

December 3, 2007
Regular Meeting

ITEM 25 – CONSIDERATION OF THE USE OF ENVIRONMENTALLY SENSITIVE LANDS FUNDS TO PURCHASE BULL CREEK FISH CAMP LOCATED ON DEAD LAKE

The following information was provided by Tim Telfer, Environmental Planner:

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
GENERAL BUSINESS / AGENDA ITEM # 25**

SUBJECT: Consideration of the Use of Environmentally Sensitive Lands Funds to Purchase Bull Creek Fish Camp Located on Dead Lake.

DATE OF MEETING: December 3, 2007

OVERVIEW/SUMMARY: Flagler County has been coordinating with the Trust for Public Land (TPL) the purchase of the Bull Creek Fish Camp (Fish Camp). The property is located at the western terminus of CR 2006 West at the union of Bull Creek and Dead Lake (Attachment 1).

The six-acre Fish Camp property includes a main building consisting of a restaurant area, small general store, and an apartment on the second floor. The six acre Fish Camp property (of the 29 acre total acquisition area) also includes a boat ramp, ±20 slip marina, and 50 full hook-up camp sites with the associated septic and potable water systems. North of the camping area is a 23 acre wetland that is part of the total 29 acre acquisition area.

The acquisition of the Fish Camp, with its existing docking facility and boat ramp facilities, is supported by the Comprehensive Plan's Recreation and Open Space Element as follows:

Objective 2: Lands purchased through the Environmentally Sensitive Lands Program will protect, preserve or restore ecologically significant areas for environmental protection and resource-based recreation.

Objective 7: The County shall secure additional access points to open water shorelines.

The wetland acreage included in the acquisition is predominantly river bank/flood plain cypress dominated hardwood swamp and hydric hammock. Both communities are dominated by large, old growth cypress and also include mature sweet gum, red maple, and cabbage palm. If evaluated under the State's UMAM classification, these wetlands would score in the higher ranges of wetland quality. Acquisition of these communities is supported by the Comprehensive Plan's Conservation Element:

Policy 11-3: Flagler County's environmentally sensitive lands shall include creek, stream or river banks, major drainage ways, beaches, shorelines, viable wetlands, floodplains, poor soil areas not suitable for development, wellhead protection areas, prime groundwater recharge areas, and natural systems that contribute to greenway corridors. The prime groundwater recharge areas are to be determined by the SJRWMD per Chapter 373.0395 (3) Florida Statutes.

And the Comprehensive Plan's Future Land Use Element:

Objective 4: Flagler County shall continue acquisition and preservation activities for the protection of environmentally sensitive features. Flagler County shall implement specific measures to protect environmentally sensitive features. In

December 3, 2007
Regular Meeting

(Item 25 – continued)

addition, Flagler County shall protect historical resources in the county from the adverse impacts of development.

On August 20, 2007, the Board approved the use of Environmentally Sensitive Land (ESL) funds to appraise this property (\$3,300.00) and execute a Memorandum of Understanding with the TPL enabling the County to use its appraisal as the second appraisal required by State law. Given that the contract seller has executed the attached purchase and sale agreement, County staff can advise the Commission that the appraisals conclude the value of the property is \$1.723 million (County's) and \$2.06 million (TPL's). Under State law and FCT grant funding rules, Section 9k-8.007, FAC, the maximum approved purchase price ("MAPP") is \$2.06 million. The proposed purchase price in the purchase agreement is \$1.81 million, which is below the MAPP. The agreement is Attachment 2. The appraisals are now subject to public inspection.

Per the Commission's direction at the November 5, 2007, meeting, County staff attempted to negotiate a management agreement for a transition period of ninety (90) days following the closing. There are efforts underway to conclude such an arrangement. If these efforts are successful they will be brought to the Board in a supplemental agenda item. Because at this time there is no management agreement, there will be no campers/tenants on the property at closing.

