

REGULAR MEETING

BOARD OF COUNTY COMMISSIONERS

MAY 11, 2004

A regular meeting of the Board of County Commissioners was held at the Murdock Administration Complex in Port Charlotte, Florida. The following members were present: Chairman Matthew D. DeBoer and Commissioners Thomas C. D'Aprile, Adam Cummings, Sara Devos and Mac V. Horton. Also in attendance were County Administrator Bruce D. Loucks, County Attorney René Francis Lee, Clerk's Finance Director William A. Knoble, Executive Assistant to the Board of County Commissioners Stacey Miller and Deputy Clerk Diane J. Nice. The meeting was called to order at **9:05 A.M.**

The **invocation** was given by Pastor Ted Hanleck, Peace Lutheran Church, Port Charlotte, Florida, followed by the Pledge of Allegiance to the Flag.

CHANGES TO THE AGENDA

Additions:

**SPECIAL
RECOGNITION**

Proclamation - Hurricane Awareness Week - May 16
- 22, 2004

**REGULAR
AGENDA**

Agenda Item M-7, Community Development - Approve the DRC PD-80-4AAA Partial Final Detail Plan Resolution permitting KB Home Fort Myers, LLC to develop the KB Home Deep Creek Model Center

Deletions:

**ENVIRONMENTAL
SERVICES**

Agenda Item E-1, Set a Public Hearing for May 25, 2004, at 10:00 A.M. or as soon thereafter as may be heard, to consider approval of an Ordinance amending the regulations regarding access and

screening enclosures for dumpsters, compactors and recycling dumpsters.

REGULAR
AGENDA

Agenda Item M-3, Administration - Presentation by James Burkhart, Environmental Administrator with the Charlotte County Health Department, regarding the County's requirements relative to Onsite Sewage Treatment and Disposal Systems.

COMMISSIONER D'APRILE MOVED FOR APPROVAL OF THE ADDITIONS AND DELETIONS TO THE AGENDA, SECONDED BY COMMISSIONER DEVOS. Commissioner Horton asked for an explanation of why they received the addition of Agenda Item M-7 at 8:30 A.M. this morning, said he didn't have time to review it and he wanted to know if this was of an emergency nature. Bruce D. Loucks, County Administrator, explained there had been some miscommunication between Administration and the County Attorney's Office last week regarding the Development Review Committee (DRC) process, it had originally been on the agenda but then got pulled off, the petitioner would like to have it on the Board's agenda today and staff said they'd make every effort to do so. Commissioner Horton said he was going to vote against the changes. CALL ON THE MOTION: CHAIRMAN DeBOER AND COMMISSIONERS CUMMINGS, D'APRILE AND DEVOS VOTED "YES" AND COMMISSIONER HORTON VOTED "NO." MOTION CARRIED: (4:1). Chairman DeBoer agreed this was something they needed to discuss tomorrow in his chambers.

I. SPECIAL RECOGNITION

Proclamation:

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY 11, 2004 AS "CHARLOTTE COUNTY PUBLIC SCHOOLS' TEACHER OF THE YEAR ... "COACH" FRANK LOCK DAY" ON MOTION BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. Frank Lock accepted the proclamation.

Employee Recognition:

Mr. Loucks and Commissioner D'Aprile recognized the following employees for their service with the County: **Five Years -**

William H. MacDonald and Janet F. McCloud, Parks, Recreation and Cultural Resources; and Felix Hernandez, Firemedic; **Ten Years** - Danny J. White, Human Services; **Fifteen Years** - Mary Jane Ackerman, Commission Office; Barbara A. Kula, Environmental and Extension Services; John D. Elias, Public Works; and Judy Hunter, Public Works; and **Twenty-Five Years** - Diane P. Scudder, Paramedic.

Special Employee Recognition:

Human Resources Director Maggie Kain and Mr. Loucks recognized the following employees for Manager / Supervisor Certificate Awards:

Level I

JoAnn Crombie	Human Services
Kevin Edwards	Geographic Information Systems
James Huish	Utilities
Kathleen Johnson	Utilities
Robert Lyle	Public Works
Michael Martindell	Utilities
Bill Montgomery	Parks, Recreation and Cultural Resources
Sherry Montgomery	Communications and Marketing
Jorge Perez-Gutierrez	Community Development
Tom Orlosky	Utilities
James Pontibrand	Environmental and Extension Services
Charles Rine	Utilities
Larry Schmidt	Utilities
Janet Wagner	Utilities
Betty Williams	Economic Development

Levels I and II

Joann Dillon	Commission Office
Stacey Miller	Commission Office
Jenine Thornley	Commission Office

Level II

Dennis Decker	Utilities
Cathy Kiesel	Employee Relations

Proclamations:

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY 15, 2004 THROUGH MAY 18, 2004 AS "NATIONAL POLICE WEEK" AND MAY 18, 2004 AS "FLORIDA STATE LAW ENFORCEMENT OFFICERS' MEMORIAL DAY" ON MOTION BY COMMISSIONER HORTON, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. Chairman DeBoer accepted the proclamation and said he would deliver it.

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY 9, 2004 THROUGH MAY 15, 2004 AS "CHARLOTTE COUNTY TOURISM WEEK" ON MOTION BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. Becky Bovell, Tourist Development Bureau Director, accepted the proclamation.

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY, 2004 AS "BICYCLE MONTH" ON MOTION BY COMMISSIONER HORTON, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. Steven Carter, MPO Bicycle/Pedestrian Advisory Committee Chairman, accepted the proclamation.

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY, 2004 AS "DOROTHY W. MATTOON, ARTS AND HUMANITIES COUNCIL ARTIST OF THE MONTH" ON MOTION BY COMMISSIONER HORTON, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. Dorothy Mattoon accepted the proclamation.

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY 19, 2004 THROUGH MAY 25, 2004 AS "DOG BITE PREVENTION WEEK" ON MOTION BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. Brian Jones accepted the proclamation.

(Deputy Clerk Karen S. Mitchell replaced Deputy Clerk Diane J. Nice for this portion of the meeting.)

THE BOARD AGREED TO THE ISSUANCE OF A PROCLAMATION STIPULATING MAY 16, 2004 THROUGH MAY 22, 2004 AS "HURRICANE AWARENESS WEEK" ON MOTION BY COMMISSIONER CUMMINGS, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. Wayne Sallade, Emergency Management Director, accepted the proclamation.

**Hospitality Sales and Marketing Association International
(HSMIA) Award**

Charlotte County Visitor's Bureau earned the top promotion award from the HSMIA Golden Bell Public Relations Travel Awards Competition presented January 26, 2004 in New York City. The Bureau won a Bronze Merit Award in the Golden Bell Public Relations category for promotional efforts concerning last year's ESPN Redfish Cup Tournament and Festival. **Commissioner D'Aprile** presented the award to Tourist Development Bureau Director Ms. Bovell.

II. CITIZEN INPUT - AGENDA ITEMS ONLY

Bill Dryburgh, Recreation & Parks Advisory Board Chairman, spoke in support of **Agenda Item J-1, Approval of facility dedications** and commented on the procedures for naming parks and park amenities.

Lynn Banish addressed **Agenda Item F-3, Approve Change Order #1 to Contract #03-505, Construction and Landscape Installation-Mid County Library**, said her concern was the landscape plan called for a lighted sidewalk running the length of the canal along a brick wall which was directly across from her backyard and asked the Board to delete the lighting or put the lighting on the commercial side.

III. COMMITTEE VACANCIES

Charlotte County is seeking volunteers to serve on the following committees:

Affordable Housing Advisory Committee

- one (1) member-at-large for a two-year term (applicant is on the agenda)

Buena Vista, Grassy Point, ELF Waterway Unit

- one (1) volunteer who must be a resident of Grassy Point

Tourism Development Council

- two (2) owner/operator volunteers

South Gulf Cove Advisory Committee

- one (1) volunteer who owns property in South Gulf Cove (applicant is on the agenda)

IV. REPORTS RECEIVED AND FILED

None.

V. CONSENT AGENDA

COMMISSIONER DEVOS MOVED FOR APPROVAL OF THE FOLLOWING ITEMS, SECONDED BY COMMISSIONER CUMMINGS. Chairman DeBoer referred to Agenda Item L-1, Initial Assessment Resolutions for South Gulf Cove Phase V Water and Wastewater MSBUs, recalled there was a problem where the amount people paid over time was less than the amount for those who prepaid, he thought they ended up using General Fund money to pay the difference back, said this was what they say now and read the following: "The amount of all prepayments made pursuant to this section shall be final. The County shall not be required to refund any portion of a prepayment if the capital cost of the water distribution facility is less than the amount upon which the adjusted prepayment amount was computed or the annual assessments will not be imposed for the full number of years anticipated at the time of such prepayment." Chairman DeBoer said he wanted to bring this up because they've all talked about being more friendly to the public, he didn't think the answer was in writing in here that if the County screws up or if there's some kind of change they excuse themselves and opined that was a terrible way to do business. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

CLERK OF THE CIRCUIT COURT

A. Finance Division

Agenda Item A-1, Adoption of Clerk's Finance Memoranda

Memorandum #1 Status of Contingency Reserves - FY 02/03

Memorandum #1A Status of Contingency Reserves - FY 03/04

Memorandum #2 Total Disbursements for the period April 21, 2004 through May 3, 2004 in the amount of \$11,860,221.09

B. Minutes Division

Agenda Item B-1, Approval of Minutes

9:00 A.M., April 13, 2004 Regular BCC Meeting

BOARD OF COUNTY COMMISSIONERS

C. Commission Office

Agenda Item C-1

Appoint Bob DiMuzio as Pirate Harbor Yacht Club's representative on the Marine Advisory Committee to fill the unexpired term of Roland Schindler whose term will expire December 31, 2004.

Agenda Item C-2

Reappoint Richard G. Galambos as the District #4 representative on the Planning and Zoning (P&Z) Board for a four-year term.

