

LAND USE PUBLIC HEARINGS

BOARD OF COUNTY COMMISSIONERS

DECEMBER 15, 2004

A special meeting of the Board of County Commissioners for Community Development Land Use Hearings was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Sara Devos and Commissioners Thomas G. Moore, Adam Cummings, Thomas C. D'Aprile and Matthew D. DeBoer. Also in attendance were County Administrator Bruce D. Loucks, Assistant County Attorney Louis Whitehead, Executive Assistant to the Board of County Commissioners Diane Gant and Deputy Clerk Karen S. Mitchell. The meeting was called to order at **9:04 A.M.** followed by the Pledge of Allegiance to the Flag.

PLANNING AND ZONING AGENDA

Thomas A. Cookingham, Planning Services Manager, briefly updated the Board on the schedule for the upcoming months and stated a copy of the schedule will be sent to each of the Commissioners and to Administration.

Agenda Item 1 - NOPC-04-10-43 (Quasi-Judicial), District IV (Proof of Publication was in Order.)

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Mr. Cookingham said this petition was by Centex Homes, it was part of the Riverwood Development of Regional Impact (DRI) and Riverwood Increment One, it would add 17+ acres, extend the build-out date by six plus years and revise the annual reporting requirement to a biannual report. Mr. Cookingham explained approval of this petition would require the deletion and replacement of the Land Use and Phasing Schedule and the associated maps, and both staff and the Planning and Zoning (P&Z) Board recommend approval. Attorney Steven C. Hartsell with the Pavese Law Firm spoke on behalf of the applicant, said this amendment would add an additional 17 acres to the previously approved Increment One, 72 units will be constructed, the revised build-out date was January 8, 2009 and requested Board approval. **(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.)** Gail Giles said this

affects her immediate area, asked if the additional 17 acres will also be paying down the original bond debt, if the water treatment plant has been extended or rebuilt because there have been problems and said she wants to know that the plant can service all of the current and new units being added. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Mr. Cookingham clarified the 17+ acres were part of the overall DRI that had already been approved. Attorney Hartsell explained this proposal wasn't adding more units to the overall Riverwood DRI, this simply brings 17 acres into the first increment area, the 72 units were part of the original number of units approved under Increment One, he didn't have the answer to paying down the bond debt but within the Riverwood development it was a Community Development District (CDD) and all the units within there have to pay their proportionate share. **Commissioner Cummings** summarized what's being done was changing the phasing of the DRI. Attorney Hartsell concurred, explained they were not adding more units to the DRI and this will result in an overall reduction in the number of units being built at Riverwood. **Commissioner Cummings** asked if archeological surveys were required to make sure they weren't building on an Indian mound. Attorney Hartsell responded they didn't believe there was any archeological resource on the 17 acres. **COMMISSIONER CUMMINGS MOVED APPROVAL TO ADOPT RESOLUTION #2004-255 FOR PETITION NOPC-04-10-43, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Agenda Item 2 - NOPC-04-10-44 (Quasi-Judicial), District IV (Proof of Publication was in Order.)

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) Mr. Cookingham said the purpose of this petition was to extend the build-out date for Increment Two Development Order from January 9, 2007 to January 8, 2009 and revise the annual reporting requirement to a biannual report. Mr. Cookingham stated Increment Two contained 307+ acres, the Southwest Regional Planning Council (SWRPC) adopted a notice of proposed change saying there was no substantial deviation, and both staff and the P&Z Board recommend approval. Attorney Hartsell spoke on behalf of the applicant, explained the request to extend the build-out date was due to permitting delays. Ms. Giles reiterated her concerns regarding Indian mounds and historical areas, and repeated her question concerning the water