If the Board approves the execution of the purchase agreement, a closing of December 17, 2007, is scheduled. TPL has completed a survey and Phase I environmental assessment and is organizing the closing. The Phase I and subsequent Phase II examination revealed no environmental conditions. In accordance with the agreement, Flagler County will reimburse TPL for expenses incurred during due diligence and standard property purchase workup items including the environmental assessments, survey, the preparation of closing documents and the title commitment. If everything is in order, then, and only then, will the County be ready to close. On December 17 a double closing will take place with the property transferring from the McCraney's to TPL, and then from TPL to Flagler County.

The purchase agreement also reserves an easement to the current owner for access to the lake on an existing dirt road. The easement is a life estate and is solely for personal use. The easement includes a 50' by 50' area adjoining the water where the road dead ends. Within this footprint the current owner may build a storage shed provided that there is no clearing of vegetation and the County approves the plans. The shed becomes the property of the County at the end of the life estate.

Flagler County Land Acquisition Selection Advisory Committee: The Flagler County Land Acquisition Selection Advisory Committee (LAC) held a special meeting on October 22, 2007, to consider a recommendation to the Board. The LAC voted unanimously to recommend that the Board acquire the Bull Creek Fish Camp; apply for a Florida Communities Trust (FCT) reimbursement grant; structure a provisional management plan which is likely to garner the highest number of points under FCT's ranking criteria; and proceed with a purchase agreement which requires the seller to transfer the property to the County without tenants.

History: Flagler County's interest in the Bull Creek Fish Camp dates to the early 1990's. At that time a title cloud on the property thwarted the County's purchase attempt from

December 3, 2007
Regular Meeting

(Item 25 – continued)

an owner named Kinney. The McCraney's bought the property in 1994 and approached the County regarding a possible purchase for \$1.3 million. An examination of the Land Acquisition Committee meeting minutes indicates the committee's concerns included the use of LAC money for a fish camp. The minutes indicate the title issue was resolved by summer 1994, and by 1995 the LAC was discussing the possibility of only purchasing a one acre portion to include the boat ramp, 175 feet of water frontage and 21 campsites. The March 1995 LAC meeting minutes indicate purchase discussions had tapered off.

Land Acquisition Committee files indicate further correspondence on this issue in 2002. The discussion included a possible property swap of a portion of the right of way of CR 2006 at its western terminus for a parcel of land for a future County boat ramp, a public access easement to Bull Creek, and construction of a cul-de-sac within the right of way of CR 2006. Records indicate a January 23, 2003, request to the Commission was canceled.

Site History: The location of the Bull Creek Fish Camp is the historic location of St. Johns Park, and prior to that was part of the settlement known as Omega. This site in particular was the location of large freight docks belonging to the St. Johns Development Company, the pilings of which can still be seen today. At this location boats carrying passengers, supplies and mail would arrive, while produce and timber would be shipped from here to market.

Use of Environmentally Sensitive Land Funds: The 1988 and 2002 referenda for the levy of ad valorem taxes to be used to acquire Environmentally Sensitive Lands each included the use of funds for the acquisition of recreation property. Furthermore, the Land Acquisition Manual, approved by the Board on October 2, 2000, included the potential acquisition of "environmentally sensitive lands, recreation areas, and water recharge areas" and lists as an objective of the program to "Promote public use and enjoyment of and control access to acquired lands including public access to water bodies for recreation activities."

FUNDING INFORMATION: \$1,810,000.00 + survey (est. \$15,000.00) + environmental assessment and testing (est. \$6,000.00) + closing costs (est. \$8050.00). Acct # 117-5200-537.61-10, Project # 875012. Currently, the Environmentally Sensitive Lands Acquisition fund currently contains an estimated \$6,056,548.00. This purchase would consume approximately 29% of the available funds.

