

**MINUTES ARE NOT VERBATIM**

**BOARD OF ADJUSTMENT  
MEETING MINUTES  
June 14, 2017**

The regular meeting of the Okaloosa County Board of Adjustment was held Wednesday, June 17, 2017 at 1:30 p.m., in the Okaloosa County Administration Building, 1<sup>st</sup> Floor Commissioners Chambers, 1250 Eglin Parkway N., Shalimar, Florida.

Board Members in attendance were Scott Kearney, Pat Byrne, Fred Schor, Payne Walker and Bob Ambrose. Staff in attendance were Elliot Kampert, Growth Management Director; and Teresa Mullins, Administrative Assistant II. Assistant County Attorney Kerry Parsons was also present.

**A. CALL TO ORDER**

Chairman Payne Walker called the meeting to order and read the opening statement into the record.

**B. ROLL CALL**

Ms. Teresa Mullins conducted roll call.

**C. APPROVAL OF MINUTES FOR: May 10, 2017**

Motion to approve the minutes as written made by Pat Byrne; Second by Bob Ambrose; approved unanimously.

**D. ANNOUNCEMENTS**

None

**E. ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA**

Mr. Elliot Kampert apologized to the Board stating that there was an issue with the notice sign posted on the subject property whereon an incorrect meeting location was listed. Mr. Kampert state that because the requirements of Okaloosa County Code regarding public notice were not met, the request for Special Exception will have to be heard at the next meeting and will have to be re-advertised and re-posted.

Assistant County Attorney Kerry Parsons informed the Board that there are 2 public notice requirements in the Code, advertising in the paper and posting on the subject site. Attorney Parsons stated that both forms of advertising must be accurate in order for an item to be heard by this Board.

Mr. Kampert apologized to the Board and those attending the meeting.

**F. ACCEPTANCE OF THE AGENDA**

Motion to accept the agenda as amended made by Bob Ambrose; Second by Pat Byrne; approved unanimously.

**G. OATH TAKING**

Ms. Mullins indicated that as the request for Special Exception will be continued, there will be no public commentary and there is no need for staff to be sworn in.

**H. DISCLOSURES**

None

**I. OLD BUSINESS**

**1. Election of Officers for 2017**

*This item was heard, per Board request, under "Other Business" after Counsel's update on the Sunshine Law, Ethics and Conflicts of Interest.*

**J. NEW BUSINESS**

- 1. 413239-BOA-2017**, a request for a Special Exception, as submitted by Scott D. Kolanek on behalf of Creek Gulf Investments, LLC, pursuant to Okaloosa County Code, Appendix E, as amended, Sections 2.01.05.4 and 11.02.09.2 to allow the operation of a "laydown yard" (equipment and materials storage) for a utility (communication) contracting company. The property is currently zoned **Agriculture District (AA)** and the future land use map designation is **Agriculture (AG)**. A general location of the property is 851 Broxson Road in the unincorporated area of the County generally referred to as Holt, Florida. The property contains 10.00 acres more or less.  
District 3

*This item was continued time certain to July 12, 2017*

**K. OTHER BUSINESS**

**1. Presentation regarding the Sunshine Law as well as Conflict of Interest**

Attorney Parsons informed the Board that she was going to briefly explain some of the key points regarding the Sunshine Law, Public Records and the Code of Ethics. Attorney Parsons began with the Sunshine Law, explaining its location and requirements, stating that any time 2 or more members wish to communicate or discuss something that has or will appear before the Board, it must be in an open, advertised meeting for which minutes are taken. Attorney Parsons noted that communication under the Sunshine Law is very broad and includes all types of communication, such as talking, texting, emailing and even, were such a thing used, smoke signals. Attorney Parsons noted that even asking staff to pass a message to another Board member regarding an issue that is or might come before the Board is also a violation. Attorney Parsons stated that violations of the Sunshine Law can result in misdemeanors, civil fines and even imprisonment in some cases. Attorney Parsons explained that there are three main components:

- The Board must have an open meeting
- The meeting must be noticed or advertised
- The meeting must be recorded, i.e. minutes must be taken

Attorney Parsons stated that all three of those components must be in effect for Board members to discuss any items before them. Attorney Parsons stated that past items that are over and will never come back before the Board could be discussed; however, she does not recommend doing so as the discussion may shift and no Board member may discuss items before the Board or items that may come before the Board in the future. Attorney Parsons informed the Board that their meetings are Quasi-Judicial in nature, which means that this Board can actually take action and as a result there are some due process matters that affect both this Board and the individuals who appear before this Board. Attorney Parsons stated that, as regards those who appear before this Board those who are present both in support of an in opposition to an agenda item have the right to speak if they choose and they have the right to know if any member of the Board had any ex-parte communications regarding their situation. Attorney Parsons continued, explaining that ex-parte communications include such things as talking to staff, a neighboring property owner or even the proposed violator. Attorney Parsons noted that if any such communication happens, notify the Board Attorney present and it can then be disclosed during an open meeting by explaining what was communicated. Attorney Parsons cautioned that ex-parte communications, even when disclosed in an open meeting, would open the Board member involved up to cross-examination. Attorney Parsons suggested that the Board members best course of action might be to blame the County Attorney's Office for their refusal to participate in any ex-parte communication.

