

**CASE NO.** PH#21-13-1  
**OWNER:** Sheldon Rubin  
**APPLICANT:** Ted Wicks Engineering/Jimmy Crawford, Esq.  
**PROJECT NAME:** Rubin Groves of Clermont, PUD

Rick Hartenstein, AICP, Senior Planner, said this was a request to amend Ordinance 2013-8, a previously approved Planned Unit Development (PUD) in the Green Swamp Area of Critical State Concern (GSACSC), in order to allow mass grading and overburden removal exceeding 200% of the stormwater volume. The applicant has stated the mass grading was necessary for the safety of future residents of the development which is planned for the elderly and disabled. He said this property is located in the Green Swamp Ridge Future Land Use Category (FLUC) and said mining is prohibited in that FLUC.

Mr. Hartenstein said the Land Development Regulations (LDRs) define lot grading as the moving, extraction or movement of soils within the limits of an individual lot or parcel. He said the applicant proposes to excavate the material for transport and sale to another location. The proposed mass grading would result in an elevation change in excess of 36 feet and violates the grading limitation in the Land Development Regulations (LDRs), where the maximum elevation change is limited to 10 feet.

The applicant proposes removing 3.0 million cubic yards of material and is requesting the removal be exempt from the mining regulations in the LDRs. The stormwater volume on this site is estimated at 500,000 cubic yards; however, this application is requesting five times the amount permitted under the mining exemption.

The requested overburden removal meets the definition of mining and is subject to the mining regulations. In addition mining is prohibited in the Green Swamp Ridge Future Land Use Category. He said the Department of Economic Opportunity (DEO) had raised other issues. This request is, also, inconsistent with the Green Swamp Principles for guiding development, which require minimizing adverse development impacts on the aquifer, protecting water quality and quantity and the natural flow of the drainage basin.

Mr. Hartenstein said staff is recommending denial of the amendment request, stating the application is inconsistent with the LDRs, that it meets the definition of mining and it is in conflict with the Comprehensive Plan.

There were no questions of staff.

Jimmy Crawford said he was the legal representative of Mr. Rubin and Ted Wicks is the applicant. He disagreed with the staff recommendation. He explained that the proposed development would be focused on being elderly and handicapped friendly. He said the development request hasn't changed, but they filed this application for an amendment when they realized they weren't going to get staff approval for the proposed mass grading plan.

Mr. Crawford discussed exemptions to the mining ordinance, such as when the physical characteristics of the land are not consistent with the development as planned. He said construction is not done under the mining rules; subdivision site work is done under a different set of rules. He noted that the DEO letter was concerned with hydrogeological issues, which caused them to hire Andreyev Engineering to review the grading plan.

In response to a question from Tim Morris, Mr. Crawford said the dirt from the site would be sold for the I-4 project, adding that the dirt had to be sold and moved off site.

Ted Wicks, PE, Wicks Engineering, responded to a series of questions from Mr. Crawford. Mr. Wicks said Andreyev Engineering was hired after he discussed this application with Rebecca Jetton, at DEO, to address hydrogeological concerns in the Green Swamp. Mr. Crawford submitted a copy of the engineering report, stating the report concluded that the net recharge would remain unchanged in the post development conditions. Mr. Wicks agreed that the mass grading plan would maintain sufficient level of soil to protect the groundwater. He said this grading plan is a subdivision construction plan and the contours shown on the map represent road profiles.

Their conclusion was that the quality and quantity of groundwater would be unchanged and that drainage patterns will not be changed by the proposed removal of the soil. Mr. Wicks said without reducing the slopes of the current topography it would be more difficult to meet stormwater runoff requirements. He said mass grading will be more than 400 feet from the wetlands which meets all the county and state requirements. There was some additional discussion of open space and grading.

In response to questions from Chairman Bryan, Mr. Crawford said they were requesting a waiver from the mining requirement because of the unique physical characteristics of the land and the type of subdivision that Mr. Rubin wants to build. He said because the development was not age-restricted it would be subject to impact fees. However, their intention is to build a subdivision that is age and handicap friendly. Chairman Bryan said he was concerned about issues that could be raised by removing that amount of dirt. Mr. Crawford said without approval from DEO the project cannot go forward.

Rick Gonzalez asked about the difference between the comments from DEO and the Andreyev report, in particular DEO's comment that only 10 feet of overburden would be left and the engineering report which claimed 24 feet. Mr. Crawford said the engineering report was based on actual on-site borings, which showed water table depths of 7.5 feet at the wetlands and up to 47 feet on other areas of the site. There was additional discussion noting the surrounding parcels have been impacted by development and do not have their natural grade. Mr. Crawford said it was their intention to meet the grade on the adjacent properties.

In response to questions from Tim Morris, Mr. Hartenstein said the report had been sent to DEO and their latest email shows the same concerns as original. Mr. Morris believed this was too early for the P&Z Board to be making a recommendation on this application. Mr. Hartenstein suggested a continuance to allow more time to resolve these issues. A couple board members stated they wanted more information.

Mr. Crawford said they didn't want to postpone, and emphasized without approval from DEO the mass grading could not be done.

Chairman Bryan said several board members would have liked more information. Mr. Gonzalez said this was not pristine property and he didn't have any concern with grading it to meet the surrounding properties.

Erin Hartigan, Assistant County Attorney, stated that if the applicant wants to move forward then that should be taken into consideration.

### **PUBLIC COMMENT**

Vance Joachim, introduce himself as the author of the Fiscal Rangers blog and is a property rights advocate. He believes that mining regulations were being used to remove property rights without compensation. He discussed the American Planners Association efforts to implement guidelines which led to the development of comprehensive plans that he believes takes away property rights of landowners.

In response to questions from Chairman Bryan, Mr. Hartenstein said this mass grading would have to meet the same rules and regulations of any mining operation, including hydrology and soil studies. Traffic and noise impacts would also be reviewed during the permitting process.

Mr. Hartenstein agreed with Mr. Gonzalez that the adjacent properties are not at the natural grade. Mr. Gonzalez suggested that it should be made clear when staff reports are based on DEO comments.

Mr. Hartenstein noted that this grading plan meets the mining definition as such and was inconsistent with the Comprehensive Plan Green Swamp Ridge FLUC policy. Mr. Gonzalez said he objected to seeing this property as some pristine topographic feature that needed to be preserved.

Mr. Morris said he was not comfortable making a motion, Chairman Bryan said he didn't have a problem supporting it.

**MOTION by Rick Gonzalez to approve PH#21-13-1, Rubin Grove PUD amendment, SECONDED by Tim Morris for the purpose of discussion.**

Chairman Bryan said he would support motion based on the engineering report, the mining review and further review by the Board of County Commissioners (BCC). Mr. Gonzalez felt DEO may not have taken into account the engineering report.

**FOR: Bryan, McKeeby, Morris, Gonzalez**

**AGAINST: None**

**MOTION CARRIED: 4-0**