and wastewater treatment plant. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner D'Aprile asked if it was possible to investigate the issue of the Indian mounds. Attorney Hartsell responded that issue was already addressed by the development order, studies have been done and those areas required to be preserved have and will continue to be protected. **Commissioner DeBoer** said the 641 units being added will add nearly 5,000 daily vehicle trips and asked when the traffic analysis going to be done in season so a traffic light can be put up. Attorney Hartsell said the monitoring report done in 2003 showed the project for both Increments One and Two still had not exceeded the anticipated impacts that had been mitigated, this particular increment will be required to pay impact fees as the units were added to mitigate the impacts of the project, bi-annual monitoring was part of the requirements and the next monitoring report will be October, 2005. **Chairman Devos** said she was currently renting in Riverwood, **Commissioner DeBoer's** concerns were very valid because it was very difficult to get onto SR 776 from Riverwood, agreed the monitoring needs to be done during a busier time, said she wants to see a traffic light there today and asked if Riverwood could do the installation. Attorney Hartsell responded his understanding was until FDOT approves the need for the traffic light they won't let you put it up. **Chairman Devos** asked if the monitoring date can be changed. Sharon Jenkins-Owen, AICP, Wilson Miller Senior Project Manager Associate, said yes, just tell them when the Board wants the traffic monitoring done. **Commissioner DeBoer** said he would leave that to staff but he felt peak season was when it should be done and asked if there would be a cost to the County. Attorney Hartsell clarified Increment One states the developer was responsible for putting in the traffic light and there would be no cost to the County. **COMMISSIONER D'APRILE MOVED APPROVAL TO ADOPT RESOLUTION #2004-256 FOR PETITION NOPC-04-10-44, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Agenda Item 3 - PA-04-08-38 (Legislative), District I (Proof of Publication was in Order.)

Jie Shao, Planner II, stated this petition requested a small-scale plan amendment on 0.96+ acres from Agriculture to Low Intensity Industrial, the site was located northwest of Washington Loop and east of Duncan Road in the Punta Gorda area, it was outside the Urban Service Area and the purpose of the

plan amendment was to allow expansion of the existing metal working service business in operation since 1990. Ms. Shao reviewed the Future Land Use Map (FLUM) and surrounding land uses and stated both staff and the P&Z Board recommend approval. Mark Gering, P.E., agent for the applicant Cicanese Fabrication, explained the owners want to change the existing Commercial Intensive two acre site along with an additional one acre to the rear of their property zoned Agricultural Estate (AE) to Industrial Light (IL) which better fits the current use, the applicants has been operating at it's current location for nearly 15 years and requested approval. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER CUMMINGS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS. COMMISSIONER CUMMINGS MOVED APPROVAL TO ENACT ORDINANCE #2004-068 FOR PETITION PA-04-08-38, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Agenda Item 4 - Z-04-08-39 (Quasi-Judicial), District I (Proof of Publication was in Order.)

(Deputy Clerk Karen S. Mitchell administered to oath to prospective witnesses.) (Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) Ms. Shao stated this petition was the companion rezoning to Petition PA-04-08-38 to rezone 2.7+ acres from AE and Commercial Intensive (CI) to IL, her previous comments applied to this petition as well, and both staff and the P&Z Board recommend approval. Mr. Gering spoke on behalf of the applicant requesting approval. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2004-069 FOR PETITION Z-04-08-39, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Agenda Item 5 - SV-04-08-16 (Legislative), District II (Proof of Publication was in Order.)

James Dossett, Development Review Manager, explained this petition was a request by the Church of God of Prophecy to vacate a portion of Lincoln Street located north of Carmalita Street, south of Olympia Street, east of Cooper Street and west of Scott Street in the Punta Gorda area. Mr. Dossett advised the site contains 0.45+ areas and both staff and the P&Z Board recommend approval with five conditions stipulated in the

