

(01-03-08 Special Meeting)

**MINUTES OF THE
BOARD OF COUNTY COMMISSIONERS
BRADFORD COUNTY, FLORIDA
PUBLIC HEARING
APPEAL OF DENIAL OF SPECIAL EXCEPTION
THURSDAY, JANUARY 3, 2008
6:30 P.M.**

The Bradford County Board of County Commissioners convened in a Public Hearing on Thursday, January 3, 2008, at 6:30 p.m. in the County Commissioners' Meeting Room, 945 North Temple Avenue, Starke, Florida.

Present were: Commissioner Hersey, Commissioner Thomas, Chairman Chandler, Commissioner Cooper and Commissioner Lewis.

Also present were: Brad Carter, County Manager; Sandra Harrell, Administrative Assistant; Marlene Stafford, Deputy Clerk; Nora Thompson, Zoning Director; Terry Brown, County Attorney; and Mark Crawford, Press. (An Official Court Reporter was present for the hearing.)

(See Supplemental File No. 01-03-08 for a copy of documentation presented at this meeting.)

INVOCATION / PLEDGE OF ALLEGIANCE

Commissioner Cooper offered an Invocation and led the Pledge of Allegiance.

CALL TO ORDER

Chairman Chandler called the hearing to order at 6:30 p.m.

PUBLIC HEARING

APPEAL OF DENIAL OF SPECIAL EXCEPTION – APPLICANT SHAWN A. RITCH, AS AGENT FOR HUNTER’S HOLE MUDBOG, INC.

Chairman Chandler called for the representatives for the applicants to make their presentation.

Mr. Norman Traylor approached the podium. Chairman Chandler asked if the attorney for the Applicant was present. Mr. Traylor advised that due to an illness, the attorney for the Applicant would not be present. The Applicant requested that he speak on their behalf.

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At the request of Mr. Brown Mr. Traylor identified himself as Norman Traylor of 2400 NE 203rd Street, Lawtey, Florida.

Mr. Brown confirmed that Mr. Traylor was indeed a spokesperson on behalf of the Applicant, Shawn A. Ritch. Mr. Traylor said that he had no documentation designating him as the Agent of Record for the Applicant. He was present by a verbal request only. Mr. Traylor was aware that the attorney who filed the appeal, Mr. Mutch, would not be present.

Mr. Brown recommended that the Board hear the position of the attorney representing the opposing parties.

Mr. Jefferson Braswell addressed the Commission. He is representing Mr. Ernest Triest and other members of the Theresa neighborhood. There is no attorney required for this proceeding. He has no objection to an authorized spokesperson speaking on behalf of the Applicant.

Mr. Norman Traylor was duly sworn by Mr. Brown.

Mr. Traylor said that there is not much that can be said to add to what was presented at the prior meeting before the Board of Adjustment. He assumed that the information presented at the prior meeting would be passed on to this Board. A lot of work and preparation has been made for the Hunter's Hole Mud Bog facility. He requested that the Board review the information and make a decision upon that information. There is no need to rehash everything previously presented to the Board of Adjustments.

Mr. Brown advised that in his appeal, Mr. Mutch requested, or at a minimum suggested, that he wanted a *de novo* appeal. Meaning that the appeal is not just based on what record may have been created at the Board of Adjustment level, but allows for the presentation of witnesses.

Mr. Brown asked Mr. Traylor if he had any instructions on which way the Applicant sought to proceed. Mr. Traylor said that since he is not an attorney he is not familiar with the term. However, the case has already been presented from both sides, the facts have been presented and a lot of information exchanged. There is no need to take up a lot of time. They just need a decision from this Board as to how they stand on the issue.

Mr. Brown said that he has not received a transcript of the hearing before the Board of Adjustment. He asked Mr. Traylor if he had a transcript that he wished to present to the Commission or to place into the record.

Mr. Traylor indicated in the negative.

Chairman Chandler called for the representatives for the opposition.

Mr. Jefferson Braswell, Attorney with Scruggs and Carmichael, Gainesville, Florida, approached the Commission. Ernest Triest and other members of the Theresa neighborhood, in opposition to the request of Mr. Ritch to allow a mud bog, have retained him. He does not know if the County Attorney and this Board have made a decision as to whether this appeal is going to be limited to information and evidence presented to the Board of Adjustment, or whether new evidence will be considered. They came prepared for a *de novo hearing*. They have expert witnesses to explain why this facility is not compatible with the adjacent agricultural and residential uses, i.e. noise, traffic, environmental issues, quality of life, morals and standards, and the negative impact on real property values. No new information has been brought forward that would cause this Board to reverse the Board of Adjustment. One would assume that the Applicant would have to come forward with some kind of new information to give the Commission a basis to approve it.

