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MINING MORATORIUM ORDINANCE

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The Board of County Commissioners of Indian River County, Florida, met in a Special Session at the County Commission Chambers, 1801 27th St., Vero Beach, Florida, on Monday, January 07, 2008, at 7:00 p.m. to conduct a public hearing on the proposed mining moratorium ordinance. Present were Chairman Sandra L. Bowden, Vice Chairman Wesley S. Davis, Commissioners Joseph E. Flescher, Peter D. O'Bryan, and Gary Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Maureen Gelfo.

1. CALL TO ORDER

Chairman Bowden called the meeting to order at 7:00 p.m.

2. INVOCATION

Reverend Carol Trax delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

County Attorney William G. Collins II led the Pledge of Allegiance to the Flag.

4. PUBLIC HEARING

4.A. MINING MORATORIUM ORDINANCE (LEGISLATIVE)

County Attorney William Collins II informed the Board that Vice Chairman Davis had spoken to him about a potential conflict of interest. Commissioner Davis confirmed that he had a conflict of interest due to his brother's ownership of a mine; thus, he would engage in the discussion, but not vote on the moratorium.

(Clerk's Note: Form 8B, Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers, is on file in the office of the Clerk to the Board.)

Recapping his memorandum of December 28, 2007, Attorney Collins provided background information on this item. He explained that on October 23, 2007, the Board directed staff to prepare an ordinance to halt the acceptance, processing, and issuance of new mining permits in the unincorporated areas of Indian River County. Attorney Collins outlined the steps that the Board has taken in order to satisfy the legal requirements for adoption of moratoriums, and announced that tonight's meeting would be the second, and final, of two public hearings. Attorney Collins reported that at their December 13, 2007 meeting, the Planning & Zoning Commission (P&Z) had unanimously recommended, with exemptions, the passage of the moratorium.

Attorney Collins provided a detailed review of the exemptions that were placed in the draft Ordinance, and declared that the Ordinance mandated that no applications for mining or administrative permit approvals would be accepted or processed, and no mining permits would be issued until July 2008. He deduced that the expiration date of the moratorium would be July 10, 2008.

Attorney Collins informed the Board that in July 2007, the State legislature imposed an additional requirement which requires the County to consider any information provided by the Florida Department of Transportation (FDOT), regarding the effect the proposed moratorium would have on the availability, transportation, and potential extraction of construction aggregate materials on the local area, region, and the State. He read into the record a letter (copy on file) from Ananth Prasad, P.E., and Chief Engineer for the Florida Department of Transportation, in which was discussed a freeze on three mines in the Lake Belt region of Miami-Dade County. The letter also set forth the State's concerns about how an aggregate shortfall might negatively impact Florida's construction industry, transportation system, and the overall health, safety and welfare of its citizens.

Attorney Collins explained that the State wanted the Board to postpone taking action on the mining moratorium until the Strategic Aggregates Review Task Force (SARTF) report has been completed, which is anticipated to be by February 1, 2008. Attorney Collins observed that if something from the report suggested that the moratorium should be lifted immediately, that could be done through an Ordinance. He reported that the new legislation also limited any moratoriums to no more than 12 months, and noted that the proposed Ordinance was for a six-month moratorium, with the understanding that an extension may be warranted.

Attorney Collins briefed the Board on the Bert Harris Act, which allows a claim for damages for the diminishment of property values that result from any change to regulations. He stressed that the proposed Ordinance was not intended to defeat approval of the Wild Turkey Mine, but rather to maintain the status quo and not approve, process, or issue any mining permits during the period of the moratorium while an evaluation on the impact of mining activities is conducted. Attorney Collins declared that the end goal of the Ordinance was to better protect public health, safety, and welfare, and to ensure compatibility between mining operations and any land uses that are in relative proximity to it and its haul routes.

Commissioner O'Bryan pointed out that there was nothing to preclude the County from moving ahead with the Ordinance, since the proposed mining moratorium was for six months, which falls within the State's allowance of up to a twelve month moratorium.

