

BOARD OF COUNTY COMMISSIONERS

FEBRUARY 17, 2009

A regular meeting of the Board of County Commissioners was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Duffy, Commissioner Cummings, Commissioner Loftus, Commissioner Starr, and Commissioner Skidmore. Also in attendance were County Administrator Baltz, Assistant County Attorney Browne, 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: None

I. Planning and Zoning Agenda (Proofs of publication were in order for all petitions.)

1. PA-08-11-43-LS - Legislative - Commission District I - Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Department of Community Affairs for an Objections, Recommendations, and Comments Report; the amendment request is to change the Future Land Use Map from Agriculture to Mineral Resource Extraction for property located north of Bermont Road, south of the DeSoto County line, east of Duncan Road (US 17), and west of SR 31, containing 73.01± acres, in the East County Planning District; Commission District I; Petition No. PA-08-11-43-LS; Applicant: George and Christina Davis. - Recommendation - Growth Management Department: Approval of Transmittal - Planning and Zoning Board: Approval of Transmittal

Steven Ellis presented the findings and analysis as detailed in the packet material and staff report dated December 24, 2008 for property owned by George and Christina Davis, requesting a large-scale Future Land Use Map (FLUM) amendment from Agriculture to Mineral Resource Extraction (MRE) for 73.01 acres to allow applicant to apply for a Group III Excavation Permit; and advised that staff and Planning and Zoning (P & Z) recommend approval of

transmittal to Department of Community Affairs (DCA) for an Objections, Recommendations, and Comments (ORC) Report.

Attorney Geri Waksler spoke on behalf of applicant in support of petition approval and requested transmittal to DCA.

James Collins lives south of the site area and disagreed that there would be no impacts to his community's quality of living, traffic impact, water flows, etc.; indicated that excavation does not benefit Charlotte County because most of the material leaves the area; opined the Commission should look at the overall affect when approving all the excavation permits; and that this request should be looked at more carefully.

Steven Brown spoke on behalf of the Charlotte County membership of the Conservancy of SW Florida; stated he is pleased to see all the applicant did to address some of the concerns; that an engineer or staff walking on the site and not seeing Scrub Jay, evidence of panthers, or the like is not conclusive; that the Environmental Impact Study (EIS) should be part of the habitat study; that mailings should have gone out to everyone out within a half mile of the property; and applauded the applicant going the extra distance.

Lawrence Martin stated he finds the entire situation complex and difficult to understand and questioned why we are here and why this change must be made based upon a section of the Comprehensive Plan, which he referred to. **Commissioner Cummings** explained Mr. Lawrence is speaking to the wrong petition.

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

**Motion Carried 5:0.**

**Commissioner Starr** indicated there is an abundance of existing mines permitted in Charlotte County; that many emails are received about the Quality Mine in Englewood and input from citizens about the quality of life; that he would like an environmental impact study in any transmittal to DCA; that he would like to see an ordinance or other legislation we must pass to assure a comprehensive environmental impact study is included in any of these projects; that we need to consider what the demand is now or in the future for fill; that in this instance a

god job was done, but we should take a closer look at the human impacts; that Charlotte County must become more proactive about the environment and the human impact; that there is a lot that needs to be studied more diligently than we do; and that he would not be in favor of approving this petition.

**Commissioner Cummings** stated there were concerns raised, which, if addressed later in the process would be okay; that it is not an assurance the concerns have been addressed, but an expression of a hope that one day they will be; that when we removed the requirement to do the EIS at this stage of the process we shot ourselves in the foot; that we have evidence there are very real impacts created by these mines and we need that information on the front end while we do not have our hands tied by the legal process and have the discretion to do what we deem to be in the public interest; and that he is not prepared to approve this without the information we worked so hard to get put earlier in the process, and then undid.

**Commissioner Skidmore** requested clarification of the half mile mailing process and that the quality of life issue was that no physical human being would live next door and be impacted. Mr. Ellis explained the requirement is to notify adjacent property owners within 200 feet of the site; that the half mile refers to the quality of life issues; and that there are no people living within a half mile of the site. Attorney Waksler stated the Comprehensive Plan (Comp Plan) sets forth what must be done in this application; that it specifically states you must provide a quality of life analysis focusing on the effect on residences within a quarter mile; that in a very recent land use change the Board of County Commissioners (BOCC) did not put in an environmental impact statement as part of the land use process because the applicant must provide an environmental impact statement as part of the rezoning and as part of the actual permit for the mine; and commented on what the applicant has done above and beyond what was required by the Comp Plan.

**Commissioner Skidmore** expressed concern with staff hesitating to fully endorse the petition; applauded what the applicant has done; indicated a second look should be given when there is discussion about affecting the quality of water around the area; and stated he needs more assurance. Attorney Waksler stated not all of the impacts are known under the new ordinance. **Chairman**

**Duffy** provided a brief history of the mining permits; indicated the intent was to put mines further out in places where there were other mines in order to avoid an impact on ground water; that this permit fits the criteria; that there are many stages before this is final; and that all but the excavation permit comes back to the BOCC. **Commissioner Starr** indicated that this is all back-door; that we would monitor the ground water after the right to dig is given; that the impact could be two miles; and expressed concern with impacts to the aquifer by the many mines.

Gary Bayne of Southwest Engineering commented on hydraulic barriers and the best manner in which to avoid the problems occurring that have been expressed. Mr. Bayne stated Southwest Florida Water Management District (SWFWMD) would not allow impacts to the wetlands more than a foot; commented on what is included in the study done by Southwest Engineering during the permitting process; stated they protect the ground water and implement a program to monitor quality and quantity of water; and pointed out that monitoring must be sent to SWFWMD. **Commissioner Loftus** opined it is a little early to call for an EIS study; indicated that lands and wildlife can change on the development; that this is just the beginning stage; that the EIS study would be done during the permitting process; and that it could be five years down the line before applicant goes for permit and when a complete, comprehensive EIS study should be done.

Barbara Jeffries commented on the excavation code and the process that goes forward from this point; indicated this is a legislative issue and if the Board believes this location is far enough out not to impact the public the excavation code passed in 2007, if properly implemented, would protect the environment and the residences. Ms. Jeffries explained that the emails that the Commissioners have received have to do with old mines that have not come under the new regulations put in place; that this mine is starting under the new codes; and would be an excellent application to begin with under the new codes.

In response to **Chairman Duffy's** inquiry, Mr. Ellis explained the scope of the quality of life analysis in further detail. Mr. Ellis stated that based upon examination of material submitted staff opined the applicant had adequately explored if there would

be quality of life issues to residences within a half mile; and advised that the BOCC is only approving a land use change to allow the applicant to apply for a permit. **Chairman Duffy** requested clarification that this location would have qualified for an automatic approval beforehand without the applicant going through this step had the BOCC added this extra layer of land use change. Mr. Ellis stated the applicant would have qualified to apply but the environmental concerns and other issues that are addressed at the permitting process would have determined if they were approved. **Chairman Duffy** inquired if Mr. Ellis believed we had met all necessary work that needs to be done to this point. Mr. Ellis said he is unaware of anything staff has missed according to the requirements as they are currently written.

**Commissioner Cummings** questioned the number of acres of land currently permitted for mines in Charlotte County and what quantity that could produce versus Charlotte County's demand. Ms. Jeffries explained she did not have acreage and responded with a breakdown by cubic yards. **Commissioner Cummings** asked if it would be safe to say that the quantities in existence would take care of many years of Charlotte County's demand; and that Charlotte County's future need would be slim to none. Ms. Jeffries said yes; but stated that some of the dirt would be used on projects other than stem walls of houses. **Commissioner Cummings** pointed out that the 413 million cu yds referred to by Ms. Jeffries is only the area being considered for actual mining applications and is not the entire property that we would later consider giving the mining FLUM. Ms. Jeffries agreed; and stated that the 413 million cu yds is only inside the pit.

