

BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS

OCTOBER 21, 2008

Land Use Public Hearings were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman D'Aprile, Commissioner Duffy, Commissioner Moore, Commissioner Cummings, and Commissioner Loftus. Also in attendance were Assistant County Attorney Browne, County Administrator Baltz, Executive Assistant Dillon, and Deputy Clerk Lansing. The following members were absent: None. The meeting was called to order at 9:00 AM, followed by the Pledge of Allegiance.

(Commissioner Cummings was not available for this portion of the meeting)

Changes to the Agenda:

Change #1: Item#2-Changes made to the Temporary Uses Ordinance

Change #2: Item#3-PA listing number changed to PA-05-11-76-LS

Deletion#1: Item#4-Applicant requested continuance.

Deletion#2: Item#8-Applicant requested continuance.

COMMISSIONER LOFTUS MOVED TO APPROVE CHANGES TO THE AGENDA,
SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

A. PLANNING AND ZONING AGENDA (Proofs of Publication were in order)

(Chairman D'Aprile polled the Board for ex parte disclosures, indicated Commissioner Cummings would be polled upon his arrival, and was advised all Commissioners had ex parte communication and would submit Disclosure Forms to the Clerk of the Court)

1. Z-08-07-33-Quasi-Judicial-Commission District I-An Ordinance

pursuant to Section 125.66 and 166.41, Florida Statutes, amending the Charlotte County Zoning Atlas from Agriculture Estate (AE) to Excavation and Mining (EM), for property located south of Washington Loop Road (south side of the loop), east of Myrtle Slough, north of Bermont Road and west of Rustic Drive, in the Punta Gorda area, containing 166.1± acres; Commission District I; Petition No. Z-08-07-33; applicant: City of Punta Gorda. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval (Ordinance 2008-087)

(Deputy Clerk Lansing administered the oath to perspective witnesses)

Jie Shao presented the proposed ordinance in detail which paralleled visual slides and packet information. Ms. Shao noted if the rezoning is approved, the City of Punta Gorda will be allowed to apply for an excavation permit to develop a drinking water reservoir on the site to supplement existing water resources in the area.

(Commissioner Cummings was present for the remainder of the meeting)

(Chairman D'Aprile polled Commissioner Cummings for ex parte disclosures. Commissioner Cummings advised he had ex parte communication and would submit a Disclosure Form for the record)

Attorney David Levin provided background information related to the proposed rezoning, stated this is only the first step, and introduced Punta Gorda Utilities Director, Tom Jackson.

Mr. Jackson gave a brief overview of the proposed ordinance, presented slides and statistics, provided the history related to the water facility, indicated the purpose and benefits of the project, discussed requirements related to Phase 1, discussed the site, related costs, the Comprehensive Plan, surrounding land uses, their goals, and noted the interconnect would serve the City of Punta Gorda, Charlotte, DeSoto, and Manatee Counties.

Commissioner Cummings expressed concern with moving forward on this, said there may be some confusion related to the mining review application and the zoning change, opined there is good reason to consider the zoning application, and asked what the proposed reservoir system capacity would be upon completion. Mr. Jackson explained the reservoir would only improve water quality and not add capacity. Attorney Leven said prior to a purchase commitment, the City of Punta Gorda had a feasibility study conducted. **Commissioner Cummings** asked for a copy of the study, discussed the staff report related to impacts, and opined for the record that there is not enough evidence. Attorney Leven said proof will be provided at permitting.

Chairman D'Aprile asked what would be done with the fill removed to build the reservoir, expressed concern for the residents of Washington Loop Road, and opined the fill should benefit the citizens. Mr. Jackson and Attorney Leven said they are looking to keep the majority of fill at the location so not to add costs to the project and to avoid an increase in the number of trucks on the road. **Chairman D'Aprile** asked about impacts to Shell Creek. Mr. Jackson provided detail and explained there would be no negative impact.

Steven Brown spoke in opposition, discussed mining, rezoning, the environment, residential impacts, and recommended this be redirected back to the Local Planning Agency (LPA).

(Deputy Clerk Lansing administered the oath to Nancy Haast)

Ms. Haast provided handouts to the Commissioners, spoke against approval of the ordinance, and suggested this is an attempt by the City of Punta Gorda to mine for financial gain.

