

**THE PINELLAS COUNTY
BOARD OF COUNTY COMMISSIONERS**

IN RE:

Appeal of Site Plan #1858.11

June Barwick,

Appellant.

NOTICE OF PRE-HEARING CONFERENCE

This cause coming on to be heard upon request for a formal hearing by the Appellant, notice is hereby given:

THAT the Appellant, or her authorized representatives, and the staff of Pinellas County, shall appear before the County Attorney, or his designee, for a pre-hearing conference on Monday, November 16, 2015, at 2:00 p.m. The pre-hearing conference shall be at the Pinellas County Planning Department, 310 Court Street, Large Conference Room, Clearwater, Florida, to consider all matters suggested therein, and to simplify the issues and expedite the hearing of this appeal set for Tuesday, December 15, 2015, at 6:00 p.m.

THE parties shall be familiar with the evidence and have full authority to make disclosure of facts, to admit and stipulate any undisputed facts and to waive technical requirements concerning the admission of evidence. No motions shall be heard at said pre-hearing conference.

EACH party shall furnish the following items in writing to the County Attorney, to-wit:

- a. A list of documentary evidence and exhibits that will be offered during the hearing and brief statement explaining their purpose;
- b. A list of all possible witnesses, which shall include the witnesses' first name, middle initial, last name and present home address, business address, home and business phones, and a brief summary of the substance of each witness' proposed testimony.
- c. The Parties must bring copies of any documents or exhibits they intend to use at the hearing, to be placed in the record for the hearing.


FAILURE to comply with the terms of this Notice may result in the Pre-Hearing Conference being continued and/or the non-complying Party's witnesses and/or exhibits being disallowed or such other relief as the Board of County Commissioners may determine.

FAILURE to appear at the scheduled pre-hearing conference shall constitute grounds for the Pinellas County Board of County Commissioners to find that the Appellant has voluntarily withdrawn the appeal.

ORDERED this 26th day of October, 2015, in Pinellas County, Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice has been furnished by regular U.S. Mail and email to Appellant, June Barwick, P.O. Box 521, Crystal Beach, Florida 34681, and Joel R. Tew, Esquire, Attorney for the Site Plan #1858.11 Applicant, Turtle Beach Land Company, LLC, a Florida limited liability company, on this 26th day of October, 2015.



James L. Bennett
County Attorney
County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756
(727) 464-3354

cc: Mark S. Woodard, County Administrator
Jacob Stowers, Assistant County Administrator
Blake G. Lyon, Director, Department of Development Review Services

**TEW & ASSOCIATES
ATTORNEYS AT LAW**

JOEL R. TEW, ESQUIRE

THE OAKS OF PALM HARBOR FINANCIAL CENTER
2999 PALM HARBOR BOULEVARD, SUITE A
PALM HARBOR, FLORIDA 34683

TELEPHONE:
(727) 216-8575

LEGAL ASSISTANT:
CINDY R. TEW

LEGAL ADMINISTRATOR:
LINDA B. SCHUMACHER

Email: jtew@tewlaw.us

November 2, 2015

James L. Bennett
County Attorney
Pinellas County
315 Court Street, 6th Floor
Clearwater, FL 33756

Re: Turtle Beach Site Plan # 1858.11/Barwick Appeal Notice

Dear Mr. Bennett:

I represent Turtle Beach Land Company, LLC, the property owner and applicant for the above-referenced approved site plan. In response to your Notice of Pre-Hearing Conference dated October 26, 2015, and with respect to the pending appeal referenced above, please accept this letter as a formal request/demand for intervention by Turtle Beach Land Company, LLC, as a primary interested-affected party, inasmuch as Turtle Beach Land Company, LLC, has a primary vested interest in this matter as the land owner and the applicant/developer for the project that is affected by the approved site plan.

We would request such intervention to include the right to attend and participate in both the pre-hearing conference scheduled for November 16, 2015, and the BOCC hearing scheduled for December 15, 2015, in this matter.

Very truly yours,

TEW & ASSOCIATES



Joel R. Tew

Counsel for Turtle Beach Land Company, LLC

JRT/lbg

pc: Mr. Marc Rutenberg
Mr. John Landon, P.E.

