

The Following Excerpts From the RCH Hearing Examiners Report Makes You Wonder Why We Bothered to Participate in the 22 Day Hearing

Residential Compatibility Issues

“The Staff basically contends that mining and residential uses are *per se* incompatible, relying on the assertion that blasting, truck traffic, dust and noise make residential uses near mine sites, unrealistic. At first blush, one might agree with this position, but the testimony and evidence do not support that position.

“Staff has not provided any definitive proof that that is actually the case. The only actual expert testimony on the subject came from the Applicant’s witnesses, Larry Sewell and Dr. David Depew. They presented evidence that there has been residential growth in the DR/GR, at the same time that mines were being created. The fact that mines are in the area does not seem to have halted residential construction. Granted that residential expansion is not larger, but the DR/GR, with its density restrictions, does not contemplate or welcome massive residential expansion. Mr. Sewell indicated that the pool of prospective purchasers, for residential property in the DR/GR, is less than other areas, but it is in line with the number of residences, and home sites, located there. Staff provided nothing to rebut this testimony.

“There was a substantial amount of testimony from individuals, who either live near the Applicant’s property, or close to other mines. They complained about truck traffic, blasting, noise and dust, all of which does negatively, to some degree, impact them. None of the complaints, however, rose to the level of stating that those activities were driving prospective purchasers, or existing residents, from the area.”

Traffic Compatibility Issues

“The Applicant has requested a condition limiting the site to 2,400 daily round trips, or 4,800 one-way trips, of dump trucks. These trucks may be accessing the site around the clock, based on the Applicant’s contractual obligations. There is no question that this is a significant increase in activity on Corkscrew Road. The Applicant has included proposed conditions that would route incoming and outgoing trucks, from the site, east on Corkscrew Road to Alico Road northwest and onto Interstate 75, or other roadways. The purpose of that condition is to limit the truck traffic on the sections of Corkscrew Road, west of Alico. How successful the Applicant will be in the compliance and enforcement of these conditions remains to be seen.

“The County Staff’s opposition to the truck issue is a belief that it will increase traffic accidents, funnel traffic into a residential area, increase road congestion, and increase road wear. The Applicant asserts it has met the only County standard imposed upon them, that is an acceptable Level of Service at the commencement of operations.

“The testimony clearly indicated that road use will increase by as much as 4,800 single truck trips, or 2,400 round trips, per day. After consideration of that number of trips, experts from both the County Staff and the Applicant, agree that an acceptable level of service will exist on Corkscrew Road. ...

“County Staff also took the position that truck traffic will increase accidents along this segment. This is a speculative statement. Their traffic expert, Mr. Campbell, produced a formula used in the prediction of traffic accidents. He did not apply the formula to the subject site. ...In short, there is no serious definitive evidence supporting the assertion that the Applicant’s request would result in increased traffic accidents....”

“This Hearing Examiner agrees with the Applicant that once an acceptable level of service is proven, the issue becomes moot....”

“This Hearing Examiner finds that the increase in truck traffic, over the existing and similar traffic, does not raise a new compatibility issue. There is currently extensive dump truck and agricultural truck traffic on the roadway. The Applicant’s proposal increases truck traffic, it does not create a new truck corridor. That use already exists.”

Compatibility with Blasting

“There was testimony from neighbors regarding the vibrations they were experiencing from blasts from other existing mines. There was no testimony that they exceeded the current limitations imposed by the State of Florida....”

“The Hearing Examiner finds that the current residents of this area of Lee County, are already experiencing blasting activities and knew that the same could be expected to occur in the area of Lee County. The Applicant’s blasting for mine extraction purposes is not incompatible with other neighboring land uses and is, in fact, compatible with current blasting activities from other sites within the DR/GR. ...”

Surface Water Flow

“The subject site, at all material times hereto, and for several decades, has been developed and used for agricultural purposes. It has a berm along its perimeter to restrict surface water flow, on to the subject site, from the Flint Pen Strand. That flowway runs from the northeast to the southwest, and essentially around the northern boundary of the property. The Applicant’s property was once within the boundaries of that flowway. It is not now and has not been part of the flowway for decades. ... The clear and convincing testimony from the Applicant’s experts supports the position that the development of the Applicant’s property, as proposed, will not create any additional surface water issues to that residential area. They may continue to have flooding, but that is simply because they chose to develop the residential area within the confines of a flowway. Surface water flow should not be changed to any degree by the Applicant’s project.”

Environmental Factors

“The County Staff and public have all contended that the subject property will have serious detrimental environmental impacts. This property is developed and used as an agricultural site. Any large wetland areas were removed decades ago. This property is on the edge of the Flint Pen Strand Flowway, which is inhabited by the Florida Panther, and other protected species. Telemetry data from collars on the Florida Panther, imposed on an aerial photograph, Exhibit V attached hereto, clearly reflects that, while the panthers roam the nearby slough, there is no use of the Applicant’s property. This agricultural site is clearly not panther habitat. There is no significant use of the Applicant’s site by any endangered or monitored species.”