

REGULAR MEETING

BOARD OF COUNTY COMMISSIONERS

OCTOBER 5, 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, Interim County Attorney Brendan Bradley, Executive Assistant to the Board of County Commissioners Joann Dillon, and Deputy Clerk Diane J. Nice. The meeting was called to order at **9:00 A.M.**

The **invocation** was given by **Chairman DeBoer** followed by the Pledge of Allegiance to the Flag.

CHANGES TO THE AGENDA

Additions:

Consent

Agenda

Agenda Item L-1, General Services - Board approve Change Order #3 to File #03-387, Agreement between Charlotte County and Motorola, Inc., Expansion of Radio Infrastructure, in the amount of \$560,237 for a revised total amount of \$4,362,715.96. (The County will be submitting for at least 75% reimbursement of the cost from FEMA.)

Administration Propose to cancel the Board of County Commissioners meeting on November 2, 2004 (Election Day).

Commissioner

Comments

Discussion and direction on projects related to the recovery from Hurricane Charley (added by **Chairman DeBoer** on the record).

COMMISSIONER DEVOS MOVED FOR APPROVAL OF THE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.

Chairman DeBoer announced citizens' input and sign-in procedures for each of the Planning and Zoning Agenda items.

II. PLANNING AND ZONING AGENDA

1. Discussion and Determination on Residential Density (Legislative)

Thomas A. Cookingham, Planning Services Manager, introduced Barbara Jefferies, Planner II, to make the presentation. Ms. Jefferies requested input from the Board on the future policy for the calculation or definition of density and advised Section 3-9-2 of the Zoning Code defines "density, residential" as "The number of residential dwelling units permitted per acre of land within the parcel. The term 'density' refers to the number of residential dwelling units permitted per gross acre of land and is determined by dividing the number of units by the total area of land within the boundaries of a lot or parcel. In the determination of the number of residential dwelling units to be permitted on a specific parcel of land, a fractional unit shall not entitle the applicant to an additional unit." Ms. Jefferies explained the three underlined references to "land" create a case for excluding areas of water from receiving density credit although arguments have been made that "wetlands" and "submerged lands" should also be included in a broad definition of land; pointed out Section 3-9-2, Rules of Construction, Definitions state "Except as defined herein, all other words used in this chapter shall have their customary dictionary definitions;" and Webster's defines land as "1. any part of the earth's surface, as a continent or an island, not covered by a body of water." Ms. Jefferies explained two scenarios exist: RSF-1, each dwelling unit within the zoning category would be on one acre or 200' x 200' lot or a multiplier to be applied against gross acreage to calculate gross density without regard to resulting lot size and the scenarios create different results regarding lot size and density as well as quality of life and neighborhood character. Ms. Jefferies reported staff traditionally has taken the multiplier approach because no extreme case has ever been presented resulting in a lot size that would be 10% of the

zoning category or 10% of approximately 40,000 square feet; two cases now exist, one of which is a proposed development on a 50-acre parcel in a Agriculture Estates (AE) zoned area inside the Urban Service Area (USA) equivalent to one-acre zoning of which 30 acres have been mined under a Class III excavation permit leaving a 28-acre water body, the developer has proposed 104 units derived from 50 units on a gross density calculation for one-acre zoning applied to the 50-acre parcel and 54 units transferred in on a Transfer of Development Rights (TDR) certificate, the resulting lot size would be 3,200 square feet or 40' x 80' after engineering infrastructure and buffers and the second case involves a dredged boat basin wherein the developer is requesting density under the water body; staff has researched other jurisdictions on the density issue and determined that it is up to local elected officials to decide based on community dynamics; reported the industry average for engineering infrastructure within a subdivision is approximately 20% of the land area; and staff's recommendation is continue to not deduct for engineering infrastructure and deduct for natural and manmade unbuildable features such as Class II and Class III excavations, wetlands, and open waterbodies. **Chairman DeBoer** reiterated public input procedures. Michael P. Haymans, as a citizen and attorney of Farr, Farr, Emerich, Sifrit, Hackett & Carr, P.A. for multiple clients including Babcock Florida Company, stated the interpretation that wetlands and waterbodies do not have any density would change 45 years of gross density reliance by private property owners and it would create a devastating impact on vacant property values and more onerous impact than the recent Transfer of Development Units (TDU); land exists under all water bodies, wetlands, and excavations; pointed out the State of Florida leases land under waterbodies; and recalled about two years ago, the Board adopted the TDR ordinance that indicated wetlands and other areas from which density might be shifted have some value and \$3,700 was established as that unit value. Bruce Pomeroy stated a lot of County platted land is still in ownership from the General Development Corporation era; suggested the Board consider available services including medical, fire, law enforcement, and traffic flows for development purposes; and the calculation of density should incorporate road improvements, sidewalks and street lighting. Suzy Hackett, Co-Chairman of the Alligator Park Land Development Committee, expressed concern regarding the impact this change would have on a 10-acre proposed development

going through the Development Review Committee (DRC) process that has a specific number of lots designated with approximately 1.5 acres of wetlands plus buffers as well as a future project and requested the Board seriously consider this issue. Geri L. Waksler, of Moore and Waksler, P.L., appeared on behalf of KB Homes Ft. Myers, LLC, Florida Lakes, Inc., Bruce Laishley, and Rick Treworgy; advised staff's interpretation should be rejected since staff's rationale for the change fails when five definitions for "land" is found in Webster's, one of which is "a portion of the earth's solid surface distinguishable by boundaries or ownership;" staff's interpretation is not supported by established legal principles i.e. the ordinance refers to gross acre of land, words may not be added to create a limitation not included in the plain language, because zoning regulations are in derogation of private rights of ownership and words used in a zoning ordinance should be given the broadest meaning when there is no definition or clear intent to the contrary, and the ordinance should be interpreted in favor of the property owner; the current interpretation has been in effect for over 30 years and many property owners have acquired land and excavated property in reliance on this interpretation; to make this change would jeopardize their investments; and the new interpretation would increase the cost of fill for all property owners wishing to build as a result of cost increases based on land values and the value placed on density in the TDU ordinance and, if excavations are not done in the future, fill will have to be transported in at a higher cost; and requested the Board reject staff's interpretation. Make Cataldo encouraged the Board to deny staff's recommendation because 40' x 80' lots are not user friendly and the demographics of the property and wetlands should be included in the density. Mel Staudmeyer, of Southwest Land Developers and Florida Lakes, Inc., opined the proposed change will placed an economic hardship by increasing transportation and fill costs, currently 75% of all fill dirt is coming from out-of-County, and requested the Board vote no on the density change. Greg Stuart, on behalf of Gregory Eagle and as Project Planner for RealMark Tuckers Grade, LC, pointed out staff's proposal has many flaws as indicated by citizens' comments; reported staff's interpretation that wetlands are 100% aquatic and no density should be assigned is technically incorrect since wetlands are emergent lands not 100% aquatic; questioned the method for administering this type of definition i.e. pre- or post-permit or rely on a Federal,

State, or County definition; advised he has practiced in his professional capacity in 18 counties in Florida that use the traditional, accepted means of defining density in the same way as this County currently does; expressed the belief that the change will significantly impact property values; and urged the Board reject the proposed change. Robert H. Berntsson, of McKinley, Ittersagen, Gunderson & Berntsson, P.A. on behalf of a number of client, urged rejection of staff's interpretation; stated the definition for density has been in the Code since 1981 and the Code contains the words "gross acreage;" wetlands and submerged lands are lands based on boundaries; a change of this magnitude needs to go through the public hearing and ordinance processes; the Board has the discretion to place a condition on an excavation excluding density for an excavated lake; the TDU ordinance recognizes transfer of density on properties with wetlands; the Code allows cluster developments on properties with natural and manmade features in order to achieve the density entitled to under the gross acreage basis; reiterated the request to reject staff's interpretation; or at least for staff to bring back an ordinance in order to justify the change. Bruce Laishley, of Southwest Land Developers and Florida Lakes, Inc., stated he has been in excavation and land development since 1983; requested the Board listen to the citizens and attorneys who have all opposed this change; he has been working on a proposed project for 14 years while performing studies and obtaining permits and this change will adversely impact that development; and requested the Board not adopt the new definition. Todd Rebel, of Banks Engineering representing the 50-acre project referenced by Ms. Jefferies, advised the project is being developed as a Planned Development (PD) that encourages clustering of density on property and the definitions of a wetland and a lake are complex i.e. Southwest Florida Water Management District (SWFWMD) and the Army Corp of Engineers take jurisdiction on wetlands and density is gotten back once a permit is issued, advised a portion of the lake on the 50-acre project is being filled in; and questioned if the developer will get density back if it is not there now, where do you draw the line i.e. at seasonal high water, dry season, top of bank for a lake, and pointed out fluctuations exist on lakes and wetlands. **Chairman DeBoer** announced closure of public input. **Commissioner D'Aprile** stated he has heard a lot of negative comments regarding the new definition; fill dirt from excavations have been utilized in new construction; stated he does not have a

problem with a property owner making money from his land; the Board is trying to control density and reduce platted lots; expressed opposition to staff's interpretation of cluster development on 20% of a parcel. **Commissioner Horton** stated the Board is not responsible to control developer profits, the Board has been encouraging TDUs off of wetlands for preservation purposes so there is density on wetlands, commented on the difficulty of grandfathering in the particular 50-acre project with the 28-acre lake, and questioned the necessity of a zoning change to allow the transfer of the 54 units of the 104 proposed units. Ms. Jefferies explained a plan amendment and a PD out of the existing zoning would be necessary. **Commissioner Horton** pointed out Board concerns may be addressed during the PD process and it would not be necessary to change the density definition. **Commissioner Cummings** advised the Regional Coalition, that Charlotte County is not a direct signatory to, needs the County's cooperation in negotiations for Babcock Ranch and suggested exclusion of them to protect the integrity of the negotiations. **Commissioner Cummings** commented on differences in Classes I, II, and III group excavations as well as development potential i.e. if a lake is excavated for the intent of using it as a lake with residential development based on permitting criteria, then the lake density should be counted but not for the purpose of selling fill; there are different slopes and these need to be addressed more fully under the Group II excavations in furtherance of development activities and include a littoral zone with the lake to create an amenity and a habitat that is worth something; Group III excavations are done for investment and profit; and Group I excavations are more for landscaping and density should be counted. **Commissioner Cummings** stated the Comprehensive Plan (Plan) and the TDU ordinance encourage transferring development potential out of wetlands; he is in a quandary over some existing submerged lands; wondered if density credit should have been given for the TDR transferred cul-de-sac out of the City of Punta Gorda's drinking water reservoir; and he does not have a problem with staff bringing back an ordinance as suggested by Attorney Berntsson including Group I and Group II excavation criteria requiring a littoral zone. **Commissioner Devos** agreed that the change should be brought back in an ordinance to allow an opportunity to discuss whether or not to grandfather Group III excavations; requested the number of Class III excavation permits; opposed locating a residential development by a Class