**BOARD OF COUNTY
COMMISSIONERS**

Dave Eggers
Pat Gerard
Charlie Justice
Janet C. Long
John Morroni
Karen Williams Seel
Kenneth T. Welch



James L. Bennett
County Attorney

November 3, 2015

Joel R. Tew, Esquire
Tew & Associates
2999 Palm Harbor Boulevard, Suite A
Palm Harbor, FL 34683

RE: Turtle Beach Site Plan #1858.11/Barwick Appeal

This is, Mr. Tew, to acknowledge your letter dated November 2, 2015, seeking intervention in both the pre-hearing conference scheduled for November 16, 2015, and the Board of County Commissioners hearing scheduled for December 15, 2015, all in regard to the above-captioned matter.

Your letter is timely filed and your request is hereby approved by me as counsel to the Board of County Commissioners in this matter.

Sincerely,

James L. Bennett
County Attorney

JLB:sme

cc: June Barwick
Blake G. Lyon, Director, Development Review Services
David S. Sadowsky, Sr. Asst. County Attorney
Jacob Stowers, Assistant County Administrator
Mark S. Woodard, County Administrator

FILED BY PATYEB06/WFD/CJ/L BY Ligation/Turtle Creek/Response/110315.Dcm

PLEASE ADDRESS REPLY TO:
315 Court Street
Clearwater, Florida 33756
Phone: (727) 464-3334
FAX: (727) 464-4147
TDD: (727) 464-4431

Website: www.pinellascounty.org



THE PINELLAS COUNTY
BOARD OF COUNTY COMMISSIONERS

In Re:

Appeal of Site Plan #1858.11

June Barwick,

Appellant

PRE-HEARING CONFERENCE STATEMENT

On November 16, 2015, the following Parties to this cause, or their authorized representatives, appeared before the County Attorney's designee at a pre-hearing conference and the following action was taken:

Parties:	Appellant –	June Barwick
	Appellee –	Blake G. Lyon, Director, Development Review Services David Sadowsky, Sr. Assistant County Attorney Jake Stowers, Assistant County Administrator
	Intervenor –	Turtle Beach Land Company, LLC Joel R. Tew (Attorney)

1. **Statement of Case:** This is an appeal of Turtle Beach Site Plan #1858.11

This appeal was filed by June Barwick via letter dated October 20, 2015 (copy attached as Exhibit 1), and addressed to Mark Woodard, the County Administrator. Ms. Barwick raised several issues in her appeal, which are summarized in paragraphs 1 through 4 in her letter. Since this is an appeal, Mr. Tew stated his position at the pre-hearing conference that testimony at the quasi-judicial hearing before the Board of County Commissioners (BCC) should be limited to those matters raised in Exhibit 1 in order to protect the due process rights on his client.

2. **Issues to be Resolved:**

- a. Whether the exemption from the provisions of Sections 166-50 and 166-51, Pinellas County Land Development Code (PCLDC) provided for in Section 166-46 is applicable to Site Plan #1858.11 (hereinafter referenced as the Site Plan). In reviewing the Site Plan, Pinellas County (County) applied the exemption provided for in Section 166-46, PCLDC. Ms. Barwick takes the position that the exemption is not applicable. Mr. Tew, representing the Intervenor/Property Owner, takes the position that the exemption does apply. Mr. Tew further takes the position that, notwithstanding the exemption, the Site Plan complies with the requirements that were waived, specifically the requirements of Sections 166-50 and 166-51, PCLDC.
- b. Whether the BCC has jurisdiction to hear an appeal to Variance BA 12-11-13, which was approved by the Board of Adjustment (BOA) following a public hearing held on

November 7, 2013. The BOA's decision was rendered via letter dated December 9, 2013. Ms. Barwick's position is set forth in paragraph #2 in Exhibit 1. The County takes the position that the BCC has no jurisdiction in this matter and that any remedy Ms. Barwick has regarding that decision is governed by Sections 138-120 or 138-122, PCLDC. Similarly, Mr. Tew maintains that the BCC is wholly without jurisdiction to hear any such appeal due to the jurisdictional limit set forth in Section 138-120, PCLDC.

