no wetlands be impacted. To the degree that there are any impacts, it would be subject to our applicable ordinances at the development stage.

Mr. Zechnowitz concurred.

Member Cornett asked for clarification that if this special exception is approved, we have the same tower at the same location at the same height, doing the same thing.

Mr. Zechnowitz replied "exactly".

Michelle Foshee, 3465 Hyder Ave, Deltona, FL 32738, Property Owner, (#5 on petition) was not noticed of the original case, asked for clarification on the tower height, and is in opposition to the project. She also stated she has concerns with negative property value.

Marie DeAngelis, 3205 Hyder Ave, Deltona, FL 32738, Property Owner, (#12 on petition) agreed with Michelle Foshee. She stated all neighbors are upset, cited wildlife and cancer concerns. She is opposed.

Chairman Huttman asked Ms. DeAngelis if she had received notification.

Ms. DeAngelis replied she had no notification, but did see the posted sign.

Mary Robinson explained the requirement is to put the poster up ten days prior and the applicant has submitted an affidavit that was done. The zoning ordinance requirements for due public notice require that the adjacent property owners are notified by certified mail. She pointed out the two previous speakers are not immediately adjacent.

Adrian Peinado, 2654 Howland Blvd, Deltona, FL 32738, Adjacent Property Owner, not present when name called.

Janet Doffing, 1996 Industrial Drive, DeLand, FL 32724, Adjacent Property Owner, not present when name called.

Kenneth Hoff, 3030 Lockwood Blvd, Deltona, FL 32738, Property Owner, (#3 on petition) had concerns regarding notice and agreed with previous speakers. He submitted petition with at least a dozen signatures opposed to the tower. He stated it's not consistent with current land uses and given more time, he can provide signatures of another twenty homeowners. He also asked for more time to obtain legal counsel to represent them.

Member Rudolph reminded Mr. Hoff this is just the first step in the process and the matter will go to County Council on June 21, where he can provide testimony.

Mr. Hoff continued to state his opposition and frustration with the late notice.

Dan Adkins, 3040 Lockwood Blvd, Deltona, FL 32738, Property Owner, (#11 on petition) agreed with previous speakers and asked about the height of the tower, and whether the site is considered wetlands.

Mr. Zechnowitz replied the Land Development code's first priority is to avoid wetlands and then if that's not the case, to minimize impact and finally mitigate for any impacts to the wetlands.

Mr. Adkins is opposed.

Member Rudolph wanted to know if there was a contiguous owner.

Ms. Foshee stated her survey indicates she is contiguous but did not have it with her.

Member Rudolph asked staff to comment on the contiguity issue with this property owner.

Mr. Zechnowitz replied that the applicant has notified all the adjoining property owners, based on the list provided by the Property Appraiser.

Member Huttman asked if there is approval to act based on the January application.

Mr. Zechnowitz replied they have approval for the 165 monopole tower, subject to the conditions discussed today. The language under discussion effectively precludes development of the site because it says "no impact to wetlands or buffers".

Ken Hoff stated the subject property and nearby area are probably one of the biggest concentrations of the protected gopher tortoise as well as deer, scrub jays and other wildlife. As a property owner within 1000 feet of the proposed tower, he is opposed to the impact.

Mr. Dyer reminded the public this is not a re-hearing of the original request. It is only an amendment to that request. He also reviewed the advertising, notification and posting requirements and stated that all have been met for the original hearing and today's amendment. He further stated this body does not have the ability to rescind the original Special Exception request.

Mr. Hoff asked if that can be challenged through a legal process.

Mr. Dyer replied it is his opinion that time has passed.

Further discussion ensued about whether due public notice was served for the December meeting.

Ms. Denan discussed the timing of the biologist's report and offered the environmental report for the record and mentioned she has photographs of the notices for both hearings.

Chairman Huttman stated he had just been provided with minutes from the December hearing, indicating two people filled out blue slips, but did not answer when called to speak.

Ms. Lipke commented that tower construction seems to visually impact more than just adjacent property owners and asked if that has been considered in the past.

Mr. Dyer responded that would require an amendment to the Ordinance and he is not aware of any such discussions. Due public notice has been satisfied according to the Ordinance.

Member Gove asked if staff had been aware the site was all wetlands in January, would the recommendations have been different.

Mr. Zechnowitz responded that Condition #3 would not have contained the language that precluded impacts to wetlands because the Land Development code controls development of property and deals with the impacts to wetlands. The applicant indicated there was an area of the site that was not wetlands and they could erect the tower without impacting wetlands.

Chairman Huttman concluded the public input.

Member Cornett stated that upon re-review of the December 12 minutes, the property description and distances to affected structures appear identical to today's.

Member Rudolph **MOVED** to **FORWARD** Case S-07-056 to County Council with a recommendation of **APPROVAL** based on staff information and conditions presented. **Motion fails for lack of a SECOND.**

Member Lipke asked the applicant if there is anything that can be done to address the issues raised by the property owners.

Ms. Denan replied the lighting of the tower is a County requirement, not FAA. Compatibility with the surrounding area was discussed at the original hearing, and if they can't meet the wetland alteration permit requirements they don't have a site. What the applicant is asking is for permission to go through the process.

Chairman Huttman stated that denying the amendment to Condition #3 does force the issue addressing the public's concerns.

Member Rudolph stated that by not denying the amendment, the applicant has the opportunity to mitigate and/or do what's necessary and proper and legal. Without it, they don't have an opportunity to even try.

Member Rudolph **MOVED** to **FORWARD** Case S-07-056 to County Council with a recommendation of **APPROVAL** based on staff information and conditions presented. Member Cornett **SECONDED** for purpose of discussion. A Roll Call vote is asked for. All in favor of this motion:

Member Rudolph – Aye	Member Cornett - Aye
Member Lipke – Nay	Member Sixma – Nay

Member Gove – Nay Member Huttman - Aye
The motion does not carry; no recommendation to County Council.

Member Gove **MOVED** to **FORWARD** to County Council with a recommendation of **DENIAL** as presented. Member Sixma **SECONDED**. A Roll Call vote is asked for. All in favor of this motion:

Member Rudolph – Nay Member Cornett – Nay
Member Lipke – Aye Member Gove – Aye
Member Sixma – Aye Member Huttman - Nay
The motion does not carry; no recommendation to County Council.

OLD BUSINESS

NONE

PUBLIC ITEMS

NONE

STAFF ITEMS

NONE

COMMISSION COMMENTS

Member Rudolph thanked the Commission for the opportunity to serve.

Chairman Huttman inquired about possible County assistance to Hontoon Island area residents, possibly some approval assistance discussed at a County Council meeting.

Mary Robinson replied that several residents appeared at Council to suggest more assistance such as a field office.

Member Cornett commented that the County needs an ordinance to deal with emergencies to lessen the impact on the standard County procedures. His issue before the Council was not with staff, but with an additional ordinance.

Member Sixma commented he feels the property description in the last case is incorrect; SW of Elkcam and Howland should be NW. It's towards Lake Helen, not Osteen.

PRESS AND CITIZEN COMMENTS

NONE

ADJOURNMENT


Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 12:23 p.m.



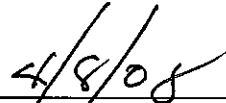
Gary Huttman, Chairman



Date



Taver Cornett, Secretary



Date