proposed resolution. **Commissioner DeBoer** asked if staff had checked with Public Works to see if this was needed for drainage. Mr. Dossett said yes and Public Works had no objections. **Commissioner DeBoer** voiced concerns about access to the ditch because the railroad doesn't clean it the County does. Pastor L.B. Babbett, applicant, requested approval, said he agreed with the conditions, clarified he's been there 14 years and the railroad allows Public Works the right-of-way (ROW) to clean the ditch. **Commissioner Cummings** recalled a problem because the County ordinances required the applicant to provide a vegetative buffer between the church and the railroad and asked if anything had changed regarding modifications and parking. Pastor Babbett responded nothing had changed regarding parking, they did the buffer with the railroad, one of the things that's changed was they wanted to pave this road, they'd already been assessed \$1,002 for 10 years to pave even though it's not used that much and only one resident had any objection to the closure. **Commissioner Cummings** summarized so the Church wanted to make it part of their parking lot and maintain it. Pastor Babbett said yes. **Commissioner D'Aprile** asked if they intend to block the entrance to this road so no one can get down it. Pastor Baggett said yes. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2004-257 FOR PETITION SV-04-08-16, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 6 - PV-04-09-19 (Legislative), District IV (Proof of Publication was in Order.)

Mr. Dossett stated this petition was a request to vacate a portion of the platted ROW located in the Murdock Carrousel Subdivision, the site contains 0.5+ acres, and both staff and the P&Z Board recommend approval with one condition that the applicant must submit a survey including a declarative statement which has been done. Douglas A. Lewis, Esq. spoke on behalf of the applicant in support of the staff report and requested approval. **Commissioner DeBoer** questioned the long rectangular parcel. Attorney Lewis responded he thought it was Tract D which was a Conservation Easement owned by their client. **Commissioner DeBoer** said the land above the easement was Franz Ross Park and asked if his client would be willing to work out an agreement where the County would maintain the retention area

and preservation easement and allow the County to use it as part of Franz Ross Park. (Commissioner Moore was not present for this portion of the meeting.) Attorney Lewis said he would pass that on to his client. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2004-258 FOR PETITION PV-04-09-19, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). (Commissioner Moore was present for the remainder of the meeting.)**

Agenda Item 7 - PV-04-09-20 (Legislative), District III (Proof of Publication was in Order.)

Mr. Dossett explained this petition requests a plat vacation for a portion of Rotonda Heights Subdivision, the portion to be vacated was Lot 1983 through Lot 1993 on Easter Court, and Lot 1999 on Rotonda Boulevard West, the site contains 5.7+ acres and staff and the P&Z Board recommend approval with three conditions as stated in the proposed resolution. Michael McKinley, Esq. with the law firm of McKinley, Ittersagen, Gunderson & Berntsson, P.A., appeared on behalf of the applicant. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED APPROVAL TO ADOPT RESOLUTION #2004-259 FOR PETITION PV-04-09-20, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Agenda Item 8 - PP-04-07-14 (Quasi-Judicial), District I (Proof of Publication was in Order.)

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Mr. Dossett explained this petition was for a Preliminary Plat for Hunter Creek Estates Residential Subdivision, the site will contain 28 single family lots on 37.9 acres for a density of 0.74 units per acre, the zoning was AE and each homeowner shall install a private well and septic system to County standards. Mr. Dossett stated staff and the P&Z Board recommend approval with the following three conditions:

1. Lots 11, 12, 18, 24 and 25 will have maximum house square footage as determined by the Health Department in order to meet minimum septic setbacks from the water.
2. Extend the 10' drainage and utility easement from Lot 18 to the common area "C".
3. Applicant agrees to meet current planning and zoning conditions during Development Review Committee (DRC) review.

Ben Maltese, Hunter Creek Estates LLC Managing Partner, stated they have answered the Health Department issues and requested approval. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED APPROVAL OF PRELIMINARY PLAT PP-04-07-14, SECONDED BY COMMISSIONER CUMMINGS AND DECLARED UNANIMOUS.**

Agenda Item 9 - PP-04-09-19 (Quasi-Judicial), District IV (Proof of Publication was in Order.)

