

On August 27, 2018 the DeSoto Board of County Commissioners met. On the agenda was the matter of the Florida Land-Use Environmental Dispute Resolution Act. As you will recall this obscure law (70-15) known as FLUEDRA constitutes Mosaic's response to DeSoto's rejection of their bid to rezone 14,000 acres from Agriculture to Phosphate Mining/Industrial land use. Without this rezone the phosphate fertilizer giant is helpless to move forward with their mining plan.

It think it would be useful to share more factual information on the outcome of this meeting, as I have seen information, circulating on the internet that does not portray it accurately. Mosaic didn't "win" anything in particular at that meeting. In fact Mosaic was not even represented there. On the other hand the public was abundantly represented despite the fact that the meeting was held at 3:00 in the afternoon. Furthermore, the statute under discussion is not a law that gives special consideration to the phosphate mine industry, but is available to any aggrieved property owner who feels a government entity has "unduly burdened" the owner of his legitimate use of the property.

The matter was presented to the DeSoto Commission by its legal counsel, Tampa lawyer, Don Conn. Mr. Conn's presentation characterized FLUEDRA as an obscure and vague law with little case history that would allow an aggrieved land-owner like Mosaic who feels local government acted "unreasonably" and "unfairly" in denying a rezone, to request participation by the local government in a voluntary mediation process. A Special Magistrate, paid equally by and agreeable to both parties, is appointed. The Magistrate's purpose is to schedule a hearing to air both sides of the matter and then mediate a resolution between the two parties. If there is no agreement he submits a report. The law encourages the participation and representation of the public in the hearing and the mediation, although the details and to what extent the public participates is to be determined by the Special Magistrate. Only those members of the public who own property contiguous to the affected property or who have previously testified on the record are considered qualified to testify.

Although the law is seemingly meant to expedite an out-of-court settlement by the two parties and actually stops the clock on the time limit for Mosaic to file for litigation, all time frames in the law are subject to modification with the agreement of both parties. So, potentially the process could drag on for years. However, the DeSoto Commission felt like the cost of hiring a Special Magistrate to hear the case and attempt to mediate a solution would present a substantial burden to the county.

Mr. Conn outlined those parts of the statute that he considered poorly defined, and also recommended that certain terms be accepted by both parties before they could move ahead with the process of choosing a Special Magistrate.

The following points were specified by Mr. Conn as imperative to resolve with Mosaic before appointment of a Special Magistrate:

1. The hearings conducted by the Special Magistrate must be based on the existing record with no new witnesses or exhibits.
2. Guarantee public participation
3. Proceedings subject to Sunshine and Public Record laws.

4. Board will consider recommendations on Special Magistrate in formal legal environment
5. Special Magistrate must have substantial experience in Land-Use and local government law
6. An impasse can be declared at any time

Thus Mr. Conn offered to return before the DeSoto Commissioners with a progress report on September 11 at a regular county meeting at 9:00 AM. So all interested parties should have that date circled on your calendar. 3PR News will provide coverage.

After considerable discussion and testimony from a good number of representatives of the public, the board decided to meet Mosaic's request. The reasoning for this as expressed by Commissioner Langford was that they were confident in the legality and reasonableness of their denial of the Mosaic rezoning proposal, and that the Special Magistrate would concur with that. Therefore when it comes to a lawsuit (which was euphemistically referred to again and again as "goin 'cross the street ") on the part of the Mosaic phosphate mine, that the report of the Special Magistrate would give more weight to the county in that event. There was also umbrage among the commissioners and the public that entering into the mediation process would create additional financial pressure on the county to meet the Special Magistrate's fees. No mention was made of the increase in Mr. Conn's fees. It was decided then to make that part of the county's response - that Mosaic should be paying more than half of the Special Magistrate's fees (estimated at \$300 - \$400/hour) as a courtesy. That is, with no privileges attached.

So, by the looks of things and based experience as well as the legal advice we've received, the mediation process will probably be a lengthy one. As Mr. Conn emphasized repeatedly there could be no change to the county's previous decision, except by board action in a legally constituted public forum. I have a feeling that Mosaic will offer lots of "conditions," and probably some kind of multi-million dollar financial mitigation as they have done already in the last three mines permitted in neighboring Hardee County. Also the mediation process will span at least one election and perhaps more while Mosaic will be working vigorously behind the scenes (with schools, local charities and other causes) to influence the outcome.