

BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS

JUNE 17, 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 Manley. The following members were absent: None. The meeting was called to order at 9:00 AM, followed by the Pledge of Allegiance.

Changes to the Agenda:

Addition #1: Requested by Attorney's Office: Set a Special Board meeting for the sole purpose of convening an Executive Session for Wednesday, June 18, 2008, at 3:00 PM, or as soon thereafter as possible, in the County Attorney's Office Conference Room to discuss the IUPAT union negotiations.

Change #1: Requested by Attorney's Office: Agenda Item #1, MDO-07-10-01, Changes in the proposed resolution regarding the Babcock Ranch Community Master DRI Order

COMMISSIONER MOORE MOVED TO APPROVE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER LOFTUS.
Motion Carried 5:0.

Mr. Baltz suggested placing an item on the June 24, 2008 regular agenda to schedule an update on Jump Start Charlotte and a follow-up financial review meeting for about two hours on Friday, June 27, 2008 from 1:30 PM to 3:30 PM or Tuesday, July 1, 2008 from 1:30 PM to 3:30 PM and requested Board Members' preference. Commissioner Duffy expressed a preference for July 1, 2008. Commissioner Loftus advised he would be available on either date. Chairman D'Aprile indicated July 1, 2008 would be better for him. (Board consensus to set the follow-up budget meeting on July 1, 2008 from 1:30 PM to 3:30 PM.)

Chairman D'Aprile requested Agenda Item 5 be considered at this time. (Board consensus.)

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

5. NC-08-04-01 - Legislative - Commission District V - Charlotte County Growth Management Department, Addressing Section, on behalf of applicant Donald C. Grudt, has applied to re-name a portion of one street in Port Charlotte Subdivision, Section 034. The street to be re-named is more particularly described as a portion of River Lane beginning at the intersection of Bachmann Boulevard running southerly to Grayton Terrace. The street is proposed to be named Jacobson Way. The aforementioned street is located in Port Charlotte Subdivision, Section 034, as recorded in Plat Book 5, Page 38-C, of the Public Records of Charlotte County, Florida. These streets are located in Section 03, Township 40 South, Range 22 East, in Commission District V. Recommendation Growth Management Department: Approval - Planning and Zoning Board: None

Maggie Bartley presented petition for the street name change based on a slide presentation and in accordance with the packet material including the staff report, advised a citizen requested the name change to honor a veteran, reported only one resident resides on the street segment and the other three lots are vacant, no objections from County departments were received, and recommended approval.

Donald Grudt appeared on behalf of Jacobson Veterans Nursing Home and noted his request for the name change as set out in a November 6, 2006 letter to the Community Development Department.

Frank Valora, Veterans of Foreign Wars Post 5690 Commander, commented in support of the name change on behalf of numerous military and community service organizations including VFW Post 5690, American Legion Posts 110 and 103, Moose Lodge 2121, Charlotte County Veterans Council, Quantis Club of Punta Gorda, Punta Gorda Masonic Lodge 115, Elks Lodge 206, VFW Post 10476, the Punta Gorda Moose Lodge, and Congressman Tim Mahoney.

Leonard Leary expressed support for approval.

Bill Kopp, Secretary of Charlotte County Veterans Council (CCVC), spoke on behalf of all members of the CCVC in favor of approving the renaming of a portion of River Lane to Jacobson Way.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE RESOLUTION 2008-064, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

1. MDO-07-10-01 - Quasi-Judicial - Commission District I - Pursuant to Section 380.06(11), Florida Statutes, the Charlotte County Board of County Commissioners is holding a public hearing to consider a request for approval of a revision to the master development order for the Babcock Ranch Community, to reflect the settlement with the Department of Community Affairs (DCA); for property located east of State Road 31, south of State Road 74, west of the Glades County line, and north of the Lee County line, containing 13,630± acres, in the East County Planning area; Commission District I, Petition No. MDO-07-10-01; applicant Babcock Property Holdings, LLC. Recommendation Growth Management Department: Approval - Planning and Zoning Board: Approval

(Chairman D'Aprile polled the Board for ex parte disclosures and all Board Members except Commissioner Loftus indicated no disclosures. Deputy Clerk Manley administered the oath.)