III excavation; agreed with **Commissioner Cummings** on the need to address Class II excavation criteria regarding the angle of the slope and suggested it might be handled in an ordinance or through the PD process; expressed no objection to cluster homes even though she does not like living in one at the present time; expressed concern about transferring substandard lots on a one-to-one basis; indicated support for reducing density; and stated she needs a better definition of density. **Chairman DeBoer** pointed out the definition of density ties in with the TDR ordinance, definitions for substandard lots and clustering density, height limitations, and the excavation ordinance; stated when a manmade water body is on a piece of property, the owner decided to use that resource or convert that asset to cash or revenue; that transfer is not just selling the fill but it is also the value gained from the amenity for lakeside properties; more flexibility should be allowed when the community takes away a property owner's choice regarding environmentally sensitive and wetland areas; concurred with comments on how to deal with this in the future; and stated the Board has the discretion to decide on how this and other policies are applied in the context to the greater vision, goals, and objectives in preserving the quality of life in the County, green space, and reducing density. **COMMISSIONER HORTON MOVED FOR APPROVAL TO ADDRESS DENSITY ISSUES THROUGH PLANNED DEVELOPMENT, ZONING, AND PLAN AMENDMENT PROCESSES ON A CASE-BY-CASE BASIS AND TO SET A WORKSHOP TO BEGIN DEVELOPING POLICIES THAT CARRY OUT THE OVERALL GOALS AND OBJECTIVES OF THE BOARD, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.**

Chairman DeBoer requested, by a show of hands, the number of people present for **Agenda Item 6, PA-04-05-23-LS, Winchester Boulevard and Englewood East**. The majority of people raised hands. **Chairman DeBoer** suggested the item be taken next and requested citizens remember that other people are present for other petitions.

RECESS: 9:58 A.M. - 10:05 A.M.

COMMISSIONER DEVOS MOVED FOR APPROVAL TO TAKE AGENDA ITEM 6 OUT OF ORDER, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.

Agenda Item 6, PA-04-05-23-LS, District III - Legislative (Proof of Publication was in order.)

Jorge Perez, Planner II, gave a slide presentation on the petition filed by Alliant Partners, LLC, for a large-scale plan amendment from LDR to Community Commercial Center (CCC) on 16.7+ acres located west of Winchester Boulevard and south of the Sarasota - Charlotte county line, in the Englewood area; approval of the petition will add the site to the existing 8.16+ acres of Commercial Center (CC) that were amended in 2001 to serve retail needs of adjacent neighborhoods, the total 24.8+ acre commercial site would be located along Winchester Boulevard, a designated hurricane evacuation route that is also a limited access road; approval of the amendment would not cause Winchester Boulevard's Level of Service (LOS) to fall below a "C"; explained the one, three, five, and ten-mile radius around the WalMart on SR 776 and the Publix at Gulf Cove commercial centers; the applicant has indicated an intent to file for a rezoning to a PD during the adoption hearings whereby the Board might impose conditions for buffering, screening, and landscaping between the commercial and immediately adjacent mobile home park; estimated a 20% increase in traffic; based upon a telephone conversation with Emergency Management Director Wayne Sallade, a traffic control point will be needed on Winchester in the vicinity of the proposed development; staff recommends denial because of potential impacts on traffic generation, evacuation efforts, noise, and the quality of living of present and future residents; and the P&Z Board recommended approval of the transmittal on July 20, 2004 on a 3:1 vote. Robert H. Berntsson, of McKinley, Ittersagen, Gunderson and Berntsson, P.A., appeared on behalf of the applicant by stating the plan amendment with a Commercial General (CG) rezoning was denied by the Board in August 2003 because of the lack of the ability to control development whereas this request provides flexibility with the PD at the adoption phase to address buffering, access, and traffic circulation; the preliminary site plan shows an entire walled community with buffering and no access point to the mobile home community; the site is adjacent to the approximate 8-acre parcel zoned Commercial Center; opined staff's one, three, five, and ten mile radius is misleading since people shop where they want to; the property is currently zoned Mobile Home Subdivision that prohibits conventional stick-built homes; access onto Winchester Boulevard would be required

even if mobile homes were constructed on the site; seemingly staff's denial is based on evacuation during a major storm event although Mr. Sallade has indicated support for the request; the TDU ordinance, the Plan, and every major undertaking encourages density reduction and this request will reduce density by over 100 mobile homes and lessen the number of people that will have to be evacuated; the Winchester Corridor is scheduled for expansion; ranch properties to the north will be developed in North Port and Sarasota County areas; there are very few 25-acre commercial sites remaining in the County; encouraged transmittal to the Department of Community Affairs (DCA) for Objections, Recommendations, and Comments (ORC) and allow him to work with staff on a PD to ensure public safety, health, and welfare; and requested time for rebuttal. **Chairman DeBoer** stated the legislative process does not provide for rebuttal. **Commissioner Cummings** requested the number of times an application on this parcel has been before the Board. **Chairman DeBoer** stated three times before **Commissioners Cummings and Horton** and him. **Commissioner Horton** requested the number of mobile homes that can be put on the site. Mr. Perez calculated 125 mobile homes. **Commissioner Horton** estimated 250 people for evacuation purposes and questioned applicant's intent to file for a PD. Attorney Berntsson concurred and indicated the current application contains that information. **Commissioner Horton** requested the number of trips per day based upon the 20% increase. Mr. Perez reported staff's analysis indicates 481 trips per day with a full build out as currently designated versus more than 20,000 trips per day for a commercial center; explained a traffic engineer has disputed staff's analysis since all of the 20,000 trips would not generated by this shopping center alone; and even if the number of trips were off by 50%, there would still be 10,000 trips per day. **Commissioner D'Aprile** requested the most devastating impact that Home Depot would have on the surrounding community in addition to the increase in traffic and property values. Mr. Perez commented on the impact of commercial development on immediately adjacent homes; Attorney Berntsson has indicated the development will come back for a PD and provided a site map that reflects a 25' setback; traffic issues impact the community on an overall basis; and Sarasota County is working to develop the Winchester extension. **Commissioner D'Aprile** requested the time line for the extension. Mr. Perez stated 5 to 10 years. **Commissioner D'Aprile** requested the type of buffer and the economic impact on the community.

Attorney Berntsson explained a 6' walled buffer with landscaping on the outside next to the residential similar to the one at Eckerd's at the corner of Pine Street and SR 776; advised the specific site user has not been determined at this time, there have been discussions with Home Depot and several large retailers; and sales and property tax generation would be significant. **Chairman DeBoer** announced public hearing input procedures. Bruce Pomeroy, an Englewood Road Warrior, stated Phase I of the Winchester Corridor is approximately .7 mile from SR 776 to the Charlotte - Sarasota county line; the 2001 rezoning to Commercial Center was spot zoning and recalled the applicant stated the remaining 7 acres would remain wild forever; an application for rezoning filed in 2002 was denied in 2003; the current application would change the 16+ acres to commercial and the approximate 24+ acres will be utilized for one commercial site; after driving around the Home Depot on Veterans and Toledo Blade Boulevards, he commented on the increased traffic impact and disruption to residential neighborhoods; and suggested an overpass. Barbara Harrington recalled hundreds of her neighbors from Lemon Bay Isles and East Englewood and staff appeared before the Board approximately a year ago and requested the Board reject the request for a commercial corridor along Winchester Boulevard due to adverse environmental impacts, noise and light pollution, movement and storage of large trucks, and promises that this property would remain residential; commented on the number of accidents at SR 776 and San Casa and on Winchester Boulevard and increased trip generation; and requested the Board reject another spot zoning change. William Harrington, a resident of Lemon Bay Isles manufactured homes park, commented in opposition to the request; pointed out an error in the unified report on paragraph 9, page 2 exists since Station 13 at the disconnected Winchester Boulevard, is only an annex ambulance response unit; this is the third time a request has been before the Board on this tract; the Board rejected the 2003 zoning request by a unanimous vote; requested a detailed analysis be performed and compared with an accepted SR 776 corridor study on concerns regarding traffic safety, landscape buffers, sensitivity to generic standards of the Florida Department of Transportation, impacts on individual neighborhoods, proposed County standards of commercial development especially relating to lighting, pedestrian access, separation of commercial and residential areas of buffer zones; opined buffers on Winchester Boulevard are inadequate; he has