Lawrence Martin spoke in opposition of the proposed ordinance, opined this proposal is not just an excavation, it is a reservoir for the City, and requested it be tabled.

Rick Fried spoke against the ordinance, said there is nothing in writing that this will become a reservoir, talked about mine permits approved near residential, and recommended other locations to be considered for the reservoir.

Mayor Larry Friedman (City of Punta Gorda) spoke in favor of the ordinance, responded to negative comments made earlier, explained the reasons for the reservoir, and stated it will assure a long term source of portable water to serve Charlotte County and the City of Punta Gorda.

Don McCormick opined he is in favor of anything that will improve water quality.

Attorney Leven confirmed the City of Punta Gorda has no intention of mining dirt, has met all requirements of the ordinance and rezoning, and requested approval.

Robert Gleason lives adjacent to the parcel, said he thought this was a zoning change, but has only heard about the reservoir, opined the area does not need additional mining, and requested the issue be tabled.

COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

Commissioner Cummings mentioned the applicant can have the opportunity to speak again since an additional speaker spoke after him. Mr. Leven summed up his case. **Commissioner Duffy** asked for the number of miles from the closest existing mine to the proposed reservoir, explained this is the first step in a very long process, and noted more details will become available after approval.

Chairman D'Aprile said it is important to control mining especially in the Jones Loop area, indicated the City of Punta Gorda expressed their intent not to sell dirt, and noted the reservoir will preserve existing water and assure future portable water to the community.

COMMISSIONER LOFTUS MOVED TO APPROVE (Petition# Z-08-07-33) AN ORDINANCE AMENDING THE CHARLOTTE COUNTY ZONING ATLAS FROM AGRICULTURE ESTATE (AE) TO EXCAVATION AND MINING (EM) (ORDINANCE 2008-087), SECONDED BY COMMISSIONER MOORE.

Commissioner Cummings said we are looking at the zoning change to mining and asked for clarification that that zoning is only required if they intend to do a class 3 excavation. Ms. Shao answered affirmatively. **Commissioner Cummings** asked if the excavation classification change would require a percentage of fill be transported off site. Attorney Derek Rooney stated detail related to the classification and said this is the only option available to the City. **Commissioner Cummings** continued discussing the issue in detail and said they must watch this carefully as it moves forward.

Commissioner Moore asked if classification 3 puts a mine under the greatest scrutiny. Attorney Rooney answered affirmatively and stated classification 3 has the highest standards. **Chairman D'Aprile** commented that there are many questions to be answered, noted the City has an obligation to serve its citizens, indicated this is to only approve the amendment, and said the Board will research all issues prior to final approval.

Motion Carried 5:0.

2. Temporary Uses Ordinance-Legislative-Countywide-An Ordinance amending Section 3-9-95.1, Temporary Uses, of the Code of Laws and Ordinances of Charlotte County, Florida; providing for general provisions; providing for applicability; providing for types of temporary use permits; providing for procedures and fees for temporary use permits; providing for severability; and providing an effective date. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: No recommendation (**Ordinance 2008-088**)

Nicole Dozier provided detail related to modifications made to improve the Temporary Use Ordinance, indicated there were now three types of permits which were based on square footage, discussed fees, types of events, impacts, and said they feel they have addressed the concerns of the Commissioners and of the Planning and Zoning Board.

Commissioner Moore asked why he received a new print out of the ordinance today. **Attorney Rooney** explained the replacement ordinance corrected scribblers errors. **Commissioner Duffy** questioned the reason for ten days for the mid size events. **Ms. Dozier** explained it gives the seasonal client additional time.

George Werner commented that it has taken ten (10) years to be at this point, asked for a speedy decision since they are already five months beyond the target date, and discussed several issues he recommended the Board review.

COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

Ms. Dozier addressed the issues **Mr. Werner** pointed out and explained them in detail. **Commissioner Loftus** asked whether the three day back to back event fee would be double. **Attorney Rooney** advised if there was two review processes and if they were conducting two separate events over the six days, than they would pay the \$1,000 fee twice, however, the purpose for the consecutive period is for the smaller seasonal events that are back to back with one review. **Commissioner Duffy** opined the \$1000 permit fee is too low and stated the County is loosing thousands of dollars in revenues on car sale events since tags and registration revenues goes back to the County where the business is located. **Attorney Rooney** said they have no way of regaining those losses since sales tax is state regulated, discussed how they determine fees, and advised why they now tie the temporary use to the property not the applicant. **Commissioner Cummings** said he has always been opposed to tent sale ordinances, however, noted he was considering approval since this ordinance is better than the existing ordinance, and gave examples why.