**Commissioner Cummings** stated we are not looking at meeting a Charlotte County need of resources; that the vast majority of counties across the state, including neighboring counties, have been tightening up their regulations trying to deal with impacts their communities have experienced; indicated the BOCC needs as much information on the front end to deem what is best for Charlotte County citizens; that this decision is an important precedent in how we are going to deal with the others coming up today; that it is unfortunate this applicant gets caught at this point in the process but he cannot take that into consideration; and opined the BOCC needs to have the big book where it has the information on the front end of the process and still has the

control and ability to do something about it and our hands are not tied by a quasi judicial process where no one was satisfied with the results.

**COMMISSIONER LOFTUS MOVED TO TRANSMIT LARGE SCALE PLAN AMENDMENT PEITION PA-08-11-43-LS TO THE DEPARTMENT OF COMMUNITY AFFAIRS FOR AN OBJECTIONS, RECOMMENDATIONS, AND COMMENTS REPORT, SECONDED BY CHAIRMAN DUFFY.**

*Chairman Duffy* stated we must be smart about this; that we have the environmental assessments done at every stage of the approval process; that everyone with a mine must go through many approvals by SWFWMD and the Department of Environmental Protection (DEP); that this should be an easy decision of allowing the new land use category which the BOCC put into place; that our staff has told us this is a good land use requirement; and opined it is a no-brainer.

*Mr. Ruggieri* gave a brief description of the process from this point; indicated there is time between transmittal and adoption to work out issues the Board believes needs to be clarified; that the MRE Future Land Use Designation does not preclude all other types of development once it is approved; that you are still entitled to uses and rights attributable under the agricultural zoning, agricultural estate zoning, and environmentally sensitive zoning classifications; pointed out that just approving this MRE Future Land Use does not mean a mine is going to be there; that it looks at Class III mines, what their effects are, and allows the BOCC to take the information presented into consideration to determine if this is a good location for a mine; that it then goes through permitting; and that if the permitting falters or fails it does not preclude other types of development on the property.

**Motion Failed 2:3. Commissioner Cummings, Commissioner Starr, and Commissioner Skidmore opposing.**

**RECESS: 10:10 AM - 10:20 AM**

2. PA-08-11-45-LS - Legislative - Commission District I - Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Department of Community Affairs for an Objections, Recommendations, and Comments

report, amending the Charlotte County Future Land Use Map from Agriculture to Mineral Resource Extraction, for property located in the East County Planning District, containing 3,754± acres; Commission District I; Petition No. PA-08-11-45-LS; applicant: Charlotte County Board of County Commissioners. Recommendation - Growth Management Department: Approval of Transmittal - Planning and Zoning Board: Approval of Transmittal

Seann Smith gave a slide presentation and presented the findings and analysis in the staff report dated December 29, 2008; and advised this is a transmittal hearing for a County-initiated large scale amendment to the FLUM from AG to MRE in a number of locations totaling approximately 3,754.26 acres. Mr. Smith noted that of the 14 currently active mines in Charlotte County four did not meet the standards of the new MRE FLUM designation because they are in an Urban Service Area or are within one-half mile of the Special Surface Water Protection Overlay District. Mr. Smith explained the ten sites included in this petition are in the East and South County planning districts; that the land use of all these sites is currently AG; that all of the sites are legally permitted Group III excavations; that the intent of the changes is to bring their future land use designations into alignment with their existing land use; that after creating this FLUM designation the County saw the need to assist existing businesses by proactively placing all of the conforming Group III excavations into this designation; that the request was processed by unanimous request at the transmittal hearing for the Future Land Use Element; that the petition only involves parcels included in previously-approved excavation permit applications; that one site contains land in the Resource Conservation Future Land Use designation; but that land was specifically excluded from the petition. Mr. Smith advised that staff and P & Z recommend approval of the transmittal of the petition to DCA for an ORC report.

**Commissioner Cummings** requested that someone find out how many acres are actually permitted on these parcels for mines versus the acreage of the parcels that are being given the MRE land use designation in order to determine how much additional property potentially could be on the table for consideration. **Commissioner Skidmore** asked what the significance is to the mines if transmittal is not approved; and inquired if

there was a necessity to group all ten together or if they could have been reviewed individually. In response, Mr. Smith stated that as part of the transmittal of the changes to the text of the Future Land Use Element a previous Commission unanimously requested that the petition be processed to help protect existing businesses; explained the mines continue to operate under the permits they have until their permit expires if the petition is not approved today; and stated staff was following direction of the Board given at the transmittal hearing that all existing mines that conformed to the text be transmitted and brought forward. **Commissioner Skidmore** requested clarification that the mines are bundled together due to direction of the previous Board but there is nothing to preclude looking at each individual mine as a single entity. Mr. Smith replied affirmatively. **Commissioner Skidmore** asked Attorney Browne what the legal liability to the County would be if this is not approved today since the mines were already permitted and the County changed the process. Attorney Browne stated there would be no immediate impact; and requested that Assistant County Attorney Derek Rooney address the issue.

Attorney Rooney stated that liability to the County would be very near zero if the Board denied all of them right now; that the individual mine owners could come in and petition for a change; and that this change would not alter their rights in any way. **Commissioner Skidmore** requested clarification of why this is before the Board today. Attorney Rooney explained at the time the new policies to the Future Land Use Element were put in place the then Board had concerns that existing mines would now have to go through the process of amending the future land use, go through rezoning, and then go through the permitting stage again; and that it was the desire of the Board at that time to change the future land use for the existing mines and in effect say that where those mines are is appropriate location for mining. **Commissioner Skidmore** clarified that transmittal today would eliminate the processes that were talked about in the previous application and in a sense strengthen the rights of the mines opposed to the "bureaucratic" process. Attorney Rooney explained that if this transmittal is approved, DCA's ORC report came back in a positive manner, and the Board adopted the future land use changes, when the existing mines come in to renew their permits for the existing excavation sites, they could come in without having to get the future land use; that they would still

have to go through the zoning and permit stages again; but that this takes out one of the hurdles they would have to go through.

**Commissioner Skidmore** commented on Quality Mines; and asked where the hearing examiner fits into the process. Attorney Rooney explained the current process, what triggers starting the process over, and when the petitioner goes before the Special Master. **Commissioner Skidmore** said he wants to avoid another Quality Mine issue where there are definite implications to the citizens of the County and the Commissioners have little latitude.

Attorney Rooney advised that Quality Mine would be excluded because the change to the future land use and the new zoning classifications did not allow them to continue to operate; that when their permit is done, it is done, and they will not be able to come in and seek a future land use amendment because they are within so many feet or miles from Gulf waters. Attorney Rooney stated if there are mines that are part of this transmittal petition with outstanding neighborhood issues such as Quality Mine, we would not be aware of them at this stage unless staff had been contacted. **Commissioner Skidmore** inquired if we have a map that shows when a mine was permitted opposed to residential build out and if there has been residential build out since the permitting of the mine in order to determine if there is residential encroachment or mining encroachment. **Commissioner Skidmore** questioned why ten vastly different geographic areas were put together.

**Chairman Duffy** stated this is a very complex issue; opined a better understanding is needed by **Commissioners Skidmore** and **Starr**; and recommended postponing this item for two weeks or a month until they can study it more thoroughly with an in-depth briefing on the mining history. **Commissioner Starr** said he has an understanding of this and is prepared to proceed today. **Commissioner Cummings** stated he is prepared to be patient with questions. **Commissioner Loftus** pointed out the only reason the mines were lumped together is that the Board wanted to be certain they were brought forward. Attorney Rooney agreed. **Commissioner Cummings** stated it was Board direction.