previously raised a question on the proper environmental permits for restoration of percolation of pond berms and no acceptable answer has been received; no answer has been received to the July 1, 2003 letter from the County's Environmental Specialist Andrew Kelly; referenced the December 29, 1995 agreement regarding the Lake Side Club that contained terms and conditions applicable to the developer, residents, and assigns based upon a minimum of 85 and a maximum of 171 lots to be developed; and requested disapproval of the application. Bruce Howey stated Lemon Bay Isles residents welcomed Winchester Boulevard as a dedicated evacuation route; questioned the impact of a large commercial development on the initial reason for growth on Winchester Boulevard; and requested rejection because Winchester should continue as an evacuation route. Don Ruesan, a Lemon Bay Isles resident and a Director of the Property Owners Association, stated owners of the 8-acre parcel, upon which the Board granted a variance from residential to commercial, pledged not to come back for rezoning of the whole parcel; that pledge has been broken twice; there has been no change in the circumstances or concerns and no reason to change the zoning; commented on the potential adverse traffic impacts and safety hazards as a result of the proposed change; and requested rejection of the application. Mike Cataldo, a Rotonda West resident, stated the argument of applicant's attorney is lame at best; he spoke with 10 Lemon Bay Isles couples last weekend of which 16 residents opposed the transmittal in order to preserve the quality of life they bought into and the peacefulness of the neighborhood; prior to any future commercial development approval, interconnections should be done with at least three access roads parallel to SR 776 and completion of Winchester Boulevard to the south including a traffic signal; the applicant should visit Lemon Bay Isles residents to ascertain what they want; and requested rejection of the transmittal. Elizabeth Kliesrath, a Lemon Bay Isles resident at the last house on Partridge Avenue that backs up to Winchester Boulevard, stated she no longer needs an alarm clock to get up in the mornings because there is a lot of traffic at 5:00 A.M. and hot rods during the day; the buffer zone does not reduce noise and litter and she does not need another buffer; she is 85 years old; and asked that she be left a lone to enjoy some solitude for the rest of her life. Charlie Lindberg, on behalf of the Englewood East Property Owners Association, read a paragraph from the letter of the Executive Board that indicates that "We represent

hundreds of residents who need your protection from developers that profit by ... inappropriate usage into our residential area. We ask that you help us preserve the integrity of our community by resisting this commercial intrusion." **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner Cummings incorporated his comments from prior public hearings regarding this matter. **COMMISSIONER CUMMINGS MOVED TO DENY TRANSMITTAL OF PETITION PA-04-05-23-LS TO DCA FOR AN ORC, SECONDED BY COMMISSIONER HORTON.** Commissioner Horton compared remarks from citizens, some of who oppose and support the proposed change; stated even though he has difficulty imaging 30,000 trips per day and reduced the number to 10,000 trips per day, the proposed development will have a significant economic impact on sales tax and \$.01 sales tax revenues; pointed out density will be reduced by 125 manufactured homes and access onto Winchester Boulevard will be the same whether the site is developed as zoned or under the proposed change; Winchester Boulevard was built as an excavation route under the first \$.01 sales tax extension and that needs to take precedent in favor of the motion to deny. **Commissioner D'Aprile** commented on his continuing position as an opponent of economic development; pointed out the specific site use has not been established; stated reducing density and increasing economic development is a plus but there are a lot of negatives in this case; and he will vote in favor of the motion. **Commissioner Devos** stated most of the discussion today is more appropriate for the PD hearing instead of the transmittal hearing; commented on the likelihood of the site use as a large box store; and even though the proposed change will allow a reduction in density, establish another commercial node, and reduce the trip generation to the Home Depot in Port Charlotte via SR 776, she will support the motion, and join in the Board's desire to reject the transmittal. **Chairman DeBoer** recalled prior discussions on applications concerning this parcel and Winchester Boulevard as an evacuation route as well as the promises made when the 8.16+ acres were rezoned to commercial that the remaining property would remain as originally zoned and intended as a buffer and concurred with the motion. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item 2, PA-04-05-16-LS, District II - Legislative (Proof of Publication was in order.)

Jie Shao, Planner II, gave a slide presentation on the petition filed by Gregory W. Eagle, Trustee, for three large-scale plan amendments on a single parcel to amend the Urban Service Area Overlay District (USAOD) map by extending the Suburban Area to cover 17.18+ acres, Future Land Use Map (FLUM) amendment from Preservation to Agriculture on the same acreage, and a FLUM from Agriculture to Low Density Residential (LDR) for 38.8+ acres located within the USAOD and outside the Coastal High Hazard Area (CHHA) located on the northwest corner of Burnt Store Road and Grand Canal Road in the Punta Gorda area; the applicant applied for a large-scale plan amendment in 1996/97 to convert 60.73+ acres from Agriculture to Coastal Residential and the Board denied the petition due to low build out in the area, environmental, archeological/historical and hurricane safety considerations; the applicant is now requesting the plan amendments, the Preservation portion of the property has been surveyed to delineate the wetlands and staff has determined that the FLUM amendment is justified; the applicant has indicated that an archeological survey is being conducted on the site; the applicant is also requesting amendment on the front portion of the property to LDR and staff has concluded that a residential neighborhood development on this portion would be appropriate when utilizing the PD zoning district and the residential development would be facilitated through a TDR; and staff and the Planning and Zoning (P&Z) Board recommend approval of the transmittal to the DCA for an ORC. Attorney Waksler appeared on behalf of the applicant with a slide presentation; explained the tract has two FLUM use designations i.e. Agriculture inside the USA and Preservation outside the USA; when the Preservation area was originally established, there were no surveys of the parcel and the actual Coastal Wetland Areas had not been delineated, and the line between the Preservation land use and Agriculture use was drawn along the section line; the wetlands have been surveyed and the wetland lines have been accepted by the Southwest Florida Water Management District (SWFWMD); the first part of the application requests reclassification of parts of the property outside the Coastal Wetland as Agriculture inside the USA as is the remainder of the property and also consistent with the existing land use on the remainder; the second part of the request is to reclassify the eastern most

portion of the property from Agriculture inside the USA to LDR outside the Coastal High Hazard Area to afford a greater range of development densities than allowed by the Agriculture land use designation; the site has a Preservation and Agriculture designated parcel located between Tern Bay on the north and Pirate Harbor on the south; Tern Bay is a mixed use property including commercial uses and Pirate Harbor is a LDR subdivision located within the USA; pointed out on a slide the old USA division on the property contrasting with the field verified area of the Coastal Wetlands; a change is requested from Preservation to Agriculture designation and 38.31 acres from Agriculture to LDR on Burnt Store Road and outside of the Coastal High Hazard Area; utilities will pass directly adjacent to this site since Tern Bay will be bringing Charlotte County Utilities (CCU) lines up to the north; any increased density created by the land use change will be accomplished by a TDR by removing from less appropriate areas and transferred to this site; a TDR will be required to be accompanied by the PD rezoning; the PD will set aside a 13.5-acre conservation easement for an east-west wildlife corridor which will connect the Coastal Wetlands to the State owned Preservation Areas located east of Burnt Store Road; approval of this change will not impact the price of the property i.e. Greg Eagle has already established and conveyed a price to the County for possible acquisition; this change will not expand the USA because the property requesting to be changed to LDR is already within the USA; the County is obligated to provide certain services and provisions are in progress to install utilities and expansion of the shoulders on Burnt Store Road to address safety problems; capacity on Burnt Store Road is not an issue at this time; and requested approval of the dual change to the FLUM. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner Cummings indicated staff and the applicant have worked together in resolving all of his concerns. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO TRANSMIT PETITION PA-04-05-16-LS TO DCA FOR AN ORC BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 7, 2004 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS.** Commissioner Horton requested an explanation on the change from Preservation to Agriculture. Ms. Shao pointed out the difference in the existing section line utilized in designating the Preservation area and the wetlands

survey that reflected the wetlands actually exist beyond the section line. Attorney Waksler explained lands designated Preservation must comply with certain criteria and characteristics and the change to Agriculture will allow development at a lower density and provide transition between the LDR along Burnt Store Road and the Agriculture area accomplished by a PD with buffers, housing types, and clustering of housing. **Commissioner Horton** requested the number of Preservation and Agriculture development units. Ms. Shao advised one unit per 40 acres under Preservation and one unit per acre under Agriculture. Attorney Waksler pointed out a TDR will be required to remove density from less desirable areas from a Sending Zone other than this property and the changes requested are on 38.31 acres from Agriculture to LDR and 36 acres from Preservation to Agriculture. **Commissioner Horton** expressed opposition due to the increase in buildable units. Attorney Waksler advised a PD and TDR will be heard at the adoption hearing. **Chairman DeBoer** expressed reluctance since he is not totally comfortable with the proposed changes and expressed concern about not having a full corridor plan for Burnt Store Road. **Commissioner Cummings** commented in support of the County acquiring the property for the Wildlife Corridor to the Charlotte Harbor Buffer Preserve. **Chairman DeBoer** requested more information on the Preservation Corridor. **CALL ON THE MOTION: MOTION CARRIED ON A VOTE OF 4:1 WITH COMMISSIONER HORTON OPPOSING.**

Agenda Item 3, PA-04-05-18-LS, District IV - Legislative (Proof of Publication was in order.)