- c. Whether the BCC has any authority to compel an applicant for site plan approval to comply with the State of Florida's regulatory requirements, including applying for and receiving applicable permits, if any. Ms. Barwick's complaint in this regard is set forth in paragraph #4 in Exhibit 1. At the pre-hearing conference, she confirmed that she has raised her concerns with the State of Florida. The County takes the position that it has no jurisdiction to enforce State regulatory requirements. Mr. Tew concurs with the County's position, as set forth herein, and also noted there is nothing in the PCLDC that requires issuance of any applicable State permits as a prerequisite to County approval of a site plan. He further objects to this issue being raised in the appeal due to the potential prejudicial impact it could have on his client during the quasi-judicial proceeding before the BCC.
- d. Whether the sidewalk waiver issued pursuant to Section 138-645(e)(6) was appropriately issued. See paragraph #5 below for stipulated facts pertinent to this issue. Ms. Barwick's position is that the waiver constitutes a public safety concern. The County disagrees with this position, particularly since the waiver only applies to the private roads, which are located beyond the gated entry to the Turtle Beach community. Mr. Tew agrees with the County's position and further, questions whether the BCC has jurisdiction to hear this specific issue.

3. **Documentary Evidence and Exhibits:**

At the pre-hearing conference, the Parties each submitted documentary evidence into the record and were given until 9:00 a.m., November 19, 2015, to submit additional documentary evidence in to the record. Updated evidence was provided by the deadline given. The Parties have worked cooperatively to ensure copies of the respective submittals are available to each Party.

4. **List of Witnesses and Summary of Testimony:**

The County provided a revised list of documentary evidence and exhibits, as well as all possible witnesses before the time frame set forth in paragraph 3, which is attached as Exhibit 2. Exhibit 2 provides a brief summary of each witness' anticipated testimony. Mr. Tew provided a list of documentary evidence and witnesses with an indication as to the subject matter to which each witness will testify, which is attached as Exhibit 3. Ms. Barwick provided a compilation of potential witnesses, including the subject matter to which each witness will testify. A supplemental filing included an updated list of documentary evidence submitted, which includes a list of witnesses with an indication as to the subject matter to which each witness will testify. This supplemental filing was received within the time frame set forth in paragraph 3 and is attached as Exhibit 4.

5. **Stipulated Issues and Pertinent Facts:**

The sidewalk requirement was waived only in regard to the private roads, which are located beyond the gated entry to the Turtle Beach community. Sidewalks will be required along the public roads which lead to this gated entry, as well as in various locations beyond the gated entry, primarily in and around the common areas.

6. The Parties' attention is drawn to Section 134-14, PCLDC, which pertains to quasi-judicial proceedings before the BCC. To clarify the procedure set forth therein, the following order of presentation and time limits will apply to the quasi-judicial proceeding before the BCC:
- a. County staff – 20 minutes
 - b. Appellant – 20 minutes
 - c. Intervenor – 20 minutes

"Affected Party," as that term is used in Section 134-14, PCLDC, shall include Ms. Barwick, County staff and Turtle Beach Land Company, LLC, as represented by Mr. Tew. Any Party who wishes to file a motion regarding any legal issues raised herein may do so no later than December 8, 2015. Such motions will be heard and disposed of prior to the presentation of any evidence or testimony.

7. The Parties have five (5) business days from receipt of this Pre-Hearing Conference Statement to file with the County Attorney exceptions to the statement, specifically, until 5:00 p.m., November 30, 2015.
8. Any documents or witnesses not disclosed herein will only be considered by the BCC upon a showing of good cause and a lack of unfair prejudice and surprise.
9. The Appeal Hearing is currently scheduled for Tuesday, December 15, 2015, after the regular meeting of the Board of County Commissioners, to be held in the Assembly Room, 5th Floor, 315 Court Street, Clearwater, FL. The Hearing shall begin as soon after 6:00 p.m. as possible.



Jewel White
Counsel to the Board of County Commissioners

Date: 11.19.15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Pre-Hearing Conference Statement has been furnished via email and U.S. Mail to Appellant, June Barwick, at junebarwick@gmail.com, P.O. Box 521, Crystal Beach, FL 34681, and Joel R. Tew, Esquire, at JTew@tewlaw.us, Tew & Associates, 2999 Palm Harbor Boulevard, Suite A, Palm Harbor, FL 34683, Attorney for the Site Plan #1858.11, Applicant, Turtle Beach Land Company, LLC, a Florida limited liability company, on this 19th day of November 2015.