Excavation Administrator Barbara Jeffries stated that Mirror Lakes is a mine that moved into an area that has a community

around it; that housing exists around all of them but not in a development-type way. **Commissioner Skidmore** confirmed the Board's option is to approve all or deny all. Jeff Ruggieri said specific mines can be pulled if the BOCC wished. **Chairman Duffy** clarified there is no rush to do this today. Mr. Ruggieri stated we are under no time constraints and no pressing need. **Commissioner Cummings** explained the only constraint is that as things are tabled the agenda gets stacked up; indicated that workload is the only issue in re-hearing these matters; and requested that Mr. Smith go back through the aerials of the individual sites more slowly from the beginning.

**Commissioner Skidmore** advised that complaints had been received from citizens near the Mirror Lake mine of low water pressure and poor water quality. Ms. Jeffries reported this is a 12 acre site, 58 acre pit, currently permitted to go 38 feet; that if the FLUM is provided with a yes and transmitted and the mine came back wanting to go an additional 12 feet it would be an "as right"; that the Board would be taking out its opportunity to make a legislative decision to have a mine expand there because Mirror Lake is not a maxed-out mine; and stated that its permit expires in December 2016 Ms. Jeffries advised she spoke to a neighboring resident whose pond went dry, apparently because of the de-watering at this site. **Commissioner Cummings** clarified that the 58 acres of the 192 acre site is permitted; that they could come back for an expansion later to expand the surface area; and that the FLUM part of the decision would already be taken care of. Ms. Jeffries explained they could do an expansion width-wise and depth-wise because excavation is three-dimensional, not just on the surface. **Commissioner Cummings** noted if they go deeper it is a matter of right. Ms. Jeffries agreed; indicated that is one of the issues associated to the Washington Loop Homeowners Group; and pointed out other proposed pits.

**Commissioner Cummings** stated he would like to know the total area that is permitted for mining on the ten site; and questioned lack of mining activity on one of the aerials. Mr. Smith advised that staff had not looked to determine if there was actual activity, only if there was an active permit; stated a more recent photo had been found showing activity on the questioned site, but that his understanding is that the owner wants to do an asphalt and bash plant on the site and wants the future land use

change so they can process the rezoning and special exception that would be required; and indicated it is far more remote than others that have created concerns. Ms. Jeffries advised she would need to get back to **Commissioner Cummings** with an answer to his inquiry on permitted acreage of the ten sites.

**Commissioner Skidmore** questioned the location on the map of Swaying Palm Drive. Ms. Jeffries pointed out the location of Swaying Palm Drive and areas that were of concern to the public. **Commissioner Skidmore** inquired if the sites could be viewed individually on to their own merits without missing any windows of opportunity.

Inga Williams explained that for this petition acreage could be reduced by pulling certain ones and allowing others to go forward; but that in order to break them up as **Commissioner Skidmore** requests staff would have to come back with individual petitions, go through staff analysis, re-advertise and bring it forward at another agenda. **Commissioner Skidmore** opined results are somewhat skewed because questions put forth on the application were answered collectively. Ms. Williams stated that staff went on the assumption that environmental impacts were taken care of when the mines went through the permitting process because the environmental permit requires environmental impact statements and review. **Chairman Duffy** inquired if it was **Commissioner Skidmore's** Recommendation to take some out of the petition. **Commissioner Skidmore** expressed concern with contention over Mirror Lakes Mine; indicated it is hard to judge the application on its merits and get the full effect when looking at all ten at one time; and requested they hear from the citizens.

Washington Loop resident, Lawrence Martin stated that these ten mines were permitted under a 2003, or earlier, ordinance when staff and the BOCC thought that ordinance to be weak and not protective of the environment; that by passing this zoning the BOCC is saying these ten mines exist on land that is appropriate for mining; and that times have changed and much of the land is no longer considered appropriate. Mr. Martin opined the BOCC should not allow these mines to be re-zoned to avoid them expanding onto the remaining lands; and indicated by voting not to do this the mines can continue operating as they have been.

President of the Washington Loop Homeowners Against Mining Nancy Haast said she was upset to be here on this issue after all the Washington Loop group has been through; indicated wildlife is diminishing rapidly in Charlotte County; stated approval of the petition gives these mines a free pass for the future; and spoke in opposition of approving the petition.

William Gard provided an aerial handout and commented on the number of children in the area; indicated Mirror Lakes Mine was purchased by South Loop Excavation LLC because it already had its permits; that the mine can be expanded to the east; expressed concern with fatalities due to the Mirror Lakes Mine being too close to residential area; and spoke in opposition of approving the petition.

Washington Loop Road resident Clarke Keller expressed concern with members who sat on the committee for the re-write of the ordinance; commented on changes in the water from brackish to salt water, depletion of fish due to changes in the water, and changes in the plant life since the mines have been in operation; spoke in opposition of approving the petition; opined an overall EIS is needed; and that the mines should pay into a fund to do that.

Steven Brown commented on the transmittal of the Mineral Resource Extraction Future Land Use Map designation to DCA in April 2008; indicated that one of the requirements was there be an EIS and conform to the Charlotte County Code of Ordinances; that staff substituted their judgment and decided the EIS was not required; that what got approved for adoption did not include the EIS; and that he has not heard an adequate explanation for that. Mr. Brown stated that it is the Conservancy's position that the petition to change these ten mines is not consistent with Comprehensive Plan Policy 2.2.18(f); that he finds nothing in the State Statutes or Comprehensive that provides an exemption to the County of their own standards; and suggested if this is to be sent back for better information it be sent all the way back and have staff do what the Comprehensive Plan says must be done at a minimum and hopefully also acquire an EIS.

James Collins said the concerns he expressed in the first petition apply to this petition as well; commented on expansions and wetlands; expressed concern with so much material leaving

Charlotte County; and indicated there has been too much impact on this area already.

Tammy Cash spoke on behalf of Hall Ranch, which is one of the 14 mines that would not rezoned here or given a free pass; opined that if the petition is approved these operators get an unfair advantage on competition; and indicated if the Board approves this petition for the ten operators it should first make sure their reclamation has been done before giving them anything.

Washington Loop resident Jim Story spoke on behalf of himself and other area residents unable to attend; indicated that no mining should be done on Washington Loop and that they fully support Steven Brown and the Conservancy of Southwest Florida; that they request that all mines approved under the code remain in their current classification until their permit expires without a change in zoning; that any mine intending to extend be required to file a new permit and a new Environmental Impact Statement; that they would like better communication on the time frame of hearings; and opined signs posted on Washington Loop should be located in more legible area.

Bill Cicanese advised he lives across from Mirror Lakes; that he has lived at the same location for over thirty years; that his pond is close to going dry; that he is not an expert on environmental; but believes the quality of life has definitely changed due to the mines.

Washington Loop resident Rick Freed stated the Commission last year took some very positive steps to correct a bad situation when the mining and excavation zoning was created; opined what is happening today is the miners and their attorneys looking at an opportunity to turn it against you by insisting they are already immune to the safeguards and should be locked in for years to come. Mr. Freed expressed concern for the future welfare of his grandchildren; and pointed out what happens to the community can have an effect on wildlife and naturalists interested in visiting the area.

Attorney Rob Berntsson commented on past hearings and when the BOCC decided to obtain a hearing examiner to strictly apply the rules that the County Commissioners adopted so that everyone was insured a fair and legal proceeding. Mr. Berntsson commented on

what is required during the permitting process and why these ten mines are before the Board today; explained that these sites are more than ten acres, which makes them a large scale plan amendment; and that there are only two windows of opportunity per year to take care of this. Attorney Berntsson indicated the Facilitating Agricultural Resource Management Systems (FARMS) program through Southwest Florida Water Management District (SWFWMD) encourages excavations rather than the ground water that has been taken from the ground; indicated these sites have onsite mitigation; and that we need to follow the rules that have been set and treat these property owners fairly.