Agenda Item C-3

Reappoint Ann Dever as the District #3 representative on the Recreation & Parks Advisory Board for a three-year term.

D. Economic Development

Agenda Item D-1

Agreement #2004-027 with First Financial Employee Leasing, Inc., a Florida corporation, for the Economic Incentive Development Program.

Agenda Item D-2

Agreement #2004-028 with Pulsafeeder, Inc., a Florida corporation, for the Economic Incentive Development Program.

F. General Services

Agenda Item F-1

Change Order #6 to Contract #03-114, Sanitary Sewer Expansion - Area G with E.T. MacKenzie of Florida, Inc., Bradenton, FL in the amount of \$3,100.68 for a total revised contract amount of \$456,193.20.

Agenda Item F-2

Property Deletions - May, 2004.

Agenda Item F-4

Amendment #4 to Contract #03-295, South County Regional Park - Construction Management with Mathews Taylor Construction, LLC, for the Guaranteed Maximum Price (GMP) of \$4,465,797 for the gym, pedestrian plazas, and site electrical work in addition to the Phase 1, 2 and 3 GMP prices for a total GMP to date of \$9,588.157.

Agenda Item F-5

Work Assignment FV to Contract #00-08, Engineer of Record for Charlotte County Utilities with Dufresne-Henry, Inc. for the total amount of \$178,000.

G. General Services - Real Property Services

Agenda Item G-1

Resolution #2004-078 authorizing the Chairman to execute the County Deed releasing a portion of a twenty (20) foot wide canal maintenance easement located in Lot 1, Block 3251, Port Charlotte Subdivision, Section 51, to Sylvanie E. Skepple in order to obtain clear title on an existing portion of pool, deck, and cage.

H. Human Services

Agenda Item H-1

Resolution #2004-079 authorizing Transit Manager Rich Weingarten to file and execute the application and Human Services Director Victoria Carpenter to sign all agreements and contracts required in connection with the application for the annual Transportation Disadvantage Trust Fund Grant of \$281,717 to fund an estimated 37,562 one-way trips by Transit Division Bus or by local cab with State cash of \$253,545 and a County in-kind match of \$28,172; and the project represents 59% of the annual Transportation Disadvantaged revenues.

Agenda Item H-2

Addendum Agreement #2003-017 with Charlotte County Human Services Transit Division Policy and Procedures for Utilization of Bus Advertising Assets to allow for acceptance of Public Service Announcements on public health and safety for a limited term from governmental agencies or non-profit organizations at no charge.

Agenda Item H-3

Amendment #1 to Agreement #2000-063 to change the name from Southwest Florida Children's Fund, Inc. to Children's Advocacy Center; to provide for automatic renewal with no changes and any changes to be approved by the Board of County Commissioners; and the flat rate payment of \$150 to Provider is increased to \$200 retroactive from November 2003.

J. Parks, Recreation, and Cultural Resources

Dedicate facilities: the Historical Center classroom to Peggy Desguin, the Trial Head of the Cape Haze Pioneer Trail to E. David Johnson, and the El Jobean Park to Randy L. Spence.

K. Public Works

Agenda Item K-1

Resolution #2004-080 and **Agreement #2004-029** (Local Agency Program Agreement - LPN #411767-1-58-01) with the Florida Department of Transportation (FDOT) for construction of paved shoulders, guard rails, and auxiliary lanes on both sides of Burnt Store Road from Notre Dame Boulevard to one mile south of Notre Dame Boulevard on or before June 30, 2005 for an estimated total cost of \$500,000.

Agenda Item K-2

Set a Public Hearing on May 25, 2004, at 10:00 A.M., or as soon thereafter as may be heard, to consider an Ordinance creating the Farabee Road Street and Drainage Unit (MSBU).

Agenda Item K-3

Budget Amendment #04-A34 to amend the Road Improvements Section of the approved FY 2003/2004 Capital Improvements Program (CIP), modifying costs and revenue sources to add a project to signalize the intersection of Rampart Boulevard and Luther Road at an estimated cost of \$198,000 and **Budget Transfer #04-036** for \$29,000 to augment funding within various accounts to provide for engineering services.

L. Utilities

Agenda Item L-1

Resolution #2004-081 for initial assessments for the South Gulf Cove Phase V Water Distribution Facilities MSBU and **Resolution #2004-082** for initial assessments for the South Gulf Cove Phase V Wastewater Collection Facilities MSBU and **set a Public Hearing for June 8, 2004, at 10:00 A.M.,** or as soon thereafter as may be heard, to consider the Final Assessment Resolutions for the South Gulf Cove Phase V Water and Wastewater MSBUs.

ITEM FOR DISCUSSION

F. General Services

Agenda Item F-3, Approve Change Order #1 to Contract #03-505, Construction and Landscape Installation - Mid County Library, with L.A.M., Inc. for \$114,683.10 with a revised total contract amount of \$434,583.10

Commissioner Cummings reviewed the items involved in the landscape change order and asked why these items weren't caught on the first go around. **Chairman DeBoer** said he knows Mr. Sheridan wasn't around when this started, he was a little disturbed by the newspaper comments this morning, recalled when this project began Public Works started removing the exotic vegetation on the embankment, he received complaints from the public about that, the then manager told him it was all going to be taken care of as it was in the project but it would be done later on, he suggested to the manager that the vegetation be removed when it was replaced with buffering instead of doing it first, and said he just wanted to get that information out before somebody made some comments that weren't necessarily factual. **Commissioner Cummings** said it sounds like they anticipated these things and figured they'd do it by change order on purpose. **Chairman DeBoer** responded apparently so. **Commissioner Cummings** opined then they should have said that to the Board on the front end. **Chairman DeBoer** agreed and said he was upset with this one too. Michael J. Sheridan, Facilities Construction and Maintenance Director, said what he would like to add was this project was designed by staff and poor assumptions were made which resulted in the additional costs because the wall had to 'grow' three feet. **Commissioner Cummings** asked what would happen if this was not approved. Kimberly A. Corbett, Purchasing Director, explained the work had already been done and if this wasn't approved the contractors wouldn't get paid. **Commissioner Cummings** said he understood the work had to be done but they screwed up and it should have been brought out into the open. **Commissioner D'Aprile** agreed, said he didn't appreciate this, in the future this needs to stop, and he knew there were times when changes orders were necessary but he didn't think this was one of them. **Commissioner Horton** asked how the contractor would get his money if this wasn't approved. Reneé Francis Lee, County Attorney, responded that based on what

she'd heard this morning the contractor would have a lawsuit against the County and the judge would probably rule in the contractor's favor. **Commissioner Horton** agreed with **Commissioner D'Aprile** regarding the Board's complaints about change orders over the past eight years and asked where the money was coming from. Ann Navan, County Budget Officer, clarified it was part of the library renovation project from the 1998 sales tax extension fund. **Commissioner Horton** asked if there was enough money to do everything else they've got to do plus this \$114,683.10. Mrs. Navan responded yes. **Commissioner Horton** said since Chuck Evans left he hasn't been comfortable with the way the sales tax projects have been run, he wanted to see them get a better handle on the management of the sales tax dollars than has been shown recently, the Board made a commitment to the citizens to monitor how those dollars were being spent, when Mr. Evans was here he worked for the Board under a special contract and they were in control but since then he's lost that confidence. **Chairman DeBoer** said he knew they had to approve this but they need to make changes, they had a specific budget for library improvements, they added money that was left over from that original sales tax for the purpose of books and shelving and to now be told that the \$115,000 wasn't going to affect anything they already approved was something he didn't have confidence in. **Chairman DeBoer** reiterated they need to make some serious changes, referred to the account number information on the goldenrod, said staff needs to go back to using account names not account numbers as well as listing the budget amount and he would work this out with Attorney Lee and Mr. Loucks tomorrow. **COMMISSIONER CUMMINGS MOVED APPROVAL OF AGENDA ITEM F-3, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.**

RECESS: 10:10 A.M. - 10:16 A.M.

VII. PUBLIC HEARING AGENDA

N. 10:00 A.M. Public Hearings

Agenda Item N-1, Consider and adopt an ordinance amending the territory of the Harbour Heights Street and Drainage MSBU to add properties abutting road and bridge roads that have not been previously assessed, as well as other properties which benefit from the assessment, but are not currently included in the

description of the territory of the unit in Section 4-6-267, Charlotte County Code (Proof of publication was in order.)

Dawn Harrison, Municipal Services District Representative, explained the proposed ordinance would amend the territory adding properties abutting road and bridge roads which have not previously been assessed and to add other properties which benefit from the assessment but were not currently included. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER HORTON AND DECLARED UNANIMOUS. COMMISSIONER CUMMINGS MOVED APPROVAL TO ENACT ORDINANCE #2004-024, SECONDED BY COMMISSIONER D'APRILE.** Commissioner D'Aprile reported he'd been called by the Harbour Heights Association because they hadn't been notified or allowed to provide some input regarding their concerns about the water sheet flow through that area and asked for an explanation. Thomas F. O'Kane, Jr., P.E., Public Works Director, explained the project design hasn't started yet, he'd spoken with a number of the residents including Mr. Fleming regarding their drainage concerns, it will be part of what the design engineer looks at, they were currently negotiating a contract with DMK for the design work, he felt he was aware of their concerns and after they have a preliminary design he would sit down with the committee if the Commissioner wanted. **Commissioner D'Aprile** said he just wanted to give them that opportunity. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item N-2, Consider and adopt an ordinance amending the territory of Punta Gorda Non-Urban Street and Drainage Unit (PGNU) to incorporate the territory of the South Charlotte Marl Street and Drainage Unit, the Three Rivers Street and Drainage Unit and the Sabal Palm Drive Road and Drainage Unit (Proof of publication was in order.)