Joel R. Tew
Chief Assistant County Attorney
315 Court Street, 6th Floor
Clearwater, FL 33756
Telephone: (727) 464-3354

cc: James L. Bennett, County Attorney
Blake G. Lyon, Director, Development Review Services
David Sadowsky, Sr. Assistant County Attorney
Jake Stowers, Assistant County Administrator
Mark S. Woodard, County Administrator

EXHIBIT 1

TO: Mark Woodard, Pinellas County Administrator

RE: Appeal of SP# 1858.11 September 30, 2015 Revision to Approved Plan

Dear Mr. Woodard:

For the past half year, I have been working with an ever-growing group of residents of Crystal Beach, known collectively as Crystal Beach Watch, to attempt to understand the proposal of Turtle Beach Land Company for their development of the property formerly known as Sutherland Crossing. The community was galvanized into action by an unfortunate request from the developer to create a gated community in our midst that would not only be antithetical to the Crystal Beach way of life, but would also effectively remove the most frequently used access to Lake Chautauqua, a public lake. Collecting information from the County staff and doing research of our own into county codes and procedures, we learned that the developer was asserting to staff that they were submitting a "plan revision" which would avoid many of the environmental controls that would be typical of a project of this magnitude in such an environmentally sensitive area. They also had plans to remove a park that had been designated as a park for over thirty years and used by the community for access to the lake and to the walking trail in the adjacent Clearwater Marine Aquarium preservation lands.

Initially, we supported the staff desire to have the developer go through full site plan review, rather than bypass this step claiming it was not necessary for a land condominium. We prevailed on this front, only to find that the staff was willing to expedite the site plan review, in large part by agreeing with the questionable assertion that this was simply a revision of the previously-approved 1982 site plan for a group of 62 small time-sharing cabins in a naturally-landscaped setting. This view of the site plan as a revised plan resulted in the development being exempted from up-to-date environmental regulations and wetland boundaries and not requiring many parts of a full site plan review.

Our argument is not really with the developer; we assume they always want to maximize profit on each project. Our argument is with the County staff who supported this intensity of development with little regard to community input or appropriate environmental practices, and with apparent lack of concern for critical safety issues like setbacks, sidewalks, and traffic analysis. We believe that county government should be the gatekeeper for ensuring prudent development that recognizes and attempts to accommodate community concerns, satisfies current environmental protections, and is consistent with County development goals and the comprehensive plan.

The developer has responded in part to community pressure by signing a settlement agreement with another appellant and some of her neighbors which protects the above-mentioned community park in return for these individuals agreeing to no longer participate in the community opposition to his plan. Because of this action, the list of items being appealed below does not include the issues about the community park. Naturally, if this agreement is rescinded the prior issues of privatizing a public park blocking access to a public lake should be reinstated in this appeal.

This appeal of the approval of this plan rests on several complaints:

- 1. Evaluating this project as simply a revision of the 1982-approved plan for Sutherland Crossing and therefore exempt from certain key environmental regulations as well as the need for a full and up-to-date evaluation in key areas like traffic, safety, and water quality. This simply flies in the face of reality...the project is a different use with a different layout.**
- 2. Granting setbacks on the public road, relying on an incorrectly processed BOA variance request in 2013. The attached correspondence, including our complaint letter of 8/13/15 and subsequent correspondence with the assistant county administrator, is attached. In summary, the issue is that the applicant requested "A", the staff recommended "A" with conditions, the BOA approved "A", then the staff issued a decision letter granting "B" which included more than was requested. If the Board wants to extend the variance beyond the subject of the application made by developer on 9/24/2013 or beyond the staff recommendation made at the hearing on 11/7/2013, then a revised application should be filed, appropriate public notice given and a vote taken in a regularly calendared session of the Board. To handle a variance that dramatically affects many acres of development in what seems almost a casual way without any of the normally required paperwork, staff review or public notice violates the letter and spirit of the regulations and, if uncorrected, raises questions about the integrity of those involved.**
- 3. Vague and/or erroneous statements by staff over the period of our discussions with them requesting information. Discretionary decisions by staff have resulted in unprecedented use of lower wetland buffers, possibly endangering the public lake, and the waiver of the requirements for sidewalks resulting in public safety issues.**
- 4. Electing to not involve the State Department of Environmental Protection, including requiring the applicant to apply for a DEP Environmental Resource Permit, and other state agencies involved in protecting the Pinellas Aquatic Preserve.**

The handling of this entire project flies in the face of stated Pinellas County objectives to support community characteristics, preserve the environment and operate with transparency. There is a continuing concern for the safety and well-being of the citizens of Crystal Beach and the protection of our environment.

