



Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.

September 14, 2020

Lee County Board of County Commissioners
Mr. John Manning
Mr. Cecil Pendergrass
Mr. Ray Sandelli
Mr. Brian Hamman
Mr. Frank Mann

Sent via email

RE: Bell Road Mine – DCI2020-00007

Dear Lee County BOCC:

On behalf of the Conservancy of Southwest Florida and our over 7,000 supporting families, we write in support of Lee County Staff's recommendation that the Bell Road Mine application be denied as submitted. We agree with staff's assessment that the fill dirt mine is attempting to become a lime rock mine without going through the appropriate process outlined in Section 12 of the Lee County Land Development Code (LDC).

An approval for a fill dirt mine cannot transform into an approval for a lime rock mine without going through the appropriate process under the LDC. Please reject this application and support the process and protections provided by LDC Section 12. Recently, Old Corkscrew Plantation (OCP) applied for approval as a lime rock mine. There was a seven-day hearing in front of the Hearing Examiner (HEX) in order to hear all the evidence for this mine request, which ultimately resulted in a recommendation of denial from the HEX and a denial by you. This applicant is asking you to forgo that process. You should not.

One of our concerns with eliminating Map 14 was the approval of new lime rock mines without appropriate public notice or public participation. While reasonable people can disagree whether Map 14 was necessary, it did provide a direct way for the public to communicate with their elected officials about mines. It required public notice and potentially impacted property owners were notified. That no longer exists. We were assured, however, that LDC Section 12 provides all the public participation that could be needed. This request circumvents all public notice provisions. We ask you to stand by your statement that Section 12 provides enough opportunities and notice for the public. Require this new lime rock mine go through the



Conservancy of Southwest Florida has been awarded Charity Navigator's prestigious 3-Star top rating for good governance, sound fiscal management and commitment to accountability and transparency. Charity Navigator is America's largest and most respected independent evaluator of charities.

appropriate process. Lee County has stated that the revised Section 12 was significantly strengthened, resulting in a more rigorous and detailed review of mining applications.¹ The applicant wants to avoid that review. Do not let them.

Lee County staff has done an excellent job laying out why this is not currently a lime rock mine, and cannot be transformed into a lime rock mine without going through Section 12 and the Hearing Examiner proceeding. We agree with their analysis.

We would remind you that the LDC recognizes that mining operations are not compatible with most other uses (Sec. 12-101(a)). We note that this site is near the OCP site and OCP was recently denied a permit because of incompatibility. Blasting is serious business that causes irreparable disruption to the environment, flowways, and impacts surrounding property owners. While the state of Florida may have standards that prevent structural damage, human can perceive blasting at levels much lower than what is required to damage structures.² State standards do not prohibit offsite impacts, only that vibration levels do not exceed certain levels beyond the property border.³

Hearing Examiner Rules

While not directly about Bell Mine, as this project may be resubmitted and go before the Hearing Examiner (HEX), we are taking this opportunity to ask you to modify the Hearing Examiner rules. While we take issue with several practices and rules, the most egregious is that only people, not organizations, can gain standing to address the BOCC.

For example, if I attend the HEX, speak as a Conservancy of Southwest Florida representative, and have filed a lobbyist form with Lee County stating that I represent the Conservancy, the Conservancy should be able to send any representative – not just me – to address the BOCC at the public hearing about the matter discussed at the HEX. I have emailed with Michael Jacob about this practice, and his response is that only the Board can change the rules. I am asking you to change the rules to allow organizations to change their representative for different meetings so long as all parties are registered with Lee County as lobbyists for the same organization.

We also believe that it is appropriate for the public to be able to address their elected officials directly. The public hearing portion of the HEX is not time date certain. It is difficult for interested and impacted members of the public to attend a multiple day hearing in order to be present for their chance to make a statement to the HEX, which is required in order to address you. While I understand that a written statement submitted to the HEX would become part of the record provided to the BOCC, it would be helpful if, at a minimum, people who submit written comments but do not speak at the HEX could also verbally address the BOCC.

Finally, if the change allowing people who submit written comments but do not speak during the HEX proceeding to address the BOCC is made, it would be helpful to allow the public 3-5 days once the hearing closes to send materials and letters to the HEX. The HEX routinely keeps the record open for one or both parties, so this shouldn't be problematic or a hardship. Robust

¹ Case No. 19-3848GM, Department of Administrative Hearings, paragraph 39

² Case DCI2011-00007, Hearing Examiner Recommendation, Page 7, footnote 41

³ Case DCI2011-00007, Hearing Examiner Recommendation, Page 13

public involvement should be encouraged and the rules should make public involvement as easy as possible.

Conclusion

Lee County staff has done an excellent job outlining the history of the property, the approvals of the property and what the applicant should do if they would like to convert the property from a fill dirt mine to a lime rock mine. We support their recommendation of denial, and ask that you do the same. In addition, we are asking that you look at the processes and procedures the HEX uses to make it easier for the public to comment to the HEX as well as increasing opportunities for the public to address the BOCC.

Finally, the Conservancy cannot send a representative to the meeting because of the COVID 19 pandemic. Please stay safe, socially distance and wear a mask if you attend this meeting in person. As the pandemic shows no signs of abating, we request a virtual way to attend – by phone or conferencing computer application – be allowed and encouraged for Lee County.

Sincerely,



Julianne Thomas, Senior Environmental Planning Specialist

cc:

Brandon Dunn
Michael Jacob
Brian Roberts
Rebecca Sweigert
Elizabeth Workman