Ms. Harrison explained the proposed ordinance would merge the South Charlotte Marl, Three Rivers and Sabal Palm Units into the Punta Gorda Non-Urban Street and Drainage Unit as directed by the Board. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2004-025, SECONDED BY COMMISSIONER HORTON AND DECLARED UNANIMOUS.**

Agenda Item N-3, Consider and adopt an ordinance amending the territory of the South Gulf Cove Waterway Unit to include property benefited by improvements but not previously included in the described territory of the unit (Proof of publication was in order.)

Judy Hunter, Municipal Services District Representative, explained the proposed ordinance would amend the territory to include property benefited by the improvements but not previously included. Ray Warner, South Gulf Cove MSBU Advisory Committee member, said the new MSBU territory map was missing 32 acres at the south end of their lagoon, the land was owned by Charlotte/Sarasota Holdings who intends to put in a marina one day and opined since it was a waterfront property they should be involved and paying into this MSBU. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Mrs. Hunter responded they would look into it to determine what needs to be done and if necessary they will bring back an amendment to the territory. **COMMISSIONER DEVOS MOVED APPROVAL TO ENACT ORDINANCE #2004-026, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item N-4, Consider and adopt an ordinance merging the Rotonda Meadows Street and Drainage Unit and the Rotonda Villas Street and Drainage Unit into a new Street and Drainage MSBU called Rotonda Meadows/Villas Street and Drainage Unit and the new unit would allow in its purpose, the use of MSBU funds for neighborhood beautification projects (Proof of publication was in order.)

Mrs. Hunter explained in 1997 the County accepted various developer controlled Rotonda subdivisions into MSBUs and has maintained them since that time, 11 years ago the developer had combined the property owners associations for Rotonda Meadows and Villas but the County wasn't aware of that in 1997, the developer has now left the area and turned the property owners associations over to the residents; and the proposed ordinance would merge the Rotonda Meadows and Rotonda Villas units into a new MSBU called Rotonda Meadows/Villas Street and Drainage Unit. Kendall Leach, Rotonda Meadows/Villas Board of Directors member, reported there was unanimous support by the combined membership for the proposed ordinance. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER HORTON AND DECLARED**

UNANIMOUS. COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2004-027, SECONDED BY COMMISSIONER HORTON AND DECLARED UNANIMOUS.

VI. REGULAR AGENDA

M. Regular Business

Agenda Item M-1, Board of Commissioners - Board select by ballot, one candidate to fill the South Gulf Cove Advisory Committee vacancy

Chairman DeBoer asked each of them to complete the ballot in the material and pass them down to Mr. Loucks. **Chairman DeBoer** announced there were four votes for Kendall Leach. **COMMISSIONER CUMMINGS MOVED APPROVAL OF KENDALL LEACH, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.**

Agenda Item M-2, Board of Commissioners - Board select by ballot, one at-large candidate to fill the Affordable Housing Advisory Committee vacancy

Chairman DeBoer asked each of them to complete the ballot in the material and pass them down to Mr. Loucks. **Chairman DeBoer** announced there were four votes for Lou-Anne Curtis. **COMMISSIONER HORTON MOVED APPROVAL OF LOU-ANNE CURTIS, SECONDED BY COMMISSIONER CUMMINGS AND DECLARED UNANIMOUS.**

Agenda Item M-3, Administration - Presentation by James Burkhart, Environmental Administrator with the Charlotte County Health Department regarding the County's requirements relative to Onsite Sewage Treatment and Disposal Systems (Deleted from agenda)

Commissioner Cummings requested a point of personal privilege and said he understood this item had been deleted from the agenda but he wanted to bring up one concern in the intervening timeframe. **Commissioner Cummings** said he was told but had not verified that the Health Department has made recommendations to grant exceptions to this ordinance, if there were special circumstances for it being a hardship as the variance procedure calls for that's fine but if they were granting variances solely because the current director doesn't like Aerobic Treatment

Units (ATU) he would have a problem, opined that would be subverting the intent of the ordinance and said he just wanted to make that comment before they moved on. **Commissioner Horton** agreed and said the Commissioner had a good point. **Chairman DeBoer** said he'd heard the same rumors but he also appreciated **Commissioner Cummings'** comments yesterday at Pre-Agenda about looking at the impact this has on the Comprehensive Plan (Comp Plan) and whether or not the Department of Community Affairs (DCA) would appreciate us making that change. **Chairman DeBoer** said this was a significant change the Board made a number of years ago, DCA said we were starting to be a very progressive community and opined to get rid of the ATUs just to be replaced by six more inches of sand certainly doesn't address all the things they made decisions on in the beginning.

Agenda Item M-4, Budget - Approve funding for acquisition of properties for the Countywide Habitat Conservation Plan by advancing funds for the currently established .05 mills rate set aside each year in the County's CIP for the purchase of environmental lands

James A. Thomson, Environmental and Extension Services Director, said staff was directed to identify properties and the amount of money that would be spent for immediate relief for a group of property owners being held up by the U.S. Fish and Wildlife Service (USFWS). Mr. Thomson explained staff has identified the properties as detailed in the package material as well as some of the specific issues the County is being faced with and clarified the batch process was based on a County-wide Habitat Conservation Plan (HCP) with one-to-one mitigation credits. **Commissioner Cummings** said his primary concern was having a specific dollar figure generated based on need which staff has now addressed as \$700,000, and his ongoing concern was whether they should do this at all along with the two ways of doing it - a user fee versus the MSBU, but he still felt this was something they should move ahead with on a user fee basis. **Commissioner Cummings** stated his understanding was the \$700,000 will acquire property that could be used for up to 50 customers, they currently have 29, and if none of those customers chose to participate to pay the user fee - to pay their proportionate share, there were sufficient County-wide projects that would need mitigation in these same areas that that money could be paid back from all of those projects. Mr. Thomson said that was

correct. **Commissioner Cummings** said with a user fee basis they can finance this project, those in this batch that chose to participate could pay back on a direct reimbursement, if not the County can use it as mitigation paying it back through those projects and opined it was a comparatively low risk way of proceeding. **Commissioner Cummings** opined the user fee basis allows people to go forward who really want to but it doesn't create a financial reason for the people who have no intention of developing right now to want to do it, and there was room for arguments on both sides but said he still supported the user fee over the MSBU. **Commissioner Horton** said he felt the people in Atlanta were very cooperative and want to help expedite whatever the County tries to do, referred to the Cape Haze Peninsula Batch 1 Acquisition map and asked how staff planned to mitigate only part of a parcel. Mr. Thomson said with a County-wide HCP they would try to get as many connecting lots as possible within that area up to the required amount specified or about 452 acres in that general area. **Commissioner Horton** summarized if the people in batch 1 decide not to participate the County would still be able to use land purchased with the \$700,000 to mitigate other County projects. Mr. Thomson said yes they would only buy property in Scrub-jay habitat that could be used for mitigation for projects that impact Scrub-jays and they would direct their purchases in areas that have been identified for County CIP projects. **Commissioner Horton** said the County has to buy property in the same general area of what they're mitigating and asked what County projects were in the Cape Haze peninsula. Charles A. Pingree, Jr., Senior Real Property Agent, stated the two main projects were 125 acres of mitigation for Winchester South and another acreage site for the Rotonda Wastewater Treatment Plant. **Chairman DeBoer** advised **Commissioner D'Aprile** and **Commissioner Devos** have meetings at 11:15 A.M. and asked if the Board wanted to continue this discussion to this afternoon after the 2:00 P.M. hearings. **(Board consensus.)** **Commissioner Devos** asked staff to provide clarification regarding the various zones at that time. **(Commissioner D'Aprile and Commissioner Devos were not present for this portion of the meeting.)**

Agenda Item M-5, Community Development - Update and inform the Board regarding the Evaluation and Appraisal Report (EAR) based amendments

Joan LeBeau, Planner III, gave a slide presentation which paralleled the material and detailed the 2003 Charlotte County Evaluation and Appraisal Report.

Agenda Item M-6, Administration - Appoint David G. Schlobohm to fill the position of Utilities Director, effective on or about May 26, 2004

Mr. Loucks explained they went through a competitive process, Mr. Schlobohm far exceeded all other candidates and requested approval of his appointment effective May 26, 2004 or sooner if possible. **COMMISSIONER CUMMINGS MOVED APPROVAL TO APPOINT DAVID G. SCHLOBOHM TO FILL THE POSITION OF UTILITIES DIRECTOR, SECONDED BY COMMISSIONER HORTON AND DECLARED UNANIMOUS.**

Agenda Item M-7, Community Development - Approve the DRC PD-80-4AAA Partial Final Detail Plan Resolution permitting KB Home Fort Myers, LLC to develop the KB Home Deep Creek Model Center

Buddy Braselton, Planner II, explained the proposed resolution would allow KB Home to develop the Deep Creek Model Center and office located on a commercial lot within the Sandhill DRI Planned Development (PD) and requested approval. Chairman DeBoer said Mr. Loucks spoke with staff about making the systemic changes necessary so they don't have to cancel these kind of meetings in the future and delay the process. Mr. Loucks clarified at times there wasn't a quorum even though the committee was comprised of County staff and in the future they will have alternates to ensure that doesn't happen in the future. COMMISSIONER CUMMINGS MOVED APPROVAL TO ADOPT RESOLUTION #2004-083, SECONDED BY COMMISSIONER HORTON. Commissioner Horton said he's not anti the project just how it got here and he just wanted that to be understood so he would vote for this. CALL ON THE MOTION: DECLARED UNANIMOUS.

VIII. CITIZEN INPUT - ANY SUBJECT

Kendall Leach, Rotonda Sands Association Treasurer and Rotonda Meadows Association Treasurer, said these two segments were the only two that don't have sewer; it was his understanding this will be designed in 2005 with installation in 2007 and 2008 but the membership would like to move this up; everyone was fully in favor of this; and they hoped the construction could be started and completed in 2006.

An "unidentified citizen" who was the Port Charlotte Lions Club Publicity Director commented on their efforts to get a display board by Olean Avenue like the one in North Port that would lists the service clubs, said the northerners and many local residents don't know about many of these organizations and they would like to get more exposure.

