

**STAFF REPORT**

Planning & Zoning Commission: July 14, 2003

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**APPLICANT:** Claire Clements **FILE NUMBER:** CU-03-09

**PURPOSE:** Conditional Use Permit for Excavation

**GENERAL**

**LOCATION:** North side of Power Line Road, approximately 1 1/4 miles east of Lockhart Road

**LEGAL**

**DESCRIPTION:** A portion of Section 17, Township 23 South, Range 21 East, Hernando County, FL

**FILE STATUS:** All legal obligations have been completed.

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**CITIZEN RESPONSE:** FOR: 0 AGAINST: 0

**STAFF FINDINGS:**

Surrounding Zoning

Surrounding Land Uses

North: AG  
South: Pasco County  
East: AG  
West: AG

Pasture  
Pasture  
Pasture  
Tree farm

**SUMMARY OF REQUEST**

The petitioner is applying to renew a conditional use permit for excavation for a period of five (5) years. The permit was originally issued on March 13, 1995, by the Planning and Zoning Commission, and subsequently on November 9, 1999. The BCC reviewed the P&Z's 1999 approval and modified the approval conditions to allow the excavation operation for a period of three and one-half years.

**FINDINGS OF FACT**

1. The property is currently zoned AG.
2. The subject area contains 119 acres.
3. The subject property has been developed with a sand mine.

4. Access to the site is from Power Line Road.
5. The subject property is located within a planned development land use classification on the adopted Future Land Use Map.
6. The on-site soil types include Arredondo fine sand and Candler fine sand. Candler fine sand provides a habitat suitable for gopher tortoises. Since there is the potential for this listed species of special concern to be present, a Florida Fish and Wildlife Conservation Commission permit may be required prior to site alterations.
7. The property is located in a flood zone C.
8. The Utilities Department has indicated that central water and sewer are not available to serve the subject site.
9. There are adequate public facilities available to serve limited development on the subject property.
10. The surrounding area is characterized by pasture, Spartan Electronics, rural residential uses and a dairy operation.

#### **STAFF DISCUSSION**

The petitioner requests the renewal of a conditional use permit (CUP) for excavation of a sand mine for a period of five (5) years. The permit was originally issued on March 13, 1995, by the Planning and Zoning Commission and subsequently on November 8, 1999. On December 14, 1999, the BCC reviewed the P&Z's decision for approval of the renewal of the CUP. The BCC voted to approve the CUP for the excavation operation for a period of three and one-half years with the following performance conditions:

1. The petitioner must maintain all permits from Hernando County and meet all applicable land regulations, for either construction or use of the property.
2. The petitioner may access the property from the west of the subject property along Power Line Road to Lockhart Road provided the petitioner improves both Power Line and Lockhart Roads to collector standards prior to using either road in association with the excavation operation.
3. Access to Hickory Hill Road and Lockhart Road south of Power Line Road shall not be allowed unless an agreement is negotiated with the County for maintenance and upkeep of these roads.

4. The petitioner may utilize Power Line Road to the east of the subject property to Kettering Road in accordance with the agreement between the Developer and the County executed on September 7, 1999.
5. The final elevation on the western half of the site shall not be less than 100' MSL and the final elevation on the eastern half of the site shall not be less than 125' MSL.
6. If a clay lens is encountered during the excavation operation, the petitioner must modify the excavation permit to review the new elevations of the excavation bottom.
7. Violation of any of the terms of the CUP may result in a hearing before the Planning and Zoning Commission to consider revocation.

The Board of County Commissioner's applied a three and one half year limit on the permit to be consistent with the approval by the Southwest Florida Management District until June 27, 2003. SWFWMD has subsequently extended the permit until June 27, 2006. A copy has been provided for our files.

The applicant requests the renewal of a conditional use permit for a five year period in order to continue to remove and sell dirt on the 119 acre parcel of AG zoned land. County development regulations permit the P&Z to grant a CUP for excavation activities on parcels less than 40 acres in size for a time period of up to five (5) years. On January 17, 1995, the BCC granted the petitioner a variance from the 40-acre maximum, to the subject request of 119 acres. The P&Z may grant the permit if they make the determination that the proposed request for this temporary use is appropriately located and is compatible with the surrounding area. If the request is approved, the staff would recommend the approval time frame tie to the SWFWMD permit.

At the BCC's 1995 hearing, the Board requested that the following issues be addressed during the P&Z's review of the request. The BCC requested that the final elevation of the property not be less than 100 feet MSL, the slope of the property be 1:6, improvements to Power Line Road be addressed, a surtax be assessed to trucks hauling from the subject site, air quality and the future use of the property.

The 119 acres are under three (3) separate ownerships. Property A (Hawes Family Partnership) comprises approximately 39 acres and is planted with pine trees. Property B (Hornbuckle) comprises approximately 43 acres and is barren land with the exception of grass/weed covering. Property C (Olmstead) comprises approximately 37 acres and is currently pasture. The three properties together form a large hill. The petitioner's narrative indicates they are grading the property with a series of plateaus in order to blend with the surrounding area and in order to prepare the land for future development. The final elevation is proposed by the developer to be 100 MSL on the western portion of the site, and 125' on the eastern portion of the site.

The narrative submitted by the petitioner indicates that the soil is well drained and there is no clay layer; however, no information supporting this position was provided. The petitioner has previously indicated that if a clay layer is encountered, the appropriate measures with the SWFWMD will be taken and no mining will occur through a confined layer of clay if it is discovered. The 1999 permit approval included a condition requiring the petitioner to modify the permit to review the new elevations of the excavation bottom if a clay lens is encountered during the excavation operation.

