

September 22, 2008 – Special Meeting

The Board of County Commissioners, Walton County, Florida, held a special meeting on Monday, September 22, 2008, at 5:00 p.m., at the South Walton Annex to discuss the Jolly Bay PUD.

The following Board members were present: Commissioner Larry Jones, Chairman; Commissioner Sara Comander, Vice-Chair; Commissioner Scott Brannon; Commissioner Kenneth Pridgen; and Commissioner Cindy Meadows. Mr. Ronnie Bell, County Administrator and Mr. Mike Burke, County Attorney were also present.

Commissioner Meadows led the invocation followed by the Pledge of Allegiance to the American Flag. Chairman Jones called the meeting to order regarding approval of the Jolly Bay PUD Master Plan and Phase I.

The Quasi Judicial hearing was called to order and Attorney Burke administered the oath to those intending on speaking.

Attorney Dana Matthews presented an updated exhibit list and Exhibits BB **(28)**, CC **(29)**, and DD **(30)** to the Board. Mr. Chance Powell, accepted as an expert witness, explained the Freeport urban service area map which shows the urban service boundary lines. The Jolly Bay project area is not included in those boundaries. He stated that the maps presented are the current up-to-date maps for the City of Freeport. He stated the Freeport sewer service master plan for 2008 shows the major projects in the area which would be serviced by the City of Freeport. Mr. Powell discussed the platted/approval residential units in the rural village district and there are approximately 2,010 lots within the contiguous rural village district.

Commissioner Meadows questioned if those lots were single family and if any were condominiums or multi-family dwellings. Mr. Powell stated that most of them are single family and some multi-family dwellings are located in the Bear Creek area. Mr. Powell stated that the land use of the Bear Creek area is rural village.

Ms. Pat Blackshear, Planning and Development Director, questioned if the City of Freeport adopted the urban service boundary as a plan amendment and if it is in compliance. Mr. Powell answered that sewer is available in the area and it does lie in the urban service boundary. Ms. Blackshear questioned if the City of Freeport adopted in their Capital Improvements Program, a 5-year plan with long term CIE or the capital projects served from a water/sewer standpoint. Mr. Powell answered that the Jolly Bay project was shown on the 2008 Freeport Sewer Service Master Plan.

Chairman Jones questioned which of the multi-family subdivision town homes listed are in the rural village district and how tall those structures are. Mr. Powell answered that Bear Creek is in the same contiguous rural village district and the height of those structures are 50 feet.

Mr. Richard Adams, resident, questioned how many homes were on the existing lots and the location of the projects on Fluffy Landing Road. Mr. Powell stated that he was not certain of the number of homes on the existing lots but some of the projects on Fluffy Landing Road have been approved and built.

Ms. Kimberly Maxwell, applicant, presented Exhibits EE **(31)** and GG **(32)** to the Board and briefly explained the application process for Jolly Bay. She stated the Planning Commission unanimously voted for the project and made several comments in favor of the project. Ms. Maxwell stated that after coming before the Board, they decided to offer

additional concessions to ease concerns regarding the project. Those additions include: widening Jolly Bay Road to 24 feet up to the project site, include a turn lane on Hwy 331 and Jolly Bay Road, and include low turtle lighting in the design of the condominium.

Attorney Matthews called upon Mr. Ken Metcalf, Director of Planning with Greenburg Turf in Tallahassee, for testimony. Mr. Bob Apgar, Attorney, submitted Mr. Metcalf's resume for the record. Attorney Apgar questioned Mr. Metcalf, accepted as an expert witness, how a planner conducts an urban sprawl analysis under Florida law. Mr. Metcalf answered that it is a land use analysis required under Chapter 163 of the Growth Management Act and Rule 9J5 under the Florida Administrative Code. He stated that Rule 9J5 goes into detail on how to do an urban sprawl analysis. An urban sprawl analysis is directed to the review of comprehensive plans and comprehensive plan amendments for compliance with the growth management statutes. It is not a development criteria or standard that applies to the review of individual developments. Mr. Metcalf prepared a report and submitted it to the Board as Exhibit II (35). He stated that the rural village comprehensive plan does not constitute urban sprawl and explained the indicators of urban sprawl.