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) (Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) Mr. Dossett explained this petition was for a Preliminary Plat for Sawgrass Pointe at Riverwood Unit Three, the site contains 46.70+ acres and there will be 82 single family lots within the Riverwood Community Development District (CDD). Mr. Dossett stated both staff and the P&Z Board recommend approval with one condition - the applicant shall provide Natural Resources Division with a copy of all approvals from the Florida Fish and Wildlife Conservation Commission and the U.S. Fish and Wildlife Services to revise designated preserve areas shown in the Development Order. **Commissioner DeBoer** recalled the Board had seen this before and they had argued about an access that use to come out on Eleanor Avenue. Mr. Dossett said in reviewing the minutes when this whole site was discussed there was a request that access to the site come only from Eleanor Avenue but it was not written into the other approval and the problem with that access was it would present a conflict with the preservation area. Mark D. Haines, WilsonMiller, Inc., spoke on behalf of the applicant, clarified Unit Three was intended to be an additional unit north of Units One and Two that were already approved, the intent was to bring

traffic in from the rest of the Riverwood community and they weren't asking for permanent access to either Eleanor Avenue or Proude Street. Mr. Haines said one of the problems has been construction traffic, there was a creek separating the larger portion of the Riverwood community to the south of this site, the intention is to bridge the creek farther south and provide permanent access via that bridge and out the main entrance to Riverwood but until such time as that bridge is constructed, provide temporary access off of Proude Street or one of the other streets into the property to facilitate the construction. Gail Giles recalled the final DRI in 1993, one of the reasons for the Eleanor Avenue access to that property was in case of fire and emergency, said she still wants to know what they are doing about their plant capacity and since this was all on waterways she wanted to know the number of spills since 1993. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** **Commissioner Cummings** asked the proposed use and if this was an eagle nest area. Mr. Haines responded residential use. Mr. Dossett responded he wasn't sure if this was an eagle nest area. **Commissioner Cummings** said this was referred to in item 3 of Ms. LeBeau's report. Mr. Dossett clarified the statements in item 3 just serves to put the applicant on notice regarding the need for eagle nesting surveys prior to plat, development and any permit approvals. **Commissioner D'Aprile** asked staff to answer Ms. Giles' question on the number of spills. Mr. Haines said to his knowledge there had been none and it was his belief the development order process addresses the issue of plant capacity. Mr. Dossett said he wasn't aware of any spills and they have a letter from CCU saying the plant capacity can meet the need. **Commissioner D'Aprile** said he wasn't happy with this report especially regarding the lack of information regarding spills. **Commissioner DeBoer** noted this was a quasi-judicial hearing, they must base their analysis on substantial and competent evidence and audience comments were not expert testimony so they become hearsay carrying no weight in their decision making process. **COMMISSIONER DeBOER MOVED APPROVAL OF PRELIMINARY PLAT PP-04-09-19 FOR SAWGRASS POINTE AT RIVERWOOD UNIT THREE, SECONDED BY COMMISSIONER CUMMINGS.** **Commissioner Cummings** agreed with **Commissioner DeBoer**, said there were regulatory tools to handle these issues which were not part of this proceeding and the evidence points to granting this petition. **Commissioner D'Aprile** said he understood that, he just wants someone to answer Mrs. Giles' questions. **Commissioner Cummings** said he

supported the Commissioner's request. Mr. Loucks stated he would bring this information back to the Board. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item 10 - PP-04-09-20 (Quasi-Judicial), District IV (Proof of Publication was in Order.)