The petitioner has applied to renew an excavation permit from the Development Department. The petitioner would be required to maintain the appropriate permits to continue operating the sand mine.

The petitioner has indicated that access to the property will from Kettering Road to the east via Power Line Road. Power Line Road is not paved before or to the east of the subject property. Power Line Road east along the property to Kettering Road is an 18' roadway that is not in good condition. Kettering Road is designated in the County's adopted Comprehensive Plan as a minor collector road. Currently, Kettering Road is improved from SR 50 south to the Walmart distribution center to accommodate truck traffic.

In October 1993, the P&Z approved a CUP for an excavation operation on property approximately 3/4 mile north of Power Line Road which was re-approved in 1998. This site comprises approximately 30 acres. As part of the approval of the CUP, the petitioner was required to enter into a maintenance agreement with the County for Kettering Road. The agreement includes a fifty cent (\$.50) truck fee charged to cover the maintenance costs of the portion of Kettering Road, from the truck traffic access to the paved portion of Kettering Road, over a five-year period.

It has been the staff's opinion that the petitioner could be allowed to access the property from the west of the subject property along Power Line Road to Lockhart Road provided the petitioner improves both Power Line and Lockhart Roads to collector roadway status prior to using either road in association with the operation. This was included as a condition of approval in the approved CUP. Additionally, the approved CUP would not allow access to Hickory Hill Road and Lockhart Road south of Power Line Road unless an agreement is negotiated with the County for maintenance and upkeep. It is the staff's position these conditions should still apply.

The staff is of the opinion that the petitioner should be allowed to utilize Power Line and Kettering Roads in a manner consistent with the agreement approved by the BCC on September 7, 1999. The agreement indicates the petitioner will be charged \$0.02 per cubic yard of sand removed to cover maintenance and traffic control costs. The Budget Department has estimated fees paid for the current fiscal year ending 10/03 will be \$1,425.00. The Finance Department has provided records indicating the petitioner has paid \$1,401.88 thus far for the current fiscal year.

Pasco County has been notified of the petitioner's request; no response has yet been received.

**FINDINGS OF FACT**

The subject site is located within the I-75/SR 50 Planned Development District (PDD) which will eventually consist of a mixture of industrial, commercial, residential and public facility uses. It is the staff's opinion that an extension of the CUP for a period of five (3) years would not be inconsistent with the adopted Future Land Use Map nor incompatible with the surrounding area.

The surrounding area is characterized by pasture, Spartan Electronics, rural residential uses and a dairy operation. The proposed use is a temporary use and the county regulations require reclamation of the site. Staff is of the opinion that the proposed use at this location would not adversely affect the surrounding area if the property is developed in accordance with the staff recommendation.

**The conditional use permit process is a land use determination and does not constitute a permit for either construction, or use of, the property, or a Certificate of Concurrency. Prior to use of, or construction on, the property, the petitioner must receive approval from the appropriate County Department(s) for the use, which may include review by the Development Review Committee (DRC).**

**The granting of this land use determination does not protect the owner from civil liability for recorded deed restrictions which may exceed any county land use ordinances. Homeowners associations or architectural review committees require submission of plans for review and approval. The applicant for this land use request should contact the local association or the Public Records for all restrictions applicable to this property.**

**STAFF RECOMMENDATION:**

The Planning staff recommends the Planning and Zoning Commission approve the Conditional Use Permit for an excavation operation for a period of three (3) years (until June 27, 2006) because it is the staff's opinion that the request is consistent with development in the areas and would not adversely affect the surrounding area. Approval should be contingent upon the following:

1. The petitioner must maintain all permits from Hernando County and meet all applicable land development regulations, for either construction or use of the property, including review of the proposed use through the DRC process.
2. The petitioner may access the property from the west of the subject property along Power Line Road to Lockhart Road provided the petitioner improves both Power Line and Lockhart Roads to collector standards prior to using either road in association with the excavation operation.
3. Access to Hickory Hill Road and Lockhart Road south of Power Line Road shall not be allowed unless an agreement is negotiated with the County for maintenance and upkeep of these roads.

4. The petitioner may utilize Power Line Road to the east of the subject property to Kettering Road in accordance with the agreement between the Developer and the County executed on September 7, 1999.
5. The final elevation on the western half of the site shall not be less than 100' MSL and the final elevation on the eastern half of the site shall not be less than 125' MSL.
6. If a clay lens is encountered during the excavation operation, the petitioner must modify the excavation permit to review the new elevations of the excavation bottom.
7. Violation of any of the terms of the CUP may result in a hearing before the Planning and Zoning Commission to consider revocation.

**P&Z ACTION:**

The Planning and Zoning Commission voted 5-0 to approve the Conditional Use Permit for an excavation operation for a period of five (5) years contingent upon the following:

1. The petitioner must maintain all permits from Hernando County and meet all applicable land development regulations, for either construction or use of the property, including review of the proposed use through the DRC process.
2. The petitioner may access the property from the west of the subject property along Power Line Road to Lockhart Road provided the petitioner improves both Power Line and Lockhart Roads to collector standards prior to using either road in association with the excavation operation.
3. Access to Hickory Hill Road and Lockhart Road south of Power Line Road shall not be allowed unless an agreement is negotiated with the County for maintenance and upkeep of these roads.
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5. The final elevation on the western half of the site shall not be less than 100' MSL and the final elevation on the eastern half of the site shall not be less than 125' MSL.
6. If a clay lens is encountered during the excavation operation, the petitioner must modify the excavation permit to review the new elevations of the excavation bottom.

7. Violation of any of the terms of the CUP may result in a hearing before the Planning and Zoning Commission to consider revocation.
8. The petitioner must maintain a valid SWFWMD permit or the CUP shall become null and void.