

New Smyrna Beach City Commission Meeting – Feb. 22, 2022

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City Commissioners agreed by consensus there was no point in prolonging three unsuccessful legal challenges to the development of a proposed borrow pit close to the south side of SR-44 and east of I-95.

"We've been to court three times on this issue. The court has ordered us to issue the special exception use permit to the applicant," City Attorney Carrie Avallone advised the Commission.

Commissioner Michael Kolody commented, "I'm not interested in an appeal at this point. I think we went far enough with that and the writing's on the wall. It's not going to change." He said he still didn't think the applicant for the project had "proven his case regarding the wetlands and the direction of the water (flow). Perhaps they will see the light and provide that proof." Kolody added, "I don't find the borrow pit to be the worst thing in the world because there are planning issues that can work to our benefit if it is constructed. We recently approved a change to a PUD to allow a hospital to go in across the street, which will have a very large borrow pit associated with it. I just ask in future applications that we really go in depth with reviewing the effects we will have on the environment."

Owners of 119 undeveloped acres along SR-44 sought a special exception to develop the borrow pit, from which sandy material is dredged for building projects, on about 36 acres at the northern end of their property. The proposed borrow pit would expand an existing pit on the property to about 18 acres. The entire property is zoned Prime Agriculture (A-1) and has an associated future land use of Activity Center, due to its proximity to I-95 and other business-related parcels of land. The site is immediately south of SR-44, east of Florida Memorial Parkway and I-95, and directly south of (across from) the Sugar Mill Drive intersection with SR-44.

The city attorney said developers of the borrow pit have agreed to put up a traffic signal arm at the intersection of Sugar Mill Drive and SR-44, and all traffic from the borrow pit will use that access onto SR-44. Avallone assured the Commission that she, City Manager Khalid Resheidat and the former assistant city manager, Brian Fields, had contacted biologists and engineers to inquire about how the borrow pit could affect water quality in the area. They could not find experts who supported the city's position that the borrow pit could diminish the quality and volume of groundwater in the area.

Commissioner Jake Sachs stated, "I believe there is substantial competent evidence out there to the contrary, that a borrow pit is not an appropriate use of this land ... I can assure you there are experts in the field that insist that borrow pits are negative to the environment. Now, you can mitigate some of the damages, certainly ... Or maybe not, especially if nobody's watching.... We need to have the people who have the knowledge to provide substantial competent evidence. If we don't have that...we will lose every time ... And we will be a wide-open developers' town. Should we spend that little bit of money for a totally outside, objective opinion? I'm not going to point any fingers but we dropped the ball on this one."

Vice Mayor Jason McGuirk disagreed, saying, "The evidence I don't believe is in our favor. We did the best we can under the circumstances. I would love to not have that borrow pit at that location. I think it's going to create some problems. But at some point, you have to look at the reality. The judge has continued to rule in favor (of the applicant) and I don't believe we have the cards to play to win this. I would not want to further put the city in a legal exposure kind of situation where we may wind up having significant financial consequences down the road."

Commissioner Randy Hartman, who had previously voted against denying the project a special exception, said, "I think based on the evidence submitted at the hearing we had no reason to deny this. I do not support an appeal. I think we had our bite at the apple. We lost. I think we should accept our loss gracefully and move on." He then challenged Commissioner Sachs to bring forward the experts that he (Sachs) said would support the city's position and state that the borrow pit would adversely affect groundwater.

Sachs responded, "Yes, I did speak to experts. But, I didn't want to drag them in. You can't drag them in and expose them to the best lawyers in the state (representing the borrow pit applicant) with no compensation. I think we should be more discriminatory in how we allow people to use the land."

Mayor Russ Owen agreed that, "It does feel like we are outmanned and outgunned sometimes. They (developers) come in with their parade of experts and we turn to our folks who are supposed to be experts on every possible thing."

Avallone suggested the city could set criteria for future projects, such as whether a development proposal impacts a certain amount of wetlands, and then the city could hire an environmental expert to research that issue.

City Commissioners honored local resident Linda Henline, creator of the "Keep NSB Clean" program, with the 2021 Volusia League of Cities "Volunteer Citizen of the Year" Award.

"You called me an activist. My friends call me 'trashy lady,'" Henline joked, addressing McGuirk. "Keep NSB Clean" has never been about me. It's always been about the community and the volunteers and people who will take the time to do something good. I'd like to turn around and dedicate this to all those people."

The City Commission accepted the 2021 Donnadine Miller Memorial Historic Preservation Award for Non-Residential Properties for the city's renovation that turned the 1929-vintage, former First Baptist Church into a new City Hall Annex.

Donnadine Miller awards are given each year to one residential property and one non-residential property to promote pride in the city's past and increase awareness and appreciation for buildings that contribute to the history and character of New Smyrna Beach. Buildings that are 50 years old and older, or sites associated with a historic event, are eligible for the awards and are judged on their historic and community significance, as well as their charm.

The Historic Preservation Commission voted 5-0 earlier this year to recommend that the award go to the City Hall Annex. The City Hall Annex at 214 Sams Ave. houses the city's Development Services Departments and a new, larger chamber for meetings of the City Commission, its advisory boards and meetings with the community.

Mayor Owen noted, "This is a great honor for the city."

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