P. County Administrator

Bruce D. Loucks, County Administrator, reported receipt of a letter from the Federal Emergency Management Agency (FEMA) advising that Charlotte County has been verified as Class 5 of the National Flood Insurance Program's Community Rating System (CRS) which means applicable properties will receive a 25% premium discount beginning May, 2004.

Mr. Loucks recalled two weeks the issue of additional funding needed by Arts and Humanities to help pay their rent was brought up, staff has asked for a letter from them and upon receipt this item will be placed on the agenda.

Q. County Attorney

Reneé Francis Lee, County Attorney, advised their administrative hearing on the Ona Mine has started, it was anticipated this could take up to one month, Mrs. Shoemaker was serving as their corporate representative and invited the Board to attend. Attorney Lee stated they could run out of money, distributed the Phosphate Legal Challenge Expenditure by Category budget summary sheet, said it appears the total project expenses were about \$7.3 million, the approved budget was about \$7.7 million leaving available funds of about \$448,741 and she hoped that would be enough for these last few weeks of trial. Attorney Lee said

they were confident and hopeful they would be successful but they may need more money, **Commissioner Cummings** has directed us to contact Sarasota County and it appears they are willing financially but nothing has been forthcoming. **Commissioner Cummings** recalled this was expected, Lee County had committed to contribute an additional \$1 million in October, 2004 but Charlotte County would have to finance between now and then, and agreed they hadn't gotten a firm commitment from Sarasota County for a specific amount of money but said the feedback he's gotten was they were prepared to go further than the \$500,000 deficit. **Chairman DeBoer** said it was about time for another executive session, he understood there would be two other companies filing for mining permits this summer, the County has spent almost \$8 million in less than three years without raising taxes so other folks need to come to the table real soon and he was committed to finish the lawsuit they were in but if others don't join them in the fight they would run out of road. **Commissioner Cummings** opined the Board would see a \$1.5 million budget transfer coming back to ensure things happen. Attorney Lee said as she sees the dollars being depleted she will make arrangements with the Budget Office to identify available monies and they also have a call into Sarasota County to ask what their level of participation will be if any but it seems everyone now understands how critical this is. **Chairman DeBoer** said he wanted to make it clear that when they ask the Budget Office to find money, it has to be repaid.

Attorney Lee said the Chair had sent out a memorandum to the other Board members on the BCC rules asking whether any changes were needed and she had not received any response from anyone so could she assume everything was okay. **Chairman DeBoer** said just those things the Board has routinely changed like meeting dates so just go ahead and bring those changes back if no one has an interest beyond that; and the only additional thing was the issue of proclamations, having some kind of an administrative process for their staff people on proclamations and special occasions.

Attorney Lee noted Mr. Byron was in the audience, he was the director of the sober house, he had made an offer for settlement and she would bring back some proposals for the Board to consider but due to a lack of staff time to meet with her she doesn't have a report at this time.

Attorney Lee said the big issue today is Edgewater Condominiums, recalled the Board wasn't happy with the agreement that was floated around last week regarding the settlement agreement whereby this Board would voluntarily release the restriction on that building which prohibited it from being a multi-family residential building, and said part of the criticism she'd heard was there was nothing to assure the Board the building would be demolished if the developer couldn't remodel/restore it within possibly a year. Attorney Lee said she met with Attorney Haymans yesterday to express those concerns and he told her he would stand-by the development agreement that was in place which allows him 60 or 120 days after the restriction was released to submit for a building permit. Attorney Lee stated if the Board released the restriction then within 60 days Attorney Haymans has to submit for building permit and if that doesn't occur the Board can start the sue-back unsafe building process again. Attorney Lee reported Attorney Haymans also agreed to do the variances in one batch rather than successively and he felt the benefit to the County of getting that building completed was enough to satisfy the Board's concerns but she could not get Attorney Haymans to commit that the County could demolish the building if he didn't starting building on it soon. Attorney Lee advised she'd asked for bonds or other alternatives to complete the demolition but she hadn't heard from him, requested Board direction if she should bring back the settlement agreement which incorporates the development agreement with the timelines the Board approved about a year and a half ago and reiterated the settlement agreement would release the restriction and start the clock ticking in the development agreement. **Commissioner Horton** recalled 1.5 years ago the Board took action to destroy the building, Attorney Haymans took action against the County to prevent that and the question was whether the Board had the right to enforce the restriction. Attorney Lee said he was exactly right. **Commissioner Horton** recalled being told it would take 30 to 60 days to get it before a judge to determine if the County had that right or not, said now 1.5 years later they were sitting in the same spot with the same guy over the same thing, he doesn't want to lift the restriction, he wants to get it before a judge to determine if they have the right to enforce the restriction and asked again what would it take to get this thing before a judge. Attorney Lee said there has been a notice for trial set and filed with the court. Brendan Bradley, Deputy County Attorney, clarified

no date has been set as yet but the next session starts June 1, 2004. Attorney Lee stated, "Yesterday I guess I was rather confronted by Mr. Haymans and his statement that the Board was not standing by it's agreement to release that restriction, because he says it was the Board's instructions that he go out and get the consent of the surrounding property owners to release this restriction and once that was done, once he had the consent of all the property owners, then the Board would release the restriction. So, he feels the Board has not lived up to its verbal agreement or instructions to him that he get the consent of everybody; and, you know, that was proposed as one of the reasons why he wouldn't enter into any other agreements with us." **Commissioner Horton** said he understands that point but nothing has developed on any kind of time line, they were still right where they were 18 months ago, reiterated he wants a judge to tell him whether or not they have the right to do that and he didn't see any reason to release the restriction. Attorney Lee said she would press for a court date to be set. **Commissioner Horton** said even if Attorney Haymans is able to get all the players to agree and the Board lifts the restriction, if Attorney Haymans doesn't live up to the agreement he made with those individuals the Board can't enforce that so the people would still be in the same mess and he felt it was the Board's obligation to protect those people. Attorney Lee agreed. **Chairman DeBoer** opined this situation seems to be one of constant confrontation rather than any kind of mediation toward a settlement, he felt **Commissioner Horton** was right, unfortunately when they received the permission to develop this building the deed restriction was to be enforced by the County, he felt they should live up to that and agreed with **Commissioner Horton** they need to move ahead as quickly as possible to get a judge to decide this. **Commissioner Cummings** agreed and said his previous comments still stand. Attorney Lee summarized she had her instructions.

R. Commissioner Comments

Commissioner Cummings commented on: water hook-ups at construction sites that trigger sewer charges when sewer isn't available making people upset; the need for a marine siting plan that recognizes existing facilities; and Murdock Village which was correcting a critical problem in the Future Land Use Map (FLUM). **Commissioner Horton** agreed. **Chairman DeBoer** advised

they received the Regional Planning Council (RPC) appointments requested by **Commissioner Cummings**. **Chairman DeBoer** advised he has been subpoenaed to testify in the eminent domain cases on May 24, 2004 and May 25, 2004 and **Commissioner D'Aprile** will chair the Board meeting on May 25, 2004. **Chairman DeBoer** commented on: parking fines levied for parks and boat ramps versus annual passes and the need for illuminated signage. **Commissioner Horton** concurred. **Commissioner Cummings** reported Mrs. Hoeft was working on the signage issue.

RECESS: 11:47 A.M. - 2:03 P.M.

(Executive Assistant Joann Dillon replaced Executive Assistant Stacey Miller and Deputy Clerk Diane J. Nice replaced Deputy Clerk Karen S. Mitchell for the remainder of the meeting.)

IX. PLANNING AND ZONING AGENDA

S. 2:00 P.M. PETITIONS - PLAN AMENDMENT AND REZONINGS

Future Land Use Map Amendments: Ordinances, Text Amendments, Amendments to Chapter 3-9, County Code, Plat and Street Vacations (These are legislative hearings which must meet the "fairly debatable" legal standard.)

Rezoning: Notice of Proposed Change, Substantial Deviation From a Development Order, Transfer of Development Rights, Special Exception to Expand Existing Business, and Plats (These are quasi-judicial hearings which require disclosure of "ex-parte" communications and sworn testimony. Findings must meet the "substantial competent evidence" legal standard that the proposal is consistent with adopted policy. Allows cross-examination of witnesses and rebuttal.)

Agenda Item S-1, PA-04-02-06, District IV (Proof of Publication was in Order.)

Jorge Perez, Planner II, advised this petition and the companion rezoning, petition Z-04-02-07, was filed by Semyon Popovetsky; gave a slide presentation on the request for a small scale Future Land Use Map (FLUM) amendment from Low Density Residential (LDR) to Commercial Center (CC) on approximately 6.77 acres located on the corner of Cornelius Boulevard and Lace

Terrace, in the Northwest Port Charlotte area to be added to the existing 13-acre parcel; the Zoning Map is consistent with the FLUM; most of the property is Residential Single-Family (RSF-3.5), the 13 acres are zoned Commercial General (CG), and petition Z-04-02-07 seeks a rezoning from RSF-3.5 to CG; Geographic Information Systems provided the information that the 20-acre parcel would provide easy access to 7,000 residential lots and about 16,000 people without going on U.S. 41 or S.R. 776; staff recommends approval; and the Planning and Zoning (P&Z) Board recommended approval of the petition. **Chairman DeBoer** questioned Mr. Perez as to applicability of his testimony to petition Z-04-02-7. Mr. Perez stated he would incorporate his testimony into the next presentation. **Chairman DeBoer** suggested the oath be administered to prospective witnesses on petitions PA-04-02-06, Z-04-02-07, Z-02-1-2, and PP-04-02-02. **(Deputy Clerk Diane J. Nice administered the oath to prospective witnesses.)** Mr. Perez stated his testimony for the plan amendment and rezoning are the same. **Commissioner Cummings** requested verification that the property is located in the Suburban Area of the Urban Service Area. Mr. Perez stated in the Suburban portion. **Commissioner Cummings** questioned the viability of the site for retail needs if density of the surrounding residential area is reduced by half. Mr. Perez advised the 20-acre site on Cornelius Boulevard would probably be a viable site. **Commissioner Horton** requested an explanation on the parcel to the left of the site on the FLUM. Mr. Perez reported the legal description submitted included a small strip of land for alignment with the existing parcel not the entire parcel. Geri L. Waksler, Moore and Waksler law firm, appeared on behalf of the applicant, explained Mr. Popovetsky would be closing on the 6.67 acres tomorrow along with the 13-acre tract and he is also the contract purchaser of the 100-acre residential site abutting these two parcels; applicant believes that commercial should extend from Eleanor Avenue to Lace Terrace; the site would provide many commercial services to the surrounding residential community and reduce trip generation on U.S. 41 and S.R. 776; the time to make the change is now prior to significant residential development; and requested approval of the land use amendment and zoning change. Attorney Waksler stated she was sworn in and asked that her comments be made a part of the record for petition Z-04-02-07. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. COMMISSIONER**

D'APRILE MOVED FOR APPROVAL TO ENACT ORDINANCE #2004-028 APPROVING PETITION PA-04-02-06 FILED BY SEMYON POPOVETSKY BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 31, 2004 AND EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER HORTON AND DECLARED UNANIMOUS.

