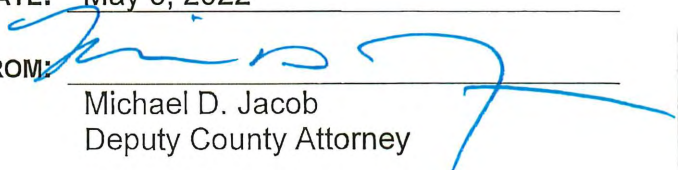


**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

DATE: May 3, 2022

To: Donna Marie Collins  
Chief Hearing Examiner

FROM:   
Michael D. Jacob  
Deputy County Attorney

RE: Corkscrew Grove Hearing  
May 17, 2022

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This memorandum is being provided to describe the purpose and scope of the Corkscrew Grove Hearing scheduled for May 17, 2022. I have also provided some additional information concerning the statutory basis for the Hearing.

On March 30, 2011 a rezoning application for 4,202 acres of the subject property (Case No. DCI2011-00007) was filed, seeking approval as an Industrial Planned Development ("IPD") to allow lime rock mining. The application for the IPD was processed and denied by Lee County on November 6, 2019, as reflected in Resolution No. Z-18-008. Corkscrew Grove Limited Partnership ("CGLP") timely presented a claim for monetary damages pursuant to Section 70.001, Fla. Stat., the "Bert Harris Act."

On April 19, 2022, the Board of County Commissioners held an Executive Session concerning the potential settlement of the litigation filed by Corkscrew Grove. Following the Executive Session, the Board unanimously approved the Stipulation of Settlement. The Board's Motion approving the Settlement included the following:

- A. Approve the Stipulation of Settlement that provides for the issuance of development orders and development permits pursuant to Chapter 70.01(4), Fla. Stat., at maximum development parameters of:
- Maximum density of 1.5 dwelling units per gross acre (Approx. 6500 Acres);
  - Maximum 700,000 square feet of commercial, limited as follows:
    - A maximum of 150,000 square feet directly fronting and/or abutting Corkscrew Road (unused Commercial square footage may be moved internally),
    - 50,000 square feet internal to the development (may include unused Commercial Square footage from off Corkscrew Road), and
    - 500,000 square feet directly fronting, or abutting State Road 82;
  - Uses include public infrastructure, wireless communication facilities, essential services, public and/or private schools without limitation of square footage, and such other uses typical of similarly sized mixed use developments within Lee County;

- A minimum of 61% Open Space (approximately 4072 acres);
- A minimum of 3,274 acres of onsite restoration consisting of wetland conservation easements, and flowway easements;
- land swap for adjacent County Property to facilitate the construction of infrastructure needed for the Project and for the County's future regional infrastructure needs;
- Conveyance of the mining rights for all property subject to the Development Agreement in exchange for proportionate share credits to CGLP in the amount of \$2,400,000.00;
- proportionate share of needed Corkscrew Road roadway improvements not to exceed \$2,000.00 per residential unit due at issuance of building permits;
- impact fee credits for the design, permitting, and/or construction costs associated with any right of way improvements made to the Spine Road at the request of the County that are not necessary to meet the Development's infrastructure needs, or any right of way dedication or conveyance to the County; and
- as further conditioned within the Stipulation of Settlement with attached Development Agreement.

B. Direct the Hearing Examiner's Office to conduct a Hearing and issue a recommendation in accordance with the terms of the Stipulation of Settlement.

C. Direct Staff to set the proposed Development Agreement for 2 public hearings following issuance of a recommendation by the Hearing Examiner's Office in accordance with the terms of the Stipulation of Settlement.

A copy of the Stipulation of Settlement has been attached.

Pursuant to Chapter 70, Fla. Stat., after a Bert Harris claim is filed, the County is authorized to provide the Plaintiff various settlement options. The types of settlement options that may be provided include:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

Upon acceptance of the Settlement, the County is authorized to *“implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method...”* See § 70.01(4)(c), Fla. Stat. However, note, any settlement offer issued under subsection § 70.01(4)(c), Fla. Stat., is subject to the requirements of § 70.01(4)(d), Fla. Stat.

Under, § 70.01(4)(d), Fla. Stat., if the proposed settlement agreement has *“the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property,”* then the relief granted must *“protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.”* Still further, if the relief granted has the effect of *“contravening the application of a statute as it would otherwise apply to the subject real property,”* the County and the Plaintiff must file a petition in circuit court seeking Court approval of the Settlement Agreement and the Court determines *“that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.”*

In furtherance of the Settlement Agreement, the County and Plaintiff have prepared a draft development agreement that implements the Settlement Offer. Certain provisions of the development agreement are not consistent with the Land Development Code and the Lee Plan. Typically, these inconsistencies would require issuance of deviations as part of a planned development and Lee Plan amendments. In anticipation of this, and in furtherance of the requirements of § 70.01(4)(d), Fla. Stat., the Stipulation of Settlement provides for a hearing process that evaluates the proposed development to ensure that the development agreement and proposed conditions ***“protect the public interest served by the regulations”*** that the project are not consistent with and to ensure adequate public participation in the process as would typically occur in the public hearings for a Lee Plan amendment.

Pursuant to the Stipulation of Settlement, the Board has directed a Hearing before the Hearing Examiner. Pursuant to subsection 4c of the Stipulation of Settlement, *“the sole and limited purpose of this hearing is to evaluate whether the relief granted to the Property Owners by this Stipulation and the Development Agreement protects the public interest served by the Contravened Regulations. In the conduct of this hearing, the Hearing Examiner ... will take testimony and evidence as provided under Lee County Administrative Code AC-2-6 from CGLP and Contract Purchaser/Consultant Team, County staff, and the general public.”* Once the hearing is complete, the Hearing

Examiner has 30 days in which to provide a recommendation. The recommendation is limited to the purpose identified in subsections 4c and 4d, (ie the development agreement and proposed conditions protect the public interest served by the contravened regulations).

In making your report and recommendation, the Hearing Examiner must evaluate whether the Stipulation and Agreement (specifically the Development Agreement) either does or does not protect the public interest served by the Contravened Regulations. In the event that the Hearing Examiner determines that the public interest is not protected, you may recommend additional conditions or requirements to be added into the Agreement that you believe will cause the public interest to be adequately protected. Once the report is issued, the County will proceed with 2 additional public hearings before the Board.

In preparation for the May 17<sup>th</sup> Hearing, County Staff, CGLP, and Contract Purchaser/Consultant Team have identified the rules, regulations, and ordinances that would be contravened ("Contravened Regulations") by the Stipulation and the Agreement as contemplated by Section 70.001(4)(d)1., Florida Statutes. As part of the proposed development, the development agreement includes proposed conditions and obligations that the Parties believe will adequately protect the public interest served by the Contravened Regulations. The Parties are prepared to provide testimony at the hearing to address these issues.

In the next two days, our Office will provide you with documentation and background evidence to support the Parties' position and to serve as evidence in the proceeding. If you have any questions or would like additional information, please do not hesitate to let me know and I will coordinate with the necessary Consultants or County Staff to get you the information or documentation.

Cc: Neale Montgomery  
Ray Blacksmith  
Joe Cameratta