

**RESOLUTION Z-12-07**

*A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA FOR A SPECIAL USE PERMIT TO ALLOW EXCAVATION OF OVER 200 CUBIC YARDS IN AN A (AGRICULTURE) ZONING DISTRICT (1 UNIT PER 5 ACRES DENSITY) WITH A RURAL AGRICULTURE LAND USE DESIGNATION ON APPROXIMATELY 188.3 ACRES LOCATED AT 21115 SE 179<sup>TH</sup> PLACE ON TAX PARCEL NUMBERS 20127-001-001, 20127-000-000 AND 20127-001-000*

WHEREAS, Zoning Application ZOS-01-12 has been duly filed and was considered by the Alachua County Planning Commission at its regular meeting of July 18, 2012; and,

WHEREAS, the Alachua County Board of County Commissioners considered this zoning item at its regular meeting of August 28, 2012;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:

Zoning Application ZOS-01-12, a request by Gary Dounson & Associates, Inc., agent for Ona Colasante, owner, for a special use permit to allow excavation of over 200 cubic yards in an A (Agriculture) zoning district (1 unit per 5 acres density) with a Rural Agriculture land use designation on approximately 188.3 acres located at 21115 SE 179<sup>th</sup> Place on Tax Parcel numbers 20127-001-001, 20127-000-000 and 20127-001-000, as summarized in Exhibit A in this resolution, is hereby approved with the following conditions and bases:

## Conditions

- 1) Final development plan approval by the DRC shall be required.
- 2) All fill previously placed in wetlands, wetland buffers and 100-year floodplains shall be removed and relocated to a DRC-approved disposal site or sites.
- 3) Any fill material that will be hauled off-site must utilize the existing private lime rock stabilized driveway that runs through parcels 20127-001-001 and 20167-002-000 for the haul route to US Highway 301. Southeast 179<sup>th</sup> Place may not be used as a haul route. The Florida Department of Transportation must be contacted if off-site hauling is proposed.
- 4) All impacted wetlands, wetland buffers and 100-year floodplains shall be restored as closely as possible to pre-existing conditions. Restoration activities shall be conducted in accordance with a restoration, management and monitoring plan approved by the DRC.

## Bases

1. Policy 6.2.5 of the Future Land Use Element (FLUE) states that ***parcels containing natural resource areas as identified in the Conservation and Open Space Element shall be conserved in accordance with those policies, such that the natural functions of the resource area are not significantly altered.*** This shall be accomplished either through clustering of new developments in accordance with Policy 6.2.9 through 6.2.14 below, or for developments of less than 25 lots that might not be clustered in accordance with these policies, through a development plan that assures the permanent protection of natural resources consistent with the requirements of the Conservation and Open Space Element; the land development regulations shall detail

*the requirements for management and permanent protection of the ecological value of natural resources in those developments that are not clustered through legally enforceable mechanisms that provide protection of those resources equivalent to the protection under Policies 6.2.12.3 through 6.2.12.5.*

Policy 6.2.5 of the FLUE, while specifically mentioning residential development, is meant to ensure protection of natural resource areas as identified in the COSE. The requested SUP is meant to correct a violation of Alachua County Code dealing with excavation and fill activities on this site. In granting this SUP, the Board will be permitting corrective action as a means of mitigating the excavation work that has already occurred on this site, thereby protecting to the greatest extent remaining natural resources at this site.

**2. Policy 4.3.3** of the Conservation and Open Space (COSE) Element states that *the development regulations shall address mining, **land excavation and filling activities**, and shall include provisions for reclamation and reuse, and assure successful completion of approved reclamation and reuse plans. Mining, land excavation, and filling activities shall be consistent, at a minimum, with the Alachua County Excavation and Fill Ordinance and the Alachua County Surface Mining and Land Reclamation Ordinance which provide for permit requirements and standards for site location, site design, environmental protection and reclamation.*

Excavation and fill activities on this site were done without permit, in violation of the Alachua County Excavation and Fill Ordinance. Approval of this special use permit will allow the applicant to initiate the compliance process by obtaining the required SUP called for in the CEB Order dated March 8, 2012. The applicant will also be required to submit a site plan for approval by the DRC, who will use the conditions of this SUP as well as the Excavation and Fill ordinance in the Code to ensure compliance with Policy 4.3.3 of the COSE to the greatest extent possible. The proposed site plan provides for significant reclamation work to the site, including removal of the mounded fill material, modifications to the existing excavated lake and other restoration measures as outlined in the submitted development plan.