Please advise as to next steps in this process.

Very truly yours,

June Barwick

20 October 2015



EXHIBIT 2

November 18, 2015

To: County Attorney's Office

From: Development Review Services
Blake Lyon, Director

A handwritten signature in black ink, appearing to read "BL", is written over the name "Blake Lyon, Director".

Re: Appeal of Site Plan #1858.11 – Pre-Hearing Conference Evidence Request

The following information has been provided in response to the Notice of Pre-Hearing Conference:

a. A list of documentary evidence and exhibits

1. Final Administrative Approval (FAA) for SP #1858.11
2. Site Plan #1858.11
3. October 20, 2015 Appeal Letter
4. 1979 - Point Seaside Master Plan
5. 1980 - Point Seaside Master Plan
6. 1981 - Point Seaside Site Plan (Phases 1, 2, and 3)
7. 1983 - Sutherland Crossing (Phase 4)
8. 1985 - Sutherland Crossing II
9. Site Plan #1858.10
10. Variance - BA 12-11-13
11. Sidewalk Waiver
12. FAA for SP #1858.10
13. July 22, 2015 letter rescinding SP #1858.10
14. July 24, 2015 letter reinstating SP #1858.10
15. Google Earth/Street View of the Point Seaside Master Plan area and surrounds
16. Pinellas County GIS layers (i.e. zoning, land use, subdivisions, utilities, floodplain, etc)
17. Point Seaside and Sutherland Crossing Plans
18. Pinellas County Land Development Code

b. A list of all possible witnesses

The following addresses are for the employees listed below:

440 Court Street, Clearwater, FL 33756

1. **Blake Lyon, Director of Development Review Services, 727-464-6053** – Discussion of the DRS site plan review process, the variance, and Pinellas County Land Development Code.
2. **Cliff Still, Environmental Manager, 727-464-2923** – Discussion of the DRS site plan review process and environmental regulations within the Pinellas County Land Development Code.
3. **Carol Purchell, Senior Environmental Specialist, 727-464-4016** – Discussion of field conditions, site plan review process, and environmental regulations.
4. **Gene Crasson, Development Review Services Manager, 727-464-3642** – Discussion of Site Plan review process, land development code regulations, and subject matter expert on Public Works related items such as roadway standards, access requirements, etc.
5. **Jean Mundilk, Plans Coordinator, 727-464-3580** – Discussion of site plan review process, specifically coordination of site plan distribution, consolidation of review comments, and zoning comments.
6. **Glenn Bailey, Zoning Manager, 727-464-5640** – Discussion of variance process with the Board of Adjustment.
7. **Tammy Swinton, Planning Analyst, 727-464-3583** – Discussion of variance process, specifically the notice and advertising methodology.

22211 US 19 N, Clearwater, FL 33765
8. **Tom Washburn, Traffic Engineer, 727-464-8804** – Discussion of the County's roadway standards, traffic operations, and general discussion of Public Works site plan review procedures.

14 Fort Harrison, Clearwater, FL 33756
9. **David Smith, Professional Engineer, 727-464-3353** – Discuss of the County's stormwater and drainage regulations and regulatory review of the site plan.
10. **Sandra McDonald, Professional Engineer, 727-464-4068** – Discussion of the County's utilities and regulatory review of the site plan for potential impacts to the utility system.

EXHIBIT 3

**THE PINELLAS COUNTY
BOARD OF COUNTY COMMISSIONERS**

IN RE:

Appeal of Site Plan #1858.11

June Barwick,

Appellant.

**INTERVENOR/APPLICANT'S PREHEARING CONFERENCE
COMPLIANCE DOCUMENTS/LISTS**

Intervenor/Applicant, Turtle Beach Land Company, LLC, hereby submits its list of documentary evidence and exhibits, and list of potential witnesses, for the hearing of this appeal as directed by the Notice of Pre-Hearing Conference:

Schedule of Documentary Evidence/Exhibits:

1. Approved Site Plan With Final Administrative Approval Notice Dated July 24, 2015 (Site Plan #1).
2. Approved Revised Site Plan With Final Administrative Approval Notice Dated September 30, 2015 (Site Plan # 2).
3. Aerial Overlay Depicting Site Plan # 1.
4. Aerial Overlay Depicting Site Plan # 2.
5. Condominium Re-Plat To Conform to Site Plan # 2.
6. Jeffers Settlement Agreement With Resident Consents/Joinders
7. Vicinity Map To Identify Location of Settlement Agreement Parties [To Be Provided Prior to Hearing]
8. FDEP Exemption Letter

Copies of all documents other than Item # 7 have been provided at the Pre-Hearing Conference; some of the foregoing exhibits may be mounted on boards for presentation purposes at the hearing. Item # 7 is in process and will be provided when available.