Attorney Parsons stated that Florida Statutes, Chapter 119 requires that there is a right to all actions taken during public business, noting that the law is very broad and encompasses any and all records, such as meeting minutes, email, notes and telephone transcripts or logs, if any are taken. Attorney Parsons stated that any such documents, such as emails sent by Board members to staff or counsel qualify as public records. Attorney Parsons stated that any attempt to hide or destroy documents can result in fines, criminal prosecution and imprisonment.

Attorney Parsons stated that Chapter 112, Florida Statutes, which includes the Code of Ethics, was adopted by the legislature and applies to all public bodies in Florida excepting only the Florida Legislature itself which has its own ethics law. Attorney Parsons further stated that the Code of Ethics establishes standards of conduct for all public officials, both elected and appointed. Attorney Parsons touched on several points of the Code of Ethics some of which are pertinent to this Board:

- Solicitation of or acceptance of gifts, i.e. bribery
- Unauthorized compensation, i.e. compensation for a particular vote or quid pro quo
- Misuse of Public Position, i.e. using position to coerce the behavior of another

- Disclosings or use of certain information, such as disclosing knowledge of bids
- Doing Business with your own agency
- Engaging in conflicting employment or contractual relationships

Attorney Parsons reminded the Board that Financial Disclosure forms are due to the Supervisor of Elections by July 1 (July 3 for 2017 as July 1 is on a Saturday) and noted that very significant fines can accrue if those forms aren't filed out and returned by the deadline as required by the Florida State Department of Ethics.

Attorney Parsons stated that a major issue for this and other Boards in the Code of Ethics deals with Conflicts of Interest. Attorney Parsons further stated that the Code of Ethics requires that a Board member vote if they are present at a meeting, excepting only under special circumstances wherein a Board member has a Conflict of Interest as defined in the Code of Ethics. Attorney Parsons stated that there are 3 basic reasons for a Conflict of Interest:

- If there is a gain or loss that the Board member would suffer based on the vote.
- If a relative of a Board member will suffer a gain or loss based on the vote.
- If a business entity with which the Board member is involved will suffer a gain or loss based on the vote.

Attorney Parsons stated that, in the event that a Board member has a Conflict of Interest, they can fill out a ***Form 8B Memorandum of Voting Conflict for County, Municipal and Other Local Public Officials*** and disclose during the meeting that the Board member has a Conflict of Interest and will not be voting. Attorney Parsons further stated that the Form 8B must be given to the Recording Secretary and recorded as part of the public record.

A brief discussion ensued.

## **2. Election of Officers for 2017**

Chairman Walker opened nominations for Chairman.

Motion to retain Payne Walker as Chairman made by Bob Ambrose; Second by Pat Byrne.

Chairman Walker accepted the nomination.

There were no further nominations,

Payne Walker approved as 2017 Chairman by unanimous vote.

A brief discussion ensued.

Chairman Walker opened nominations for Vice-Chairman.

Motion to nominate Fred Schor as Vice-Chairman made by Pat Byrne; Second by Scott Kearney.

Mr. Schor accepted the nomination.

There were no further nominations.

Fred Schor approved as 2017 Vice- Chairperson by unanimous vote.

Attorney Parsons noted, for the record, that the request for the special exception listed below has been continued and will be heard by this Board, time certain, on July 12, 2017 in this same location, 1250 Elgin Parkway, Commissioner's Chambers, Shalimar, Florida:

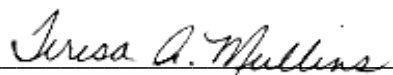
*413239-BOA-2017, a request for a Special Exception, as submitted by Scott D. Kolanek on behalf of Creek Gulf Investments, LLC, pursuant to Okaloosa County Code, Appendix E, as amended, Sections 2.01.05.4 and 11.02.09.2 to allow the operation of a "laydown yard" (equipment and materials storage) for a utility (communication) contracting company.*

A brief discussion ensued.

- 3. The next regular meeting** of the Board of Adjustment is scheduled to be held on July 12, 2017 at 1:30 p.m., **at the Okaloosa County Administrative Complex, 1250 Eglin Parkway N, first floor Commissioner's Chambers, Shalimar, Florida.**

#### **L. ADJOURNMENT**

Motion to adjourn made by Scott Kearney; second by Pat Byrne; approved unanimously.

Prepared by   
Teresa A. Mullins, Recording Secretary  
6.15.2017