**3. Policy 4.7.8** of the COSE states that *development activity that occurs in violation of the County's Comprehensive Plan or land development regulations shall be required to mitigate, in addition to paying monetary penalties provided by the land development regulations. Mitigation shall include, at a minimum, onsite restoration of buffers, habitat, and hydrology of the original wetland area.* The request for a special use permit is the being made as a result of findings of fact, conclusions of law and order by the Alachua County Codes Enforcement Board. As stated in the background section of this report, the applicant was adjudicated guilty of violations of Alachua County Code sections dealing with development in areas designated as wetland, wetland buffer or flood prone area. Corrective actions ordered by the CEB include obtaining the required special use permit from the Board of County Commissioners as well as obtaining development plan approval from the DRC for activities that include restoration of wetlands, wetland buffers

and 100 year floodplains impacted by the excavation and fill activities on this site. Approval of this SUP will allow these restoration activities to commence, in conformance with Policy 4.7.8 of the COSE.

**4. Policy 7.1.2** of the Future land Use Element states that *Proposed changes in the zoning map shall consider:*

- a. *consistency with the goals, objectives, policies and adopted maps of the Comprehensive Plan*
- b. *the availability and capacity of public facilities required to serve the development. When considering a rezoning, this includes availability and capacity of existing public facilities and timing of future facilities based on capital plans. Specific determinations for any exceptions to the requirement to connect to a centralized potable water and sanitary sewer system will be made at the stage of development plan review, as detailed in Policy 2.1 of the Potable Water and Sanitary Sewer Element.*
- c. *the relationship of the proposed development to existing development in the vicinity and considerations relating to environmental justice and redevelopment opportunities.*
- d. *those factors identified by law, including that as a general matter an applicant is not entitled to a particular density or intensity within the range of densities and intensities permitted by the Comprehensive Plan, given due consideration of legitimate public purposes relating*

*to health, safety, and welfare.*

The proposed SUP is consistent with the general goals, policies and objectives of the Comprehensive Plan and with the specific policies previously cited in this staff report. The granting of this SUP will have no impact on public facilities or levels of service as found in the Comprehensive Plan. Impacts of the development to other development in the vicinity are limited in part due to the nature of where this excavation is located within the larger parcel of land owned by the applicant. Also, the SUP, if approved, is intended to implement measures that will mitigate adverse impacts that may have resulted from the excavation and fill activities that have already occurred on this site. The applicant is not seeking to develop the parcel at a particular density or intensity and the SUP, if granted, is intended to provide measures to mitigate adverse impacts created by previous excavation and fill activities at the site.

5. Any Special Use Permit is required to demonstrate that it complies with the general criteria identified in **Section 402.124** of the ULDC. These criteria are:

- a. the proposed use is consistent with the Comprehensive Plan and ULDC;*
- b. the proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;*
- c. the proposed use shall not adversely affect the health, safety, and welfare of the public; and*
- d. satisfactory provisions and arrangements have been made concerning the following matters, where applicable:*

- 1.ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;*
- 2.off-street parking and loading areas where required, with particular attention to item 1 above;*
- 3.the noise, glare or odor effects of the special exception on surrounding properties;*
- 4.refuse and service areas, with particular reference to location, screening and items 1 and 2 above;*
- 5.Utilities, with reference to location and availability;*
- 6.Screening and buffering with reference to type, dimensions and character;*
- 7.Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;*
- 8.Required yards and other open space;*
- 9.General compatibility with surrounding properties; and*
- 10.Any special requirements set forth in this ULDC for the particular use involved.*

The proposed SUP is consistent with the general goals, policies and objectives of the Comprehensive Plan and with the specific policies previously cited in this staff report. The granting of this SUP will have no impact on public facilities or levels of service as found in the Comprehensive Plan. Impacts of the development to other development in the vicinity are limited in part due to the nature of where this excavation is located within the larger parcel of land owned by the applicant. Also, the SUP, if approved, is intended to implement measures that will mitigate adverse impacts that may have resulted from the excavation and fill activities that have already occurred on this site.