Schedule of Potential Witnesses:

Testimony Re: Project Data & History/Site Plan Approval Process/Technical Compliance Matters:

John Landon, P.E., Landon, Moree & Associates
Don Richardson, Ph.D., Biologist/Environmental Consultant
Trey Shimp, Shimp Surveying
Christy Jones, Esquire
Randy Austin, Landon, Moree & Associates

Joel R. Tew, Esquire
Marc Ruteberg
Blake Lyon
Jake Stowers
Al Navaroli
John Cueva
David Scott, P.E.
Cliff Still
Gene Crosson
David Smith, P.E.

Testimony Re: Settlement Agreement/Revised Site Plan Process:

Andrey A. Jeffers, Esquire
Mathew Poling, Esquire
Joel R. Tew, Esquire

Others:

All Witnesses Listed or Called by the Appellant
All Witnesses Listed or Called by the County
Rebuttal Witnesses As Needed

Respectfully Submitted,



Joel R. Tew, Esquire
Counsel for Intervenor/Applicant
Turtle Beach Land Company, LLC

Date: November 16, 2015

EXHIBIT 4

**Turtle Beach Appeal Book
Site Plan # 1858.11**

List of potential witnesses

Maps

- The 1979 Series Scale map of 'Sutherland Crossing Area' in Pinellas County, FL-Arial view prepared by Kucera & Associates
- Jan 7 1980 Point Seaside RPD Land Use Plan, with enlarged notes section on following page.
- September 1980 preliminary plan for point seaside, including note about county requirement of min. 5.3 ac of park in the 26.5 "condominium" area
- August 25, 1982 Final Site Plan Point Seaside East A Condominium, by SM & K, Inc., with enlarged notes on following page
- June 29, 1983, Plat for Sutherland Crossing A Condominium
- May 18, 2013, Existing Conditions/Demolition Plan prepared by LMA
- September 23, 2015, Turtle Beach Site Plan, final administrative site plan approval, with land unit owner notes on following page
- Two maps with color-coded comparison between existing and planned housing density
- Color-coded plan showing inadequate upland buffers

Pinellas County Code (used, but not included in this document)

- Sec. 138-151, 152 zoning clearance
- Sec. 138-176, 177, 178, 179 site plan requirements and review procedures
- Sec. 138-180 time limits on site plans
- Sec. 166-46 Site Plan exemptions
- Sec. 166-50 updated buffers adjacent to wetlands
- Sec. 166-51 Upland preservation area

Pinellas County Comprehensive Plan (used but not included in this document)

Documents

- **June 5, 2-15, Environmental Assessment of the Turtle Beach Project by Donald Richardson, Ph.D.**
- **File of early 1980 environmental assessment letters**
- **Comprehensive Conservation and management plan for Clearwater Harbor and St. Joseph Sound-pp 24-26**
- **Sales Brochure of Crystal Beach that includes community character and other historical information – to be provided by Dec 8th**
- **Article with illustration of Crystal Beach Spring for Crystal Beach**
- **Excerpt from draft overlay document**
- **BOA # BA-12-11-13: application, recommendation, minutes, decision letter, and attachment with complaint letter and correspondence**
- **Impervious surface comparison for Sutherland Crossing and Turtle Beach projects**
- **Excerpt from argument that site plan review is required for condo project, March 19, 2015**
- **December 21, 1989 letter from county on number of units: 48 condominium units plus 13 single family lots (62 for point seaside, 49 used). Also approval rescission letter calculating number of units.**
- **Transcript of Blake Lyon testimony at the Palm Harbor Street vacation hearing (BCC 11/10/15, item 20) on importance of community history and character – to be provided by December 8th.**

Excerpts from Pinellas County Staff responses to submitted site-plans

Pictures

DEP and other state agency communication – to be provided by Dec 8th

Petitions – format enclosed, signatures provided by December 8th

POTENTIAL WITNESS LIST—

testimony on history and character of Crystal Beach, applicability of site plan as "revision" of 1982 plan, environmental issues, and other examples of inadequacy of the current site plan from the perspective of both subject professionals and members of the community.