Barbara Jefferies, Planner II, presented the large-scale plan amendment filed by KB Homes Ft. Myers, LLC from Agriculture to LDR on 43.6 acres with slides reflecting the property contains an Agriculture Estates (AE) zoning designation and the FLUM and zoning designations combined limit the site to a density of one unit per acre; the property is located within the Suburban portion of the USA, adjacent to and north of South Jones Loop Road, west of I-75 and east of Taylor Road; the site is triangular shaped and Alligator Creek forms the base of the triangle; existing land use patterns in the area are LDR and Agriculture, south of the site are several large lot residential properties, southwest and southeast of the site are mobile homes parks, and KB Homes recently obtained a rezoning to PD north of

Alligator Creek for 280 units of density at 3.2 units per acre, west of the site are three large lots containing Mobile Home Conventional (MHC) zoning but developed with single-family homes, and east of the site are residential uses and a golf course; impacts to the school infrastructure and roadways are anticipated; the project may increase some of the property values while decreasing others, this is a relatively rural part of the USAOD and there are large homes on large tracts as well as mobile homes on small lots, and the impact on living conditions and adjacent property values will depend on site design and those portions utilized for natural beauty will be less impact to nearby neighbors; staff has some reservations regarding the change in land use since a question exists on whether the site might be used as a Receiving Zone (RZ) because of active gopher tortoise burrows and the property contains habitat suitable for scrub jays; protection of the natural beauty of the landscape through the site design process will be an important factor in staff's future recommendations; and staff and the P&Z Board recommend approval to transmit the petition to DCA for an ORC. Ms. Jefferies reported the site plan proposes 110 lots averaging 60' x 120' instead of the 218 lots that the site could support on a density basis. Attorney Waksler appeared on behalf of the applicant in support of the large scale plan amendment from Agriculture to LDR and advised KB Homes will be submitting a PD rezoning request to run concurrently with the adoption hearing; KB Homes has completed traffic, environmental, and tree studies and gopher tortoise burrows and heritage trees were identified and will be preserved under the PD; and requested approval of the transmittal and time for rebuttal. **Chairman DeBoer** explained rebuttal is not allowed in legislative hearings. Alan LeBeau, owner of property across the street from the site and a contractor, stated he moved to the area because of Agriculture and Agricultural Estates designations; pointed out Agriculture lands are being rezoned for higher density development and almost 7,000 vacant residential lots exist in the South County; the Jones Loop Road area is being taken over piece-by-piece; the proposed change is wrong and against the Plan; the Board is being buffaloed; and requested denial. Grace Amodeo stated environmentally sensitive lands need to be preserved and expressed opposition to transmittal of this petition and the prior petition. Jacquelyn Mack, owner of two acres on Jones Loop Road, commented in opposition to the transmittal and proposed change from

Agriculture to LDR; pointed out Objective 2.2 states that Charlotte County will designate lands suitable for urban development at various densities on the FLUM; this rezoning will open the door for applicant to increase the proposed density "in excess of two units per acre"; the staff report states that wetlands and habitats shall be protected and nothing has shown that Alligator Creek, a Class 1 waterbody, will be protected under Department of Environmental Protection and SWFWMD standards; stated approval will guarantee another up-scaled development of a large number of units crammed into a parcel meant to be developed at a lower density; the number of plan amendments in this area will greatly impact traffic along Jones Loop Road i.e. this petition will generate an additional 2,000+ trips; wondered if other projects along Jones Loop Road and east of I-75 will generate a significant number of trips and drop the Level of Service (LOS) to "D" which is not supposed to occur; and requested denial of the proposed change. Tom Doyle agreed with comments of the three prior citizens; stated he moved to the area because the density was low; Jones Loop Road is too narrow to handle increased traffic flows; and the corner of Acline and Taylor will become a death trap. Barbara Ensevido, owner of the 10-acre tract adjacent to the site, advised they bought the land because it was zoned Agriculture; in four years, she has seen on her property almost every animal that lives in Charlotte County; stated the Acline and Taylor intersection is already dangerous; and requested denial. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.** Commissioner D'Aprile commented in opposition because of the density increase. **COMMISSIONER D'APRILE MOVED TO DENY TRANSMITTAL OF PETITION PA-04-05-18-LS TO DCA FOR AN ORC, SECONDED BY COMMISSIONER HORTON.** Commissioner Cummings questioned if a parcel with AE zoning and LDR designation may be developed. Ms. Jefferies responded with one-acre home sites. Commissioner Cummings requested an explanation of the density if the underlying land use is changed prior to a rezoning i.e. by changing the underlying land use prior to changing the zoning, the property is not developable until a rezoning is done to make it consistent with the underlying land use. Ms. Jefferies advised the applicant has represented an intent to file a PD with a rezoning. **Commissioner Cummings** requested verification that AE zoning may be used with Agriculture and LDR. Ms. Jefferies expressed understanding that one-acre home sites would be consistent with AE zoning for

medium sized tract housing. **Commissioner Cummings** questioned the development potential under AE zoning change, with a change in the underlying land use, if the lower of the zoning or underlying land use is used for TDUs. Inga Williams, Planner III, explained with Agriculture FLUM designation and AE zoning the maximum development potential is one unit per acre; AE zoning is consistent with LDR but the development potential increases to five units per acre; and if the FLUM designation is changed, a TDU would not be necessary and development potential would increase. **Commissioner Cummings** stated, in order to assure that TDUs work the way the Board wants them to, it would be necessary to base TDUs on the lowest development units; TDUs are not required until final plat approval; and if this is approved, development potential would increase. Ms. Jefferies stated the potential would increase, but the applicant would still be required to rezone the property and transfer density at that time. Attorney Waksler explained a land use designation allows a range of densities i.e. LDR permits from one unit per acre to five units per acre but the land use is restricted by the zoning; the development potential under AE would be maxed out at one unit per acre even though the land use might allow up to five units per acre; in order to realize the five units per acre, the owner must change the zoning from AE to a zoning designation that allows more than one unit per acre; and it would be necessary to transfer the additional density onto the property at that time. **Commissioner Cummings** stated he will support the lowest number of development units when Attorneys Waksler and Haymans bring back rezoning petitions and TDUs; opposed pulling development units from an Infill Area; transfers of development units should come from equal or less developable areas; and he will not support the motion. **Commissioner Horton** questioned the reason for changing the land use designation and giving the potential for increased development units. **Commissioner Devos** recalled requests for TDUs are filed at the end of this process whereas the TDUs should be in place prior to a rezoning since there is no guarantee that an applicant will file for TDUs at the plan amendment or adoption stage. Thomas A. Cookingham, Planning Services Manager, agreed timing is the key, suggested setting a workshop to address Board concerns, and explained this petition is under the TDR ordinance which requires them up front versus the TDU ordinance that the Board is considering provides for options to require them all up front. **Commissioner Devos** opposed the motion. **Chairman DeBoer**

summarized the issue is the potential on allowing five units per acre without having a master plan and expressed support for the motion. **CALL ON THE MOTION: MOTION CARRIED ON A VOTE OF 3:2 WITH COMMISSIONERS CUMMINGS AND DEVOS OPPOSING.**

RECESS: 12:23 P.M. - 12:28 P.M.

(Executive Assistant Jenine Thornley replaced Executive Assistant Joann Dillon for this portion of the meeting.) Chairman DeBoer requested Board input on continuing or breaking for lunch and suggested taking Agenda Item L-1 at this time.

I. CONSENT AGENDA

L. General Services

Agenda Item L-1

COMMISSIONER DEVOS MOVED FOR APPROVAL OF CHANGE ORDER #3 TO FILE #03-387, AGREEMENT BETWEEN CHARLOTTE COUNTY AND MOTOROLA, INC., EXPANSION OF RADIO INFRASTRUCTURE, IN THE AMOUNT OF \$560,237 FOR A REVISED TOTAL AMOUNT OF \$4,362,715.96, SECONDED BY COMMISSIONER D'APRILE. Chairman DeBoer commented on the failures of the 800 MHz during Hurricane Charley and the 911 system during Frances and advised the negotiated agreement with Motorola will allow for the 911 database system to be under the control of the Board. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

(Board consensus to continue working through lunch.) Commissioner Devos suggested a workshop be set to discuss establishing a South County master plan. Chairman DeBoer stated Major Corridor Master Planning would be added to the Chairman's Report for direction.

Agenda Item 4, PA-04-05-19-LS, District II - Legislative (Proof of Publication was in order.)

Ms. Shao gave a slide presentation on the petition filed by Florida Lakes, Inc. for a large-scale plan amendment on a 15.58+ acre portion of a 55.21+ acre property from Agriculture to Commercial Center (CC); the smaller portion of property is vacant and located on the northeast corner of Taylor Road and Royal Road in the Punta Gorda area and the remaining property on

the east side of the subject site is being commercially excavated for sand; the site is within the Suburban Area of the USA, the majority of the properties to the east beyond the excavation and southeast of the site contain single-family residences, mobile homes, or vacant residential lands; the subject property is bordered on the north by vacant Recreational Vehicle (RV) land and mobile homes owned by residents of Alligator Park, Cox Lumber Company, other intensive commercial and industrial uses are located west and northwest of the site across Taylor Road, and there are some vacant commercial lands located south and southwest of the site across the railroad tracks and US 41; the site is set back from US 41, which will avoid visual blights to the US 41 corridor, and next to an existing CI use; the area of concern of this amendment is the southeast portion of the site that is adjacent to residential; impacts should be mitigated by placement of the required "D" Buffer between the property CI zoning and MHC zoning; staff has determined that the proposed CC FLUM designation is compatible with uses in the immediate area; and staff and P&Z Board recommend approval to transmit the petition to DCA for an ORC. Attorney Waksler appeared on behalf of the applicant; explained the large scale plan amendment requests a change from Agriculture to CC on approximately 15.5 acres off of Taylor and Royal Roads; Florida Lakes officials have worked cooperatively with Alligator Park owners on this petition and the adjacent excavation site; reported Alligator Park owners support the petition; the recently excavated lake will provide stormwater management for the proposed development and an extensive buffer from surrounding residential properties; and requested approval of the transmittal of the plan amendment. Suzy Hackett, Co-Chairman of the Land Development Committee for Alligator Park, announced support for the change in zoning and proposed development and requested approval. Bruce Laishley, developer of the site, explained a 50-acre parcel was acquired for an industrial park; many meetings held with mobile home park owners and adjacent residents have resulted in a compromise for a lake to the rear as retention to the site and provide waterfront lots or a club house area for the mobile home park and the south part of the property; the lots on Burnt Store Road at the Meadows are zoned Residential 3.5 and Multi-Family 5 units per acre and the lots on US 41 are CG and CI that match the proposed change. Tom Doyle stated he was not consulted about the proposed change, his main concern is that the rezoning was denied last time and now a

lake has been included in the commercial center, it is dangerous to have an ungated railroad track, it is not fair to put the extra traffic on Royal Road, and recalled Alligator Park residents expressed concern about the prior rezoning because of the noise, and opposed the change. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner Horton requested the number of density units to be removed if the petition is approved. Ms. Shao advised 15 units of density. **COMMISSIONER DEVOS MOVED FOR APPROVAL TO TRANSMIT PETITION PA-04-05-19-LS TO DCA FOR AN ORC BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 7, 2004 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 5, PA-04-05-20-LS, District II - Legislative (Proof of Publication was in order.)