Agenda Item S-2, Z-04-02-07, District IV (Proof of Publication was in Order.)

(Chairman DeBoer polled the Board for ex-parte disclosures and there were none.) Mr. Perez entered the same testimony as submitted for petition PA-04-02-06. Attorney Waksler incorporated her prior testimony. COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DEVOS MOVED FOR APPROVAL TO ENACT ORDINANCE #2004-029 APPROVING PETITION Z-04-02-7 FILED BY SEMYON POPOVETSKY BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 31, 2004 AND EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER CUMMINGS AND DECLARED UNANIMOUS.

Agenda Item S-3, Z-02-1-2, District II (Proof of Publication was in Order.)

Mr. Perez gave a slide presentation of the site and surrounding property designations on the FLUM and Zoning Map, photographs and aerials of the buildings being constructed on the site, and adjacent uses; explained the request, filed by Charles M. Polk Jr. and Paige C. Polk, is for a rezoning from CG to CI on approximately 4.99 acres located on Charlotte Street in the Solana area of Punta Gorda; existing homes in the CG area are non-conforming structures; staff recommends denial based on access, existing land uses, whether the property may be used under the existing zoning, and whether the changed conditions would be appropriate. Mr. Perez reported a local street provides the only excess; vehicles serving a CI district are usually larger and heavier than vehicles in a CG district; the existing residential and multi-family homes and historic area may be adversely impacted; the site has received final site plan approval and permits as a result of the Development Review Committee (DRC) process; approval of the rezoning would allow industrial-like uses on a local street that is highly visible

from the Duncan Road overpass, which serves at the gateway to the City of Punta Gorda; the City of Punta Gorda submitted a letter in opposition when the petition was originally filed based upon visibility concerns; staff recommends denial; and the P&Z Board recommended approval. **(Chairman DeBoer polled the Board for ex-parte disclosures. Commissioner Cummings submitted the Disclosure Form based upon receipt of a copy of a letter from C. Michael Polk & Associates, Inc.)** Commissioner Devos requested an explanation why applicants have filed for rezoning when buildings are currently under construction on the site. Mr. Perez pointed out applicants filed early in 2002 for the rezoning and construction has taken place based upon DRC approval. **Commissioner Devos** expressed disappointment concerning the exterior of the building being allowed under the new neighborhood standards and the CG and CI uses on land abutting residential. Mr. Perez reiterated the homes are legally non-conforming structures and they will be allowed to remain unless significant damage and renovation are required. **Commissioner Devos** requested zoning on surrounding properties. Mr. Perez reported adjacent properties are zoned CG, CI, and Office, Medical, and Institution (OMI) with some residential densities, and there are large parcels on Florida Street with better access that have For Sale signs on them. **Commissioner D'Aprile** requested an explanation regarding access from U.S. 17 and buffering. Mr. Perez stated approval of the zoning change would negate buffering on a good portion of the site. Attorney Waksler appeared on behalf of applicants and requested clarification on loosening buffering requirements with a change from CG to CI. Mr. Perez explained the buffer is determined by zoning districts, a change from CG to CI would require merging of a buffer to an abutting CI, and although the property cannot be seen from the adjacent CI property you would see it every time you drive on Duncan Road because of the elevation differential. Attorney Waksler informed the Board that even though P&Z Board has recommended approval, staff recommends denial; indicated staff's analysis is flawed because the proposal is exempt under Policy 2.2.7 and not contrary to the Comprehensive Plan; pointed out existing land uses on surrounding properties have Commercial land uses with a mixture of CI, CG, and OMI zoning designations and residential in the CG area are non-conforming uses; the most recent development in the area is comprised of metal office warehouses immediately north of the site; expressed unawareness of rezoning standards that

require applicants to show there are no other sites available; this property has been owned by applicants' family for 100 years, to require them to purchase other property for this use does not make sense, and it is not contemplated by the zoning standards; staff failed to note that the proposed development would decrease the level of accessibility to the site, it does not have appropriate access for CG, retail uses, or a roadway system sufficient for CG trips at 2,098 trips per day whereas CI zoning is calculated at 256 trips per day; the surrounding area has been designated primarily for non-residential uses by the Zoning and FLUM classifications; applicants desire to develop the site as office warehouses just like the site to the north; it is not appropriate to develop retail uses; the surrounding area would not support shopping uses; the photographs show initial construction and the exterior will comply with the architectural standards; and requested approval. C. Michael Polk stated flex buildings are being constructed with stucco on the front exterior to look more like an office or retail center that will house his office, his cousin's construction office, and his mother's interior design office; recalled his great, great, great grandfather owned the property as homestead and two aunts own adjacent properties with historic homes; indicated he has no intention of devaluing the land value; expressed surprise at staff's reluctance to approve the application; the building would provide 60% office and 40% storage; and advised there are two access points on Charlotte Street and La Villa Road. Charles Polk stated development on the approximate 2.57 acre site will be approximately 15,000 square feet; referenced an article on a 150,000 square feet building under construction on 10 acres in Manatee County for the difference in square footage; questioned the difference in building requirements; advised the family still owns land and lives near the site; and applicants intend to construct an esthetically attractive building façade since it is located near to the corridor of entry for the City of Punta Gorda. **Chairman DeBoer** pointed out the Board's decision must be based upon substantial and competent evidence. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DEVOS MOVED FOR APPROVAL TO ENACT ORDINANCE #2004-030 APPROVING PETITION Z-02-1-2 FILED BY CHARLES M. POLK JR. AND PAIGE C. POLK BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JANUARY 28, 2004 AND EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED**

BY COMMISSIONER D'APRILE. Commissioner Horton requested an explanation of buffering requirements applicable to the site under the CI designation. Mr. Perez pointed out no buffers would be required on Duncan Road, La Villa Road, or Charlotte Street but more buffers would be required adjacent to the RMF-10 and OMI properties. Commissioner Horton questioned if square footage of a building under CI would increase over CG. Mr. Perez advised the square footage is approximately the same but the uses are more intensive. Commissioner Horton then questioned if design standards for CG are greater than CI. Mr. Perez stated they are the same and the application was going through the DRC process when the commercial design standards were approved so the application is not subject to the ordinance. Commissioner Horton requested uses allowed in CI over CG. Mr. Perez stated CI allows all CG uses as well as lumber and building supply establishments, automotive sales and service, boat and trailer sales and service, heavy equipment sales, service, and rental, a driving range, wholesale sales, mass transit terminals and yards, car wash, mini warehouse, and car rental agencies are some of the principle permitted uses without a special exception. Commissioner Horton requested the amount of parking in CG and CI zoning designations. Mr. Perez reported the parking requirements for CI are less than for CG. Commissioner Horton expressed concern with the reduction in buffers and stated he wants more buffers and landscaping to make the site more esthetically attractive for everyone. Commissioner Cummings stated approval of the application must be based on the principle permitted uses so he does not have a problem with applicants' proposal; there is a propensity to push the zoning in the Cleveland Area to the maximum; expressed concern with the rezoning request after DRC has approved specific guidelines for construction even though the request is to allow different uses; and commented in support of staff's recommendation for denial. **CALL ON THE MOTION: CHAIRMAN DeBOER AND COMMISSIONERS DEVOS AND D'APRILE VOTED "YES" AND COMMISSIONERS CUMMINGS AND HORTON VOTED "NO." MOTION CARRIED: 3:2.**

Preliminary Plat: (This is a quasi-judicial hearing that requires disclosure of "ex-parte" communication, sworn testimony, substantial competent evidence, and findings that the proposal is consistent with adopted policy and allows for cross-examination of witnesses and rebuttal.)

Agenda Item S-4, PP-04-02-02, District IV (Proof of Publication was in Order.)

(Chairman DeBoer polled the Board for ex-parte disclosures and there were none.) Mark Gering, Development Review Manager, presented the request for approval of the preliminary plat for Villa Milano filed by Villa Milano, LLC, formerly known as White Heron Homes, on 39.44 acres located in Section 15, Township 40 South, Range 21 East, located east of Applegate Drive, south of Gennario Avenue, west of Gramercy Street, north of Tivoli Avenue, and approximately .25 mile southeast of the application on property in Northwest Port Charlotte heard earlier; the site was previously granted special exception, SE-03-20, to allow cluster housing for a total 138 lots as proposed for a density of 3.44 units per acre; sewer and water will be provide by Charlotte County Utilities; roads will be approved by the County Engineer but not built to County standards, the roads will remain private; P&Z Board recommended approval; and staff recommends approval subject to the following conditions:

1. Charlotte County Subdivision Regulations, Section 3-7-51 requires legal descriptions to begin at a section corner or other recorded government corner, regardless of whether it is a new plat or a replat of a previously recorded plat. State plane coordinates (NAD-1983-90) shall be stated on the plat and in the descriptions for at least two Permanent Reference Monuments (PRMs) of the proposed plat.
2. No PRMs are indicated as being installed. These need to be established and inspected prior to preliminary plat approval.
3. It appears that the engineer consultant has placed several sanitary manholes at the exact intersection point of several streets where permanent control points are ordinarily placed.
4. The applicant needs to know Charlotte County does not accept nails in bottle caps, roofing nails, p-k nails, survey tacks, carpet tacks, or other temporary markers are permanent control points.
5. A permanent drainage easement needs to be dedicated to Charlotte County to cover the offsite drainage conveyance right-of-way.