- 1. Gregg Bachman, PhD – 520 Indiana Ave CB**
- 2. Debbie Barasso – 415 Henry Lane CB**
- 3. June Barwick – 613 Tennessee Ave CB**
- 4. Kent Barwick – 613 Tennessee Ave CB**
- 5. Robin Bleier RN – 530 Tennessee Ave CB**
- 6. Sue Conlon – 609 Pennsylvania Ave CB**
- 7. Alicia Donohue – 600 Tennessee Ave CB**
- 8. William W Falls, PhD – 187 Sage Circle CB**
- 9. Paul Ford – 45 Lorraine St CB**
- 10. William C. Gibson – 510 Avery St CB**
- 11. Kerry Glem – 530 Tennessee Ave CB**
- 12. Linda Henry – 200 Vincent St CB**
- 13. Marie Henry – Henry Lane CB**
- 14. Jerri Hill – 357 Henry Lane CB**
- 15. Robert A. Hill – 357 Henry Lane CB**
- 16. Jon A. Hull – 204 Charleston Ave CB**
- 17. John P McMahon, Jr – 253 Georgia Ave CB**
- 18. Barb McNeil – 200 Vincent St CB**
- 19. Robert P Murray, AIA – 407 Maryland Ave CB**
- 20. Claudette Otto – 205 Vincent St CB**
- 21. Sherrie Teddy MD – 520 Indiana Ave CB**
- 22. Unique Engineering Solutions, LLC – 4177 Corporate Court PH**
- 23. Dale Wallace, certified arborist – 609 Pennsylvania Ave CB**
- 24. Barb Witlin, 562 Ontario Ave CB**

- 25.**

**THE PINELLAS COUNTY
BOARD OF COUNTY COMMISSIONERS**

In Re:

Appeal of Site Plan # 1858.11

June Barwick,

Appellant

**INTERVENOR TURTLE BEACH LAND COMPANY LLC'S
MOTION TO DISMISS AND/OR MOTION TO STRIKE,
AND MOTION IN LIMINE**

Intervenor, Turtle Beach Land Company, LLC, pursuant to Section 6 of the Pre-Hearing Conference Statement, hereby files and serves its Motion to Dismiss and/or Motion to Strike, and its Motion in Limine, and in support thereof, says:

- I. Motion to Dismiss and/or Motion to Strike
 - A. Intervenor moves to dismiss and/or strike Paragraph 2 of the Appellant's "appeal letter" dated October 20, 2015, and all matters asserted therein, in their entirety. The grounds for the motions are as follows:
 - (i) pursuant to the County's Land Development Code and applicable Florida law, all such matters are time-barred as the time period for asserting any such argument(s) expired more than two (2) years ago. Moreover, such time limitations are jurisdictional and cannot be waived; therefore such claims cannot be asserted as a matter of law; and
 - (ii) independent of the absolute time bar set forth in (i) above, the Board of County Commissioners lacks any legal jurisdiction to hear such matters, as exclusive jurisdiction over any appeal, interpretation, revocation, modification or any other matter whatsoever related to such variance(s) lies exclusively with the Board of Adjustments and Appeals, under the County's Land Development Code and applicable law; therefore the County Commission is precluded from consideration of any such claims as a matter of law.
 - B. Intervenor moves to dismiss and/or strike Paragraph 3 of the Appellant's "appeal letter" dated October 20, 2015, and all matters asserted therein, in their entirety. The grounds for the motions are that any such alleged statements or conduct by staff to the Appellant are not legally material to whether the Intervenor's site plan approval was required by the Land Development Code, and therefore such claims are impertinent and not legally relevant to the subject matter at hand. Any such claims may be the subject to internal

policy review by the County Administration, but are not material or relevant to any substantive, legal appeal of the Intervenor's site plan approval.

C. Intervenor moves to dismiss and/or strike Paragraph 4 of the Appellant's "appeal letter" dated October 20, 2015, and all matters asserted therein, in their entirety. The grounds for the motions are as follows:

- (i) as a matter of Florida law, exclusive jurisdiction over all such matters is reserved to the Florida Department of Environmental Protection, and Pinellas County has no jurisdiction to enforce any such permit requirements of FDEP or any other state agency; and
- (ii) independent of (i) above, the County has no such provision in its Land Development Code, nor any policy, practice or procedure that requires any such permit or approval from independent state agencies prior to issuance of any site plan approval, and has never applied or enforced any such policy, practice or procedure in Pinellas County.