Attorney Geri Waksler advised that she does not represent any of the ten mines listed; commented on why mining and excavation became an issue, restrictions, and where no mines can be located due to the new mining ordinance; indicated when the issue first came up this industry voluntarily submitted itself to a moratorium and did not move forward with any new permitting while the new mining ordinance was being submitted; and that the mining industry has played by the rules. Attorney Waksler requested that rather than make all decisions based on the complaints of a few look at the County as a whole, recognize that mines employ forty to fifty people, that they provide the dirt that allows our roads and homes to be built; and pointed out that dirt that goes out of the County often is used to create concrete blocks that come back into the County. Attorney Waksler opined we need to stop moving headlong forward in the desire to stop all mining, look at what has been done, allow time to determine if what's been done will actually operate, and allow the miners and excavators that have played by the rules to have the rules apply fairly to them.

David Smith stated he lives on Little Farm Road; that his water has been tested three times in the last four years and each time it showed a heavy contamination of ammonia nitrates and diesel fuel; that his home well has been condemned by the State of Florida; that blasting occurs twice a week and the explosives get your attention; that the mining operation has affected the foundation of his home and as a result his home has been condemned; and opined the miners would have a different outlook if they lived next door to their projects.

Andrea Story opined the Board of County Commissioners used good common sense when Omni Waste was not allowed because it was not needed; and indicated times change and sometimes it is okay to say we do not need more of something and that there might be better land use here.

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

COMMISSIONER SKIDMORE MOVED TO DENY PETITION PA-08-11-45-LS, SECONDED BY COMMISSIONER STARR.

Chairman Duffy inquired if Charlotte County has mines that are 80' deep. Ms. Jeffries stated that the deepest she is aware of is 58'; indicated that we allow to the maximum of 2' above the confining layer, which is determined by a hydro geologist hired by the applicant; and that staff does not verify except to review the soil borings. Chairman Duffy advised that not all of the fill goes out of the County; and stated that some of the aggregate removed during the mining process is used to build the roads. Chairman Duffy recommended each Commissioner visit a mine and make inquiries. Chairman Duffy indicated many good points were raised by citizens but some information they obtained was not correct.

Chairman Duffy recalled the Board came up with the new classification from Agriculture to MRE because of its concerns of protecting the environment and residents from mining right in their neighborhoods; indicated that what has been done is a good thing but some people want no mining in Charlotte County; that the direction the Board took two years ago was to try and accommodate the business owners and residents; and that staff has done what it believes necessary to make this happen and meet those needs. Chairman Duffy advised that today the decision is to take these mines already in existence and put them into the category that we have designated; that other environmental impacts will be taken into consideration and addressed by the Department of Environmental Protection (DEP) and SWFWMD during the permitting process; and opined we are doing what we should to protect the citizens and make certain the mining companies adhere to the standards, rules and regulations.

**Commissioner Skidmore** expressed concern that if transmittal is approved today the Board is not only moving from classification "A" to classification "B", but that an essential step of oversight and accountability is being eliminated; indicated he sympathizes with the residents; that mining is on Washington Loop and we must learn to work with what is already there; that he does not like how all of these are lumped together; and that there needs to be as much accountability as possible. **Commissioner Skidmore** commented on the accountability of the reclamation not having been done and requested that Mr. Baltz check into that to be certain all regulations are being adhered to and all measures enforced; recommended mine owners and neighborhood residents open a dialogue; and indicated that a similar situation worked well in his district.

**Commissioner Starr** stated there is no intent to stop mining; that he would not vote in favor of transmittal because he believes it takes oversight away; that future expansion would be taken for granted; that previous Commissions should not have allowed so many mines in this County; that there is no EIS and that needs to be revisited; that it was a mistake to take that out as it also protects people; and that he cannot support this initiative.

**Commissioner Cummings** explained that the Commission absolutely looks at whether or not the community needs not another specific business, but additional amounts of a future type of land use; and that looking at what the long term needs for fill are for the community is a legitimate FLUM question. **Commissioner Cummings** agreed it is an important point when looking at giving out additional rights that the first review be that all current requirements are being met. **Commissioner Cummings** commented on the discussion of whether or not we should wait and see the results of each of the changes made in the process; and stated you cannot wait that long in between making improvements that obviously need to be made. **Commissioner Cummings** stated that the decision today is whether we will give out new development rights that once given you cannot get back without buying them; that it is a very important distinction in any decision the Board makes when having these land use hearings; that this is not an issue of protecting development rights but an issue of whether or not we are obligated to give out new ones; and that he does not believe that is the case here.

**Commissioner Cummings** stated he supports the decision; and indicated if after the vote the Board wants to give direction to staff that it expects to see the impact studies that have been talked about in the past required at this stage in the process and have the "big book story" that Ms. Jeffries earlier referred to so the Board can better understand the consequences of the legislative decision before it, that he would support it.

**Motion Carried 3:2. Chairman Duffy, and Commissioner Loftus opposing.**

**Commissioner Cummings** asked if the Board wants to give direction to staff that it would like to see the impact studies at this point in the process rather than later. **Commissioner Starr** clarified **Commissioner Cummings** was referring to the EIS. **Commissioner Cummings** advised that was the primary one, but recalled there was some pretty in depth discussion; that he is not certain he wants to confine it to a specific thing; but that the EIS would certainly be the core issue he is looking at. **Commissioner Skidmore** said he would like the Board to not make that decision at this moment; and indicated he would like to talk to staff more about it first because it is more than just one issue. (Consensus by the Board.)

**Chairman Duffy** explained there were eight more items on the agenda and an MPO meeting this afternoon in the room they were occupying and asked about moving items out of order due to citizens in attendance. **Commissioner Skidmore** requested that Agenda Item 8 be moved forward. (Consensus by the Board.)

8. Grove City Community Plan - Commission District III - Pursuant to Objective 2.9 (Community Planning) of the Future Land Use Element of the 1997-2010 Comprehensive Plan, a public presentation is being made by the Growth Management Department and the Grove City Planning Committee regarding the Grove City Community Plan. The Grove City Community Planning Committee is seeking acceptance of the Community Plan and formation of the Grove City Advisory Board by the County. Recommendation - Growth Management Department: Acceptance of the Community Plan - Planning and Zoning Board: Acceptance of the Community Plan

Martina Kuche outlined the request by the Grove City Planning Committee under this agenda item with a slide presentation and advised that Growth Management and P & Z recommend acceptance of the Community Plan and establishment of the Grove City Advisory Board. Ms. Kuche noted a change request to the Resolution in that the original Resolution establishing the advisory board requested that one of the members be a commercial property owner; that through community discussions and at the Planning and Zoning Board, the request was narrowed to state that if an advisory board is approved that one of the members should actually have a business in Grove City. **Commissioner Skidmore** asked if that meant the member could be someone who is a tenant of a building but not actually own the building. Ms. Kuche explained they did not draw out the language that specifically; that it would be a matter for the advisory board to decide as they appoint a member; and that the stipulation was not simply to own an undeveloped piece of commercial land in the community.

**Commissioner Skidmore** questioned the presence of three or more advisory board members constituting a quorum; and opined that it would make more sense to make that quorum four on a board of seven. Ms. Kuche advised that the request is to have a five-member board with a quorum being three; and that she would verify that everything is consistent and correct. **Commissioner Skidmore** inquired if the second document is a working document that can be changed with community support. Ms. Kuche advised that both documents are working documents in the framework and guidelines; that the only thing that is less of a working aspect are the goals; that the intent is that the advisory committee would move forward in fulfilling those goals; that how they go about doing that would be a group thing; but the document can be modified as times change.