DEPT/CONTACT/PHONE #: Tim Telfer, Environmental Planner, (386) 313-4066

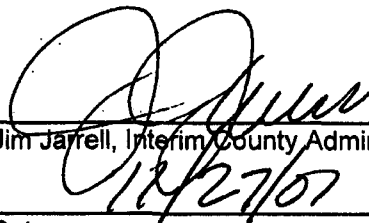
RECOMMENDATION: Request the Board approve the use of Environmentally Sensitive Lands funds for the Bull Creek Fish Camp, in accordance with the purchase and sale agreement.

ATTACHMENTS:

1. Location Map
2. TPL/Flagler County Purchase Agreement

Tim Telfer/cl
Environmental Planner

11/2/07
Date


Jim Jayrell, Interim County Administrator
Date 11/2/07

December 3, 2007
Regular Meeting

(Item 25 – continued)

Interim County Administrator Jarrell explained Bull Creek was a 29-acre parcel, with 23 acres being wetlands and 6 acres a fish camp that had been in business for many years. Stated the Trust for Public Lands (TPL) was the enabling means to purchase this property and with BCC approval the Environmentally Sensitive Land Funds were used to have an appraisal done. The TPL also did an appraisal. A Purchase Agreement had been derived with the owner for \$1.8 million. Explained there was currently approximately \$6 million in ESL funds and the purchase of this property would consume 29% of that amount. The closing was scheduled for Monday, December 17, 2007 and would be a double closing with the property transferring from the owner, Mr. McCraney, to TPL and then to Flagler County. The Purchase Agreement reserved an easement for the current owner to access the lake on an existing dirt road. Noted the Land Acquisition Committee voted unanimously to recommend the BCC acquire this property. Stated per previous BCC action, an agreement was created for the owner to maintain the management of the property through the season for a ninety-day period. Requested BCC approval of the purchase to close on December 17, 2007.

County Attorney Hadeed stated these were funds under a bond issue and requirements must be established. The BCC must comply with Florida Chapter 125, with the bond referendum and the ordinance, and IRS requirements. Explained the following:

- The Florida Chapter 125 was the law that governed counties. The Purchase Agreement, which he had provided to the BCC in hard copy form, showed the changes based on compliance by the TPL with a couple of contingencies. Chapter 125 allowed the purchase of land either by way of an option agreement or a purchase and sale agreement and it had rules about making the appraisals public. County staff had opted to use a Purchase and Sale Agreement. The appraisals were available for any public inspection. The County had complied with all of the requirements of Florida Chapter 125.
- The resolutions the BCC had adopted and the voters had approved, that being the funds from the referendum to go towards the acquisition of the environmentally sensitive lands, including water recharge areas and parks and recreation areas. This was not a water recharge area, however, it was an environmentally sensitive lands and did provide recreation areas consistent with the referendum provision. The agenda memo furnished to the BCC detailed the nature of environmental assets on the property, one being a 23-acre hardwood cypress wetland that was in tact along the shoreline and forms part of the watershed for Dead Lake. The other environmental resource was the access to the Dead Lake and purchasing that entire length of shoreline would allow the County to better protect that Lake from runoff. There was an ordinance in place as to how lands were determined under the Environmentally Sensitive Lands Program, with the Land Acquisition Committee reviewing and evaluating properties for compliance with environmentally sensitive land criteria and that projects were ranked according to priority, which had been done and this project was listed as number one priority for acquisition. A report on the master acquisitions plan for environmentally sensitive lands for Flagler County was published in April 2000, and within the report Dead Lake access park was identified as one of the priority sites and was on that priority ranking. Finally, the County was to pursue and seek partnerships with state and federal governments as far as defraying acquisition costs. A Florida Communities Trust (FCT) funding and BCC instruction was to structure this closing to maximize the ability to obtain a reimbursement grant from the state of Florida. The FCT provided a self score check sheet on the suitability of the project for consideration by the state.

(Item 25 – continued)

- There were IRS requirements that needed to be complied with. The County had very specific and tight controls on things like arbitrage (a rebate paid to the government) and this transaction would avoid that. Within the context of the official bond documents there were provisions of rebateable arbitrage, and they had a rebate expert and a rebate fund. There was a prohibition on private activity bonds and the way they were structuring this transaction, including discussions concerning transitional management plan, it would not run afoul with any of those requirements.

