

SUMMARY OF HEARING EXAMINER RECOMMENDATION

DCI2006-00007
ESTERO GROUP IPD REZONING

I. APPLICATION

This matter came before the Lee County Hearing Examiner as an Application for a Rezoning including a Development of County Impact (DCI) from **Agricultural (AG-2)** to the **Industrial Planned Development (IPD)**, pursuant to the Lee County Land Development Code (LDC), for property located at 22951 Corkscrew Road, in South Lee County, Florida.

II. HEARING EXAMINER RECOMMENDATION

This is a request to rezone a 318-acre parcel, located on the north side of Corkscrew Road and east of Alico Road extension, from AG-2 to IPD for development with a fill dirt mining operation. The parcel is located approximately 7 miles east of the Alico Road/Corkscrew Road intersection, and is about two miles west of the Lee County line. It is abutted on the north and east by an ongoing agricultural operation and a single-family home at the northeast corner, on the west by an ongoing mining operation and then AG-2 zoned lands, and on the south by Corkscrew Road and then a mix of single-family and agricultural uses on AG-2 zoned properties. There are several residential "communities" and numerous single-family ranchettes scattered on both sides of Corkscrew Road to the east, west and south of the subject property. It is designated DR/GR in the Lee Plan.

Numerous expert and lay witnesses testified, at the 13-day hearing, on behalf of the various parties about the following issues:

- 1) the water quality and water quantity of the County's public wellfield recharge lands;
- 2) the existing wetland and wildlife habitat and other resources on this site and scattered throughout the DR/GR area; and
- 3) the safety, lifestyles, and quality of life of the existing residential population scattered throughout the surrounding area.

After careful review of the record, the undersigned Hearing Examiner concluded that:

- 1) Lee County's and Applicant's expert witnesses could not state - with certainty - that the conditions proposed throughout the hearing would adequately protect the County's water quantity or quality, wildlife, or other natural resources in the DR/GR area, as intended by Policy 1.4.5. and Goals 10, 107, 114, 115 and 117; and
- 2) The residents of the DR/GR area will be adversely affected by the mining operation - even as conditioned by Staff and Applicant, particularly by the increased amount of mining related truck traffic on Corkscrew Road, a narrow rural arterial, which provides the only access to their homes.

The Hearing Examiner's greatest concerns in this case stem from the uncertainty of Staff's and Applicant's experts that the conditions were adequate to protect the DR/GR lands and functions. First, she is concerned that any approval of this request may "lock" Lee County into a development pattern that may prove to be inconsistent and incompatible with the intent of the DR/GR - i.e., zoning by the "domino effect."

Second, she is concerned that, with all the unknowns about this area and this request, the approval of this mining operation could have unpredictable and irrevocable long-term or future impacts on the DR/GR functions, which could jeopardize the County's future water supply.

Lastly, the Lee Plan and the Land Development Code require all these issues to be reviewed and addressed during the zoning stage, so that Staff can determine and ensure consistency with the Lee Plan and compatibility with other uses. Once the request has been approved and moves forward for development orders/permits, changes in the existing circumstances or changes in the proposed conditions of approval will not be reviewed again for consistency with the intent of the Lee Plan nor for compatibility with the other uses in this area. In addition, in that instance, neither the BOCC nor the public will have a chance to review the new conditions or changed circumstances to determine if the project should still be approved.

For all the reasons and conclusions discussed more fully in her Recommendation, the undersigned Hearing Examiner recommended that the BOCC **deny this request, without prejudice**, which will allow Applicant to bring the rezoning request again within one year. During the re-application time frame, Applicant and Staff will have the opportunity to perform a more in-depth review of the subsurface materials, underground water flow patterns, and surface drainage patterns, as well as other factors and conditions that could be affected by the mining operation.

This Recommendation was made the 4th day of April, 2008, and a complete copy forwarded to the offices of the Lee County Board of County Commissioners.

III. LOCATION OF COMPLETE RECOMMENDATION AND ATTACHMENTS

Copies of the Hearing Examiner's Recommendation, Official Transcripts or summaries, List of Exhibits, Public Participation, Staff Report, and Legal Description are available for review at www.lee-county.com/HearingExaminer/ (click on Search Document), the Development Services Division, and the Office of the Hearing Examiner. Copies may be obtained for the actual cost of duplication. The exhibits submitted during the hearing are available for review at the Office of the Hearing Examiner, and will be transmitted to the Board of County Commissioners prior to their hearing on this matter.

IV. HEARING BEFORE BOARD OF COUNTY COMMISSIONERS

The Board of County Commissioners (BOCC) will hold a hearing at which they will consider the record made before the Hearing Examiner. Only participants who provided testimony or evidence on the record at the Hearing Examiner proceedings, or their representative, will be allowed to address the BOCC. The content of all statements by persons addressing the BOCC shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

It is anticipated that this matter will be heard by the BOCC in *May or June 2008*; however, the Department of Community Development/Development Services Division will send written notice to all participants of the actual date and time of this hearing before the BOCC.

V. UNAUTHORIZED COMMUNICATIONS

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5] No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added] Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]