Audrey Shinske, Nancy Christensen, Roger Wells, and Arnold Taranto spoke in support of the agenda item. Mr. Taranto indicated a need to concentrate on creating more open space rather than the buildings being so close to the right-of-way; and commented on a change in too many referenced to the "Board" without clarifying which "Board" was being referenced. Ms. Kuche advised the Resolution was re-worded for better clarification.

**COMMISSIONER SKIDMORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER STARR.**

Motion Carried 5:0.

COMMISSIONER SKIDMORE MOVED TO APPROVE RESOLUTION 2009-145, INCLUDING THE GROVE CITY COMMUNITY PLAN, SECONDED BY COMMISSIONER LOFTUS.

Commissioner Loftus thanked the committee, staff, and Ms. Kuche for the diligent work, and a special thanks to Audrey Shinske for her perseverance.

Motion Carried 5:0.

(Consensus to move forward with establishment of the advisory board)

5. Z-08-01-12 - Quasi-Judicial - Commission District IV - 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 Commercial General (CG), for property located at 525 Bowman Terrance, in the Port Charlotte area, containing 12.42± acres; Commission District IV; Petition No. Z-08-01-12; Applicant: SW Florida Commercial Group, LLC. Recommendation - Growth Management Department: Approval - Planning and Zoning Board: Approval

Chairman Duffy polled the Board for ex-parte disclosures and there were none) (Deputy Clerk Manley administered the oath.

Roxann Read gave a slide presentation based upon the packet material and the findings and analysis reflected in the staff report dated December 19, 2008; and advised that the Growth Management Department and P & Z recommend approval of this petition.

Attorney Waksler spoke on behalf of the applicant in support of the petition; and requested approval of the re-zoning.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2009-007, SECONDED BY COMMISSIONER STARR.

Commissioner Skidmore asked if there had been a review of the proposed use of potable water, trips per day, and the significant increase to the existing area. Attorney Waksler advised a traffic study was submitted at the time the land use change was done to insure level of service would remain within the adopted levels; that the land use and rezoning were submitted at the same time with the same supporting documentation but cannot run contiguously because the land use must be approved by DCA and found to be in complete compliance before the rezoning can come forward; that at the same time transportation was looked at an analysis was done for potable water; and that it was determined there was sufficient capacity to service the site.

**Motion Carried 4:1. Commissioner Skidmore opposing.**

3. Z-07-11-84 - Quasi-Judicial - Commission District III - An Ordinance pursuant to Section 125.66 and 166.41, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Multi-family 5 (RMF-5) to Commercial General (CG), for property located at 8399, 8389, and 8379 Cypress Road, in the Englewood area, containing 15.76± acres; Commission District III; Petition No. Z-07-11-84; Applicant: Jerry and Kristina Paul. Recommendation - Growth Management Department: Approval - Planning and Zoning Board: Approval

Ms. Kuche advised that petition Z-07-11-84 requests an ordinance to approve an amendment to the Comprehensive Plan from Residential Multi-family-5 (RMF-5) to Commercial General (CG) for a 15.75 +/- acre currently undeveloped site located within the Grove City community planning area. Ms. Kuche stated this is a companion rezoning to a large scale plan amendment approved by the Board of County Commissioners (BOCC) on September 9, 2008, which amended the site's FLUM designation from Low Density Residential to Commercial Center; that approval of the requested rezoning would bring the site's designations into consistency, enabling the development of commercial and office uses to serve the surrounding residential communities; and advised that the Growth Management Department and P & Z recommend approval of this petition.

*Commissioner Cummings* inquired if oath needed to administered or if it had occurred en mass. *Ms. Kuche* advised she had not been sworn in. (*Deputy Clerk Manley* administered the oath to all in attendance who would speak on any item on today's agenda. *Chairman Duffy* polled the Board for ex parte on this agenda item. *Commissioner Skidmore* indicated he would furnish ex parte to the Clerk. *Ms. Kuche* acknowledged that everything stated prior to being sworn in was the truth.)

*Commissioner Skidmore* asked about community comments. *Ms. Kuche* advised when the original land use came before the Commissioners she received a number of phone calls requesting more information on the type of commercial development that would be put into place; that both then and now the end use had not been decided so many of the questions were answered by expressing the differences between the Low Density and the Commercial Center and what the different allowances were. *Ms. Kuche* advised that most of the individuals wanted to know how a commercial property would have to be buffered from their Low Density and mobile home; and that is written in the County Code as the Landscape Buffered D.

*Attorney Berntsson* spoke on behalf of the applicant in support of the petition; and requested approval of the re-zoning.

*Commissioner Skidmore* advised that he received emails from local residents who are not in favor of this. *Ms. Kuche* explained that with regard to the Commercial General zoning designation, should the Board approve the decision today, there would not be another opportunity, unless there was some sort of conflict or such, to direct that type of development on the property; that the concern of the residents was if that zoning designation allowed that extra level of working with the property owner to determine where on the property each use would be; and indicated that at present there is one designation which allows that, which is planned development.

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

**Motion Carried 5:0.**

**COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2009-008, SECONDED BY COMMISSIONER STARR.**

Motion Carried 4:1. Commissioner Skidmore opposing.

RECESS: 1:00 - 1:30 PM

4. Z-05-05-29 - 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) and Residential Single-Family 3.5 (RSF-3.5) to Commercial General (CG), for property located at 2351 and 3011 Duncan Road, in the Punta Gorda area, containing 17.11± acres; Commission District I; Petition No. Z-05-05-29; Applicant: American Services of SW FL Inc. Recommendation - Growth Management Department: Approval - Planning and Zoning Board: Approval

Roxann Read advised petition Z-05-05-09 is a companion petition to a large scale plan amendment adopted by the BOCC in April 2006; gave a slide presentation based upon the packet material and the findings and analysis reflected in the staff report dated December 19, 2008; offered details about an agreement between the Department of Community Affairs (DCA) and Charlotte County in July 2008 resolving outstanding issues about compliance; and advised that the Growth Management Department and P & Z recommend approval of this petition.

Commissioner Cummings advised he has no ex parte; that the site is just down the street from property his brother owns, but does not believe that it is sufficient to constitute a conflict. Chairman Duffy polled the Board for ex parte and there were none. Those persons to speak had been previously administered the oath prior to the recess.

Attorney Geri Waksler spoke on behalf of applicant and requested approval of the re-zoning.

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

Motion Carried 5:0.

COMMISSIONER SKIDMORE MOVED TO APPROVE ORDINANCE 2009-009, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

6. PA-08-11-41 - Legislative - Commission District II - An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, for an amendment to the Future Land Use Map of the Charlotte County Comprehensive Plan from High Density Residential to Commercial Corridor, for property located at 1010 Lavilla Road, in the Punta Gorda area, containing 0.85± acres; Commission District II; Petition No. PA-08-11-41; applicant: Mario Lopez. Recommendation - Growth Management Department: Denial - Planning and Zoning Board: No Recommendation - Split vote
  
7. Z-08-11-42 - Quasi-Judicial - Commission District II - An Ordinance pursuant to Section 125.66 and 166.41, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Multi-family 10 (RMF-10) to Office, Medical, and Institutional (OMI), for property located at 1010 Lavilla Road, in the Punta Gorda area, containing 0.85± acres; Commission District II; Petition No. Z-08-11-42; applicant: Mario Lopez. Recommendation - Growth Management Department: Denial - Planning and Zoning Board: No Recommendation - Split vote

(Chairman Duffy polled the Board for ex-parte disclosures for agenda item 7. Commissioner Skidmore advised he has ex parte and will provide it to the Clerk. No other Commissioner had ex parte.)