Ms. Shao gave a slide presentation on the petition filed by RealMark Tuckers Grade, L.C., for a large-scale plan amendment on 363.75 acres of Agriculture for 349.83+ acres to LDR and 13.92+ acres to CC; the site is located on the northeast corner of US 41 and Tuckers Grade in the Punta Gorda area; applicant indicated in the application that a request to rezone the site to PD will be filed in the near future to allow for residential and commercial mixed use development; the petition requests an amendment of the southwest portion of the site, which is located at the intersection of Tuckers Grade and US 41, from Agriculture to CC; the commercial development would serve to shield interior residences from the noise generated by traffic on US 41 and serve the proposed residential neighborhood and nearby neighborhoods; the majority of surrounding land is designated for low density uses such as the mobile home area to the west that appears approximately 85% built out, Tropical Gulf Acres subdivision zoned RSF-3.5 is located to the south of Tuckers Grade, residential development of the site would be compatible with surrounding areas and it would be facilitated through a TDU to allow for more units than is allowed by the current one unit per acre; the amendment will have minimal impacts to surrounding residential uses and commercial development is compatible with the Tuckers Grade and US 41 corner; and staff and P&Z Board recommend approval to transmit the petition to DCA for an ORC. Attorney Waksler appeared on behalf of the applicant in support

of the transmittal of the large scale plan amendment on approximately 364 acres at the corner of Tuckers Grade and US 41; the site is currently designated Agriculture within the USA; about 350 acres are to be changed to LDR and 14 acres to CC and the rezoning will allow a mixed-use community containing a variety of housing types and densities; the applicant will be submitting a PD and rezoning request to run concurrently with the adoption hearings; the commercial area will have access points within the residential community to reduce trips on US 41 and Tuckers Grade with access from Tuckers Grade; the site has a vacant Agriculture designated parcel to the east between it and I-75 and lands in other directions have residential land uses with development ranging from mobile homes and single family homes; prior to submitting the application, meetings were held with CCU to identify preferred routes for extension of sewer from the Burnt Store Road plant, discussions are nearing completion, and the site will be served with central water and sewer; the rezoning will require a TDU and the applicant has identified a high density plat located outside of the USA to which density will be transferred from this site at the time of the adoption hearings; environmentally sensitive areas on the site will be preserved; the site is located between US 41, I-75, and Tuckers Grade; and requested transmittal of the plan amendment to DCA. **Chairman DeBoer** requested the relationship between RealMark and the owners. Attorney Waksler advised RealMark is the owner of the property since the closing recently took place. Nancy Parker questioned if LDR and Agriculture are the same. Ms. Shao explained the density is different i.e. the maximum density under Agriculture is one unit per acre and the density range under LDR is one to five units per acre. Ms. Parker pointed out on the map that a portion of the LDR designated area should be Agriculture since she owns 10 acres of that land; advised she has received offers to purchase her land, one offer doubled in a month, and she is trying to find out what is going on; she requested meetings with staff and finally one of the owners of the recently acquired land contacted her about development plans and possibly selling her land; and wondered how the proposed change will impact her life. **Chairman DeBoer, at the consensus of the Board, requested Ms. Parker to conclude her remarks as the time limit has expired.** Ms. Parker presented photographs to the Board, requested property owners in the area be afforded the same type of utilities and drainage extensions, and stated another public hearing should be set on this matter.

Chairman DeBoer advised other public hearings will be scheduled to allow additional input and to address concerns and indicated Ms. Parker would receive notification. Grace Amodeo questioned the number of units on this land and recalled the Board desires to reduce the number of platted lots not plat more land. Bruce Laishley stated he does not own this site or know the owners but it affords a great opportunity to extend water and sewer from the Burnt Store Road plant to other parts of South County. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DEVOS MOVED FOR APPROVAL TO TRANSMIT PETITION PA-04-05-20-LS TO DCA FOR AN ORC BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 7, 2004 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.** Commissioner Horton calculated the density units may increase from 364 under Agriculture up to 1,830 units under LDR and opposed transmittal. **Commissioner Cummings** opined this site is one of the more appropriate for development because of its location. **Commissioner Devos** commented in support of this type of development. **Commissioner D'Aprile** expressed concern about the increase in potential density and indicated a need for an assurance that development will not occur at five units per acre. **Chairman DeBoer** requested an explanation on the 13.92 acres i.e. specific to commercial in relation to the overall size of the parcel, recalled discussions regarding future development in South County, this ties in with discussions about a connector with Burnt Store Road to I-75, and envisioned a large commercial area rather than strip shopping. Attorney Waksler recalled the Plan defines 13.2 acres as a neighborhood area and larger acreage would be more regional, 13 acres is not a strip shopping center, the planners looked at the depth of the parcel in terms of possible uses i.e. a large grocery store with smaller shops around it. **Chairman DeBoer** questioned the difficulty of increasing the commercial area after approval. Attorney Waksler explained an increase of less than 10 acres may be accomplished through the regular rezoning land use change process whereas the applicant would have to wait one year after approval of the current application before filing a large scale plan amendment for any increase of 10 acres or more. **CALL ON THE MOTION: MOTION CARRIED ON A VOTE OF 3:2 WITH COMMISSIONERS D'APRILE AND HORTON OPPOSING.**

Agenda Item 7, PA-04-05-25-LS, District III - Legislative (Proof of Publication was in order.)

Mr. Perez gave a slide presentation on the petition for a text amendment to delete Policies 2.3.1 and 2.3.14 of the Future Land Use Element of the Plan prohibiting multi-family residential development south of Bayshore Drive along Charlotte Harbor; subsequent to adoption of the Policies, the County acquired a portion of waterfront property for Bayshore Oaks Linear Park and consolidated a Coastal Residential Single-Family zoning district in this portion of the Charlotte Harbor Community Redevelopment Area (CRA); the Waterfront Property Ordinance (Section 3-9-95) limits building height to 35 feet; these changed conditions will guarantee that the Charlotte Harbor CRA will not overdevelop with tall structures; the proposed deletions will allow the few remaining parcels in private ownership to develop multi-family uses; staff recommends approval of the transmittal; the Charlotte Harbor Community Redevelopment Area Advisory Committee (CRAAC) recommended approval of the transmittal during a May 27, 2004 meeting; and the P&Z Board recommended approval of the transmittal during a July 20, 2004 meeting. Dick Loftus, Chairman of CRAAC, appeared in support of the requested change. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner **Devos** requested the waterfront building height limitation in Charlotte Harbor. Mr. Perez stated the waterfront ordinance, applicable to all zoning districts within 1,200' of Charlotte Harbor, would still limit the building height to 35' and pointed out a developer may request a variance, as has been done for a building height of 38' exclusive of 3' uninhabitable space, and approximately three stories over parking. **Chairman DeBoer** commented on the need for the Board to meet as the Community Redevelopment Agency to address Charlotte Harbor issues. **COMMISSIONER DEVOS MOVED FOR APPROVAL TO TRANSMIT PETITION PA-04-05-25-LS TO DCA FOR AN ORC BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MAY 17, 2004 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Chairman DeBoer requested a motion to take Agenda Item 10 out of order. **COMMISSIONER DEVOS MOVED FOR APPROVAL TO TAKE AGENDA**

ITEM 10 OUT OF ORDER, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.

Agenda Item 10, Public Hearing on an Ordinance amending Charlotte County Code Section 4-3.35-91 and creating a new Section 4-3.5-92 regarding Heritage Lake Park Community Development District - Quasi-Judicial (Proof of Publication was in order.)

Chairman DeBoer announced the item. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DEVOS MOVED FOR APPROVAL TO ENACT ORDINANCE #2004-063, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 8, PA-04-05-26-LS, District III - Legislative (Proof of Publication was in order.)

Inga Williams, Planner III, gave a slide presentation on Text Amendments to the Future Land Use Element of the 1997-2010 Plan to (1) remove bonus densities for transfers of development rights from the Policies and reword development rights into density units and (2) remove all Policies concerning Rural Communities and change Policies related to New Communities that only those communities adjacent to the USA will be approved; and staff and the P&Z Board recommend approval of the transmittal to DCA for an ORC. Michael Haymans, attorney with Farr, Farr, Emerich, Sifrit, Hackett & Carr, P.A., appeared on behalf of Babcock Florida Company, various rural land owners, and as a Charlotte County resident since the 1960's, stated fairness to property owners and due process are important considerations; this is premature and should be made a part of the TDU workshop because there may be some unintended consequences if the transmittal is made to DCA; adequate discussions have not been held regarding the East Planning Area of the County; transmittal will indicate that there shall never be another application filed to change the intensity or density of development in that area; reiterated the need for a workshop; and requested denial of the transmittal. Attorney Waksler appeared on behalf of various large property owners who will be impacted due to the proposed change to the FLUM and Plan Policies; questioned the need for the change when there are no problems regarding Rural Communities i.e. no one has attempted a Rural Community; if this