D. Intervenor moves to dismiss and/or strike that portion of Paragraph 1 which asserts that traffic is a valid subject for this appeal, on the following grounds: the Intervenor's site plan is for only 61 single-family units, which density already was contained in the project's prior zoning, master plan and site plan approvals. Taking into consideration the prior units of density which exist in the overall project, and with the 61 pre-existing units that are contained in the Intervenor's approved site plan, the overall project still has exactly the same number of units of residential density (110 units), as prior to the Intervenor's site plan approval. Consequently, as a matter of law, the Intervenor's site plan does not create any additional traffic impact, and pursuant to Florida law, the Intervenor cannot be required to mitigate for any pre-existing impacts which may exist, as a result of any prior approvals. Consequently traffic is not a legally applicable subject to this appeal.

II. Motion in Limine

A. Limitation of Issues to be Argued:

Intervenor moves in limine for the Board of County Commissioners to expressly limit Appellant's presentation of evidence (both witness testimony and any documentary evidence) solely to those matters specifically contained within Paragraph 1 of the Appellant's "appeal letter" dated October 20, 2015, other than traffic (as stated above), as follows: (i) "environmental regulations," (ii) "safety," and "water quality" (actually a sub-set of "environmental regulations"). Therefore, Appellant must be instructed not to seek to introduce any evidence (oral or written) that is not directly relevant and pertinent to said matters.

B. Limitation of Parties to Speak:

Intervenor also moves in limine to restrict those who are allowed to speak or address the Board of County Commissioners to only those who are "parties" to the appeal, to wit: The County, the Appellant (June Barwick), and the Intervenor. No other persons or entities filed any appeal within the jurisdictional time period, nor has any other party been granted intervenor or other party status in this proceeding, within the time period allowed. Consequently, only the Appellant, June Barwick, has any legal right to

introduce evidence or to make oral argument in this appeal. Any other determination will violate the Intervenor's due process rights herein.

C. Limitation/Qualification of Expert Witness Testimony:

Finally, because this is a quasi-judicial proceeding under applicable Florida law, Intervenor moves the Board of County Commissioners to require the pre-qualification of any proposed witness who is proffered to address any technical issue (including "environmental regulations," "traffic," "traffic safety" and/or "water quality"), as any such witness on such technical subject must have sufficient expert qualifications to provide legally competent evidence on such subject(s).

Wherefore, Intervenor requests a pre-appeal hearing determination on the foregoing matters.



Joel E. Tew, Esquire
Counsel for Intervenor
Turtle Beach Land Company, LLC
Date: 11/23/2015

Copies Provided To:

David Sadowsky, Esquire
Jewel White, Esquire
Mrs. June Barwick

TO: The Honorable Chair and Members of the
Board of County Commissioners

FROM: Jewel White, Chief Assistant County Attorney 

SUBJECT: Appeal of Site Plan #1858.11
Turtle Beach Land Company, LLC

DATE: December 4, 2015

The above referenced matter is currently scheduled to come before the Board at its December 15, 2015 meeting. The appeal was filed in a timely manner by Ms. June Barwick, a nearby resident. The County Attorney's Office conducted a Pre-Hearing Conference in an attempt to clearly define the issues that will be before the Board in this appeal. The resulting Pre-Hearing Conference Statement is now available for your review, together with the Exceptions submitted by Ms. Barwick and motions that have been filed by both Parties. The documentary evidence submitted by each of the Parties, including County staff, is also available. All of the referenced documents are available for your review in Board Records.

Ms. Barwick has requested that this matter be continued and the Property Owner, through its attorney Joel Tew, has indicated it does not object. In addition, there are a number of other procedural matters that will ultimately be before the Board and Mr. Tew has requested that these matters be acted upon at this month's meeting. County staff will be recommending you continue this appeal at your December 15, 2015 meeting, but that you also decide the other matters that have been raised by Mr. Tew.

Please keep in mind that this is a quasi-judicial matter and you should not discuss this case with anyone.

cc: June Barwick, Appellant
Blake G. Lyon, Director, Development Review Services
David Sadowsky, Sr. Assistant County Attorney
Jake Stowers, Assistant County Administrator
Joel R. Tew, Esquire

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