Chairman D'Aprile expressed concern for our business industry, says there is deception with outside car sale event offers, said he likes the ordinance but is opposed to a \$1000 permit fee for back to back events, and stated he wants to keep the money local and protect our citizens. **Commissioner Moore** asked about permit locations and mentioned possible legal issues related to the ordinance. **Ms. Dozier** explained the system related to issuing

permits and location choices. **Commissioner Loftus** advised he was willing to move the ordinance if back to back events were deleted. **Chairman D'Aprile** and Attorney Rooney discussed back to back issues, explained temporary use and consistency among different organizations, and provided possible options.

Commissioner Duffy brought up deception related to advertised sales and prizes and asked if the issue could be addressed in this ordinance. Attorney Rooney explained. **Commissioner Duffy** asked if temporary use will be held at the new Events Center and asked about vacant lots versus shopping centers with parking. Ms. Dozier and Attorney Rooney pointed out the event center, stadium and other locations are created for larger events and mentioned they are trying to monitor the smaller events and explained the rules, codes, bonds, setbacks and additional information related to vacant lots versus shopping center events.

Chairman D'Aprile asked for the legal impacts related to eliminating back to back events. Attorney Rooney explained in detail. **Commissioner Loftus** again mentioned he would move the ordinance if they eliminated back to back and **Commissioner Duffy** seconded the motion. Attorney Rooney asked if the amendment should include time between events.

Commissioner Cummings commented that if the change in this ordinance is challenged in the future, this conversation could be used against the Board related to their intent. Attorney Rooney clarified the changes for the record.

COMMISSIONER LOFTUS MOVED TO AMEND SECTION 3-9-95.1, TEMPORARY USES ORDINANCE AS REVISED FOR THE RECORD (ORDINANCE 2008-088), SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:1. Commissioner Cummings opposing.

RECESS: 11:00 - 11:10 AM

3. PA-05-11-76-LS-Legislative-Commission District III-Adopt an annotation to the Future Land Use Map for the site which was the subject of Petition PA-01-05-16-LS, owned by J & J Homes. The annotation will limit the overall density of the subject site to 400 units and specifically limit the amount

of density that can be placed in the portion of the property located within the Coastal High Hazard Area to 3.5 units per acre. The amendment is a requirement of a Stipulated Settlement Agreement with the Department of Community Affairs. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Not applicable (Ordinance 2008-089) (XREF: Ordinance 2007-026)

Inga Williams described the amendment which paralleled visual slides, explained the Department of Community Affairs (DCA) found this not to be in compliance, and noted the timeline of events related to the approval of a Stipulated Settlement Agreement requiring this amendment.

COMMISSIONER MOORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

Commissioner Cummings asked about past changes related to density and zoning and opined annotating the Comprehensive Plan is a bad idea and will not work over the long term.

COMMISSIONER CUMMINGS MOVED PA-05-11-76-LS TO ADOPT AN ANNOTATION TO THE FUTURE LAND USE MAP (ORDINANCE 2008-089) (XREF: ORDINANCE 2007-026), SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

5. PP-08-07-02-Quasi Judicial-Commission District IV-Smith & Wester, Inc. has applied for a Preliminary Plat for a commercial subdivision, Tippecanoe Business Park, consisting of 10 commercial lots in Section 15, Township 40 South, Range 21 East. The site, consisting of 17.03 acres, more or less, is located southwest of Biscayne Drive, northeast of El Jobean Road, and west of Eastwind Waterway in Commission District IV. Recommendation: Building Construction Services Department: Approval - Planning and Zoning Board: Approval

(Chairman D'Aprile polled the Board for ex parte disclosures and there were none) (Deputy Clerk Lansing administered the oath)

Barbara Jeffries described the preliminary plat petition which paralleled visual slides, mentioned staff recommendation for approval with nine (9) conditions, and read the conditions into the record.

Attorney Wotitsky discussed the location in detail and advised they are seeking approval.