change is adopted, the County will never know if a Rural Community will work; a developer who proposes a Rural Community would have to file a large scale plan amendment for a legislative decision and the Board has the discretion to approve or reject such proposed development; why close the opportunity to provide what might be wonderful Rural Communities outside of the USA; and requested rejection of the transmittal. Warren Ross, an attorney with the Wotitzky law firm, appeared on behalf of Larry Hudson, Hudson Farms, and owners of property within the East County Planning District, by joining in the comments of Attorneys Waksler and Haymans in opposition to the proposed amendment that is inconsistent with the Plan that provides for flexibility with regard to development of agriculture properties. Earl Drayton Farr, Jr., attorney with Farr, Farr, Emerich, Sifrit, Hackett & Carr, P.A., appeared on behalf of the Babcock Family and Babcock Company in opposition of the proposed change; explained approximately four years ago the Babcock Family acknowledged the need to develop a plan for the future of the family holdings; the plan that took about one and one-half years to develop included a conservation area, most in open lands; the State and counties got involved to the extent of purchasing the lands; the family did not want to sell because of tax impacts for which they should not be penalized because they have been good stewards of the land; they have tried to meet the requirements of Charlotte and Lee Counties and various State agencies and a solution may be decided on in the near future; requested a chance to work this out and postpone transmittal of the proposed change; transmittal will force the Babcock Family to consider other options if a solution cannot be agreed upon for acquisition of the land; no one is beating on the doors to develop a Rural Community; pointed out the Board has much more control over development than ever before during his 53 years serving as an attorney; requested denial of the transmittal; and filed an ownership statement with the Board. Robert H. Berntsson, attorney with McKinley, Ittersagen, Gunderson & Berntsson, P.A., appeared on behalf of numerous property owners; stated the proposed change and transmittal is inappropriate; why limit South County development options; allow Babcock Family negotiations continue; and delay this transmittal. Andy Dodd, a member of the Agricultural and Natural Resources Advisory Committee (ANRAC) and a Charlotte County resident, reminded the Board that ANRAC was not consulted about the proposed change; ANRAC withheld its support of the TDU ordinance based on this

concept; the agricultural community is trying to rebuild; the proposed change is inappropriate; and requested denial of the transmittal. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED TO TABLE BOARD ACTION UNTIL A WORKSHOP CAN BE HELD TO ADDRESS CONCERNS, SECONDED BY COMMISSIONER HORTON.** Chairman DeBoer stated it would be appropriate to discuss this during the TDU workshop. **Chairman DeBoer** placed into the record the letter received from ANRAC in opposition to the text amendment. **Commissioner Devos** commented in support of the motion and, as stated last week, she wants to preserve the Board's discretion and authority regarding development petitions. **Chairman DeBoer** expressed support for the motion since transmittal would establish confines that the TDU would have to fall within and this would be premature based upon comments made at the last meeting. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item 9, PA-03-11-37-LS, District I - Legislative (Proof of Publication was in order.)

Ms. Williams presented the petition for the large-scale plan amendment to revise Policy 2.2.28 of the Future Land Use Element of the Plan dealing with mixed use communities i.e. Policy changes would identify uses allowed in New Community and Rural Community mixed use districts; the mixed use district requires a 20% open space and at least two other uses (residential, institutional, or commercial); the Policy gives the developer incentives to develop one of the uses at least 25% or greater i.e. a greater FAR or a larger building coverage and potential of 20 units per acre for Multi-Family; it also allows development of single uses within the district but the overall district must be comprised of two mixed uses and open space; and requested transmittal of the text amendment to DCA. Attorney Berntsson commented in support of establishing a mixed use district but he is concerned with placing too many limitations and being overly restrictive on options. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED FOR APPROVAL TO TRANSMIT PETITION PA-03-11-37-LS TO DCA FOR AN ORC BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JUNE 30, 2004 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING,**

SECONDED BY COMMISSIONER CUMMINGS. Commissioner Devos agreed with Attorney Berntsson's remarks in support of establishing mixed use districts. **Chairman DeBoer** expressed uncertainty about the limitations in the text amendment on mixed uses specific to the USA versus mixed uses in relation to a Development of Regional Impact (DRI). **Commissioner Devos** requested the deadline for transmittal. Ms. Williams advised the next transmittal will be July 2005. **Chairman DeBoer** summarized there are no mixed use designations within the USA and there are mixed uses in Rural Communities but it must be developed as a DRI. Ms. Williams explained the two land use designations for Rural Service Areas with mixed uses are a New Community and Rural Community and the only mixed use inside the USA is a DRI. **Chairman DeBoer** agreed with **Commissioner Devos**. **Commissioner Cummings** pointed out the interim time will provide staff and the Board more opportunities to make changes. Ms. Williams indicated discussions have been held with DCA officials about P&Z Board members' concerns about not placing the densities and intensities but Florida Statutes require such language in the Policies. **CALL ON THE MOTION: MOTION CARRIED ON A VOTE OF 3:2 WITH COMMISSIONER DEVOS AND CHAIRMAN DeBOER OPPOSING.**

RECESS: 2:05 P.M. - 2:17 P.M.

(Executive Assistant Joann Dillon replaced Executive Assistant Jenine Thornley for the remainder of the meeting.)

III. COMMISSIONERS COMMENTS

Chairman DeBoer advised his comments will pertain to Hurricane Charley recovery issues:

A request has been received for an expedited process to reopen Quiet Woman Massage Therapy - **Chairman DeBoer** reported the owners of the business leased property that was destroyed on US 41 and they own Lot 11 on Frizzell Lane directly behind an Office, Medical, and Institutional designated area where Murdock Medical Campus is located. **Chairman DeBoer** requested Board comments on directing staff to implement an expedited process to assist business owners, in general, in reopening. **(Board consensus.)**

A similar request has been received regarding Maple Leaf Estates. (**Board consensus.**)

A letter from Robert (Bucky) McQueen about FEMA housing sites with questions on land use zoning not permitting that temporary use, impact fees, (no impact fees will be charged for temporary housing for people who have been dislocated as a result of the storm), County permits will be required for construction of such a project (**Board consensus on requiring permits**), and development standards required for such construction. (**Board consensus on being lenient regarding standards and staff will have discretion so long as standards protect health and safety.**) Mr. Loucks indicated the standards have been relaxed. **Commissioner Horton** suggested establishing a time limit. (**Board consensus to set 18 months, the same as FEMA requirements.**)

Set a workshop next week to discuss and prioritize projects for submittal to FEMA and other Federal and State agencies i.e. public health and safety, and hurricane shelters and other projects that may have a future impacts; some of this information is being provided to Representatives Harris and Foley. Mr. Loucks advised the request for a project list came from a Tri-County Effort; he has been working with the FEMA Recovery Team and another meeting is scheduled next Wednesday, at the Cultural Center, at 4:30 P.M., to develop a community vision; and suggested the Board discuss the projects prior to that time. **Chairman DeBoer** referenced a second list with dollar amounts that was received and suggested projects be consolidated, categorized, and prioritized in one format. **Commissioner Cummings** wondered if Babcock Ranch would be interested in making 20 mgd available and combining it with the current tourism asset and agricultural operations as a means of facilitating the County economic recovery, so long as the rebuilding does not start competing with the acquisition. **Chairman DeBoer** suggested **Commissioner Cummings** put this item on the list for next time. **Commissioner Horton** suggested involving the City of Punta Gorda regarding the Auditorium and downtown projects including the Aqui Esta area, Burnt Store Road, a new Sheriff's building, and Courthouse. **Chairman DeBoer** suggested the covered horse arena be reconstructed at Zemel Road, Charlotte Flatwoods and utilize it as a pet shelter during storms by Lee and Charlotte Counties. **Commissioner Devos** commented on using the gymnasium that is to be built as an

evacuation site at the South County Regional Park, incorporate the Auditorium, Burnt Store Road development as an evacuation route as part of a long-range plan, as well as utilizing the new Administration Center as a shelter in order to obtain additional funding. **Chairman DeBoer** stated the Auditorium would not be eligible for funding to fortify it as a shelter because of its location on the water. **Commissioner Cummings** commented on the need to rebuild Charlotte High School and construct the South County Regional Library. **Commissioner D'Aprile** recalled \$3 million is available for Auditorium repairs and \$2.5 million in insurance funds and advised a list of names of individuals to establish a committee regarding the Auditorium has been submitted to Mr. Loucks to follow up. **Chairman DeBoer** suggested the projects be categorized and prioritized at the earliest possible date. **Commissioner Devos** suggested County and School Board staffs work together in order to secure additional funding for emergency centers. Mr. Loucks stated that is being done. **Commissioner Cummings** questioned the existence of the Friends of the Auditorium and suggested, if the group is active, they be involved regarding the Auditorium. **Commissioner Devos** suggested the lists be provided prior to the workshop in order to finalize the projects list during the workshop. **Chairman DeBoer** indicated the City of Punta Gorda Council and School Board members should be invited to participate in the workshop. **Commissioner Cummings** recommended the entities be asked to submit projects prior to the workshop due to the short time constraints. **Commissioner Devos** suggesting scheduling the workshop on Monday and finalizing the project list at next Tuesday's Board meeting. Mr. Loucks reported the agenda is short in the morning and one item in the afternoon. **Chairman DeBoer** stated the scheduling will be worked out on an expedited basis.

CCU Base Facility Charges - David G. Schlobohm, Utilities Director, instead of taking out water meters where homeowners have been displaced, is considering locking meters and other options since customers are not going to be charged when they cannot use the facilities.