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) Mr. Dossett advised this was a Preliminary Plat for Sawgrass Point at Riverwood Unit Four, this site was located south of Unit Three approved in the previous petition and the site contained 46.7+ acres for a 46 lot single family subdivision. Mr. Dossett stated both staff and the P&Z Board recommend approval with one condition - the applicant shall provide Natural Resource Division a copy of all approvals from the Florida Fish and Wildlife Conservation Commission and the U.S. Fish and Wildlife Services to revise designated preserve areas shown in the Development Order. Mr. Haines spoke on behalf of the applicant in agreement with staff's recommendation. Mrs. Giles stated she hadn't been sworn in during the previous hearing, she did call Ft. Myers regarding the treatment plant and she also called the Health Department because the stench was unbelievable. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner DeBoer asked if they should make a motion to strike Mrs. Giles' testimony. Louis Whitehead, Assistant County Attorney, said no since those hearings were over. **COMMISSIONER DeBOER MOVED APPROVAL OF PRELIMINARY PLAT PP-04-09-20 FOR SAWGRASS POINTE AT RIVERWOOD UNIT FOUR, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 11 - Z-04-09-41 (Quasi-Judicial), District I (Proof of Publication was in Order.)

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) (Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) Barbara Jefferies, Planner II, explained this petition requests a rezoning of 12 acres from RMF-10 and AE to RMF-5, 12 acres will be down-zoned, 15 acres will be up-zoned, the overall density on the 27 acres will be 135 units or 5 units per acre, clarified this was just a matter of shifting density so there will be no increase in density. Ms. Jefferies advised there were no road or utility concurrency issues and the proposed change was appropriate with the surrounding area. Ms. Jefferies stated both staff and the P&Z Board recommend approval. **Commissioner Cummings** asked if there would be a loss of green space. Ms. Jefferies said there would be a loss of lot coverage but she didn't see any conflict as this was consistent with the surrounding neighborhood, the entire parcel will be developed and clarified there won't be a set-aside of any preserve area. **Commissioner D'Aprile** said he wasn't in support of a 27 acre parcel developed without some green space or park area and he had a problem with this. Attorney McKinley spoke on behalf of the applicant, said he has been advised by the developer the preliminary site plan provides for substantial open space. **Commissioner D'Aprile** said at 5 units per acres that means less than one-quarter acre per unit which was something the Board didn't want to happen and he was a little concerned about that. Attorney McKinley responded if the Commission didn't grant this then it would probably in the applicant's economic interest to cram all of the units into the high density portion of the property which wouldn't be consistent with the pattern of development established in the neighborhood meaning 10 units per acre. **Commissioner D'Aprile** said he needs pictures to help visualize and though he has no problem accepting this petition he does have a problem with the overall usage of the property. (Deputy Clerk Karen S. Mitchell administered the oath to the witness.) John Piazza, Park Place Estates Developer, stated they intend to maintain as much green space and water areas as possible, they have acquired two adjacent parcels, it was his intent following the rezoning to actually spread these units over 39 acres which would result in much less density and a really nice community. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE**

AND DECLARED UNANIMOUS. Commissioner Cummings asked for clarification on the multi-family units. Attorney McKinley gave the Commissioner a conceptual site plan showing duplex and quad units with green space around the lots. Commissioner Cummings said he could now support this. **COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2004-070, SECONDED BY COMMISSIONER D'APRILE.** Commissioner D'Aprile said he had just needed more information and he was now satisfied. Commissioner DeBoer summarized what the Board was doing was giving the applicant an advisory of what they were looking for when these come back and he felt this doesn't rise to the expectations discussed at their workshop last week but they haven't adopted those standards yet. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Commissioner Cummings requested a point of personal privilege, opined the Public Service Commission (PSC) keeps records of spills; there was a survey of existing Indian mounds, archeological sites and historical sites; and he would like to know what steps remain in the process that could require additional surveys in the Riverwood property. Commissioner Moore said regarding the sewer issues he strongly recommended they first go to CCU but agreed Ms. Giles deserves answers on this and on the issue of excess capacity. Chairman Devos extended wishes to everyone for a happy holiday season.

MEETING ADJOURNED: 11:15 A.M.

Signature on file in Commission Minutes

Sara Devos
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**

/ksm