Commissioner Flescher asked Attorney Collins how the SARTF report would impact the Board's decision at this evening's meeting, and learned that if it was deemed to be necessary, changes to the moratorium could be made with about two weeks notice.

Vice Chairman Davis asked what was the process for a moratorium extension. Attorney Collins stated that there would have to be a recommendation by the Advisory committees and two public hearings. He recommended checking on staff's progress in about four months, so if more time is necessary, the Board could initiate an extension, as long as it was no more than twelve months total.

The Chairman opened the public hearing.

Ralph Evans, Esquire, 1420 Shorelands Drive West, representing Wild Turkey Mines, provided background information on the 800-acre parcel on which Wild Turkey would like to locate its mining operations. He expressed opposition to the moratorium, delineated his reasons for believing that the proposed Ordinance was directed towards the Wild Turkey Mine, and warned that the Board would be faced with a costly Bert Harris claim if the Board was undergoing this process in order to get rid of Wild Turkey. He asked the Board to reconsider the moratorium as it relates to the Wild Turkey permit, and acknowledged that Wild Turkey was committed to abide by any conditions that the Board might set on their permit.

The following residents voiced their concerns relative to mining operations, and supported the moratorium:

1. Nancy Wood, 590 26th Avenue
2. Danette Schaller, 2285 81st Terrace
3. Amy Banov, 69th Street
4. Sharon Sexton, 7880 37th Street
5. Rick (last name inaudible), Vero Beach
6. Donald Simon, 8080 24th Street
7. Susan Boyd, 8025 24th Street
8. Linda Mitchell, 8340 65th Street
9. Fran Denhardt, representing Ranchland Mobile Home Park residents, 2055
82nd Avenue
10. Jim Gooch, 69th Street
11. Honey Minuse, Indian River Neighborhood Association
12. Ital Veron, 280 Pepper Tree Drive
13. Dale Simchick, 766 South Easy Street, Sebastian

The Chairman called a recess at 8: 27 p.m. and reconvened the hearing at 8:41 p.m. with all members present.

The public hearing continued and the following speakers also supported the moratorium:

14. Tom Cowan, 2125 82nd Avenue SW, President of Fly-In Ranches Homeowners Association
15. Matt Thornton, 2390 80th Court
16. Jens Tripson, 2525 14th Street
17. Karen Phillips, 6855 West 82nd Avenue
18. David Cox, 9495 Periwinkle Drive

19. Tim Glover, 9660 Estuary Way, Sebastian
20. Jim Gallagher, 766 Holden Avenue, Sebastian
21. Martha Redner, 9 River Oak Drive, San Sebastian Springs
22. Jorge Latour, 2332 Vero Beach Avenue

Attorney Collins addressed a question posed by Charles Kramer, 10729 U.S. 1, Sebastian, regarding how the proposed moratorium would affect existing mines.

The following speakers expressed their reasons for opposing the moratorium:

1. Nancy Offutt, Treasure Coast Builder's Association
2. John Sanders, 2146 20th Avenue
3. Craig (unknown last name), P.E., 8018 SE Sugar Pines Way, Hobe Sound

Mike Bienvenu, 5161 Collins Ave, Miami Beach, representing the Florida Department of Transportation (FDOT), discussed the State's need for aggregate, and asked the Board to hold off on a moratorium until they could review the Strategic Review Taskforce Report.

Joseph Paladin, President of Black Swan Consulting, and a consultant for Wild Turkey, advocated cooperation between the Board and Wild Turkey. Mr. Paladin told the Board that if they wanted to go through with the moratorium, Wild Turkey would be willing to submit to that, and would be willing to slow down, and work with the County however they could; he just did not want their process stopped.

(Clerk's Note: Present on behalf of Attorney Ferguson was Court Reporter Debra McManus.)