Jei Shao advised that on companion petitions PA-08-11-41 and Z-08-11-42 Mario Lopez is requesting a small scale plan amendment from High Density Residential (HDR) to Commercial Corridor (CC) and a companion rezoning (Petition Number Z-08-11-42) from Residential Multi-family-10 (RMF-10) to Office, Medical, and Institutional (OMI); that the subject site is located at 1010 Lavilla Road in the Punta Gorda area and contains 0.85 +/- acres; and that the purpose of the petition is to allow for commercial uses on the subject site. Ms. Shao gave a slide presentation based upon the packet material and the findings and analysis reflected in the staff report dated December 19, 2008; advised that the Growth Management Department does not support the requested change in FLUM and zoning designations for reasons stated on the goldenrods; that the site is located inside the boundary of the U.S. 17 Corridor Planning Study, which the County is currently conducting; that staff and consultants have

had at least thirty meetings with property and business owners inside the study area; that study participants made no mention for the need of more commercial uses in this area; that the application and staff report were sent to the City of Punta Gorda for review and comments; that the City of Punta Gorda Urban Design Division has no objections to staff's recommendation of denial; that the Planning and Zoning Board made no recommendation because of a split vote; and that the Growth Management Department recommends denial of the plan amendment to CC and the re-zoning to OMI.

Jim Herston spoke on behalf of applicant; commented on staff's recommendations for denial; stated if a multi-family product was constructed on the site the front would be toward Lavilla Road and the back of the units would face the existing commercial complex, which is immediately behind that facility. Mr. Herston explained there are several residential complexes right on the Harbor that cannot be sold and it is difficult to imagine anyone developing residential units at this location. Mr. Herston stated that Dr. Lopez is the applicant; that Dr. Lopez and Dr. Connolly of the Charlotte Heart Institute have a long-term lease on the existing building to the front; that there is an exception to the regulations if both pieces of property are owned by the applicant, but in this case it is the same person but it is a long-term lease, not ownership. Mr. Herston opined that the area north of LaVilla Road and south of Olympia Avenue is settling toward a commercial node; that **Commissioner Cummings** pointed out there is not enough adequately zoned commercial property; that in Mr. Herston's opinion this property is adequate as the property to the east and some portions to the west are commercial; opined with utilities and infrastructure in place this is a logical commercial use; and requested that the Commissioners vote favorably.

**Commissioner Skidmore** inquired if the end user would be Dr. Lopez; and if it was Dr. Lopez' goal to create a medical/dental professional-type facility. Mr. Herston replied affirmatively; indicated Dr. Lopez does not have a designed building yet because this step had to be done first; and that it would be medical use that would possibly incorporate into the parking lot of the existing facility to tie it together as a singular unit but separate ownerships. **Commissioner Skidmore** inquired if Dr. Lopez would be willing to draw the plans for the entrance to face

the existing commercial opposed to facing residential. Mr. Herston indicated caution must be given so the back of the building that would face residential does not look like the back of a building; and stated he did not think there was a lot of room by the time a building is put on the site to get any type of an access and have the ability to turn as you come in off Lavilla, so he does not think Dr. Lopez would have a problem doing as **Commissioner Skidmore** mentioned.

**Chairman Duffy** requested clarification on the long-term lease versus ownership. Mr. Herston commented on the exceptions noted by staff and indicated this would be allowed if both parcels were owned by the same person; explained that Dr. Lopez owns the site in these petitions; that Drs. Lopez and Connolly have a 10-15 year long-term lease of the building up front; but that they do not own that property.

**Commissioner Loftus** expressed concern that while the intent may be to construct a medical building on the site the County would have no jurisdiction if the Commission rezones the property and the owner dies or the property is sold; and commented on buffering requirement concerns. Mr. Herston explained that the use would be under the OMI standards, not Commercial General standards, related to engineering or real estate firms, medical or dental, providing parking requirements could be met. Ms. Shao stated the property across the street acts as a buffer; that it is good planning to reduce from Commercial to OMI; and that all appear to be gravitating toward commercial use in that area. Discussion ensued about the classifications of the surrounding properties and rezonings that have occurred.

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

**Motion Carried 5:0.**

**Commissioner Cummings** stated his family owns property near this location but does not believe it constitutes a financial conflict of interest; indicated he is familiar with the area; that the intent of the land owner is irrelevant and it must be treated as what is allowable under the law; that there is nothing Mr. Herston can legally offer to assure the property would tie into the one above it; that the property must be treated on its own merits; and that staff recommendation is accurate.

COMMISSIONER CUMMINGS MOVED TO DENY AN ORDINANCE PURSUANT TO SECTION 163.3187 (1) (C), FLORIDA STATUTES, ADOPTING A SMALL SCALE FUTURE LAND USE MAP AMENDMENT TO THE CHARLOTTE COUNTY COMPREHENSIVE PLAN FROM HIGH DENSITY RESIDENTIAL TO COMMERCIAL CORRIDOR, FOR PROPERTY LOCATED AT 1010 LAVILLA ROAD, IN THE PUNTA GORDA AREA, CHARLOTTE COUNTY, FLORIDA, COMMISSION DISTRICT II, CONTAINING 0.85 +/- ACRES, PETITION PA-08-11-41, APPLICANT: MARIO LOPEZ, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 4:1. Commissioner Skidmore opposing.

COMMISSIONER CUMMINGS MOVED TO DENY AN ORDINANCE PURSUANT TO SECTION 125.66 AND 166.41, FLORIDA STATUTES, APPROVING AN AMENDMENT TO THE CHARLOTTE COUNTY ZONING ATLAS FROM RESIDENTIAL MULTI-FAMILY 10 (RMF-10) TO OFFICE, MEDICAL, AND INSTITUTIONAL (OMI), FOR PROPERTY LOCATED AT 1010 LAVILLA ROAD, IN THE PUNTA GORDA AREA, COMMISSION DISTRICT II, CHARLOTTE COUNTY, FLORIDA, CONTAINING 0.85 ACRES +/-, PETITION Z-08-11-42, APPLICANT: MARIO LOPEZ, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

9. Amend Sec. 3-9.5.1 - Legislative - Countywide - An ordinance amending Chapter 3-9 of the Code of Laws and Ordinances of Charlotte County, Florida, by amending Section 3-9.5.1 Site Plan Approval; by renaming the section, redrafting and reorganizing the applicability, initiation, application requirements, preliminary and final site plan review; providing for conflict with other ordinances; providing severability; and providing an effective date; Commission Districts I, II, III, IV and V; applicant Charlotte County Board of Commissioners. Recommendation - Growth Management Department: Approval - Planning and Zoning Board: Approval

Nicole Dozier gave a slide presentation based upon the packet material and the findings and analysis reflected in the staff report dated December 24, 2008; commented on significant changes in the development of the DRC process; reviewed recommendations; indicated that the changes overall have turned a quasi-judicial review board into a technical review staff process, streamlining the process; and advised that the Growth Management Department and P & Z recommend approval of this petition.

**Commissioner Cummings** commented on current requirements and what would now be required with the change; and opined it was the DRC coming through on the consent agenda that created a Sunshine issue for the County. Ms. Dozier explained that only planned developments (PD's) come before the BOCC, not the standard DRC applications. Attorney Browne explained that final detail plans on PD's goes on the consent agenda. **Commissioner Cummings** requested clarification of why the County was sued and lost and why it had to be opened up to Sunshine and a formal committee created; and indicated he needs to understand what is being changed and that the issue is being addressed with the change. Attorney Browne advised the issue is being addressed; that we were in the Sunshine and quasi-judicial only because of the court ruling; and indicated sometimes courts do not get it right because we were the only DRC in Florida that was in the Sunshine. **Commissioner Cummings** asked what was being changed that now affects the court decision. Attorney Browne stated that the current process involves four voting members of the DRC getting together to vote; and that final approval now is in the hands of the zoning official only, which takes it out of the Sunshine. **Commissioner Cummings** stated that the difference is it would then no longer be a group decision, but an individual one, after all the departmental reviews.