Seann Smith presented the petition to modify the Master Development Order, Resolution 2007-196 adopted on December 13, 2007, to address a settlement agreement with DCA as a result of DCA's appeal of the resolution on January 28, 2008; the new language proposed by stakeholders needs to be approved to address the process of traffic monitoring; and advised staff and the Planning & Zoning Board (P&Z) recommend approval.

(Commissioner Duffy noted an ex parte disclosure.)

Terrance Holihen appeared on behalf of Kitson & Partners, provided a brief history of the MDO, this is the second and final

hearing on the amendment, expressed appreciation for staff's efforts and Board consideration, and requested approval.

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

Motion Carried 5:0.

COMMISSIONER MOORE MOVED TO APPROVE RESOLUTION 2008-063, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

Commissioner Cummings stated he has fairly and consistently expressed opposition but he voted in favor of the amendment because it will implement the language proposed by the Regional Planning Council in October 2007 on traffic monitoring; a lot of time and legal expense could have been saved if the Board had listened to the people that are paid to make these comments; and the language had been approved at that time instead of having to work through a settlement with DCA as a result of DCA challenging its own language.

2. Revisions to ECAP Zoning District - Legislative - Commission District II An ordinance amending Chapter 3-9, Article II, Section 3-9-51, Enterprise Charlotte Airport Park (ECAP) Zoning District; amending permitted principal uses and structures; amending permitted accessory uses and structures; amending conditional uses/special exceptions; amending design and development standards; amending site plan approval process for developments within the district; providing for conflict with other ordinances; providing for severability; providing for an effective date. Applicant: Charlotte County Board of County Commissioners. recommendation Growth Management Department: Approval - Planning and Zoning Board: To be heard June 9, 2008

Inga Williams explained the purpose of the public hearing; requested the Board set the second public hearing on July 15, 2008 at 9:00 AM or as soon thereafter as may be heard; presented the proposed changes as suggested by users in the Enterprise Charlotte Airport Park (ECAP) as follows: clarified outdoor storage has to be done in association with a permitted principal use; some requirements have been made more stringent regarding outdoor storage screening and buffering; the 500' setback from residential has been changed to 50' from

Industrial to any other use; a new border buffer on the north, east, and south (not west as listed on page 13) requires a six foot wall and landscaping; the 300' setback has been removed between light manufacturing and institutional, office, and governmental uses; language referencing the Settlement Agreement with the Park of Commerce has been removed; the County Engineer will be allowed to reduce distance separations between entrances on roadways; references to residential have been removed in the site plan approval process; and essential and emergency services, as permitted principal uses, and language allowing those uses under special exceptions have been removed.

Attorney Robert Berntsson appeared on behalf of the petitioner, joined in staff's recommendation for approval, and verified that the rights and obligations under the settlement agreement are still in full force and effect. Ms. Williams agreed.

Attorney Geri Waksler appeared on behalf of Southwest Florida Land Developers in support of the changes and requested one additional change regarding the 15' buffer requirement for each project to eliminate the possibility of a 30' buffer that would be excessive.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE SETTING THE SECOND PUBLIC HEARING FOR APPROVAL OF THE ORDINANCE ADOPTING REVISIONS TO ECAP ZONING DISTRICT ON JULY 15, 2008 AT 9:00 AM, OR AS SOON THEREAFTER AS MAY BE HEARD, SECONDED BY COMMISSIONER MOORE.

Commissioner Loftus requested staff work further on the landscape issued mentioned by Attorney Waksler.

Motion Carried 5:0.

3. Z-08-03-22 - Quasi-Judicial - Commission District I - An Ordinance pursuant to Section 125.66 and 166.41, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Single-family 3.5 (RSF-3.5) to Residential Multi-family 3.5 (RMF-3.5), for property located at 3061, 3071, 3079, and 3087 Swanee Road, in the Port Charlotte area, containing 0.99± acres; Commission District I; Petition No.Z-08-03-22; Applicant: Eleuterio and Emma

*Lipana. Recommendation Growth Management Department:
Approval - Planning and Zoning Board: Denial*

(Chairman D'Aprile polled the Board for ex parte disclosure and there was none. Deputy Clerk Manley administered the oath.)