Chairman Jones clarified that the urban sprawl analysis would not be an appropriate way to look at the project, but as the actual land use. Mr. Metcalf agreed. Chairman Jones questioned if there is a situation where the rural village district could not constitute urban sprawl and if that would be true for any rural village district location in the county. Mr. Metcalf agreed. Chairman Jones questioned if the land is suitable and available for development. Mr. Metcalf stated that it is.

Commissioner Meadows stated it was clearly contemplated that rural village would be low density residential and non-residential uses compatible in scale and intensity with the surrounding residential areas to preserve the rural character of the county. A high-rise building is not compatible in scale or intensity with the character of the rural village areas.

Discussion continued regarding the units per acre and the mechanisms in the Comprehensive Plan that requires clustering, set backs, and the intent of land use categories.

Mr. Murray Balkcom questioned if urban sprawl contains compatibility. Mr. Metcalf stated that compatibility is not mentioned, but separation of rural uses is.

Mr. Adams questioned Mr. Metcalf if Freeport is a municipality and if the location of this project is unincorporated. Mr. Metcalf stated that it was. Mr. Adams questioned if the Board would have the ability to control the location, design, construction, and development within the unincorporated area of Walton County. Mr. Metcalf stated that they would.

Attorney Apgar called Mr. David Haight, accepted as an expert witness, to testify and stated that Mr. Haight's resume was presented to the Board at a previous meeting. Mr. Haight stated that he was familiar with the PUD processing in the county and what is expected from those projects. He stated that he was familiar with the rural village category of the Walton County Comprehensive Plan and the Land Development Code regulations. Mr. Haight stated that what is in the plan and the code should be relied upon by the applicant. In this case the applicant did rely on what was on the papers and the rural village category is described similar to urban uses. You cannot get a septic tank or

well on a parcel of that size and you must obtain urban utilities. He briefly explained the floor area ratios and impervious surface ratios. He stated that it is clear that the application exceeds the demands placed by the Land Development Code and Comprehensive Plan, it is also consistent with the planning codes.

Chairman Jones questioned if this is a transition from a very rural district to a very urban district. Mr. Haight stated that it is.

Discussion continued regarding the transition from a rural district to an urban district, the height restrictions of the buildings, compatibility, and vacant parcels.

Mr. Murray Balkcom questioned the obscurity of the building from all angles. Mr. Haight stated that the building could possibly be obscured by all angles with the exception from the Bay. Mr. Balkcom clarified that this area is zoned as rural village. Mr. Haight stated that there are also urban uses in the area.

Mr. Adams questioned if Mr. Haight stated that the project is compatible within itself internally and externally. Mr. Haight agreed that it is compatible with the demonstrations he viewed for the different project aspects.

The meeting recessed at 6:42 p.m. and reconvened at 6:55 p.m.

Attorney Apgar questioned Commissioner Meadows what non-residential areas of the project she was concerned with. Commissioner Meadows commented that the condominium would have commercial entities within and is not compatible in scale intensity with the character of the surrounding residential areas. Attorney Apgar questioned if the restaurant in the building would make the entire building non-residential use. Commissioner Meadows stated there is also a retail store. Attorney Apgar questioned the applicants if there was any non-residential use in the building and stated that there

were not any. Commissioner Meadows stated that the plans show a restaurant in the condominium building. Mr. Chance Powell, accepted as an expert witness, stated that the original plans had a restaurant, but when the height of the building was reduced the restaurant was removed from the plans.

Attorney Apgar discussed the legal standards that apply to the Board's decision and, the requirements of the Comprehensive Plan and Land Development Codes for application, and the transition to an urbanizing area.

Chairman Jones questioned Attorney Apgar if the public hearings held before the Planning Commission and the BCC is the appropriate opportunity for public to comment opposing the project. Attorney Apgar agreed. Chairman Jones clarified a decision on the project is made regardless if the applicant has gone through the entire application process and had not received any negative comments. Attorney Apgar agreed.

Discussion continued regarding the transitioning from very rural district to a very urban district.

Mr. Tim Brown read into the record from the staff report, the staff findings and facts from the Jolly Bay PUD.