**Commissioner Loftus** requested confirmation that the application would still be subject to a complete and thorough review of each department; that each department head would be the deciding factor responsible for approving that department; and that this is a means of expediting the permitting process. Ms. Dozier replied affirmatively. **Commissioner Cummings** said he understands every department would look at it; and the difference now is that rather than a vote of the committee that the court decided was a Sunshine issue it will be put in the hands of one individual after a thorough review of all departments.

Attorney Geri Waksler advised that the DRC committee is open to everyone; that revisions today have come out of the DRC committee; that this will streamline the process and allows more flexibility; and that the DRC committee supports the revisions.

Attorney Berntsson opined the changes are positive for the development community; and commented on difficulties experienced in the past and limitations by the DRC.

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

Motion Carried 5:0.

**COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2009-010, SECONDED BY COMMISSIONER SKIDMORE.**

Motion Carried 5:0.

10. PV-08-11-17 - Legislative - Commission District II - Cesna, LLC has applied for a Plat Vacation for a portion of Solona Subdivision, namely Parcel P2 of Block A, and Lots 1, 2 and 7 of Block 6 along with the 66' wide right of way between Lot 7 of Block 6 and Parcel P2 of Block A known as Acacia Street, as recorded in Plat Book 1, Page 5 of the Public Records of Charlotte County, Florida. The site is located in Section 33, Township 40, Range 23 and consists of 3.16 acres, more or less, in Commission District II. Recommendation - Building Construction Services Department: Denial Planning and Zoning Board: Approval with two conditions

Barbara Jeffries gave a slide presentation and presented the findings and analysis in accordance with the packet material and staff analysis of December 22, 2008; advised that Building Construction Services Department requests denial; and that P & Z recommends approval with two conditions. Ms. Jeffries explained that in the event the Board recommends approval, the approval should be with the following two (2) conditions: (1) Prior to recording, applicant to install a hammerhead of cul de sac where the County portion of Acacia Avenue will end to allow for emergency vehicle turn-around; and (2) Provide a statement from Public Works Construction Services Division that their concern of the cost of the newly paved area of Acacia Avenue has been satisfied (either by payment for the roadway or other negotiation).

Jim Herston spoke on behalf of applicant in support of approval of the petition; advised this is the third attempt in front of the Board on this matter; commented on prior attempts and the

outcomes; indicated the applicant owns adjoining property and advised that when the market improves the applicant intends to file for a PD; and that vacation of this parcel makes one large parcel owned by applicant.

**Commissioner Skidmore** inquired if the recently paved road was paid for by the County or the applicant. Ms. Jeffries advised the County paid for it; reviewed the aerial of the paved roadway with an existing residence; and indicated that this would remain in place until the developer comes back in for his final project. **Commissioner Skidmore** confirmed the owner of the residence was the applicant. Mr. Herston replied affirmatively. **Commissioner Skidmore** asked if the issue of the applicant compensating the County for the road paving had been resolved. Ms. Jeffries replied the issue is still outstanding. Mr. Herston stated his understanding is that the roads are below standard and that as part of the DRC project there would have to be some improvements made; and opined that the applicant would not have a problem compensating the County for the 10' or 15' wide area of paving.

**Commissioner Skidmore** commented on the conditions recommended by staff. Mr. Herston opined that providing a hammerhead to the west of the property line in the right-of-way, creating something that is unsightly for that residence, is premature when a proper turn around and/or gate to get into the overall residential project could be provided; and that the condition should stay in place until applicant gets his DRC approval, incorporate the hammerhead into the project design, and put the burden on the developer as he develops the project. Ms. Jeffries pointed out it was not only the roadway concerns that caused previous Commissioners to deny the application as reflected by the third paragraph of the goldenrod. Mr. Herston explained that he had been unable to attend the meeting with the BOCC on February 19, 2008 and unable to respond to those concerns. **Commissioner Skidmore** asked about concerns of the citizens. Ms. Jeffries advised those citizens are in attendance.

Teresa Hayse stated she lives in the home directly adjacent to where applicant wants to vacate the road; indicated her family moved to Solona Subdivision because of the large lots and space; and expressed concern that the applicant would rezone his lots, put in a large development next to her property, put a hammerhead

in her front yard, or a wall adjacent to her property. Ms. Hayes said they purchased their property knowing homes could be built around them, but not a large development; opined there are other points of access and this vacation is not needed; and is opposed to approval of this petition.

Stan Wilson advised he owns property across from the Hayes' property; that he purchased his property on a long-term basis with intent of building a home, but did not anticipate having a large development surrounding it; expressed concern to the neighborhood children with the added traffic; and opined this is a back-door attempt to get Acacia Avenue as the access point.

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

**Motion Carried 5:0.**

Chairman Duffy asked if there had been feedback from residents on Shore Drive or Poinciana Avenue about access from those locations. Ms. Jeffries said no; indicated the concerns are on Acacia Avenue; commented on portions of Acacia that could be vacated in order to protect Mr. and Mrs. Hayes, which would be split between Mr. and Mrs. Hayes and their grandfather, and access would default to either Shore Drive or Poinciana Avenue; that staff could bring that petition forward at the next BOCC meeting; but indicated she had not investigated impacts to Shore Drive or Poinciana Avenue.

Chairman Duffy inquired if the applicant could have access on Shore Drive or Poinciana Avenue. Mr. Herston explained the small amount of site planning done had access coming in off Shore Drive and Acacia; but that between those two roads a bit to the east is a large wetlands area, the boundaries which have not yet been determined. Mr. Herston questioned the ability of the County to vacate Acacia Avenue and eliminate access to Parcels P2 and Y7. Attorney Browne pointed out if the Board followed staff's alternative proposal Public Works may look for reimbursement from the Hayes'.

Chairman Duffy stated that the issue at hand is whether or not to vacate the street for this piece of property. Mr. Herston explained this developer is the same developer of River Palms off Burnt Store Road; that a similar vacation was done at that time;

and the developer was responsible for donating about 40' of land for the length of his project for the Burnt Store widening project, which shows that the applicant is an active player in trying to do things right.

**Chairman Duffy** inquired if applicant had come up with alternatives of what could be done here. Mr. Herston explained the applicant thought this was a simple request because it had just been done on the River Palms project; indicated that Acacia Avenue goes right up to the parcel line; and that it was intended to access that parcel right next to I-75. **Chairman Duffy** clarified that if the petition is denied the applicant would still have access to the property from Shore Drive. Mr. Herston replied affirmatively, but reminded the Board of the large wetlands area between Acacia and Shore.

**COMMISSIONER CUMMINGS MOVED TO DENY, SECONDED BY CHAIRMAN DUFFY.**

**Chairman Duffy** opined there are other options which the applicant should use; that there is clear access from Shore Drive; and that there have been no concerns raised by those residents at this point. **Commissioner Cummings** pointed out this includes a road vacation; that to vacate a road there should be something deemed in the public interest to give up that public asset; and that public interest has not been established. **Commissioner Loftus** agreed there should be something gained by the public; but indicated if the applicant is willing to pay for the portion that has been paved and accesses property from Shore Drive that eliminates the problem with the Hayes'; and that his recommendation is to move forward with accessing the property from Shore Drive, make certain there is a hammerhead or cul-de-sac there, and that Public Works is satisfied with payment for that portion being vacated. **Chairman Duffy** inquired if **Commissioner Loftus** meant vacate Acacia Avenue or Shore Drive. **Commissioner Loftus** said it is Acacia Avenue being vacated and applicant would have to pay for that portion that was paved, and then access the property from Shore Drive.