6. Sheet 4 references a Drainage Structure Table to be found on Sheet 4a and it is actually on Sheet 4.
7. Construction details will be required to address the construction of the off site drainage conveyance system.

Robert H. Berntsson, of McKinley, Ittersagen, Gunderson and Berntsson law firm, appeared on behalf of the applicant; stated the Board of Zoning Appeals (BZA) approved a special exception to allow cluster development; applicant intends to sell lots in fee simple title; applicant demonstrated to BZA that the property could have been platted into standard size lots and not have an increase in density based upon cluster development; and requested approval. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner Horton requested confirmation that the same number of units would be applicable to the property prior to and after platting. Attorney Berntsson concurred, reiterated the property has not been platted, condominiums would be no different than units, and it has been demonstrated that cluster development would provide the same number of units. **Commissioner Devos** questioned the need for Condition #4 in relation to the developer. Mr. Gering reported Condition #4 came from the Public Works Survey Section and there have been several instances where surveyors have put in substandard survey markers. **Chairman DeBoer** expressed concern because roads will not be built to County standards based upon past experience. Attorney Berntsson advised the roads will be private within the gated community and maintained by the Homeowners Association. **Chairman DeBoer** commented on the need for purchasers to be made aware that the County will not accept roads for maintenance through a taxing district unless the roads are brought up to County standards. Attorney Berntsson suggested a condition be placed on the face of the final plat that the private roads are to be maintained by the Homeowners Association and will not be accepted by the County unless brought up to standards and explained developer turnover to the Homeowners Association of roads, common areas, and drainage facilities occurs at a certain level of build out. Attorney Berntsson advised a condition would be placed on the final plat, in the deed restrictions, and Homeowners Association documents that the drainage facilities and roads would have to be brought to County standards prior to acceptance for maintenance. Attorney Berntsson reported .25 inch less of asphalt represents the differential from County and

private road standards and the widths comply with County standards. **COMMISSIONER DEVOS MOVED FOR APPROVAL OF PRELIMINARY PLAT PP-04-02-02, FOR VILLA MILANO, FILED BY VILLA MILANO, LLC WITH THE ADDITIONAL CONDITION AS STATED ON THE RECORD, SECONDED BY COMMISSIONER D'APRILE. Chairman DeBoer and Commissioner Cummings** pointed out addition of the .25 inch of asphalt would alleviate a future problem. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Street/Plat Vacations: (These are legislative hearings which must meet the "fairly debatable" legal standard.)

Agenda Item S-5, PV-04-02-02, District III (Proof of Publication was in Order.)

Mr. Gering presented the request for plat vacation filed on a portion of Rotonda Shores by American Trust Realty Partners, as recorded in Plat Book 10, Pages 7A through 7N of the Public Records of Charlotte County, in Sections 34 and 35, Township 41 South, Range 20 East, specifically for Lots 714, 725 through 730, and the remaining 1/2 right-of-way north of Lot 725 for 3.92 acres; lands to the east and south were previously vacated and are owned by the Southwest Florida Water Management District; staff recommends approval with the following condition:

1. Sprint and Florida Power and Light Company (FP&L) have facilities in easements off of Haitian Drive and acceptable easements must be provided prior to recording the vacation, unless FP&L agrees to move its line.

Attorney Berntsson appeared on behalf of applicants and advised approval of the application will remove the platted lot lines and 1/2 of the vacated right-of-way that remains will be vacated to allow development of the project; a siting company will be going out to the property to determine if the FP&L line is within applicants' property and, if so, an easement will be provided in a recordable form; expressed no objection to the conditions; and requested approval. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ADOPT RESOLUTION #2004-084 APPROVING PETITION PV-04-02-02 WITH THE CONDITION FOR ROTONDA SHORES FILED BY AMERICAN TRUST REALTY**

PARTNERS, SECONDED BY COMMISSIONER DEVOS. Commissioner Horton requested confirmation that approval of the vacation will allow development as one parcel. Attorney Berntsson concurred. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item S-6, SV-04-02-03, District II (Proof of Publication was in Order.)

Mr. Gering explained the request for vacation, filed by Rio Villa Lakes, LLC and Joanne M. and Roger E. Paull, is for a portion of Ames Street, as platted in Aqui Esta Unit No. 2, Plat Book 3, Pages 49A through 49C of the Public Records of Charlotte County, located in Section 18, Township 41 South, Range 23 East; the portion to be vacated is immediately south of Leach Drive between Lot 20, Block K and Lot 1, Block J for a length of 114 feet and 60 feet wide for a total of .16 acre; once vacated the west 1/2 of the right-of-way will be incorporated into a new plat named Rio Villa Lakes; Mr. and Mrs. Paull will own the east 1/2 of the vacated right-of-way and use it as a driveway to their existing residence; staff recommends approval; and the P&Z Board recommended approval. Mr. Gering reported the plat on the property south and west of the site is in the P&Z Board process now, both applications should have gone through the process at the same time, Rio Villa Lakes owns all four blocks of that property, Ames Street and Amanda Street will no longer exist, and a circular drive will be constructed on the property. Attorney Waksler concurred with staff's report and recommendation. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner Cummings questioned if staff's recommendation on the street vacation would be the same if the plat were to remain unchanged. Mr. Gering stated additional conditions would be required on the use of the portion of Ames Street located south of this vacation since there would not be sufficient space to construct a cul-de-sac. **Commissioner Cummings** queried the possibility for approval of the other vacation. Mr. Gering stated it would be brought before this Board for preliminary plat approval. **Commissioner Cummings** stated he is hesitant to approve this vacation since it appears to guarantee approval of the other proposal. Mr. Gering stated it would be approved in some form satisfactory to the Board and offered to show the Rio Villa Lakes plan. Attorney Waksler advice applicants own all of the property on both sides of Ames

Street so it would not be an access issue and expressed acceptance, if the Board decides to add a condition, to construct a cul-de-sac if the subsequent replat is not approved. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ADOPT RESOLUTION #2004-085 WITH THE CONDITION THAT IF THE SUBSEQUENT REPLAT IS NOT APPROVED, APPLICANT WILL CONSTRUCT A CUL-DE-SAC ON AMES STREET, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.**

RECESS: 3:20 P.M. - 3:30 P.M.

IV. REGULAR AGENDA

Agenda Item M-4, Budget, Approve funding for acquisition of properties for the Countywide Habitat Conservation Plan (HCP) by advancing funds from the currently established .05 mills rate set aside each year in the County's Capital Improvements Program (CIP) for the purchase of environmental lands (continued from the morning portion of the meeting)

Roger Baltz, Assistant County Administrator, stated the goal today is to provide sufficient information for the Board to make a decision; Environmental and Extension Services Director James A. Thomson reported this morning that staff has been working towards a batched or low impact HCP; the funding request is to begin acquiring property for the low impact HCP; the issue is more general and has an impact on the Countywide HCP; the maps indicate existing scrub jay habitats and locations of land that might serve for mitigation and development into a HCP or preservation areas; and staff has not identified specific properties since that may affect future acquisitions. Mr. Baltz stated the low impact HCP is tied to a commitment to implement a Countywide HCP; U.S. Fish and Wildlife Service (USFWS) has expressed a willingness to allow a one-for-one mitigation instead of a two-for-one mitigation ratio contingent upon implementation of a Countywide HCP; if the County decides to do something other than the Countywide HCP, the USFWS may not extend the one-for-one mitigation on batched HCPs; staff has interpreted the Board's direction to move forward with the Countywide HCP and provide some relief to the property owners in the permitting process through a land-swapping program for the batched approach on a voluntary basis; advised Real Property Services Manager J. Paul Payette and Environmental Specialist II Cathy Olson are not present but he and Mr. Thomson are available

to answer questions; and pointed out funds are necessary to acquire 13 acres for the batched HCP based on the one-for-one ratio. **Chairman DeBoer** commented in support of the County acquiring the 29 lots of the people who have been caught in the permitting process, expressed concern about moving forward with anything more, recalled his vote against the HCP and targeting specific properties because acquisition prices will increase as well as the cost of the overall HCP, the County should not have to act as executioner for the Federal government in regulatory federalism without compensation and due process of law with regard to property rights as delineated in Florida Statutes; opined the County's Comprehensive Plan should be amended to alleviate the County doing the Federal government's dirty work; the County should purchase the 29 lots; and proceed with mitigation for County CIP projects. Mr. Baltz explained many of the 26 lots are not in preservation areas and may not be used for mitigation. **Chairman DeBoer** requested verification on the number of lots. Mr. Baltz stated 29 lots. **Chairman DeBoer** pointed out some of the 29 lot owners would have a lawsuit for taking of property under the Burt Harris Act and requested confirmation on using the properties for mitigation of County projects as stated this morning. James A. Thomson, Environmental and Extension Services Director, explained under the batched HCP, those properties would be mitigated to allow property owners to build on their properties; pointed out yellow coded lots on the Gulf Cove Florida Scrub Jay Habitat map reflect properties being held up for permits; and the County would be purchasing properties in the green areas for mitigation. **Commissioner Devos** requested clarification that the property is not useable but it could be used for mitigation. **Commissioner Cummings** interpreted **Chairman DeBoer's** comments to mean that the County would purchase the 29 properties that had applied for permits in order to alleviate the need for mitigation and those properties would not be the properties needed for mitigation i.e. those are the properties for which mitigation would be necessary and a separate issue exists for the need to mitigate properties for CIP projects. **Commissioner Devos** concluded that monies might be spent to acquire properties in other areas as mitigation for the 29 lot owners. Mr. Baltz responded affirmatively and agreed with **Commissioner Cummings** that two separate issues exist i.e. buying property from the 29 affected property owners and buying property for mitigation purposes. **Commissioner Devos** requested the benefit to the