Justice Center Security Proposal cover letter from the Sheriff's Office - there is no communication or public address system; if funds are available from Sales Tax revenues for this building, **Chairman DeBoer** stated he would like to pursue it with the

Public Safety Coordinating Council and bring it back to the Board. **(Board consensus.)** **Commissioner Devos** pointed out the lack of such a system in the Administration Complex. **Chairman DeBoer** expressed understanding that the Fire Alarm System may also serve as a public address system with a few modifications. **Commissioner Devos** commented on the need to be able to alert specific areas of a building and to black out areas. **(Board consensus to pursue complete building security/emergency systems for the Justice Center and Administration Complex.)**

Rebuilding billboards - **Chairman DeBoer** received a visit from a man about rebuilding a billboard in Charlotte Harbor, he was given a permit to do repairs to the billboard, the billboard had to be reconstructed from the ground up, and it was not reconstructed to current Code standards. **(Board consensus that billboards damaged 50% or more of their value should not be repaired or reconstructed.)** **Commissioner D'Aprile** recalled Charlotte Harbor CRA standards require removal of all billboards by 2010, reported another billboard was rebuilt over a weekend, and everyone should be treated the same. **Commissioner Cummings** opined unpermitted billboard construction should be red tagged. **Chairman DeBoer** requested staff verify removal of billboards by 2010 taking precedent over State statutes that eliminated the ability of local entities to phase out billboards. **Commissioner Devos** commented on the difficulty of having the man remove the billboard if a permit was issued for the work. Mr. Loucks suggested reimbursement of the man's out-of-pocket expenses if a permit was issued in the confusion following the hurricanes and take the sign down. **Commissioner Cummings** suggested finding out if the permit was issued under false pretenses.

Charlotte County Airport Insurance Coverage - Messrs. Grant and Quill from the Airport Authority have met with each Board member regarding discrepancies and a quick resolution on the percentage of the policy coverage that the Airport Authority paid for. Mr. Loucks related he received a telephone call yesterday from Ms. Stromer of the accounting firm working with the Authority, mentioned that the Airport will be allowed to obtain Commercial Paper funding from the Florida Association of Counties (FAC); since the Airport does not have the authority to levy property taxes, a co-signer on the loan would be necessary; a question was raised whether the County would be interested in co-signing and opined the amount should be up to the sum of the insurance

proceeds; it would be a bridge loan to assist in construction activities pending reimbursement from the insurance company. **(Board consensus.)** **Chairman DeBoer** suggested going further than the damage claim because, in the event of a default, the responsibility for the loan would fall to the County. **Commissioner Cummings** recalled a prior request made for a cash flow analysis which has never been received and opined the cash flow now will be based on an expedited recovery. Mr. Loucks stated he has been working with the accounting firm on the analysis. **Commissioner Cummings** requested an update from the meeting with them on Wednesday. Mr. Loucks stated the meeting was with SunTrust representatives, the construction firm, Airport officials, and the accounting firm on expanding the line of credit with SunTrust; he mentioned the possibility of a loan through FAC for Commercial Paper funding; FAC has been contacted and he was advised the County would need to co-sign on the loan; he will be working with them on the distribution of insurance proceeds; the first \$5 million has been received, another \$5 million is expected soon; and then the insurance forms need to be completed. **Commissioner Cummings** commented on the need to come to a consensus on the Airport coverage percentage in light of the memorandum alleging the Airport bought one thing and got something else with no notification of change. Mr. Loucks stated two issues exist: the property and structure damage and business interruption insurance coverage; in the early to mid-1990's the County had \$1 million in business interruption coverage and the amount has been reduced over time to \$250,000 on a County-wide basis; the question is how much of the \$250,000 should be allocated to the Airport and the County; and a request has been made to the Florida League of Cities for a \$5 million business interruption coverage on a County-wide basis for the future. **Commissioner Cummings** stated he does not want to argue about \$250,000; let the Airport have it since the County has bigger funding problems. **Commissioner Devos** agreed. **Chairman DeBoer** stated he would agree only if he received the financial data from Mr. Loucks and the Airport in order to be fair regarding the \$250,000 policy; any lack of communication can be remedied later; expressed understanding that the Airport's claims represented about 33% of the property claims and still have not received any monies and requested an explanation. Mr. Loucks stated he would look into it.

Murdock Village Developer Workshop - **Chairman DeBoer** informed the Board that he has been contacted by Kittson & Company; suggested a workshop be set for Kittson and Lennar to find out how serious they are. Mr. Loucks stated a meeting was held last Wednesday with Lennar representatives to work on the agreement to bring back to the Board on November 16, 2004 and requested direction on moving forward. **Commissioner Devos** expressed support for staff to bring back an agreement on November 16, 2004. **Commissioner Horton** questioned the possibility of obtaining an interim agreement with Kitsson and other developers. **Commissioner Cummings** commented on property value increases, expressed a willingness to talk about developing a contiguous parcel in County ownership but not on the entire project, expressed uncertainty about contracting with Lennar, recalled a developer was recently hired on staff, suggested the County do its own plan and parcel it out as PDs since the return might be much better. **Chairman DeBoer** pointed out the County is still in the process of acquiring land, the land costs and values are increasing which means more County debt, and he is willing to reopen the developer process for other options. **Commissioner D'Aprile** expressed concern about not settling eminent domain cases and property acquisitions within Murdock Village; commented on the need for up front monies from developers for properties in County ownership so the County may acquire more property in lieu of taking out additional loans; the longer the wait to acquire properties and develop them, the higher the costs and values; and requested the amount of available funding. Mr. Loucks advised the last borrowing of \$6.3 million is supposed to be enough to complete Phase 4. **Commissioner D'Aprile** stated some property owners in Phases 5 and 6 are willing to settle. **Commissioner Devos** recalled staff was directed to negotiate with willing sellers. Mr. Loucks reported prices are being negotiated and staff was directed to bring back acquisitions on a case-by-case basis if the homes are outside of the area for which borrowed funds are available. **Commissioner D'Aprile** stated Paul Payette cannot negotiate without funds to buy homes from willing sellers. **Commissioner Cummings** recalled direction to staff was to focus on completing Phase 4 as the first priority and then to consider acquisitions of homes in subsequent phases.

Debris pick up - James A. Thomson, Environmental and Extension Services Director, reported approximately 1.2 million cubic

yards of debris have been collected; close to 7,000 residential customers have utilized residential drop-off sites; a switch is being made in the type of trucks being used for cleaner and quicker operations; and hurricane debris should be accepted at the land fill by Monday. Mr. Loucks explained the County was awarded a \$1.3 million grant from the Department of Agriculture for canal clean up with the County as project oversight and the Department to obtain contractors and provide inspectors. **Commissioner Cummings** stated residents should be allowed to hire contractors to remove debris and use drop off sites and expressed appreciation to Ms. Doyle and her crew for their role in recovery efforts. **Chairman DeBoer** commented on the importance of getting information out to the public on debris removal schedules and pointed out the City of Punta Gorda's efforts in residential debris removal versus demolition and construction debris that should be the responsibility of the contractor. Mr. Thomson advised schedules are being worked on; the Building Department has posted notices that demolition debris cannot be placed at the curb; staff is working with Communications and Marketing on a daily basis to get information out as well as working with FEMA representatives on debris removal. Mr. Loucks pointed out page 3 of the October 4, 2004 Hurricane Recovery Fact Sheet enumerates Public Information venues including the 120 radio spots a week and newspaper advertisements on Wednesday. Mr. Thomson explained the consultant hired inspectors and FEMA inspectors are looking for non-eligible debris and notices are being given to those property owners and advised several passes will be made. **Chairman DeBoer** suggested establishing a deadline. Mr. Thomson advised a deadline will be established for debris removal as part of the schedule for pick ups.

Request for Florida Interfaith Networking and Disaster Group (FIND) - **Chairman DeBoer** advised the request, from the consultant Group, is for \$12,000 to bring two mobile homes to house volunteers to assist in rebuilding destroyed homes and pointed out Mr. Ditzler is available to answer questions. **Commissioner Devos** requested an explanation if this is part of the \$2.5 million grant received for affordable housing for volunteers to assist in reconstruction. Mr. Loucks advised the \$2.5 million was for a host of things under affordable housing. Mr. Ditzler stated the volunteers will be working on whatever recovery needs are identified; they are working with a Faith

based organization in the County; referrals are being received from FEMA and the Emergency Operations Center (EOC); the mobile homes are to be placed at the church on Rampart where the County Emergency Needs Facility is currently located; and the units will be available to volunteers of various denominations. **Commissioner Devos** related Grants/Management Analyst Robert Hebert indicated a six-month deadline exists for assignment of the \$2.5 million grant monies; advised approximately 20 volunteers will rotate every couple of weeks; and applauded their efforts. **COMMISSIONER DEVOS MOVED TO DIRECT THE COUNTY ADMINISTRATOR TO FOLLOW THROUGH ON THIS, SECONDED BY COMMISSIONER CUMMINGS AND DECLARED UNANIMOUS.** Mr. Ditzler requested the next step in the process. Mr. Loucks and Mr. Ditzler exchanged business cards and advised he will contact Mr. Hebert to consult with Mr. Ditzler.

The Board to meet as the Charlotte Harbor CRA as soon as possible - **Chairman DeBoer** stated he will remind the County Administrator tomorrow.

Status of the Morton True Value Hardware Store Demolition Permit - Brendan Bradley, Interim County Attorney, stated the hardware store is not the only business in that strip mall; Mr. Waksler has attempted to obtain an Owner/Builder Permit to demolish portions of the strip mall occupied by the hardware store and other businesses; and the amount was in excess of \$25,000 which is outside of the exemption for Owner/Builder Permits. **Chairman DeBoer** pointed out a licensed contractor was going to do the demolition and Mr. Waksler was informed that he had to have a general contractor that was responsible for rebuilding the structure. Attorney Bradley pointed out the licensed contractor could have pulled the permit and Jim Evetts, Chief Building Official, indicated the Owner/Builder Permit was denied because the amount exceeded \$25,000 and involved units that were not occupied by him. **Chairman DeBoer** questioned if staff has advised Mr. Waksler that the demolition contractor may pull the permit. Attorney Bradley stated that would be up to Construction Services. **Commissioner Devos** requested an explanation on the establishment of the \$25,000 exemption. Attorney Bradley responded Florida Statutes. **Commissioner Devos** stated she has contracted with the same licensed contractor to demolish her house and suggested the Governor be contacted regarding exemptions to the Statute due to circumstances as a

result of Hurricane Charley. **Chairman DeBoer** stated he would contact the Governor and pointed out Mr. Waksler has two more days before the exemption expires from Southwest Florida Water Management District. Geri Waksler advised her husband paid the extra money and a general contractor pulled the permit this morning.