**Commissioner Skidmore** clarified it was **Commissioner Loftus'** recommendation to vacate Acacia but not allow access and mandate access on Shore Drive. **Commissioner Loftus** replied affirmatively. **Commissioner Skidmore** agreed with **Commissioner Cummings** that there is no public benefit; and opined the

applicant should go back and try to work with the surrounding communities. Mr. Herston pointed out that the County Codes may not allow just one access point to such a project. Ms. Jeffries pointed out there is also access from Poinciana.

**Commissioner Cummings** pointed out that is not the point we are in the process; and that if there is development to be done there is a process for doing that development.

**Motion Carried 5:0.**

**II. CITIZEN INPUT - REGULAR AGENDA ITEMS ONLY**

Attorney Berntsson advised that Attorney Browne would be bringing up an issue during Attorney Comments and requested he be allowed to speak at that time. (**Consensus by the Board**).

**III. REGULAR AGENDA**

**IV. CITIZEN INPUT - ANY SUBJECT**

**AA. County Administrator:**

Mr. Baltz commented on the BOCC's concerns of landscaping costs for the jail project; and advised that item would be worked on with Growth Management, unless advised otherwise, to look at the ECAP Ordinance and possible amendments that can be made to exempt public safety - related buildings from the landscaping requirements related to that ordinance. **Chairman Duffy** clarified it would be just public safety buildings, not all public buildings. Mr. Baltz stated the thoughts were for public safety - related buildings only because you don't want areas where contraband could be hidden or where prisoners could hide, not all public buildings.

Mr. Baltz advised that at one time the County Commission considered purchasing a piece of property on Lemon Bay called Rocky Creek Marina, which is a marina and boat ramp located on Ainger Creek; that he has been approached by the owners to reiterate the property is for sale or the ownership might be open to conversations about a lease-to-purchase type arrangement; and indicated that either way there would be a cost involvement. **Commissioner Loftus** expressed monetary

concerns and concerns of the previously existing environmental issues being addressed. Mr. Baltz stated he understands the environmental issues were resolved but would be certain that was checked out foremost if the Board has interest. **Commissioner Skidmore** stated he also understands the environmental issues were taken care of; indicated he would be interested in the lease-to-purchase option and if the proposed income could balance out the proposed costs; and would be in favor of exploring that option. **Chairman Duffy** asked what is involved in the exploration fees. Mr. Baltz said cost involvement would be in him sitting down and talking with the current owners; indicated there is a real estate transaction pending on the property; and stated he is asking if the Board wants to give him direction to have an exploratory conversation with the new owners about what kind of deal, if any, they would like to strike with the County, with emphasis on it being a zero net sum type of transaction. Mr. Baltz explained that the options are purchase, which comes with a cost, or a lease - type arrangement where you try to re-create the marina activities and glean some revenues from that and use them toward the cost in the future; but either way there will be outlays of money involved; that he has been approached; and that he needs only to know if the Board believes it to be time well spent as an exploratory conversation. **Commissioner Skidmore** indicated there could possibly be some State funds available next year, but we missed the application period for State funds this year; and opined the cost for Mr. Baltz to enter into negotiations would be insignificant.

**Commissioner Starr** stated that with the budget crunch any money spent is too much money when speaking of buying something; that he would rather see that money go elsewhere unless there was ESLOC funds available; and that he would not consider spending any money at all for this item. **Commissioner Cummings** said he does not recall enough about it to have an opinion at this time; commented on the need for water access; indicated he would be interested in hearing more about it; but that he is not in favor of spending money to do so. **Chairman Duffy** said she would rather get more information from Mr. Baltz. Mr. Baltz advised he would have an exploratory conversation and brief the BOCC.

**BB. County Attorney:**

Attorney Browne explained that at the Land Use Meeting in August 2007 a Unified Petition was brought to the Board to change Residential to Commercial on the plan and zoning from Residential to Commercial General (PA-07-05-35 and Z-07-05-36/Crown Gateway, LLC); that neither staff or the Board disagreed with the concept, but were not happy with the proposed zoning; and that in negotiations that took place right here in the middle of the meeting it was agreed that the Board would pass the plan amendment subject to the condition that the applicant apply for a planned development within 120 days from the effective date, which never happened. Attorney Browne stated the legal status is that this plan amendment never went into effect because the condition was not complied with; that he met with Attorney Berntsson last week and agreed to give him the opportunity to speak about some ideas he had.

Attorney Berntsson advised that the property is in the Cape Haze area where we want to reduce density whenever possible; pointed out locations of surrounding businesses on an aerial slide; stated this parcel does not call out for being residential; that when this went through the change of the land use the property was under contract; but with the drop in economy the contract died. Attorney Berntsson opined it is more appropriate to leave the commercial designation; indicated possible things the Board could do were (1) recognize there is an inconsistency in the Comprehensive Plan (Comp Plan) but leave it knowing that no one can develop the property until they come in to rezone it (2) rezone the property to a lesser use like Office, Medical, Institutional (OMI) or something that is inconsistent with commercial but greatly limits the amount of use that ultimately would be there, or (3) the County put a PD on it that basically says it is approved for a 100 sq ft building and 50 ft buffers all the way around it that makes it unusable until such time as the PD is modified. Attorney Berntsson indicated that the contract fell through and it now just sits there; and that it would be inappropriate for this to revert back to a residential designation without the Board being aware of it and having opportunity to give direction.

**Commissioner Skidmore** agreed the property should be commercial, not residential. **Jeff Ruggieri** stated that the action of the

Board as described by Attorney Browne is clear; that the Board can take any one of the options proposed; and that he likes the third option. Mr. Ruggieri explained that everyone agreed when it went through the future land use amendment that is a commercial use parcel; that at that time consideration was given to the proximity of the residential development and what protections could be afforded it, given our existing codes, which were not enough at that time for those residents, so we worked it out at the podium to come back with a PD that would give some enhanced buffering, some wall, berm, or something that we would be able to work with the community to the east and get their buy-in on the project; that the project fell through and now there is an inconsistency in the land use. **Commissioner Loftus** agreed the property should be commercial; recalled that he was the one who initially indicated it should come back as a PD; and stated he would still make the recommendation that it come back as a PD. **Chairman Duffy** inquired if Mr. Ruggieri's recommendation was the PD option. Mr. Ruggieri replied affirmatively, if it can be done.

Attorney Berntsson pointed out that the problem from his client's standpoint is that PD is very site specific and we have no idea of what will go on the property; that if the PD says it is a tiny building with buffer all around it, which is not usable, and when someone is ready to do it you just don't have to go through the Comp Plan again, and you can come in with a major modification. Mr. Ruggieri stated it puts it in the same scenario of just leaving it, which he is okay with, but the issue is years down the road there is an inconsistency and someone can purchase the property under the existing zoning and say I have my right to this zoning, that it does not match the future land use, and try to change the future land use back up to residential; that no one knows if it would pass, but it is a risk you have with that scenario, even though that scenario makes the most sense at this point in time. **Commissioner Cummings** clarified this was a FLUM change that the Board said would come back as a PD and the PD was never submitted; that as it stands right now the FLUM would revert to residential; and that it would have residential zoning and be developable as residential. Mr. Ruggieri replied affirmatively. **Commissioner Cummings** stated he understands the desire to make it commercial, but hesitates to stretch the legal process beyond the bounds of what is prudent. Mr. Ruggieri stated his recommendation is to just follow the existing

ordinance and let it revert, which is consistent with the Board's action; and that they can always start over again. Attorney Browne commented on there being a marketable title problem. **Chairman Duffy** said she does not want it to go back to residential from commercial at all; and inquired how that could be done morally, ethically, and legally. Attorney Berntsson stated that he and staff would get together and come back in a month with recommendations to the Board.

CC. Commissioner Comments: None

ADJOURNED: 3:15 PM

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

gm