Jeffrey Crimer gave a slide presentation on the rezoning request to Residential Multi-family (RMF) 3.5 units per acre on four vacant platted lots totaling about one acre on the west side of Swanee Road at Olean Boulevard east of the intersection with Kinds Highway; the rezoning supports the goals, objectives, and policies of the Future Land Use Element and the Housing Element of the Comprehensive Plan by promoting various housing types; the rezoning does not impact services or traffic in the area; petitioner's purpose for the rezoning is that the property is more conducive for FMD use; staff recommends approval; and P&Z recommended denial on May 12, 2008.

Commissioner Duffy inquired if the property is to be used for an assisted living facility. Mr. Crimer expressed unawareness of petitioner's intention at this time.

(Deputy Clerk Manley administered the oath to applicant James W. Herston.)

Mr. Herston advised staff has recommended approval of the project and pointed out Attorney Michael Haymans brought up the issue of spot zoning and presented documentation on this issue. Mr. Herston provided handout materials and commented in support of the rezoning.

Attorney Haymans appeared on behalf of Mr. and Mrs. Phillip Greaves in opposition of the rezoning; advised Mr. and Mrs. Greaves also opposed the petition when it was submitted as a special exception; there would be an institution at this location and the use is not consistent with other uses or rezoning in this area; and opined this rezoning would not provide an appropriate use at this location in conjunction with single family residential homes.

Phillip Greaves spoke in opposition because he purchased property to raise his family in a single family residential neighborhood and expressed concern about impacts on the quality of life with an ACLF being allowed in this location.

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

Commissioner Moore requested the number of allowable beds. Mr. Crimer explained the current petition is for a rezoning, recalled the original proposal under the special exception was for an Adult Congregate Living Facility (ACLF) for up to 32 persons on the site in a Residential Multi-Family (RMF) District, and reiterated his uncertainty regarding petitioner's intention. Commissioner Loftus asked for the maximum number of allowable units. Mr. Crimer advised multi-units may be done on this amount of land. Commissioner Loftus asked again for the maximum number of units. Mr. Crimer clarified three units in a multi-family structure. Mr. Crimer further advised that would allow 32 beds as requested under the petition for special exception in a RMF District.

Commissioner Duffy requested clarification regarding the 14 units of density allowed by the existing RSF-3.5 zoning as referenced in the Planning & Zoning minutes. Mr. Crimer expressed uncertainty of the source of the 14 units; added 14 units would not be allowed; and reiterated the proposal is for 32 beds not units.

Commissioner Duffy opined an ACLF is not the worst of allowable commercial uses but expressed concern about allowing commercial in a residential neighborhood.

Commissioner Cummings reminded the Board of quasi-judicial requirements for Board action by pointing out that the threshold of each criteria must be answered yes for approval of the rezoning but if any of the criteria are answered no, then the petition must be denied after due consideration. Attorney Browne agreed after due consideration. Commissioner Cummings said two questions exist (1) would the proposed change adversely affect living conditions in the area and referenced staff's report including the recommendation for approval versus Attorney Haymans' comments that studies have shown that ambulances affect surrounding areas, and expressed personal experience that the change would make a difference and (2) are there substantial reasons why the site cannot be used as allowed in the existing zoning designation and pointed out Attorney Haymans has provided

a competent answer that the site can be used as allowed in the existing zoning.

Commissioner Cummings concluded the property can be used for residential single family but, after due consideration of the criteria and thresholds, it appears the Board could go either way and reiterated all thresholds must be met for approval.

Attorney Browne agreed the Board has the discretion to vote either way. **Chairman D'Aprile** recalled in 1968 he applied to put in a small commercial medical building near that area and the application was denied; noted this situation is a little different; and opined that area of Kings Highway should be kept free of additional commercialization. **Chairman D'Aprile** expressed concern with the difference in recommendations by staff for approval and P&Z for denial.