property owners. Mr. Baltz stated, under the batched approach, the County would buy approximately 13 acres; that 13 acres would be classified as a HCP by USFWS; the 29 lot owners would come to the County for mitigation in order to move forward with building; and pointed out some costs would be passed on to the property owners. **Commissioner Devos** requested the costs on the approximate 52 quarter-acre lots in the 13 acres, how the property owners would reimburse the County for the costs, and pointed out various locations of the lots would negate the probability of establishing a Municipal Service Benefit Unit (MSBU) unless it was a MSBU for properties in scrub jay habitat areas. Mr. Baltz advised the cost would depend upon the purchase price of the property and the current estimate from Real Property Services is approximately \$700,000 for acquisition of 13 acres at about \$13,600 per lot. **Commissioner Devos** requested available options to the 29 property owners. Mr. Baltz reiterated the program would be voluntary and stated property owners who decide not to participate would need to go through the 8 to 12 month process for USFWS approval; pointed out the County would acquire property to serve as mitigation for private property owners and CIP projects; and referenced the County CIP Project HCP and maps of Gulf Cove, Deep Creek, and Harbour Heights Scrub Jay Habitats in the packet. **Commissioner Devos** requested an explanation of procedures for property owners who elect not to participate in the voluntary process. Mr. Baltz explained property owners would go through the 8 to 12 month USFWS evaluation process at an \$800 cost and a survey of the property must be performed as well as development of an individual HCP. **Commissioner Devos** stated the County might offer those individuals immediate relief for about \$14,000 or they could go through the 8 to 12 month process. Mr. Baltz added if the County establishes batched HCPs and a Countywide HCP, the mitigation ratio is one-for-one, but if a private property owner does mitigation, the ratio is two-for-one. **Commissioner Devos** concluded private owners do not have any other options, the cost to acquire the 13 acres for a batched HCP is \$700,000, and requested the direction necessary today. Bruce D. Loucks, County Administrator, explained the Board needs to make a decision to move forward in establishing a Countywide HCP, the first step of which would be to acquire the 13 acres for \$700,000; if the Board decided not to do a Countywide HCP in the future, mitigation may revert to the two-for-one ratio; the entire cost of the Countywide HCP may be \$38 million or \$40

million; and the cost would then be assessed to all properties in the red zones. **Commissioner Devos** simplified the decision is to spend \$700,000 as a down payment towards the \$38 million to \$40 million, without knowing how many property owners will voluntarily participate in the process, and requested the cost to the County. Mr. Loucks informed the Board that staff's recommendation is to move forward with the Countywide HCP and a mandatory participation program for the 17,000 lot owners. **Commissioner Devos** stated the bottom line is that the 17,000 lot owners would owe the County approximately \$14,000 each. Mr. Loucks pointed out if the County does nothing other than mitigation for CIP projects, it would be up to each property owner to deal with USFWS and establish individual HCPs. **Commissioner Devos** requested the mitigation ratio for County CIP projects. Mr. Loucks stated the County CIP Project HCP summary sheet reflects projects and acreage requirements and explained an HCP is based upon a science to preserve certain aspects of the populations not necessarily a certain mitigation ratio. **Commissioner Devos** questioned if the summary sheet is indicative of a Countywide HCP. Mr. Loucks explained the summary is of the County CIP HCP and a total of 410 acres for mitigation on County projects for the next five years. **Commissioner Devos** stated the CIP may change and requested the impact to the mitigation ratio based upon implementation of a County CIP versus a Countywide HCP. Reneé Francis Lee, County Attorney, stated that is unknown. Mr. Loucks reminded the Board of the CIP Budget Workshop scheduled in June. **Commissioner Devos** rationalized other affected property owners would probably have to mitigate on a two-for-one ratio and requested the ratio that USFWS will require for the County to mitigate CIP projects. Mr. Loucks pointed out the summary sheet reflects 410 acres of which the County already has title to 106 acres. **Commissioner Devos** questioned if USFWS will require additional acreage from the County like the other property owners. Mr. Baltz explained the standard that USFWS is requiring for County CIP projects is 410 acres based on 25 acres per nesting group. **Commissioner Devos** questioned if that standard is based upon implementation of a Countywide HCP. Mr. Baltz advised that was separate and pointed out the County is using its governmental status to assist property owners in resolving issues relating to Federal government requirements. **Commissioner Horton** commented on the approximate one acre shown in yellow on the Gulf Cove Scrub Jay Habitat map located in the red zone; if the County acquires that

parcel, the County would need to mitigate that parcel; it would cost the property owner approximately \$65,000 to mitigate that parcel based upon \$14,000 per quarter acre lot reimbursement to the County; and pointed out the property owner probably paid substantially less for the lots but it would be better than the private property owner having to work with USFWS and mitigate on a two-for-one ratio at today's prices. **Commissioner Horton** opined affected property owners will become livid and angry at the County spending \$700,000 and they will deal instead with USFWS and requested the portion of the 13 acres located on the Cape Haze Peninsula. Mr. Thomson reported 6.79 acres, comprised of about 26 properties of varying sizes, are to be purchased in groups. Mr. Thomson advised those properties would be put into preservation easements. **Commissioner Horton** concluded the County intends to buy the affected lots at \$14,000 each, charge each property owner \$14,000 as reimbursement when the lot is not worth that much to the property owner. **Chairman DeBoer** pointed out the property owner would be paying \$14,000 instead of \$28,000. **Commissioner Devos** requested an explanation on how the property will be assembled for group purchases. Mr. Loucks referenced the Gulf Cove Scrub Jay Habitat map, pointed out the light and dark green areas would be a part of a Countywide HCP, the County would try to acquire contiguous properties first from willing sellers, and then an eminent domain lawsuit would need to be filed since it is unlikely all property owners in those areas would be willing to sell their land. **Commissioner Horton** stated, if he owned yellow coded lots, he would prefer to use the \$65,000 to purchase property elsewhere and suggested the County provide incentives, i.e. impact fee credits, to buy other property. Mr. Baltz informed the Board that the three lots are owned by different individuals; the cost, based upon a Countywide HCP, is estimated at approximately \$4,200 per lot; and pointed out if the Board decides to proceed with a County CIP HCP, nothing would prevent the County from notifying the 17,000 property owners of their status and keeping the land swap program open and available. **Commissioner Horton** opined an HCP should be done for all Countywide projects and utilize and increase the funds set aside for environmental lands acquisitions. **Commissioner Horton** questioned government's responsibility to guarantee every land transaction, calculated the cost for the County to buy the 17,000 lots at \$10,000 each would be \$170 million, and commented in support of establishing a HCP for Countywide CIP projects. Mr. Baltz explained the \$170

million might be misleading i.e. under the batched approach about 52% of properties are located in West County whereas under the Countywide CIP HCP, the percentage drops significantly and land values in other parts of the County are lower. **Commissioner Horton** requested an estimate of the amount that affected property owners would have to pay if the County moves forward with a Countywide HCP. Mr. Baltz expressed uncertainty even though staff has been working with hypothetical situations since land management requirements that would be imposed by USFWS and associated costs are unknown at this time. **Commissioner Horton** requested the methodology that would be used to compensate the 29 lot owners in batch one if they pay \$14,000 for each quarter-acre lot and the price goes down for subsequent lot owners. Mr. Loucks suggested one approach would be to not segregate the two groups, move forward with the Countywide HCP, develop and levy an assessment on everyone, or establish a credit-reimbursement if two batches are done. **Commissioner Horton** concluded staff will bring back specific dollar amounts that affected property owners will be required to pay and questioned if USFWS will accept this as a positive step towards a Countywide HCP. Mr. Loucks agreed staff would bring back specific dollar amounts and advised USFWS is looking for a County commitment and does not care where the money comes from as long as the County identifies a reliable dedicated funding source. **Commissioner Devos** agreed USFWS does not care who pays and who suffers. **Commissioner Horton** reiterated a question from the morning about projects in a specific area on the Gulf Cove Scrub Jay Habitat map that would be served by mitigation and staff indicated the south extension of Winchester Boulevard. Mr. Loucks explained lands in the red zone are scrub jay habitat and the dark green area represents lots to be mitigated for County CIP projects or the combination of the dark and light green areas for the Countywide HCP i.e. so for County CIP projects it would be necessary to mitigate for lots in the dark green area. **Commissioner Horton** concluded that the dark green area would serve as mitigation for Winchester south, questioned if any lots exist that are closer or less expensive that would serve as mitigation for the 29 lots or 13 acres, and pointed out lots in Englewood East are less expensive than lots in Gulf Cove. Mr. Loucks reported the area identified in the dark green area is based upon the preservation of property surrounding nesting pairs not in relation to a project location. **Commissioner Horton** stated his impression is that the lots were