A motion was made by Commissioner Darby to approve Item 25 to include the Purchase and Sale Agreement. Seconded by Commissioner Hanns.

Commissioner Darby stated on Attachment 1, the map of the site to be purchased, there was a dirt road right-of-way that went past the pavement depicted as CR 2006 that runs to the lake and splits the property purchase. The square footage of that right-of-way was not included in the total acreage to be purchased through the land trust grant.

County Attorney Hadeed responded that was correct, the County was not buying its own road. Noted in this transaction they were going to receive a certified survey making sure the limits of the right-of-way were as depicted. Pointed out there was an area left for a parking lot.

Explained for Commissioner Darby the approximate alignment of the existing dirt road that extended to the water as indicated on Exhibit A to the Purchase Agreement. It was very detailed and spelled out there could not be any vegetation clearing and it was only to provide for the owner access to the water. Noted from the aerial, the road was not visible and the County wanted it to remain that way. Stated the property would be surveyed with a specific legal description.

Commissioner Darby commented when this was completed there would be an attachment that depicted the legal description of that second dirt road.

County Attorney Hadeed replied that was correct and Attachment 1 was not part of the closing documents. The Purchase and Sale Agreement specifically required they provide a survey that would meet all the requirements as well as standard surveying requirements.

Commissioner Darby referenced County Attorney Hadeed's memo, which stated it would not be feasible to create a business relationship on the restaurant and the boat slips. Inquired if after the County purchased the property it could be bid out for concession operation as other governments did. Asked what was peculiar in the law that stopped Flagler County from doing that.

County Attorney Hadeed responded there was nothing peculiar in the law. The option was reserved for the BCC. As the memo indicated, he attempted to negotiate the management agreement that the BCC authorized and directed him to work on consistent with all those requirements described earlier. It would allow continued operations subject to whatever could be successfully negotiated. Stated they were able to do that with the current owner and not run afoul with any of the previously stated requirements because it was a transition situation where

December 3, 2007
Regular Meeting

(Item 25 – continued)

there were existing uses, and the County wished not to be disruptive in its acquisition. They would be able to study how the operation worked in order to determine what to do after the expiration of the management agreement. The last and best proposal received was to have an account funded by the County from which the managing entity could use funds for operating costs. All the revenues from the rental of the campsites, the sale of bait and tackle, and other sales collected would be deposited into the account and the County would assume all the costs, revenues, and profit. The complicating problem would be that the operations were cash at point of sale; there would be no credit cards. Inventories must be replenished frequently so that merchandise was fresh and available and these vendors would not want to work on a purchase order system.

Commissioner Darby stated the BCC was requested by staff to give specific direction whether they were going to operate or not and it was the decision of the BCC not to try to operate. Asked again why other governments could do this, but Flagler County could not, and stated he realized staff did not want to, but he hoped they were not working the detail and language to fit what staff wanted and not what the BCC requested.

County Attorney Hadeed stated that was not the case. It was that system he described that was not acceptable in terms of meeting local government rules concerning finances, because there was cash at point of sale and the inability to account for it.

Commissioner Darby gave an example of all of the cash transactions going on at the Pier Restaurant and the Flagler Pier bait and tackle operations. They performed their due diligence to Flagler Beach by audit. Commented everything in the backup talked about Flagler County operating the facility and not about a concessionaire who would handle cash and credit cards. They would audit at the end of the day.

County Attorney Hadeed explained prior to the memo the present owner did not want to have a traditional concession agreement.

Commissioner Darby inquired if it was not that staff did not want to do it, but that they could not negotiate that with the present owner.

County Attorney Hadeed stated since that memo the current owner had informed the County he would be willing to do that. Continued saying the approval of the agreement required the present tenants to vacate and the County would take over December 18, 2007 and could choose internally, subject to BCC approval, to have some type of County operation there. Explained if they did not take up the issue of management, the site would be vacated of all tenants effective December 17. If it was the BCC's wish to continue some or all of the operations, they needed to discuss the issues.