Tent Sales - Attorney Bradley stated he still needs to consult with Community Development staff on regulating tent sales out of business. **(Board consensus.)** Mr. Loucks expressed understanding that would be applicable to all tent sales. Attorney Bradley responded affirmatively in order to preclude Constitutional issues and requested clarification on tent sales relative to pumpkins and Christmas trees. **Commissioner D'Aprile** recalled those were excluded and not considered under automotive and other tent sales that affected tax paying business revenues; it is not his intention to exclude all tent sales; and control over tent sales are needed to protect County business revenues.

Marine Advisory Committee - **Chairman DeBoer** stated he has received correspondence on acquisition of the Rocky Creek Marina and the Committee has complained about not being involved in the process. **Chairman DeBoer** suggested the Committee bring back an analysis for the acquisition at the same time as staff.

Florida Association of Counties (FAC) - **Chairman DeBoer** stated Mary Kay sent a terrific letter to Secretary Thomas Ridge on the County's efforts to get FEMA to pick up in private areas based on compliance with any of the three criteria. **Commissioner Devos** suggested the County join the National Association of Counties. **Commissioner Cummings** agreed and pointed out some neighboring counties are members. **Chairman DeBoer** read from Ms. Kay's letter that "public interest is specifically defined as it is in the public interest when it is necessary to eliminate immediate threats to life, public health and safety, or eliminate immediate threats or significant damage to improve public property or private property, or insure economic recovery in an effected community to the benefit of the community at large."

Major Corridor Master Planning - **Commissioner Devos** suggested setting a workshop to expedite the process. Mr. Loucks advised public hearings on the US 41 Overlay District are scheduled for

October 26 and November 9, 2004. **Commissioner Devos** expressed concern with South County corridor master planning. Mr. Loucks indicated staff has been working with the private sector on the Burnt Store Road master plan and staff will look at US 41 in South County; and pointed out some of the east and west connectors will be addressed through the Burnt Store Road study. **Commissioner Devos** suggested in commercial and industrial areas to support growth. Mr. Loucks stated growth has not occurred in South County; pointed out, if the budget is approved on October 21, 2004, two additional planners may be hired; and offered to bring back a schedule, costs, and funding. **Commissioner Devos** recalled an unfunded position for a Community Development or Neighborhood Planner. Mr. Loucks stated the unfunded position dealt with Neighborhood Redevelopment of existing areas. **Commissioner Devos** requested the position be looked at again in view of hurricane damage and reconstruction. **Commissioner Devos** stated she wants to avoid spot zonings in South County and requested the time frame to bring back the information. Mr. Loucks indicated by the end of the week. **Commissioner Devos** requested the information be brought back at the next Board meeting.

I. CONSENT AGENDA

D. Administration

Agenda Item D-1

Propose to cancel the Board of County Commissioners meeting on November 2, 2004 (Election Day)

COMMISSIONER HORTON MOVED FOR APPROVAL TO CANCEL THE BOARD MEETING OF NOVEMBER 2, 2004, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.

III. COMMISSIONERS COMMENTS (CONTINUED)

US 41 Corridor Plan - **Commissioner Horton** commented on the need to follow up on US 41 Beautification including rezoning and utilities in Charlotte Harbor, the segment for which the plan has been approved and funding is available, and rezoning from CG and Residential to CI on the Palm Automotive area in Port

Charlotte. **Commissioner Devos** commented on the need for uniform zoning on the entire US 41 Corridor. **Commissioner Cummings** recalled discussion on sewer lines at the back alley and it would probably be more expensive to install the lines at the front. **Chairman DeBoer** suggested staff bring it back.

Manasota Key Plan - **Commissioner Horton** advised residents have expressed concern about implementing the plan; suggested County Attorney staff work with residents to establish a special district and address concerns about a temporary moratorium, height and setback restrictions, and down zoning. Attorney Bradley stated he and Mr. Perez met with a few of the residents last Friday; estimated the time frame to bring the matter before the Planning & Zoning (P&Z) Board and two Board meetings prior to the end of November; expressed the belief that a moratorium would not be necessary under this timing; and explained Mr. Perez believes the matter will be ready for the next P&Z meeting and the next two Board meetings.

Vetter's Settlement Agreement Interpretation - **Commissioner Horton** summarized the settlement agreement was effective at the time of the signing whereas a disagreement has occurred as to whether the parties agreed to abide by future impositions and stated the intent of the settlement was to hold Vetter responsible for then existing and agreed upon provisions. Attorney Bradley stated a big disagreement exists on the settlement agreement; the County believed and also believed that the other parties believed when the settlement agreement was signed, that they were agreeing to be bound by what was in store for the Airport Commerce Park because it was their lawsuit holding up placement of the new plan; language written clearly indicates and supports the County's position; outside counsel, W. Cort Frohlich and Bryan Smoker, have reviewed the agreement and responded that Vetter's position is erroneous and not supportable; hopefully, a response to Attorney Frohlich's letter will elicit a discussion rather than filing of a complaint. **Commissioner Devos** requested the concessions the County was willing to make as part of the settlement. Attorney Bradley explained the County agreed to put in \$100,000's of infrastructure within a certain time frame; that has been accomplished; and if the County was not agreeing to hold Vetter to the standards that he had been holding up, there would not have been any reason for the County to agree to pay him

anything. **Commissioner Devos** questioned if the only cost to the County was for infrastructure. Attorney Bradley expressed uncertainty if a cash payment was a part of the settlement. **Commissioner Devos** wondered why the County would have agreed to do anything if the County was not getting anything in exchange i.e. the County installed the infrastructure for no consideration from Vetter. **Commissioner Cummings** recalled the County did not give an inch on potential or allowable uses i.e. the concrete plant; a concession may have been made regarding internal buffer requirements; the County does not have the ability to over ride future State required changes; advised Attorney Ortell's letter implied complete capitulation on the County's part but his recollection was just the opposite because the County installed the infrastructure in order to move forward since the cost would be less than dragging out the litigation and holding up the whole redevelopment effort. **Commissioner Horton** stated allowable uses have been changed since the settlement and questioned if Vetter must comply with the uses at the time of the agreement or now. Attorney Bradley explained the lawsuit held up implementation and the language of the agreement of all parties, except Attorney Ortell, Mr. Vetter, and possibly Attorney McKinley, indicate that they agreed to be bound by what they knew was coming down within days or a couple of weeks. **Commissioner Horton** concluded the primary issue stems from whether the parties solely agreed to what was existing at entry of the agreement or subsequent changes that were made that the parties did not agree to. **Commissioner Devos** requested the difference. Attorney Bradley advised the concrete plant was allowed by special exception whereas the change would not have allowed the plant. **Chairman DeBoer** stated an elected official contacted him to ascertain the probability of the Board granting a special exception to Rinker; the County gave up some buffering along the front of the building and facade requirements and seriously reduced buffering within the Park as well as the storage use; and the parties were subject to the same uses as in the proposed overlay district. **Commissioner Devos** stated the parties were aware because the County could not make the changes prior to settling the lawsuit and the concession on the infrastructure was agreed to in order to expedite the settlement. **Commissioner Horton** recalled Vetter came in for the zoning change prior to the County's action on the overlay district and expressed a preference for resolving this matter in lieu of going to court. **Commissioner Devos** requested

clarification on whether the Board would be obligated to grant a special exception if such a petition was filed and if a paver plant would be allowed under a special exception. Attorney Bradley advised the petitioner must comply with all seven of the criteria for a special exception and evidence would have to be presented on each of the seven criteria before the P&Z Board. **(Commissioner D'Aprile was not present for the remainder of the meeting.)** **Commissioner Devos** requested staff consult with her on resolving this matter and commented on a possible change in her position based upon **Commissioner Horton's** rationale. **Commissioner Cummings** opined that history shows there will never be enough to settle this matter. **Commissioner Devos** stated if the parties do not want a paver plant, then the issue is moot. **Chairman DeBoer** expressed concern because the Board would never enter into an agreement that prohibited future Boards from making changes in land uses; questioned if residential would be allowed because it was not removed at the time the agreement was entered into or removed limitations on the size of commercial shopping centers; and agreed with **Commissioner Cummings**.

West County Paw Park - **Commissioner Horton** stated he has had requests to allow dogs in the Rotonda Park prior to 10:00 A.M. and he has asked staff to look into this and update the Board. **Chairman DeBoer** recalled the first paw park was approved by this Board and expressed no objection to establishing a separate paw park in West County. **Commissioner Cummings** suggested one paw park be established in each segment of the County.

Chairman DeBoer announced his intended absence at the next Board meeting.

IV. CITIZEN'S INPUT

Geri Waksler stated she and her husband Joe, owner of Ace Hardware, are willing to work with staff; she has spoken with Debrah Forester on moving the building up to the property line; the site plan was redone and incorporated the new design standards for the meeting with Public Works; the site plan shows the island extended out into the excess road with nose and angled parking; pointed out the existing zoning requires a 25' setback; questioned the process by which the building can be constructed at the property line i.e. a variance or a written document from Public Works since she is concerned that the

structure might be considered as non-conforming in the future. **Commissioner Devos** suggested this issue be included in the workshop on the US 41 Corridor planning. Mr. Loucks reported staff is working on the overlay based upon plans from West Tarpon to Harbor Boulevards and to incorporate the same elements all the way from the Peace River to the Sarasota County line.

MEETING ADJOURNED: 4:23 P.M.

Signature on file in Commission Minutes
Matthew D. DeBoer
Chairman

ATTEST:

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

**By: Signature on file in Commission Minutes
Deputy Clerk**

djn