identified based upon the general location to lots to be mitigated and questioned the necessity of buying the specified lots when there are less expensive lots that might be purchased. Mr. Baltz advised staff has been working with Don Ross of Earth Balance in development of the batched approach for submittal to USFWS; staff has traveled to Vero Beach, Florida and Atlanta, Georgia to confer with USFWS officials regarding the County's approach to assure compliance with standards relating to HCPs; staff has discussed one option on providing a pool of lands available for scrub jay mitigation on a voluntary basis but that would entail significant expenditure of money and reimbursement programs. **Commissioner Horton** questioned if the County proceeds with batch one and then moves forward with a County CIP HCP, would affected lot owners be given an option or be forced to proceed on their own with USFWS under a two-for-one mitigation. Mr. Loucks restated **Commissioner Horton's** question that if the County goes ahead with batch one and buys the 13 acres in the dark green areas to cover the 29 property owners caught in the permitting process, does nothing more for private property owners, and applies the acquisition to the County CIP HCP, would these actions create future problems as the County develops the CIP. Mr. Baltz responded affirmatively, stated the commitment to develop a Countywide HCP was the factor that USFWS took most into account to offer the one-for-one mitigation and any deviation from the strategy would probably mean changes in the mitigation ratio, and it would be necessary to go back through a negotiation process. **Commissioner Devos** requested clarification of the statement made that County projects would not be impacted and now staff has indicated there are no guarantees and more negotiations would be necessary with USFWS. Mr. Loucks clarified the one-for-one mitigation ratio for the 13 acres was predicated on the County doing a Countywide HCP and if the County applies the 13 acres to the County CIP HCP then USFWS might require a two-for-one mitigation. Mr. Baltz suggested staff seek confirmation regarding the issue with USFWS officials. **Commissioner D'Aprile** stated there is no solution to this predicament; acquisition of the 13 acres for \$700,000 will resolve problems for the 29 property owners caught in the permitting process; questioned why the County should go further and purchase property for scrub jay habitat; and the only decision he can make today is on spending \$700,000 for the 13 acres. Mr. Baltz stated if the County moves forward with a batched HCP without the Countywide HCP, the one-for-one

mitigation may not be applicable and the 13 acres will not be enough to cover all 50 lots under the batched approach. **Commissioner D'Aprile** stated the County would have to bond and go further into debt and he is not comfortable with anything at this point. Attorney Lee recalled initial assumptions were to develop a Countywide HCP and this was the strategy used in negotiations with USFWS to achieve the one-for-one mitigation; the one-for-one mitigation is proposed for the 29 property owners whose building permits have been held up; advised Cathy Olson has been developing a Countywide HCP while two batched HCPs were pulled out and given to Earth Balance for submittal to USFWS; opined staff would need to negotiate again with USFWS if the decision is made not to do a Countywide HCP; expressed uncertainty regarding USFWS requirements to maintain the one-for-one mitigation; staff has been working under the assumption that Board direction was to move forward with a Countywide HCP; an expectation has been created for property owners participation in a Countywide HCP; this is an important decision; and the Board's decision today will set the course for future actions. **Commissioner Cummings** expressed understanding that the one-for-one mitigation was predicated on the acquisition of 25 acres surrounding each scrub jay family and questioned if the 410 HCP total acres on the summary sheet reflects a one-for-one or two-for-one mitigation. Mr. Thomson verified the 25 acres was for each family group and questioned if the total acreage for County projects will stay the same regardless of whether or not a Countywide HCP is done. Mr. Baltz expressed understanding that the 410 acres is still a good number but he wants to verify it with USFWS in light of the possibility of moving away from a Countywide HCP, pointed out the 410 acres is not for all County projects, they are for projects already identified in the CIP, and additional projects will require more mitigation. **Commissioner Cummings** requested if the 410 acres was established prior to discussion of an HCP. Mr. Baltz offered to bring back an answer since Mr. Kampert is no longer with the County and Ms. Olson is not present. **Commissioner Cummings** opined the numbers could increase significantly contingent upon the Countywide HCP and the one-for-one ratio. Mr. Loucks explained the amount of acreage was calculated while developing the methodology for the Countywide HCP and staff needs to verify with USFWS the extent of their linkage with the Countywide HCP. **Commissioner Cummings** expressed understanding that all of the property in the red

zones, as of today, cannot be developed based upon Federal government restrictions; mitigation issues must be addressed through some means with USFWS; the Board is trying to find a way to return development potential to one-third or one-half of the property owners depending upon the two-for-one or one-for-one mitigation; stated the Board should do this; the primary issue is the mitigation ratio; the one-for-one ratio will involve eminent domain takings at some stage; development potential has already been taken by the Federal government; the Board is trying to find a method to reduce the taking; agreed with **Commissioner Devos** that a MSBU would create a reliable revenue stream for bonding and a direct reimbursement fee based method would be a lot more difficult to bond; and expressed a preference for a direct fee based reimbursement method. **Commissioner Cummings** pointed out individuals would need to pay \$800 and go through the 8 to 12 month process with USFWS, have a survey performed, and establish an individual HCP into perpetuity versus the County trying to restore development potential, having individual property owners pay \$4,200, and implementing a HCP management plan. **Commissioner Cummings** stated going ahead with a Countywide HCP does the most to restore development potential and reduce the number of takings and pointed out a Countywide HCP would provide better quality green spaces and habitats. **Commissioner Cummings** stated the overall plan should be done, he needs more information on MSBU and fee based methodologies, and concluded the 410 acres for mitigation, as set out on the summary sheet, would still be accurate for County CIP projects. Mr. Baltz agreed with the use of 410 acres for mitigation of CIP projects. **Commissioner Cummings** commented in support of spending the \$700,000 and doing the first batch and reiterated the need for more information on the implications of MSBU and fee based methodologies before continuing with the overall HCP. **Chairman DeBoer** stated once a Countywide HCP is adopted, a lot of people would realize the lots would be worth \$28,000 not \$14,000 each based on the two-for-one mitigation; targeting properties increase purchase prices and mitigation for the property owners; if he owned one of those lots, he would hire an attorney instead of negotiating with Paul Payette; suggested going in the opposite direction and buying the lots of the 29 property owners caught in the permitting process and offering them \$7,000 for each lot; some property owners might consider using the \$7,000 to buy another lot and cut their loss to one-half; the County could take the

\$7,000 loss and sell the development unit for \$4,000 for a \$3,000 net loss; the impact to the County would be far less; things would move ahead a lot faster; and the County would not be placed in the role of executioner for the Federal government. **Commissioner Devos** commented in support of helping the 29 property owners caught in the permitting process although she is concerned with setting a precedent since other people might find themselves in similar situations; staff has not brought sufficient information to allow the Board to make an informed decision based upon the discussion today; staff needs to verify with USFWS the mitigation ratio requirement on the 410 acres for the five-year CIP and individual property owners if a Countywide HCP is not implemented. **Commissioner Devos** stated she is reluctant to make a specific commitment since information has not been provided on creating an MSBU. Attorney Lee advised an MSBU might be created and the assessments would have to be validated through a court process wherein the County would prove the boundaries and people being assessed are correct and the Court would declare a public purpose that would not be subject to future challenges so the revenue stream could be bonded. Attorney Lee pointed out 17,000 properties would be suspended from the tax roll. **Commissioner Devos** expressed reluctance in moving forward with the first batch without having the additional information and requested staff to bring back information on establishing a MSBU and bonding as well as the information requested by **Commissioner Cummings** on the fee based method and the breakdown on the payback in the MSBU for the actual annual impact to property owners. **Commissioner Devos** expressed support for doing a Countywide HCP if a reliable revenue stream can be identified and bonded. **Chairman DeBoer** requested a motion. **Commissioner D'Aprile** requested an estimate of taxes paid on each of the 17,000 lots; stated the loss in taxes, based upon \$300 for each lot, would be \$5.1 million per annum; opined the Federal government has established preservation areas for the scrub jays; suggested letting the Federal government pay the taxes; questioned if surrounding land requirements expand over the 25 acres as babies are born of the nesting pairs; stated he is not ready to do anything; and he is disgusted with the whole thing. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL OF FUNDING \$700,000 TO BEGIN ACQUISITION OF PROPERTIES FOR A COUNTYWIDE HABITAT CONSERVATION PLAN BY ADVANCING FUNDS FROM THE CURRENTLY ESTABLISHED .05 MILLS RATES SET ASIDE EACH YEAR IN THE COUNTY'S CIP FOR THE PURCHASE OF ENVIRONMENTAL**

LANDS, SECONDED BY COMMISSIONER HORTON. Commissioner Horton expressed support for doing a County CIP Project HCP; stated the County should purchase the lots from the 29 property owners caught in the permitting process; if the property owners do not accept the purchase price, let them do what they want; USFWS may have inadvertently removed 17,000 lots from the platted lots and at least approximately 8,000 lots based on the one-for-one mitigation; agreed verification from USFWS is necessary on the impact to the 410 acres calculated for mitigation of County CIP projects. **COMMISSIONER HORTON MOVED TO TABLE ACTION ON THE MAIN MOTION UNTIL THE NEXT MEETING ON MAY, 25, 2004 TO ALLOW STAFF TO BRING BACK INFORMATION AS REQUESTED, SECONDED BY COMMISSIONER DEVOS.** Commissioner Cummings advised the motion to table takes precedence over the main motion. Commissioner Devos requested staff bring back answers to questions posed by Chairman DeBoer as well as clarification on the revenue stream, the ability to bond, confirmation from USFWS regarding the 410 acres as CIP projects mitigation, and notification to the 17,000 property owners. Commissioner Cummings added clarification is needed on whether the one-for-one mitigation ratio would only be applicable to the 29 property owners or would it be extended to any property owners that make application for a building permit on lands in designated areas. Commissioner Horton commented in support of providing relief solely to the 29 property owners since property owners in the red zones are aware that they have problems. Commissioner D'Aprile concurred. Chairman DeBoer suggested spending \$9,000 or whatever the charge would be to mail notification to the other lot owners. **CALL ON THE MOTION TO TABLE THE MAIN MOTION: DECLARED UNANIMOUS.**

MEETING ADJOURNED: 5:00 P.M.

Signature on file in Commission Mission
Matthew D. DeBoer
Chairman

ATTEST:

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

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May 11, 2004

OF COUNTY COMMISSIONERS

By: Signature on file in Commission Minutes
Deputy Clerk

ksm/djn