Commissioner Darby stated his motion stood.

(Item 25 – continued)

Commissioner Abbott stated he spoke with the owner forty minutes prior to the meeting and he stated he would be more than happy to do it. For the next 90 days, the current owners would take care of everything.

An amendment to the motion was made by Commissioner Abbott not to evict the people currently at the campsite. Seconded by Commissioner Darby.

County Attorney Hadeed asked the motion makers if they contemplated that on December 18 the County would be operating the facility for the tenants or whether it would be an attempt to negotiate a concession with the current owner. A concession agreement would be that the concessionaire, the current owner, would be responsible for all expenses and revenues and some portion of revenues would be paid to the County. If the County ran the facility, it would be operated as County Administration chose.

Commissioner Hanns stated this service in Flagler County on a natural lake provided a recreation opportunity for many people. It was not his intent to purchase the property and then close it.

County Attorney Hadeed stated whatever was done must comply with the IRS requirements, which would automatically be done as well as the compliance with all the other things mentioned. The concession agreement would make all the expenses and revenues be the current owners, and the County would receive a percentage of the net revenue, similar to a royalty. Stated the BCC had the option to support the concession agreement outlined and authorize staff to take actions necessary to include a concession agreement suitable for Flagler County and bring it back to the BCC for approval. If that failed, the County would take over the operation.

Commissioner Darby amended the motion to include the option as stated by County Attorney Hadeed.

Commissioner Darby stated the current owner had been given an opportunity to strike a concession agreement with the County and if the concessionaire failed to reach an agreement with the County then the onus would be on it regarding the evictions. Asked if the concessionaire could not reach an agreement, how long a period of time would the County give the tenants before eviction.

County Attorney Hadeed stated the approval of the Purchase Agreement was that the property would be conveyed without tenants, therefore, that would happen December 17, or they would not close, unless something was done prior to that time. There would be legal requirements that would force the removal of everybody there on the date of closing.

Commissioner Holland stated the direction of staff would be to eventually take over the facility if they could not come up with a management agreement. The County did not have an operational plan or overnight security and there were fifty spaces to monitor. Stated she was very uncomfortable to say they could do it when there was nothing showing it would be feasible.

December 3, 2007
Regular Meeting

(Item 25 – continued)

County Attorney Hadeed explained the second amendment to the motion was actually a substitute amendment to the amendment to concession. The procedure was to ask for a vote on the substitute motion to have a concession agreement and failing to have a concession agreement, the County would operate. If that succeeded, then that amended the main motion and the other amendment was disregarded. If it should fail, then the BCC would vote on the other amendment. Reiterated that the County was not the entity doing the evicting. All the legal documents prepared required the owner to evict.

Commissioner Holland inquired if Interim County Administrator Jarrell were willing to take on the responsibility of saying if the BCC approved the amendment, staff would be able to take over the operations without any type of plan in place.

Interim County Administrator Jarrell stated without a management plan in place, staff would be able, on a temporary basis, to run the park from the RV rental standpoint.

Commissioner Holland stated she did not understand how it could do that.

Interim County Administrator Jarrell explained staff would have to analyze the business prospects, but it could be done.

Commissioner Hanns asked if payment of rents in advance had been taken into consideration.

Susan Granden, Trust for Public Lands representative, stated it would not be anticipated in the closing documents, but according to the current owner, the rental was on a week to week basis without any leasehold agreements or written documents.

Commissioner Hanns asked Ms. Granden if she had any concerns.

Ms. Granden stated the contract was written that there would be no personal property left and no one would be in possession of the property when the County purchased it.

Chairman O'Connell called the question on the amendment. Amendment carried 4 to 1, with Commissioner Holland dissenting.

Chairman O'Connell requested public comment.

There was no public comment.

Chairman O'Connell called the question on the amended main motion. Motion carried unanimously.