

PROCEDURAL GUIDELINES FOR THE
MEDIATION SESSION ON APRIL 3, 2019,
RE MOSAIC FERTILIZER'S
APPLICATION FOR DISPUTE RESOLUTION
UNDER SECTION 70.51, FLORIDA STATUTES

- These guidelines are to familiarize the parties and participants with the purpose and procedures applicable to the mediation portion of the Section 70.51, Florida Statutes, proceeding to be conducted on April 3, 2019.
- Section 70.51, Florida Statutes, was enacted in 1995 and is titled "The Florida Land Use and Environmental Dispute Resolution Act." As indicated by its title, the purpose for the statute is to give the owner and the governmental entity an opportunity to try to resolve their land use and/or environmental dispute over a development order issued by the governmental entity through negotiation in a non-judicial proceeding conducted by a designated special magistrate. The statutory process is specifically not intended to serve as an appellate process to determine if the development order should be reversed or upheld because the special master does not have the power or authority to make that determination.
- The process involves two separate procedures. In the phase I portion of the process, the special magistrate conducts a mediation between the owner and the governmental entity. In the words of Section 70.51(17) and (17)(a): *"The object of the hearing is to focus attention on the impact of the governmental action giving rise to the [owner's] request for relief and to explore alternatives to the development order . . . in order to recommend relief, when appropriate, to the owner. (a) The first responsibility of the special magistrate is to facilitate a resolution of the conflict between the owner and governmental entities to the end that some modification of the owner's proposed use of the property or adjustment in the development order . . . may be reached. Accordingly, the special magistrate shall act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution."*
- If the owner and governmental entity cannot reach a compromise agreement, the process goes to a phase II hearing in which the special magistrate considers the owner's request for relief, the governmental entity's response, and any other information submitted by the parties in order to make a non-binding determination as to whether the action by the governmental entity is unreasonable or unfairly burdens the owner's property.
- The April 3rd meeting is the phase I mediation session at which the focus is on trying to reach an amicable resolution of the dispute between Mosaic Fertilizer and DeSoto County over the County's development order denying Mosaic's rezoning application.

- Under Section 70.51, the mediation session is informal and open to the public, subject to the special magistrate's authority to conduct the mediation. Because it is a statutory proceeding, the special magistrate has the responsibility and authority to establish procedural rules and guidelines to ensure the mediation proceeds peacefully and efficiently. The two parties may submit information to the special magistrate in the form of pre-hearing memoranda seven calendar days prior to the mediation and argument at the mediation. Additionally, owners of land contiguous to the owner's property and any substantially affected person who submitted oral or written testimony at the County Commission hearing of a substantive nature which stated with particularity objections to or support for the development order may request to participate in the proceeding. The participation of those persons is limited to addressing issues and settlement alternatives raised by the parties which may impact their substantial interests.

- The procedure for the phase I mediation session will be as follows:
 - o There will be a sign-up sheet at the door for any owner of land contiguous to the Mosaic property who has previously requested to participate in the process to sign in for the purpose of offering public comment.
 - o There will be a separate sign-up sheet for any substantially affected person who submitted oral or written testimony at the County Commission Hearing of a substantive nature which stated with particularity objections to or support for the development order and who has previously requested to participate in the Section 70.51 process to sign in for that purpose.
 - o The special magistrate will give a brief opening statement.
 - o Mosaic's representative(s) will present the company's position, including documentary support for its position, if any.
 - o The County's representative(s) will present the County's position, including documentary support of its position, if any.

 - o Representatives for Mosaic and the County may be asked by the special magistrate to answer questions or provide additional information about their respective positions.
 - o Owners of contiguous land who have previously requested to participate in the process will each be given 5 minutes to address only the issues and settlement alternatives raised by the parties which may impact their substantial interests.

 - o The special magistrate will afford a total time period of two hours for persons who submitted oral or written testimony at the County

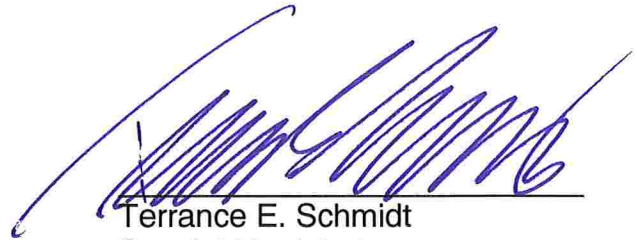
Commission Hearing of a substantive nature which stated with particularity objections to or support for the development order and who have previously requested to participate in the process and signed in, on the day of the mediation session, to address issues and settlement alternatives raised by the parties which may impact their substantial interests. Of the total two-hour time period allotted, each such person will be given 5 minutes to address only the issues and settlement alternatives raised by the parties which may impact their substantial interests. Accordingly, the special magistrate recommends that groups of participants with similar positions designate a person to speak to the impact on that group's substantial interest.

- The special magistrate will exercise his authority to eliminate disruptive behavior, respond to inappropriate comments and outbursts, and enforce time limits on comments by the parties and non-parties during the mediation session.
 - Either party may respond to comments from non-parties, but are not obligated to do so.
 - The special magistrate may privately caucus with either party to discuss the parties' positions, comments of the non-parties, and settlement alternatives.
 - If the parties are able to reach an agreement, the special magistrate anticipates that the parties will prepare a bullet-point summary of the general terms of their agreement at the mediation and that counsel for the parties will subsequently prepare and submit to the special magistrate a proposed settlement agreement for incorporation into the special magistrate's recommendation to the County Commission and Mosaic. The special magistrate's recommendation will then be the subject of a future duly noticed public hearing before the DeSoto County Commission and also be submitted for formal consideration by Mosaic. The existing rules and procedures applicable to public meetings of the County Commission will be utilized at this public hearing for the Board's consideration of the proposed settlement agreement, including the opportunity for public comment.
- The procedures for the phase II special magistrate hearing will be as follows:
- If the parties are not able to reach an agreement through mediation, the statutory process will move to a Phase II hearing at which either party may submit evidence and additional argument to the special magistrate who will then make an independent recommendation to the DeSoto County

Commission pursuant to Section 70.51(17)(b),(c),(18) and (19), Florida Statutes.

- o Specific rules, policies, and procedures for the special magistrate hearing will be addressed by specific guidelines issued in the future by the special magistrate:

Dated: March 19, 2019



Terrance E. Schmidt
Special Magistrate