Jonathan Ferguson, Esquire, 145 NW Central Park Plaza, Port Saint Lucie, and representing Wild Turkey, pointed out that the current rules and regulations allow the Wild Turkey property to be used for mining. He felt that rather than having a moratorium, the Board could utilize the six-month time period better by working on the details, processes, and conditions for making the Wild Turkey project as much of an asset to the community as possible.

There were no additional speakers and the Chairman closed the public hearing.

Commissioner Wheeler wanted to know when the Board could engage with staff regarding suggestions for amending the LDR's, and learned from Community Development Director Robert Keating that the Board could provide input when staff brings this issue back to the Board at the January 15, 2008 meeting.

Chairman Bowden asked Attorney Collins whether any mining permitting processes could proceed along parallel tracks while the moratorium was in place. Attorney Collins conveyed his reasons for not believing that this was prudent.

Vice Chairman Davis was not opposed to the moratorium, but felt that closing the mining files for six months would result in lost educational opportunities, such as learning from the Hydrology Report done by Wild Turkey.

Attorney Collins agreed that there might be facts that could be gleaned from any reports that have been submitted, and conveyed that it would be helpful for any mining applicants to "come to the table" during the six-month period of the proposed moratorium to discuss what would constitute the most effective set of regulations.

Commissioner O'Bryan supported the six-month moratorium, and did not feel that it was appropriate to keep the mining applications in process while going through the moratorium.

He noted that any information gleaned up to this point was still available, the moratorium was not closing off access to the knowledge, just halting the application process.

Commissioner Wheeler agreed with Attorney Collins that no applications should proceed during the time of the moratorium, and he did not feel that six months would “make or break anyone.”

Chairman Bowden agreed with Attorney Collins that no processing of applications should proceed while the moratorium is in place.

Vice Chairman Davis clarified that his concern was that the information in the files, which could be valuable in implementing changes to the LDR's, would be set aside during the moratorium, while staff worked on other issues.

Attorney Collins explained that staff would utilize any available information to develop better regulations, but not to move existing projects forward under existing regulations.

Commissioner Flescher shared the Vice Chairman's concern that enacting the full moratorium might prohibit staff from being able to discuss very important, beneficial key elements that would serve the public. He did not want to lose the opportunity to be able to look at the rules carefully, with input from all avenues.

Attorney Collins reassured the Commissioners that everyone was invited to come to the table, including the developers of mines, who have experts that could contribute to the conversation.

Commissioner Flescher, for the record, reiterated that he shared Vice Chairman Davis' concerns that during the moratorium staff would be unable to utilize information heretofore provided, and he sought assurance from Attorney Collins that this would not be the case.

Attorney Collins explained that the moratorium would in no way limit staff in talking to applicants regarding better land development regulations.

Commissioner Wheeler sought staff's opinion on whether it was better to process or not process ongoing applications during the moratorium, and learned from Director Keating that there would be no advantage to moving projects along as staff worked on changes to the LDR's.

In response to Chairman Bowden's inquiry as to his official stance, County Administrator Baird stated that he agreed with Attorney Collins and Director Keating.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner O'Bryan, under discussion,
to impose a six-month mining moratorium.

The Board determined that the six-month moratorium would last until July 10, 2008.

MOTION WAS AMENDED by Commissioner Wheeler,
SECONDED by Commissioner O'Bryan, to reflect July 10,
2008, as the end date of the moratorium.

The Chairman CALLED THE QUESTION and, by a 4-0 vote (Vice Chairman Davis **recused** himself), the Motion carried. The Board adopted **Ordinance 2008-001**, as amended, imposing a moratorium on the acceptance of

applications and processing of applications for mining administrative permit approvals and issuance of mining permits; providing for prohibition; providing for exemptions; providing for conflicts; providing for severability; setting forth effective and expiration dates.

5. ADJOURNMENT

There being no further business, the Board adjourned at 9: 54 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Sandra L. Bowden, Chairman

Minutes Approved: _____

BCC Special Call/MG/2008

January 7, 2008