COMMISSIONER MOORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

COMMISSIONER MOORE MOVED PETITION# PP-08-07-02 TO APPROVE A PRELIMINARY PLAT WITH NINE (9) CONDITIONS AS READ INTO THE RECORD (TIPPECANOE BUSINESS PARK) (ORDINANCE 2008-089) (XREF: ORDINANCE 2007-026), SECONDED BY COMMISSIONER DUFFY.

Motion Carried 5:0.

6. PP-08-07-03-Quasi Judicial-Commission District IV MCD, LLC has applied for a Preliminary Plat for a commercial subdivision, MCD Commons, consisting of 2 commercial lots in Section 7, Township 41 South, Range 22 East. The site currently has one commercial building and the applicant has applied to split the parcel into 2 commercial sites. The subject property, consisting of 3.366 acres, more or less, is located on the southeast corner of the Education Way and Murdock Circle intersection in Commission District IV. Recommendation: Building Construction Services Department: Approval - Planning and Zoning Board: Approval Recommendation: Building Construction Services Department: Approval - Planning and Zoning Board: Approval

(Chairman D'Aprile polled the Board for ex-parte disclosures and there were none) (Deputy Clerk Lansing administered the oath)

Barbara Jeffries provided location and detailed information related to the preliminary plat which paralleled visual slides, showed the result of the proposed change, read one (1) condition into the record, indicated they are working with the applicant to assure final plat approval, and said they recommended approval.

Commissioner Duffy asked for detail related to location and County ownership. Ms. Jeffries clarified.

James W. Herston spoke on behalf of the applicant and advised they are in agreement with the condition.

Commissioner Moore asked for additional detail related to location and preservation. Mr. Herston explained the preserve area, landscape plan, and environmental requirements. Ms. Jeffries opined 90% of what has been said is correct, mentioned research and review will be completed prior to final plat, and indicated approval is recommended.

Commissioner Cummings asked for the preservation area quote to be read out loud again. Mr. Herston provided a map, the quote, said vegetation preservation is a Development of Regional Impact (DRI) condition, and noted the vegetation must be preserved somewhere on site.

COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

Commissioner Moore suggested they give Ms. Jeffries time to review the paperwork and bring this item back next week at the Regular BCC meeting on Tuesday. **Chairman D'Aprile** said he trusted staff recommendation to move forward today. **Commissioner Loftus** opined the added condition would be enough protection. **Commissioner Duffy** agreed and asked Ms. Jeffries if she was comfortable with approval today. Ms. Jeffries answered she was comfortable however reserved judgment until final review and offered the option of adding an additional condition related to the foundation. **Commissioner Cummings** pointed out the final

plat would be on the Consent Agenda and confirmed if the recommendation changed to denial, this would be put onto the Regular Agenda for further discussion. Ms. Jeffries answered affirmatively.

COMMISSIONER LOFTUS MOVED PP-08-07-03 TO APPROVE A PRELIMINARY PLAT WITH TWO CONDITIONS READ INTO THE RECORD, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 4:1. Commissioner Moore opposing.

7. SV-08-07-14-Legislative-Commission District II-Taheer Shriteh has applied for a Street Vacation to vacate a portion of an un-named street in the LaVilla Subdivision as recorded in Plat Book 1, Page 6 of the Public Records of Charlotte County, more specifically described as the 20 foot right of way running from the easterly line of Cooper Street northeast to the eastern property line of Lot 5 of Block G of La Villa subdivision.. The site, consisting of 0.0713 acres, more or less, is located east of Cooper Street, west of Scott Street, south of E. Helen Street, and north of the Railroad Right of Way, in Commission District II. Recommendation: Building Construction Services Department: Approval - Planning and Zoning Board: Approval (**Resolution 2008-132**)

Steve Reager provided a detailed presentation of the proposed street vacation which paralleled visual slides and recommended approval.

COMMISSIONER MOORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED PETITION# SV-08-07-14 TO APPROVE A RESOLUTION TO VACATE A PORTION OF AN UN-NAMED STREET IN THE LAVILLA SUBDIVISION (RESOLUTION# 2008-132), SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

ADJOURNED: 11:43 AM

Signature on file in Commission Minutes
Chairman

ATTEST:

BARBARA T. SCOTT, CLERK
OF THE CIRCUIT COURT AND
EX-OFFICIO TO THE BOARD
OF COUNTY COMMISSIONERS

By: Signature on file in Commission Minutes
Deputy Clerk

JL