Attorney Matthews questioned Mr. Brown if there was an issue with the 100 foot height limitation for the condominium building. Mr. Brown stated that a maximum of 100 feet would not be an issue because they consider it a mid-rise building which is compatible with non-urban use. He stated that the PUD does meet the Walton County Land Development Code and the Comprehensive Plan.

Ms. Helen Brantley questioned the procedures for land development approval and if the Board has the ability to set conditions to ensure the compatibility of the project to

surrounding areas. Mr. Brown stated that the Board does have the discretion to decide the appropriate height and any other conditions for any development.

Mr. Adams questioned Mr. Brown how he would characterize churches and schools, provided that the non-residential uses are compatible in scale with intensity with the character of the residential areas. Mr. Brown stated that a building of eight stories or more is considered urban, less than eight stories is considered non-urban.

Ms. Blackshear questioned Mr. Brown if he was familiar with chapter 1 of the Land Development Code that provides that the interpretation where it is not a straight forward reading of the code by staff, that the director has that authority delegated by the Board. Mr. Brown stated that he was. Ms. Blackshear questioned Mr. Brown if he was familiar with Chapter 11 of the land development code, where the director can determine that more information is needed for major or minor projects. Mr. Brown stated that he was.

Ms. Lois LaSeur stated that she had met with the applicants and there were no specific height limitations at the time, but there were other considerations. She told the applicants the condominium could be a controversial issue. She stated that approximately 40 acres are wetlands and if the applicant obtains a dredge and fill permit and attempts to impact the wetlands, the provisions will only allow one unit per 10 acres to be impacted. There is no way to spread out and impact the area as the applicant stated they would do.

Discussion ensued regarding the Land Development Code, the mixed land use categories, urban design, percentage of commercial usage, and rural design use.

Mr. Murray Balkcom questioned what information the Planning Department had to support the information that Mr. Powell gave regarding the amount of acres that have

commercial use. Ms. LaSeur stated that the future land use map acreages would be compared with the existing land use acreage for the commercial in rural village to see if it exceeded 5%. Mr. Balkcom questioned how to determine the maximum amount allowed. Ms. LaSeur stated there is little commercial development in rural village throughout the county and the 5% criteria is discussed in the EAR report. Mr. Balkcom questioned what areas would be in the determination. Ms. LaSeur stated that it would be an area acceptable for commercial development.

Mr. Brian Kellenberger questioned the transferring and clustering density that Ms. LaSeur had mentioned. He stated that the Land Development Code allows density to be transferred from the wetland protection zone onto the upland areas. He questioned how that is determined and distributed onto the upland areas and if there are any provisions in the Land Development Code to transfer density from one upland area and cluster it onto another upland area. Ms. LaSeur stated that there is nothing specific in wetland clustering that requires you to distribute it in a certain way in the upland areas. Most of the upland density transfer issues have been in South Walton where there is a 50 foot height limitation, set backs, open space requirements, and other requirements that limit the ability to cluster to a higher density. There is nothing that prohibits clustering from one upland area to another upland area as long as the land use category, set backs, and other criteria of the Land Development Code and Comprehensive Plan are met.

Mr. Kellenberger questioned the collector road language in the Land Development Code and how a road is determined as a collector road. Mr. George Newman stated that a collector road is determined if it collects the traffic from the surrounding neighborhoods and conveys that to an arterial road, which Jolly Bay Road

does. Mr. Newman stated the determination for Jolly Bay Road to be a collector road was based on criteria of the Land Development Code and how this road collects the neighborhood traffic and moves to the arterial road.

Mr. Adams questioned if the collector road is supposed to be 22 foot wide, and have a 50 foot right-of-way. Mr. Newman agreed. Mr. Adams stated that this road is a mile long and connects to Hwy 331. He questioned if there would be a large increase from a high-rise building and 55 RV's on PMP because that is the only road out. Mr. Newman stated that based on the traffic report submitted by Mr. Joe Poole and the highway capacity manual, a surface level of B is needed. Mr. Adams questioned if the road would have to be repaved entirely and if there should be a second outlet. Mr. Newman stated that the outlet chosen was Hwy 331 and the Land Development Code does not direct that two outlets are needed.