Mr. Crimer reported the site is comprised of four lots or about one acre; four single-family homes could be constructed on the four lots and used as ACLFs; this would be consistent with the existing zoning; this is how staff viewed the application; and an ACLF is a completely different use than standard commercial uses. **Commissioner Moore** indicated opposition.

Chairman D'Aprile concluded the property is zoned for the proposed use; explained the Board must make a decision based on evidence presented today and staff's report according to the criteria required for quasi-judicial hearings. **Commissioner Cummings** added each quarter acre lot would be sufficient to separate residences or units. Mr. Crimer explained separate units are not to be built. **Commissioner Cummings** pointed out one structure could be built on each quarter acre that could have eight units. Mr. Crimer outlined allowable uses under the zoning designation.

Commissioner Cummings queried if a restriction exists on the number of persons residing in a household that are not family members. Mr. Crimer explained if an ACLF were to be conducted in a single-family residence, six occupants would be allowed under a special exception.

Commissioner Duffy recalled the applicant has indicated the structure would look like a home. Mr. Crimer stated the facade and design of the structure would be considered by the

Development Review Committee in order to maintain the residential scale and character but it is not part of the rezoning application.

Mr. Herston confirmed the structure would appear as a residence as shown on a drawing.

Mr. Haymans stated there is no binding commitment.

COMMISSIONER MOORE MOVED TO DENY PETITION Z-08-03-22 FOR AN ORDINANCE PURSUANT TO SECTION 125.66 AND 166.41, FLORIDA STATUTES, AMENDING THE CHARLOTTE COUNTY ZONING ATLAS FROM RESIDENTIAL SINGLE-FAMILY 3.5 (RSF-3.5) TO RESIDENTIAL MULTI-FAMILY 3.5 (RMF-3.5), FOR PROPERTY LOCATED AT 3061, 3071, 3079, AND 3087 SWANEE ROAD, IN THE PORT CHARLOTTE AREA, CONTAINING 0.99± ACRES FILED BY ELEUTERIO AND EMMA LIPANA, SECONDED BY COMMISSIONER CUMMINGS.

Commissioner Cummings pointed out the drawing has no legal weight in this proceeding. Commissioner Loftus expressed concern about the number of units.

Motion Carried 5:0.

4. Z-08-04-23 - Quasi-Judicial - Commission District II - An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture Estate (AE) to Enterprise Charlotte Airport Park (ECAP), for property located at 27350 or 27360 Jones Loop Road, in the Punta Gorda area, containing 40.55 acres more or less; Commission District II; Petition No. Z-08-04-23; applicant Jones Loop 40, LLC, c/o Mr. Jeffrey Hunt. Recommendation Growth Management Department: Approval - Planning and Zoning Board: Approval

(Deputy Clerk Manley administered the oath.)

Jie Shao gave a slide presentation on the rezoning request on the approximate 40.55 vacant acres located at 27350 or 27360 Jones Loop Road from Agriculture Estates to Enterprise Charlotte Airport Park (ECAP). Ms. Shao advised the ECAP zoning district is the only appropriate zoning district to implement the Enterprise Charlotte Airport Park FLUM designation and the Charlotte County Airport Authority supports the rezoning; and reported staff and P&Z recommend approval.

(Chairman D'Aprile polled the Board for ex-parte disclosures and there were none.)

Attorney Geri Waksler appeared on behalf of the applicant in support of the rezoning since it would make it consistent with the current ECAP land use designation and commented on the results of the traffic study that indicate traffic coming off of I-75 would be heading in the opposite direction from The Loop.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE PETITION Z-08-04-23 AND ORDINANCE 2008-51 APPROVING AN AMENDMENT TO THE CHARLOTTE COUNTY ZONING ATLAS FROM AGRICULTURE ESTATE (AE) TO ENTERPRISE CHARLOTTE AIRPORT PARK (ECAP), FOR PROPERTY LOCATED AT 27350 OR 27360 JONES LOOP ROAD, IN THE PUNTA GORDA AREA, CONTAINING APPROXIMATELY 40.55 ACRES FILED BY JONES LOOP 40, LLC, SECONDED BY COMMISSIONER CUMMINGS.

Motion Carried 5:0.

Commissioner Comments: None

ADJOURNED: 10:15 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

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