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Mr. Braswell said that he has got to do his job, which is to make sure that if by chance this Board were to vote to approve this appeal, that he has enough information on the record to prevail in an appeal to the circuit court. He is inclined to move forward and present the evidence, which seems to be useless since there is no new evidence.

Commissioner Cooper said that the County's Code seems to be silent as to whether this is a *de novo* hearing or whether it is an appellate hearing from the Board of Adjustment. It is his belief that this proceeding is an appellate hearing as opposed to a *de novo* trial court hearing. The purpose of this Commission is to review what was presented to the Board of Adjustment and decide whether they erred. The burden is on the Applicant to come forward with additional information that either was presented at the Board of Adjustment hearing and that was misconstrued or did not form a lawful basis for the Board of Adjustment's decision. He has heard nothing from the Applicant that would persuade him to overturn what the Board of Adjustment did. However, if Mr. Braswell is compelled for a latter case, assuming there is one, to present evidence, then he should present evidence.

Commissioner Cooper said that it is his assumption that there is a transcript of the proceedings before the Board of Adjustment and there is no reason to repeat all the testimony and evidence. Unless he hears that the Board of Adjustment did something wrong, this appeal comes to the Commission with a presumption of correctness. He has not heard from the Applicant, any errors that the Board of Adjustment made.

Mr. Braswell said that there would be some repetition. However, the planners that have been involved have had time to conduct a much more thorough review and they are prepared to present a much more compelling case in opposition. There has been no record of the lower tribunal presented. If you are in appellate court and there is no record, no transcript, nothing to review, the case is summarily dismissed. The first issue that needs to be resolved is whether this is a *de novo* proceeding or whether it is going to be based on previous testimony and record. Should it be the latter of the two, the Commission on its own initiative could say, without a record there is nothing to review.

Mr. Brown said that this is a unique situation, but the end result is the same. The County's Code is silent as to whether this is a *de novo* review or whether it is an appeal review. In either event, there is no evidence or record to take any type of action that would be beneficial to the Applicant, and the Applicant has the burden of proof. If you take the position that this is an appeal of the lower board's decision, like an appellate review, to his knowledge there is no transcript to review to determine whether the argument presented in the appeal is meritorious or not. In essence, he would agree with Mr. Braswell, that this Board should summarily deny the appeal. Alternatively, if you take the position that this is a *de novo* appeal, the opposing parties have the right to present whatever evidence they wish to perfect the record. However, the decision by this Board can only be based on the true evidence presented to it tonight, within these four walls. From his prospective, there is no competent evidence in the record. Basically, a comment has been made for this Commission to review what the Board of Adjustment heard. We do not know what the Board of Adjustment heard because there is no transcript and one has not been offered.

ACTION TAKEN BY THE BOARD:

Based on the lack of evidence presented by the Applicant and based on the absence of any transcript to effectively review what was done at the Board of Adjustment, **COMMISSIONER COOPER MOVED** that the decision of the Board of Adjustment be affirmed, which would be in effect a denial of the appeal.

COMMISSIONER LEWIS SECONDED THE MOTION.

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Commissioner Cooper said that for purposes of future hearings, it should be the position of the Board that appeals coming from Boards of Adjustment or Planning and Zoning Boards should be just that; appeals and not *de novo* reviews. It is not this Board's job to second-guess what a prior board did that this Board appointed to handle these matters and to hear evidence. At some point, he would like the Commission to clarify this in a policy statement.

There being no further discussion, the **MOTION CARRIED 5-0.**

Mr. Brown said that there is no other business before the Board.

ADJOURN

There being no further business, the public hearing was adjourned at 6:49 p.m.

(A [Final Order Denying the Appeal](#) was executed by the Chairman of the County Commission on January 7, 2008.)

**BOARD OF COUNTY COMMISSIONERS
BRADFORD COUNTY, FLORIDA**

ROSS CHANDLER, CHAIRMAN

ATTEST: _____
RAY NORMAN, CLERK OF COURTS

Minutes prepared by Marlene Stafford, Deputy Clerk