Ms. Pat Blackshear discussed her review and her determination of the application for the Jolly Bay PUD. She read portions of the comprehensive plan and the land development code into the record, and the compatibility ordinance.

Mr. Murray Balkcom questioned without the applicant purchasing mitigation land, how many units could they develop on the 60 acres. Ms. Blackshear stated that she could not answer that without looking at the site plan and doing an analysis. She stated she understood that they are not filling wetlands with the exception of a road crossing. He questioned if it would even be possible to get 140 units in the upward portion of the land. She stated that they could. He clarified the word "unit" and if we do not address the density in terms of units as in structures on a property as opposed to a condominium unit. She stated that a condominium unit is a residential unit. He stated that the two units per

acre is the language and questioned if that is two condominium units per acre or single-family development houses. She stated that it could be two single-family detached dwellings, a town home which is two attached dwellings, two units which are dwellings, units in an apartment complex, or units in a condominium.

Chairman Jones asked for public comment.

Mr. Tom Patton and Mr. Charles Murphy spoke in favor of the presented Jolly Bay PUD.

Mr. Richard Adams, Mr. Richard Brantley, and Mr. Murray Balkcom spoke in opposition of the presented Jolly Bay PUD.

Chairman Jones closed public comment.

Attorney Matthews called upon Mr. Mike Dentzau for testimony. Mr. Dentzau, accepted as an expert witness, commented on the issues with the Gulf Sturgeon and the Bald Eagle that Mr. Adams brought up. He stated that they will obtain a letter from Fish and Wild Life for concurrency or objection against the development. He stated that the construction will not have an effect on the nest since it is on the adjacent property.

Attorney Matthews stated that the issue from the staff report and the testimony is the height of the condominium building. There are 20 conditions on pages 2-4 on the staff report that staff recommended the applicant agree to. He stated additional conditions would be to widen Jolly Bay Road to 24 feet from the intersection of Hwy 331 and Fluffy Landing Road; provide any additional right-of-way for the county to have a 50 foot right-of-way. Attorney Matthews provided a proposed motion (Exhibit 39) to the Board and briefly explained the different conditions of the motion.

Attorney Burke briefly clarified the exhibit list provided by Attorney Matthews and that Exhibits M, R, and Y were not submitted. Attorney Matthews confirmed.

Motion by Commissioner Meadows, second by Commissioner Pridgen, to approve conditions 1-20 in the staff report but include in condition 1 "...all other phases are conceptual and shall require full technical submittal review and approval including public hearings"; keep the first three lines in Attorney Matthews proposed motion and change the language from 147 feet to a maximum of 100 feet; part A of the proposed motion would change to state "the applicant agrees to widen the paved surface of Jolly Bay Road to 24 feet per county standards"; include a detailed lighting plan in the plan submittals; no commercial would be allowed in the condominium building; re-submittal of building architectural plans with revisions indicated by the testimony; and include ABCD of Attorney Matthews proposed motion.

Discussion continued regarding the proposed motion language.

Commissioner Meadows amended her motion to state "a range of 75-100 feet including a variation of roof pitch, dependent on the location of the condominium building", along with the other suggested changes. Commissioner Pridgen seconded the motion.

Attorney Matthews questioned if the current location of the building is fine for the height range. Ms. Blackshear stated that it was.

Commissioner Brannon stated that PUD's are complicated and the citizens should be a part of the future phases. He stated that the applicant has not demonstrated that their proposed plan falls within the rural village category. Commissioner Comander agreed

and stated the request is for urban use within rural village, and a high-rise building does not fit within the rural village category.

Commissioner Meadows and Pridgen withdrew their motions.

Motion by Commissioner Brannon, second by Commissioner Comander, to deny the Jolly Bay PUD Master Plan and Phase I request as presented. Ayes 5, Nays 0. Jones Aye, Comander Aye, Brannon Aye, Meadows Aye, Pridgen Aye. **(Exhibits: Petitioner 28-35, 39; Respondent 36-38) (Ex Parte: Comander, Brannon)**

There being no further business, the meeting was adjourned at 9:15 p.m.

APPROVED \_\_\_\_\_  
Larry Jones, Chair

ATTEST \_\_\_\_\_  
Martha Ingle, Clerk of Court