With regard to the specific subpolicies found in Section 402.124(d), the nature of the SUP request is to mitigate excavation and fill activities that have previously occurred on this site. No additional development will occur on site and the nature of the existing development is such that it will not generate noise, odors or glare nor will there be impacts to public infrastructure. Parking is limited to the owner of the property with associated ingress and egress of these vehicles. There are no refuse or service areas nor will there be any signage associated with this request. The nature of the request is compatible with surrounding uses although the SUP will address mitigation measures to provide corrective measures for the CEB order of March 8, 2012.

**6. Section 404.95** of the ULDC states that *activities related to a new or expanded mining or excavation and fill operation shall not commence until a special use permit has been issued by the Board of County Commissioners and a development plan, meeting the conditions of the special use permit, has been approved by the*



*Development Review Committee.* The requested special use permit, if approved, will proscribe mitigation measures intended to address previous excavation and fill activities that have occurred on this site. The applicant will be required, per the conditions of this SUP, to submit a development plan to the DRC for their review and approval.

**7. Section 406.41(b)** of the ULDC states that *except as otherwise expressly provided in this section, no alteration shall occur in, on or over a surface water or wetland area or buffer, and no alteration shall occur adjacent to or connected to a surface water or wetland area, such that the water regime is modified in a way that precludes the area in question from maintaining surface water or hydroperiod necessary to sustain wetland structure and function equivalent to pre-alteration levels.* The excavation and fill activities that have occurred on this site are in violation of ULDC 406.41(b) per CEB 12-010. The SUP, if granted, will provide for mitigation activities to occur on site including (but not limited to) removal of the existing fill pile on the site, remediation activities of the excavated portion of the property and limited wetland restoration. Similarly **ULDC 406.43(d)** states that *the buffer shall retain the existing undisturbed vegetation. No activity shall occur within a buffer area, except as expressly provided in this Section or as approved by Alachua County in accordance with standards set forth. The above shall not be interpreted to prohibit the removal of non-native vegetation or the planting of native vegetation.* The same analysis applies to this section of the ULDC as well as ULDC 406.56 (Development in an area of special flood hazard) which states (in part) that *any development in an area of special flood hazard is hereby prohibited, unless a*

*Flood Hazard Area permit is first obtained.*

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8/28/12

Taken together, the special use permit, if granted, will address the non-compliance issues resulting from non-issuance of a special use permit prior to commencement of excavation and fill activities as found in each one of the cited ULDC sections. These will be addressed through the mitigation measures found in the SUP.

DULY ADOPTED in regular session this 28<sup>th</sup> day in August, A.D., 2012.

BOARD OF COUNTY COMMISSIONERS OF  
ALACHUA COUNTY, FLORIDA

By: \_\_\_\_\_

Paula M. DeLaney, Chair

ATTEST:

\_\_\_\_\_

J. K. Irby, Clerk

APPROVED AS TO FORM

\_\_\_\_\_

(SEAL)

Alachua County Attorney

DEPARTMENT APPROVAL

AS TO CORRECTNESS



Department of Growth Management

Authorized Designee

## EXHIBIT A

Legal Description Parcel 20127-000-000 (COLASANTE PARCEL)

S 790 FT OF GOV LOT 10 & GOVT LOTS 15 & 16 OR 1889/2241 LOCATED IN SECTION 34, TOWNSHIP 11 SOUTH, RANGE 22 EAST TOTALING 103.94 ACRES MORE OR LESS.

Legal Description Parcel 20127-001-001 (COLASANTE PARCEL)

COM SW COR GOVT LOT 10 N 00 DEG 56 MIN 23 SEC W 788.01 FT POB N 00 DEG 56 MIN 23 SEC W 681.53 FT N 87 DEG 34 MIN 39SEC E 1326.85 FT S 00 DEG 55 MIN 19 SEC E 681.54 FT S 87 DEG 24 MIN 39 SEC W 1326.64 FT POB OR 3824/2656 LOCATED IN SECTION 34, TOWNSHIP 11 SOUTH, RANGE 22 EAST TOTALING 20.76 ACRES MORE OR LESS

Legal Description Parcel 20127-001-000 (PHILLIPS PARCEL)

S1/2 OF GOV LOT 7 LESS N 210 FT OF W 600 FT ALSO THE N 530 FT OF GOV LOT 10 (LESS COM SW COR GOVT LOT 10 N 788.01 FTPOB N 681.53 FT N 87 DEG E 1326.85 FT S 681.54 FT S 87 DEG W 1326.64 FT POB PER OR 3824/2656), TOTALING 12.3 ACRES MORE OR LESS.